
Museum Cultural Property Law

Policy Briefing Book

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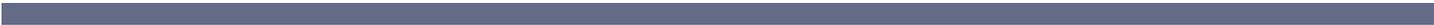
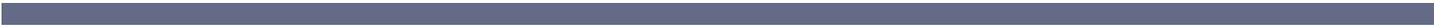


TABLE OF CONTENTS

1. Executive Summary	5
2. Statement of the Problem	6
3. Policy Recommendation	8
4. Conclusion	17
5. Appendices	19
A. Glossary	21
B. Interview Summaries	25
C. Annotated Bibliography	45
D. Selected Abandoned Cultural Property Laws	53
E. Abandoned Cultural Property Survey	73
F. Delaware Museum Association Letter	75



EXECUTIVE SUMMARY

What happens when somebody leaves an unsolicited donation at a museum? What happens when museum staff finds an undocumented object within the collection? What happens when a loaned object is never collected? These are just a few of the problematic issues museum professionals face when dealing with historical or cultural objects. Abandoned cultural property residing in museums and other cultural institutions is a little known issue to individuals outside of the museum profession, but it negatively affects institutions of all types and sizes. These abandoned objects drain museum resources without contributing to public use since museums do not hold clear title to the objects. A legal framework to establish title to these objects is necessary to allow museums to effectively manage their collections.

Unfortunately, Delaware is one of only four states that does not have any legal processes for managing abandoned cultural property. Museum professionals throughout the state acknowledge this is a critical issue. Abandoned cultural property cannot be displayed, conserved, or deaccessioned. Not only are valuable financial and staff resources being used to store and care for objects that cannot be used, but the lack of legal recourse poses an ethical dilemma. Abandoned cultural property in museums occupies valuable space that should instead be used for objects that better fulfill a museum's mission to serve the public.

There is a simple remedy to this problem. The policy recommendation outlined within this brief proposes a way to improve the state of Delaware museum collections. The proposed law includes clear instructions for establishing title. Once a museum establishes legal ownership, the objects can be brought into public use or, alternatively, have the burden of care returned to their legal owner. The law would restore museums' ability to conserve, display, and ethically dispose of unclaimed/abandoned property. This would not only open storage space for more appropriate collections, but it would also redirect funds towards the care of existing collections. Enacting a museum property law would allow for more efficient use of museum funds, including tax dollars.

Museum Cultural Property Laws have proven successful when enacted in other states. Delaware does not yet have a similar law due to a lack of legislative understanding and the existence of the more general (although not museum applicable) Abandoned Property Law. Furthermore, museums may have been wary of advocating for a law since it acknowledges a degree of disorder within collections that museum professionals did not wish to disclose to the public. Interviews with current museum professionals, included in this brief, demonstrate that the issue is indeed of primary concern. Delaware museums would be able to remedy many collections management issues with a law that directly applies to abandoned cultural property.

STATEMENT OF THE PROBLEM

Defining the Problem

Currently, Delaware lacks a law enabling institutions to resolve the pressing problem of “abandoned cultural property,” meaning property that they house, but which they do not legally own. Laws exist to address abandoned property, but none address the complex issues pertaining to abandoned *cultural* property. Objects within this category include:

1. “Unclaimed property,” “unclaimed loans,” or “old loans,” meaning loaned objects unclaimed by the owner for a specified period of time established by law after the term of a loan expires.
2. “Doorstep donations,” meaning objects left at an institution without a deed of gift to transfer ownership. Thus the burden of proof rests on the museum to prove that the owner has relinquished all rights.
3. “Undocumented property” or “found in collections,” meaning objects in a museum’s physical possession or control that lack both documentation of their origins and proof of institutional ownership

Although modern professional practices often include procedures to avoid these issues, all museums cannot prevent every instance of abandoned cultural property. For example, museums that are volunteer-run may not have the resources or experience to guarantee best practices at all times. Museums cannot prevent every instance of individuals leaving property on their doorsteps or failing to claim a loan. Furthermore, museum mission statements and collecting policies evolve over time, changing which objects fit within the institution’s collecting scope. This has resulted in an accrual of property that must be housed, but is not owned by, the museum.

Effects of the Problem

Abandoned cultural property causes significant problems for museums that house it.

