

Oklahoma Museums Association
Guidelines Relating to Unclaimed, Undocumented, and Abandoned Property
(September, 2012)

Background

The Oklahoma Museums Association Abandoned Property Task Force developed these guidelines to assist museums in dealing with unclaimed property, undocumented property, and abandoned property. The Board of Directors of the Oklahoma Museums Association approved these guidelines on September 26, 2012. By creating these guidelines, the Oklahoma Museums Association hopes to establish uniform procedures for dealing with or disposing of unclaimed property, undocumented property, and abandoned property in museums.

This information is not intended to constitute legal or tax advice. A museum should consult with legal counsel for guidance as specific issues, concerns, or questions arise.

Definitions

Abandoned property includes items deposited with, delivered to, or left on the premises of a museum without adequate documentation as to source and type of transfer under circumstances of apparent abandonment. Items of abandoned property are commonly referred to as doorstep donations.

Loan (On Loan, Loaned) refers to property held by, or maintained in the possession of a museum with the understanding that the lender intends to retain title to the property and that the museum must return physical possession of the property to the lender at some point in the future.

Unclaimed property includes loans of property made to a museum that the museum would like to return, but is unable to do so because of an inability to locate the lender or because the museum cannot for some other reason return the property to the lender. Items of unclaimed property are commonly referred to as **old loans**. They include temporary, short-term loans of property, as well as loans of property made to the museum without a specific date for returning the property.

Undocumented property includes property, materials, artifacts, and other items that became part of the museum collection without adequate documentation regarding acquisition and, as a result, legal title may not be clear, may be uncertain, or may become subject to dispute. Undocumented property is often referred to as property **found in collections** and may have been acquired by loan, gift, bequest, purchase, abandonment, or some other means.

Concerns – Unclaimed and Undocumented Property

The legal arrangement between a museum and a lender of property to the museum is a **bailment**. Under this arrangement, the museum is generally obligated to take care of the property until the lender reclaims it. The museum must exercise reasonable care to prevent loss or damage to the property. This obligation could continue indefinitely.

A number of states have enacted laws enabling museums to resolve concerns relating to ownership, transfer, sale, or disposition of unclaimed and undocumented property. Oklahoma has not enacted laws that adequately address those concerns. As a result, museums in Oklahoma may face liability if the original owner, donor, contributor, or lender claims ownership and challenges the museum's claim of ownership. In many cases, unclaimed and undocumented property held by many Oklahoma museums has been maintained for decades. Also, in many instances the museum acquired the property before the now-customary use of donor agreements, loan agreements, temporary deposit receipts, or other documentation. With questionable legal title to unclaimed and undocumented property, museums can only make limited use of these items, while bearing the responsibility and cost of providing storage space, climate control, security, inventory control, insurance, conservation, records maintenance, and other services or resources.

In order to create certainty, promote uniformity, and manage the risks, responsibilities, and costs relating to unclaimed and undocumented property, museums should:

- Properly document every loan, gift, bequest, purchase, or other acquisition of property.
- Fairly allocate responsibilities between donors and lenders, on the one hand, and museums that are recipients of gifts and loaned items, on the other.
- Expeditiously resolve concerns relating to title and ownership of unclaimed and undocumented property left in their custody.
- When possible, work with the lender, donor, seller, or transferor to create documentation for property that is undocumented.

Legal Considerations

The Oklahoma Uniform Unclaimed Property Act provides that property is unclaimed when there is a lack of activity generated by the owner of the property. If it remains unclaimed for a certain amount of time, then it is considered abandoned and must be reported to the State Treasurer. Museums operated by a nonprofit corporation primarily for educational, scientific, historic preservation, or aesthetic purposes are not subject to the provisions of the Act and, therefore, are not required to report unclaimed property in their possession. A museum may, however, take advantage of the provisions of the Unclaimed Property Act with respect to unclaimed property that it holds, if it files the required reports of unclaimed property and complies with the other requirements of the Unclaimed Property Act. Museums may report abandoned and unclaimed property without charge at www.unclaimed.state.ok.us.

Rather than relying on the Oklahoma Uniform Unclaimed Property Act, the Oklahoma Museums Association advocates following the guidelines in this document to address unclaimed property, undocumented property and abandoned property within a museum's collection held in public trust (or held for the benefit of the public).