Without clear title, museums are unable to:

- Conserve the objects
- Exhibit the objects
- Make the objects available for research
- Loan the objects to another institution
- Transfer objects that do not fit an institution’s mission to a better-suited institution
- Deaccession objects that do not serve a purpose in the collection
- Dispose of objects that cannot be conserved

These prohibitions compromise an institution's ability to realize its mission fully. Abandoned cultural property generates carrying costs by using space and resources in storage. These objects prevent museums from acquiring other objects more appropriate for their collections by using valuable space and funds.

These objects also generate an ethical dilemma. Cultural institutions have an obligation to their donors and the public to facilitate the best and highest use of each object in their care, but lacking clear title to some objects compromises their ability to do this. The economic burden caused by these objects also prohibits museums from achieving the highest standards of their missions by diverting resources.

Without a process to obtain ownership, museums face paralyzing legal, financial, and ethical liabilities for abandoned cultural property. Museums are vulnerable to claims of ownership even decades after an object was abandoned, and they cannot take any action to remedy this problem for the benefit of themselves, their constituents, or the objects in question. As a result, these objects inhibit an institution's pursuit of public service.

Current State of the Problem in Delaware

Without a law in place, museums in Delaware are powerless to resolve issues of abandoned cultural property. Thirteen professionals interviewed both in Delaware and in other states asserted that every organization they have worked with has faced problems with abandoned cultural property. All individuals interviewed who had worked in states with museum property laws attested to the laws' importance in resolving abandoned cultural property issues in a legal and ethical manner.

Because the problem of abandoned cultural property already exists, a law would provide a path to resolve this issue in a legal and ethical way. Enacting this law will benefit both institutions and the public. The law will allow for proper maintenance and use of museum collections, which will enable the more effective use of institutional funds. With solid legal footing, an institution can better achieve its legal obligations as stewards of the public trust.

At present, forty-six out of fifty states have passed laws equipping museums with a legal procedure to resolve this issue. In passing legislation, Delaware will strengthen its commitment to its cultural institutions and heritage sites by correcting an under-acknowledged, yet critical, issue.

POLICY RECOMMENDATION

Restatement of the Problem

Without a method of resolving ambiguous legal title on abandoned cultural objects, museums often face the financial and legal responsibilities of providing storage space, climate control, security, inventory control, insurance, conservation, records maintenance, and other services or resources to care for privately-owned property. The state of Delaware does not address museum-specific legal arrangements between a museum and the lender or former owner of cultural objects. Burdened with an indefinite obligation to care for abandoned cultural property, our museums need help.

Delaware's museums need a cultural property law.

Whom the Law Would Cover:

The law would cover museums or organizations operating museums in Delaware. A "museum" is a public or private nonprofit agency or institution organized on a permanent basis for primarily educational, scientific, historic, preservation, or aesthetic purposes. A museum owns or utilizes tangible objects, cares for them, and exhibits them to the public regularly.

Property Covered by the Proposed Law:

"Property" means a tangible object under a museum's care having historic, artistic, scientific, or cultural value. The law should recognize three categories of abandoned cultural property in a museum, specifying a different title obtainment procedure for each category. These categories include: 1) unclaimed cultural property; 2) doorstep donations; and 3) undocumented property.

Unclaimed property is an object or collection of objects held with an expired loan agreement or a loan for an indefinite term. *Doorstep donations*, also called unsolicited donations or abandoned property, are undocumented cultural objects given to a museum under the reasonable assumption that the owner intended to donate the property. *Undocumented property* consists of objects found in the museum's collection for which no records exist to prove ownership either by the museum or another party.

Property Not Covered by the Proposed Law:

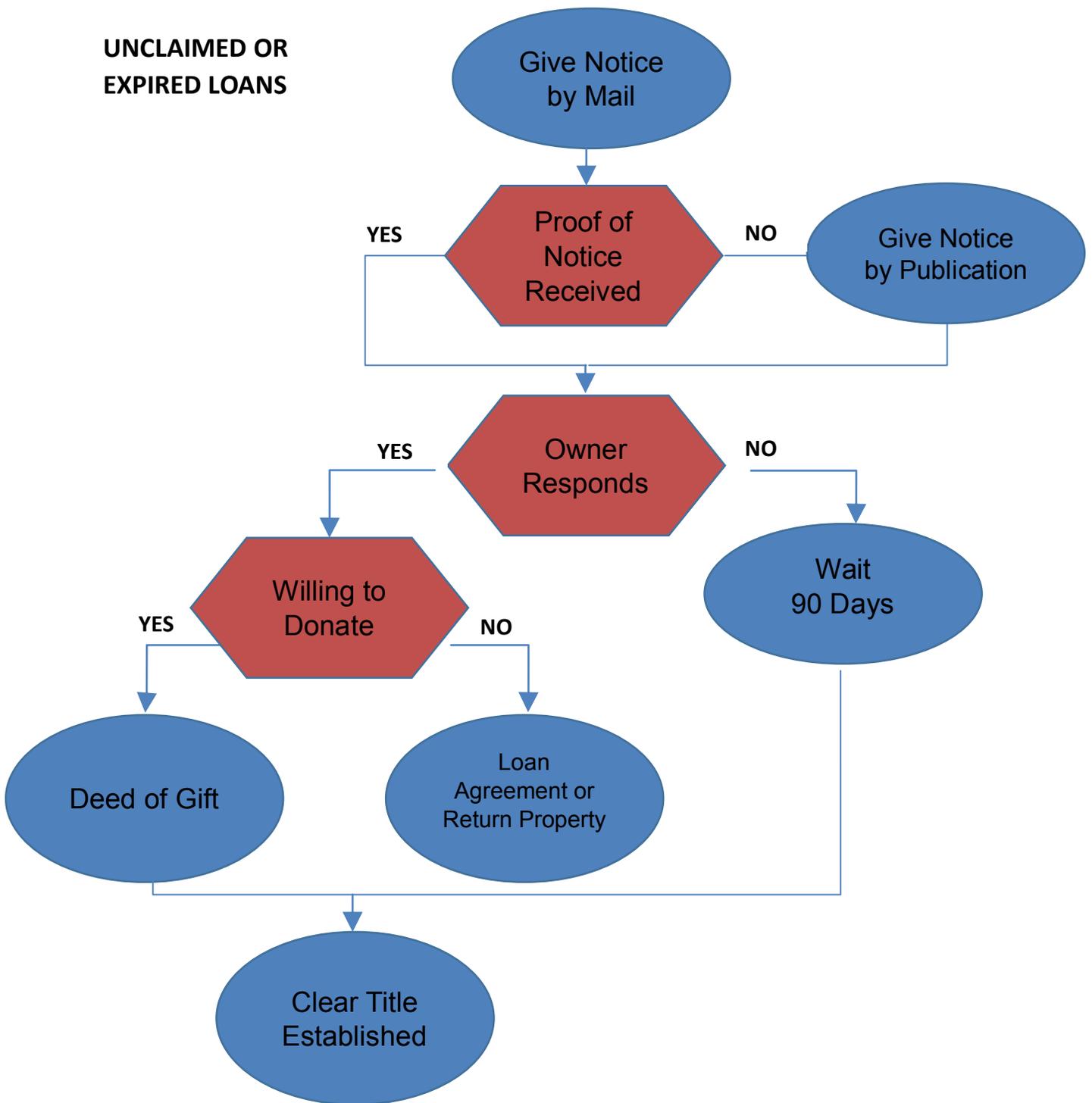
The law would not pertain to stocks, dividends, capital credits, patronage refunds, utility deposits, membership fees, account balances, or book equities. The law would not allow museums to take title of objects subject to other legal restrictions including, but not limited to, Nazi-era (1933-1945) disputed works, Native American artifacts, or stolen property.

Proposed Methods for Acquiring Title:

1) Unclaimed or Expired Loans:

- a) The museum may acquire title to an object with an expired loan agreement if the lender has not reclaimed their property following notification of the museum's intent to claim title. The museum should provide written notice of intent via certified mail, return receipt requested, to the lender or last known owner at the most recent address. If the lender does not respond to the notice within 60 days, clear title will transfer to the museum.
 - i) If the certified letter returns without response, the law will require the museum to publish a description of the object once a week for two consecutive weeks in a generally circulating newspaper within the county that the museum is located and in the county of the lender's last known address. The museum may choose to place a description of the object on the Delaware Department of Finance's Unclaimed Property website. If the object remains unclaimed after 90 days, clear title will transfer to the museum.
- b) The museum should treat a loaned object as an "Unclaimed Loan" if all of the following apply: the loan lacks a specific expiration date; the object is not considered a "permanent loan"; and the lender or lender's designated agent has not corresponded with the museum for five years.