The Native American Graves Protection and Repatriation Act requires museums that receive federal funds to complete inventories and summaries of Native American cultural items

in their collections, publish notices in the Federal Register, and repatriate Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony to lineal descendants and culturally affiliated Indian tribes. Museums that receive federal funds and that own, control, or have possession of those types of property or items should comply with the requirements of the Act. Information about the Act, including helpful answers to commonly-asked questions, can be found at <http://www.nps.gov/nagpra/mandates/index.htm>.

Museum's Obligations to a Lender

New Loans. When a new loan is made to the museum, the museum should, at the time the loan is approved:

- Enter into a written loan agreement with the lender. The loan agreement should, at a minimum, contain the following:
 - Lender's name, address, telephone number, email address, and other contact information;
 - Description of the property loaned in sufficient detail for ready identification;
 - A clear statement that the lender is providing the property on loan to the museum.
 - The beginning date of the loan;
 - The expiration date of the loan;
 - Any requirements relating to the identification of the property loaned;
 - Any restrictions relating to the property loaned;
 - A requirement that the lender is responsible for notifying the museum of changes of address and changes of ownership of the property loaned.
- Inform the lender of all loan conditions;
- Provide the lender the museum's procedure for unclaimed property loaned to the museum;
- Provide the lender with a fully signed copy of the loan agreement;
- Retain a fully signed copy of the loan agreement in the museum's records;
- Inform the lender of these guidelines and provide the lender a copy of these guidelines upon request.

Existing Loans. Regardless of the date of the loan, the museum should:

- Update its records at least annually and whenever the lender informs the museum of a change of address or change in ownership;
- Update its records if the lender and museum negotiate a change in the duration or other terms of the loan;
- Prepare an updated loan agreement or an amendment to the loan agreement if any of the terms of the loan change; obtain the signatures of the lender and the museum; furnish a fully signed copy to the lender; and retain a fully signed copy in the museum's records.
- Inform the lender of these guidelines and provide the lender a copy of these guidelines upon request.

Old Loans. The museum should:

- Determine what the lender and the museum want to do with the loaned property;
- Provide museum contact information to the lender;
- If the museum decides to terminate the loan, notify the lender of the museum's intent to terminate the loan. The notification, which may be in the form of a letter, should include:
 - The name and address of the lender, if known;
 - The name of the museum;
 - The date of the loan or the approximate date on which the property came into the custody of the museum;
 - A description of property;
 - The name, address, phone number, email address, and other contact information of the museum staff member who the lender should contact for further information;
 - A statement that the museum is terminating the loan, along with a request that the lender contact the museum within 60 days.
 - Any other information that the museum considers pertinent or important.
- If the lender does not respond within 60 days, the museum should send a second letter with the same information as the first letter, again asking the lender to contact the museum within 60 days. If at the end of the second 60-day period, the lender has still not responded, the museum should consider sending a third letter, stating that the museum has determined, based on the lender's failure to respond to the two prior letters, that the lender has donated the property as of the date of the third letter and that the museum claims title to, and ownership of, the property.
- If the first letter is returned as undeliverable or if the museum cannot locate the lender after a reasonable search with no indication of the lender's whereabouts, the museum may wish to treat the property as having been abandoned. In that case, the museum should consult with legal counsel.

Documentation

Unclaimed and Undocumented Property - Found in Collections

- The museum should document the length of time that the museum has held the property.
 - Documentation may include inventories, catalog records, dated photographs, correspondence, or other records of ownership, maintenance, or possession.
 - If the museum cannot find existing documentation, the museum should catalog the property with a tracking number and note in the museum's records the date on which the property was found in the collection. This provides the museum a timeline to use later if the museum wants to claim ownership of the property. For example, by noting that undocumented property was found in the museum's collection in September 2012, the museum now has a record that it may proceed to claim title to the property in seven years, which would be September 2019.

- The museum should consider giving public notice of intent to claim title to the property, depending on the cost of publication, the nature of the property, and the value of the property.
 - Publish notice in a newspaper of general circulation in the area where the museum is located at least once a week for three consecutive weeks;
 - The notice should, at a minimum, contain:
 - The museum's name;
 - The date or approximate date of the museum's acquisition of the property, if known;
 - A description of property;
 - The name, address, and phone number of the museum staff member to contact for further information;
 - A statement that if written proof of claim is not presented to the museum by the current owner, and if the owner's right to receive the property is not established to the museum's satisfaction within 180 days after the date of the 3rd public notice, the museum will consider the property to have been abandoned and will claim ownership of the property.
 - Publish a similar notice on museum's website.

Oklahoma law does not provide certainty, and this procedure does not guaranty that the museum will acquire title to the property. Museums should consult with their own legal counsel for advice and direction in these circumstances.