UNCLAIMED OR EXPIRED LOANS

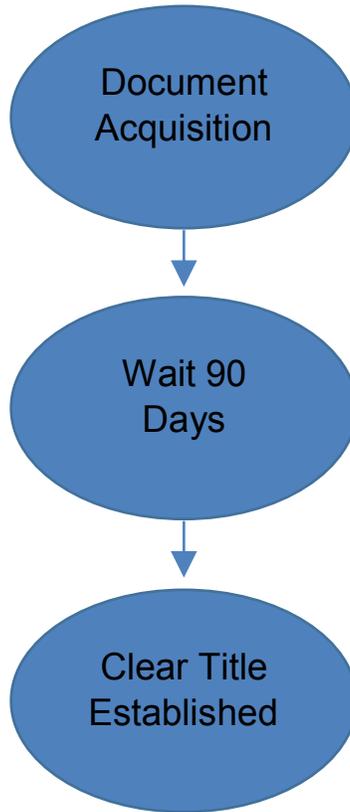


Proposed Methods for Acquiring Title, Continued:

2) Doorstep Donations:

- a) The museum may acquire rights to objects delivered, left on the premises, or unsolicited by the museum if no one comes forward to establish ownership of said property within 90 days.

DOORSTEP DONATIONS

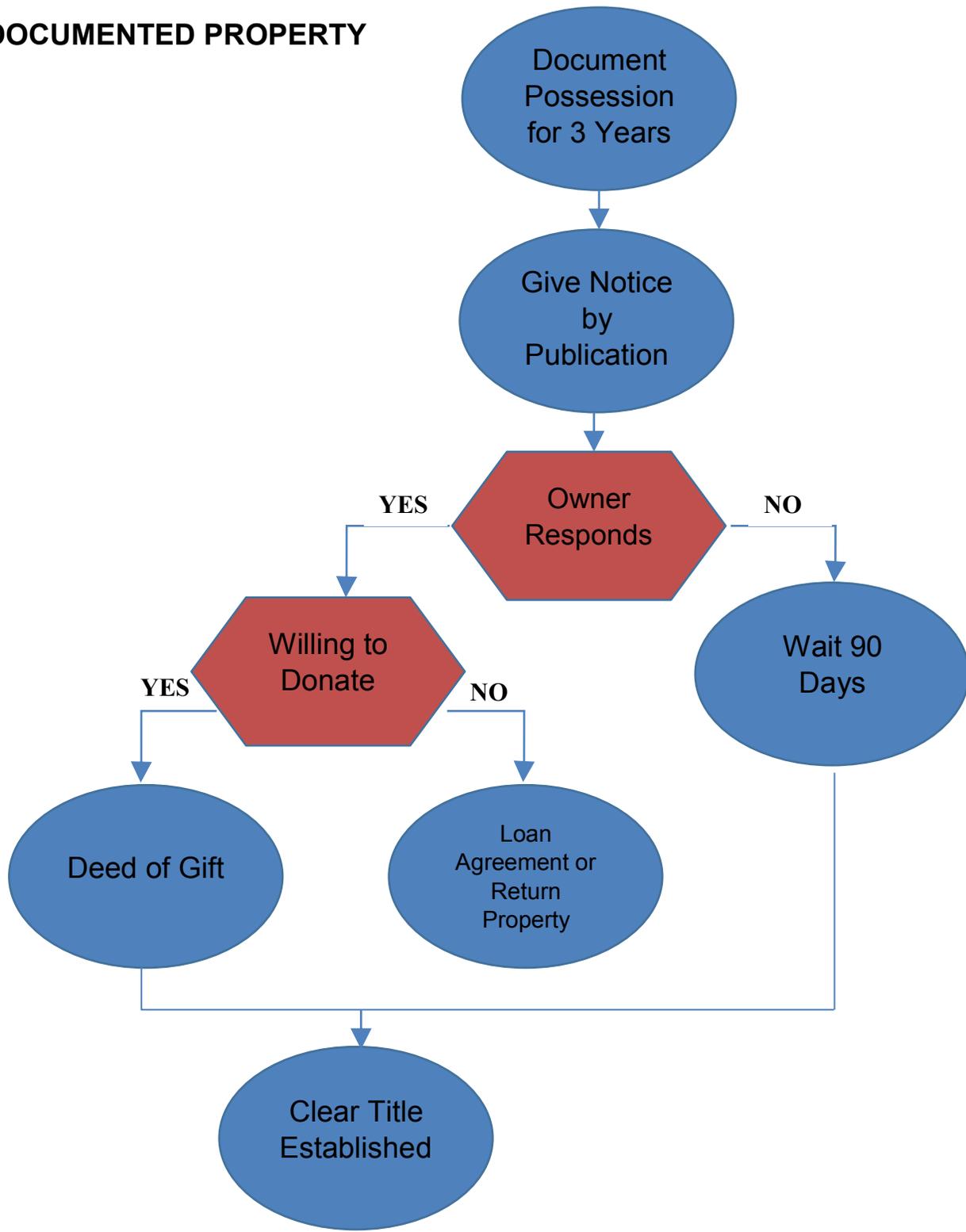


Proposed Methods for Acquiring Title, Continued:

3) Undocumented Property:

- a) Objects for which the museum cannot determine the lender, donor, or owner after making a good faith effort are considered undocumented property. The museum must document having physical possession of the object for three years prior to publishing a notice (following the same procedure for Unclaimed Loans) to claim clear title. If no one else claims ownership within 90 days, the museum may claim title.

UNDOCUMENTED PROPERTY



ADDITIONAL PROVISIONS

Conservation of Loaned Property:

Unless a written loan agreement exists to the contrary, the museum may apply conservation measures to property to which it does not have clear title (1) if the protection of the property requires immediate action, or (2) if the property presents a hazard to the health and safety of the public or museum staff.

Use of Proceeds from the Sale of Property:

The proceeds derived from the sale of property the museum acquires under this law should be used for collections acquisition or protection and care of the museum's collection.

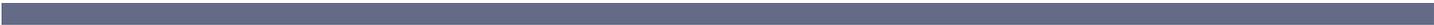
CONCLUSION

Well-constructed abandoned cultural property laws allow cultural institutions to effectively manage the priceless community resources with which they have been entrusted. The need for a legal framework for establishing clear title for abandoned objects has been recognized by most states. In fact, Delaware is one of only four states that lack an abandoned cultural property law.

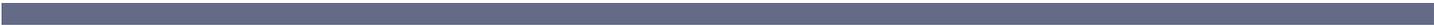
Action is required. Without legislation, Delaware museums are needlessly burdened with caring for objects that have been thrust upon them by some well-meaning anonymous donor and objects that lack appropriate ownership records. As it stands, these abandoned objects are held in limbo: they legally cannot be used by the museum, nor can they be discarded.

Nevertheless, museums bear the cost of their care, which not only results in the waste of already stretched resources, but, in some cases, taxpayer money. Delaware museums are clearly disadvantaged by the lack of an abandoned *cultural* property law.

Adopting the proposed policy would enable Delaware museums to more appropriately use their resources and better serve their communities. The research and sources compiled in this policy book summarize the problem and offer a proposed solution. In adopting a policy and passing legislation, Delaware will strengthen its commitment to its cultural institutions and heritage sites by correcting an under-acknowledged, yet critical, issue.



APPENDICES



Appendix A: GLOSSARY

Abandoned Cultural Property: Term that includes doorstep donations, unclaimed property, and undocumented property that are in the physical possession of a museum or culture institute.

Accession: An object or group of objects in the museum collection obtained at one time from a single source. “Accessioning” is taking possession and title to the object, placing it in the museum collection, and making a record of it.

Accession Number: A number assigned to an object that serves as a unique identifier. Used to tie museum records to that object.

Acquisition: The administrative process of discovering, preliminary evaluating, negotiating for, taking custody of, and documenting title to an object(s) or collection. May be gifts, transfers, field collections, or purchases.