Abandoned Property - Doorstep Donations

- Document the abandonment of the property. This may include taking pictures of property in the location in which it was abandoned and recording pertinent data, such as where it was left, who found it, when it was found, any notes or information that was found with the property, and other information.
- Generally, the museum may presume that an unsolicited item of property left at a museum from an unknown source is a gift if no one claims ownership within a year.
- Decide whether the property should be held as part of the museum's permanent collection or whether the museum should dispose it.

Claims for Property

Claims for Undocumented or Previously Unclaimed Property

- In general, the museum should exercise due care to maintain and preserve any property it is given.
- If someone submits a claim of ownership of property that was previously unclaimed, that was undocumented, or that was previously considered abandoned, the museum must investigate the claim, unless it is clear to the museum that the claim is unsupported, unsubstantiated, and frivolous.
- The museum should verify the identity of the claimant and evaluate all aspects of the claim in an effort to determine whether the claimant was the original lender or donor.

- If the claimant does not claim to be the original lender or donor, the museum should establish the claimant's relationship to the lender or donor; ascertain the claimant's reasons and justification for the claim; and evaluate the claimant's authority for making the claim. The claimant must provide information satisfactory to the museum that the claimant is entitled to claim and take possession of the property.
- If multiple claims to ownership are submitted, the museum should defer a determination of ownership until the various claims are resolved by agreement or legal action. If the museum verifies that multiple claimants are joint owners, the museum should make sure all parties agree to the final disposition of the property before taking action.
- If the museum is satisfied that the claimant or claimants are entitled to take possession of the property, the museum should enter into an agreement with the claimant(s) relating to disposition of the property. Among other matters, the agreement should (a) identify all parties, (b) describe the property, (c) state the circumstances relating to the claim, (d) provide an authorization for the museum to make the property available for retrieval by a specific person, (e) include representations by the claimant(s) that they are entitled to direct the return of the property and to provide the authorizations in the agreement, (f) permit the museum to take and retain photographs and make copies of any written documentation that is being returned, (g) include an indemnification by the claimant(s) to protect the museum from claims by others for the same property, (h) release the museum from liability relating to its prior possession of the property, and (i) be signed by all claimants.
- If the museum would like to retain the property, the museum should suggest or encourage the claimant or claimants to donate it or to provide it on loan for a specific period of time. If the claimant(s) agree, the museum should document their agreement and donation.

No Claim Submitted after Notice, Inquiry

- If no one claims the property, then the museum may wish to claim the property as having been abandoned. Oklahoma law does not provide certainty, so museums should consult with their own legal counsel for advice and direction in these circumstances.
- If the museum determines that the property has been abandoned, then the museum must decide whether to dispose of the property or to add it to its collection. If the museum chooses to dispose of the property, the museum should keep records, including descriptions of the property, method of disposition, and value at time of disposition.

Conservation Measures

Unless a written loan agreement provides otherwise, a museum may apply conservation measures to, or dispose of, undocumented property or property on loan to the museum without the owner's permission if:

- Immediate action is required to protect the property; or

- The property has become a hazard to the health and safety of the public or to the museum's staff, due to one or more of the following:
 - The property poses an immediate risk of harm to the museum's staff or collection or to the general public, in which case the museum should promptly notify the owner or, if the museum is not able to locate the owner, the museum may dispose of the property without delay and undertake efforts to notify the owner of the action taken;
 - The museum is unable to reach the owner through available means of communication and is required to take immediate action; or
 - The museum contacts the owner, but the owner does not agree to the protective measures that the museum recommends and does not or is unable to terminate the loan and collect the property within the time the museum determines the action is necessary.

When a conservation measure is undertaken, the museum:

- May claim a lien on the property in the amount of the costs incurred by the museum;
- Should generally not be liable to the owner for damage to, or loss of, the loaned property, as long as the museum acted properly and had a reasonable belief at the time the action was taken that the action was necessary due to an immediate risk of harm; and
- Should not be liable to the owner for damage to, or loss of, the property due to conservation measures applied, as long as the museum exercised reasonable care in choosing and applying such conservation measures.

Again, Oklahoma law does not provide certainty in this area, and museums should consult with their own legal counsel for advice and direction in these circumstances.

Other Considerations

Legal Certainty – This information is intended to serve as a guideline for museums. As noted, Oklahoma law does not provide certainty with respect to some of the matters described, and museums should consult with their own legal counsel for advice and direction, as necessary appropriate.

Contractual Obligations - A museum and lender can establish by contract a different process and different requirements relating to property donated or loaned.