Catalog: The curatorial process of classifying and documenting objects usually in complete descriptive detail resulting in extensive information in the forms of cards, files, publications, and digital data.

Conservation Measures: Any actions taken to preserve or stabilize an object, including, but not limited to, proper storage, support, cleaning, and restoration.

Cultural Property: A tangible manuscript or object, in the custody of a museum, that has historical, artistic, scientific, or cultural value.

Deaccession: Accessioned objects that have been formally removed from the museum’s permanent collection. Term is restricted to collections/objects that are no longer relevant or useful for the purposes and activities of the museum or when such pieces cannot be stored properly and preserved.

Deed of Gift: A written instrument that transfers ownership of an object(s) from a donor to the museum. It should include conditions (if any) of gift. It must be signed by the donor and contain a signature of acknowledgement of receipt of gift by the museum.

Disposition: The act of removing unaccessioned objects from the museum collection.

Document: The process of producing records to identify and enhance the knowledge of cultural objects with the intent of properly managing the museum’s collection.

Doorstep Donations: Property that that have been left with the museum. To establish abandonment, it must be proven that the owner intended to donate the property, though without following official museum guidelines, such as leaving the object at the museum after hours or by refusing to complete a deed of gift. The burden of proof rests on the party claiming ownership by default (ie: the museum). Also called *unsolicited donations* or *abandoned property*.

Expired Loans: Loans of limited duration for which the termination dates have passed.

Inventory: The process of periodically locating and listing accessioned, loaned, and borrowed objects by location.

Lender: An individual (or legal heirs), corporation, partnership, trust estate, or other organization or entity whose name appears in the records of the museum as the entity legally entitled to control property on loan to the museum.

Loan: The deposit of property with a museum that is not accompanied by a transfer of title to the property or other evidence of donative intent; however, "loan" does not include a consignment of property for sale.

Loan Agreement: A contract between a lender and a borrower of an object(s), specifying the object(s) and outlining the conditions of the loan and the respective responsibilities of each party.

Museum: A public or private nonprofit agency or institution located in this state and organized on a permanent basis for primarily educational, scientific, historic, preservation, or aesthetic purposes, that owns or utilizes tangible objects, cares for them, and makes them available to the public on a regular basis.

Museum Records: Documents created or held by a museum in its regular course of business.

Permanent Collection: Objects that are owned and accessioned by the museum, that it has the responsibility to house and care for, and that may be used as the museum sees fit—most often for exhibition, loan, or study.

Permanent Loan: A long-term loan with no definite termination date. These objects are often treated as part of the museum's permanent collection.

Risk Management: Identification and elimination or reduction of risks to the collection. Risk management requires thoughtful review of potential hazards including natural disasters, vandalism, theft, human error, mechanical or operational failure, and deterioration.

Unaccessioned Objects: Objects in the possession of the museum that have not been formally added to the museum's permanent collection, but still require storage and care.

Unclaimed Property: Property that is on loan to a museum in which the original lender, or anyone legitimately on the lender's behalf, and has not contacted or responded to contact attempts by the museum for an extended period of time. Also called "old loans" or "unclaimed loans."

Undocumented Property: Property in a museum's physical possession or control that is unsupported by any documentation and/or lacks sufficient evidence to prove museum ownership. There are no definitive records as to their origin or status. The museum cannot determine the lender, donor, or owner after making a good faith search. Also called "Found in Collection (FIC)," or "Undocumented Objects."



Appendix B: INTERVIEW SUMMARIES

Introduction

As part of the research for this brief, several interviews were conducted with museum professionals within Delaware and nationally. In the state, these professionals described the effects of objects lacking title on their institutions and how a law would resolve these issues. Other professionals reflected on their experience developing, advocating for, and using these laws in institutions across the country. This appendix summarizes central points from the conversations.

Delaware

DAN CITRON, *Executive Director*, New Castle Historical Society; *President*, Delaware Museum Association

CONNIE COOPER, *Chief Curator Emerita*, Delaware Historical Society

KEITH MINSINGER, *Museum Registrar/Collections Database Manager*, Hagley Museum & Library

BETH PARKER MILLER, *Registrar*, Winterthur Museum, Garden & Library

&

PAULA DeSTEFANO, *Associate Registrar*, Winterthur Museum, Garden & Library

SUZANNE SAVERY, *Deputy Director*, Delaware Division of Historical & Cultural Affairs

National

WALTER FONT, *Curator*, The History Center (Fort Wayne, IN)/Allen County Historical Society

MARK A. GREENE, *Senior Archivist Emeritus & Past Director*, American Heritage Center, University of Wyoming; *Contributor*, Society of American Archivists Abandoned Property Project

CLIFF HIGHT, *University Archivist*, Kansas State University; *Contributor*, Society of American Archivists Abandoned Property Project

MARCELLA HUGGARD, *Archives & Manuscripts Coordinator*, University of Kansas; *Contributor*, Society of American Archivists Abandoned Property Project

D. CLAUDIA THOMPSON, *Head of Arrangement & Description*, University of Wyoming

LAURA UGLEAN JACKSON, *Archivist*, University of California Irvine

LINDA WHITAKER, *Director of Library & Archives*, Arizona Historical Society; *Contributor*, Society of American Archivists Abandoned Property Project

DAN CITRON

Executive Director, New Castle Historical Society

Museum Objects Lacking Clear Title In Delaware

- Asserted that this is a problem
 - for institutions of all sizes and levels of funding
 - for small institutions that are volunteer-run and therefore have fewer opportunities for professionalization.
- Claimed problem stemmed from well-intentioned donors including items given without following legal processes. Museums face risk of later descendants reclaiming property.

Museum Objects Lacking Clear Title at your Institution

- The Society's interaction with these objects includes:
 - Doorstop donations (boxes left at the door)
 - Creates an unclear situation involving legal liability
 - May contain objects of value to the Society, but there is often too much risk involved because once a box is opened or brought into the institution, the Society can be held legally liable for its contents
 - Duplicate objects, which the Society is unable to get rid of
 - Objects that no longer fit its collecting scope, which has evolved over its eighty years of existence (along with professional standards for collecting)
 - Unable to follow ethical deaccessioning procedures
 - Examples: broken bottles, pieces of brick claimed to be from Martha's Vineyard, and a rock allegedly thrown at William Penn by "Chief Sock-Em-Good" when Penn first landed in Delaware
- Left on their own to resolve this issue, the Society developed a temporary custody sheet for donors that includes a clause granting them the right to get rid of unclaimed property
 - But this is not guaranteed to stand up in court
 - Also does not cover every scenario

Problems with Museum Objects Lacking Clear Title

- Take up storage
- Require time to deal with these objects without having the flexibility to care for or use these items effectively
 - Many of these objects do not fit with the institution's collection scope
- Bring costs that the institution incurs
 - Carrying costs
 - "Mission costs," where the institution cannot take objects that fit with its missions because it is storing things that do not fit its mission
 - May also alienate potential donors if institution is unable to take their objects

Ethical Considerations for a Delaware Law

- Establishing a fair waiting period before this property can be addressed
- Making a good faith effort to determine potential addresses for donors of unclaimed loans
- Making the law clear and easy to follow so that museums can actually use it
- Enabling museums to make the most of their collections by getting things to the place where they can serve the best purpose
 - For example, they have a collection of doll furniture in storage that may better serve another institution
- Allowing for ethical deaccessioning by museums

Obstacles

- Lack of education, which means that legislators are unaware of the issue
- Confusion about the difference between *regular* abandoned property (not covered by a law like this) and abandoned/unclaimed *museum cultural* property (the focus of this effort)

Suggested Provisions for a Law

- Although Mr. Citron does not have experience with other state laws, he believes an excessive waiting period such as that in some other states would make a law ineffective
 - He suggested assigning a grading system so that objects that have been in collections for longer periods of time could be addressed more quickly than more recent objects
- Advocates for a law based on regular abandoned property laws regarding notifications, etc.
 - Add a web posting provision/opportunity

CONNIE COOPER

Chief Curator Emerita, Delaware Historical Society

Museum Objects Lacking Clear Title In Delaware

- Even though many institutions do not have the resources to review their collections constantly, this type of property exists
- Factors at play:
 - Professionalization of the field has established standards that were not in effect in the earlier days of many of these institutions
 - The ideal case of a clear paper trail does not always exist because no standard for this paperwork existed in the past
 - As a result, institutions may not have the paper trail expected in present day
 - Even when information available about these objects exists, the proper paperwork to claim title does not necessarily exist
 - Evolution of collections policies over time also complicates how a museum deals with its holdings
 - Stable or declining resources awarded to cultural institutions
- Legal structure would help resolve these issues
 - Avoiding the possibility of a situation where someone shows up years and years after a loan expired to ask for their property back
 - Without a law, institutions are operating only on precedent and decency; Lacks legal framework to back these ethics
- Law would empower this institution to accomplish its mission

Museum Objects Lacking Clear Title at Your Institution

- Always making an effort to maintain as much of a paper trail as possible to keep things as ethical as possible

Problems with Museum Objects Lacking Clear Title

- Limited resources and limited legal framework restrict what institutions can do

Ethical Considerations for a Delaware Law

- Delaware Historical Society always tried to pursue an ethical framework, even without the legal backing to enforce it
- Unsolicited donors are often turned away if no qualified professional can meet with them when they arrive to avoid issues with abandonment, which strains community relations and undermines the institution's mission and spirit

Suggested Provisions for a Law

- Provision to make a good faith effort to locate original owners

KEITH MINSINGER

Museum Registrar/ Collections Database Manager, Hagley Museum & Library

Museum Objects Lacking Clear Title In Delaware

- Biggest issue is the lack of legal structure
 - Museums cannot determine clear ownership of objects, which means they cannot do anything about conservation, display, and deaccessioning
 - During Mr. Minsinger’s experience at Franklin Pierce University, an entire section of the University’s collection lacked clear title and therefore could not be touched
- Laws exist for corporate and personal abandoned property
 - Museum cultural property also requires specific attention that will separate it from these types of property

Museum Objects Lacking Clear Title at Your Institution

- Man came to claim a typewriter that had been unclaimed for years, and he was able to do so because he had proof of ownership from many years ago
 - Though this situation worked out as it should have, it does reveal that in more ambiguous situations, the institution has no claim
- Hagley is a repository for the Avon Collection, but they have no claim on these objects, making this a “volatile” collection
 - While this is part of the arrangement they have with Avon, this situation represents the issues that abandoned cultural property can cause
- Objects without clear title are a “millstone” around an institution’s neck

Problems with Museum Objects Lacking Clear Title

- Bring maintenance costs even as they sit in storage
 - If these items do not fit with the museum’s collection, it is wasting its money
 - No quantitative study currently exists to calculate carrying cost of these objects

Ethical Considerations for a Delaware Law

- Due diligence on the part of the museums
 - Informing donors
 - Making a good faith effort to locate and reach them
- Assistance to museums in meeting their stewardship obligations
 - Can better care for the objects that fit within their collections while also relocating objects that do not to places where they can serve their best uses
- Clarity and ease of understanding
- Separation of museum collections as a public trust from corporate and personal property in a legal framework

Potential Obstacles to the Passage of a Law

- Lack of education about why this is an issue outside of the museum community
- Complication of tax write-off considerations

Suggested Provisions for a Law

- Reasonable mandatory hold time (approximately 5 years)
- Acceptable medium for a museum to advertise objects that lack clear title
 - Are newspapers the best medium for this in present day?
 - Online portal? But who would update it?
- Distinction of abandoned *cultural* property from corporate and personal abandoned property
- Acknowledgment of cost limitations (for example, the cost of newspaper advertising) that would make this law ineffective for museum use

BETH PARKER MILLER, Registrar
&
PAULA DeSTEFANO, Associate Registrar
Winterthur Museum, Garden & Library

Museum Objects Lacking Clear Title In Delaware

- Although Winterthur has not had major legal issues thus far, a law would be helpful to avoid these issues should they arise (or at places where they have arisen).

Museum Objects Lacking Clear Title at Your Institution

- Fifty lots of varying size with unclaimed property. Estimated: a little under 10% of their collection
- Efforts made to track down lenders of expired loans as collection is re-inventoried
- Internal policy to deal with these objects that may not be effective in court
- Difficulty in tracking of changes in ownership

Problems with Museum Objects Lacking Clear Title

- Money, time, and space are invested on these objects, even though the museum does not own them
 - Insurance money spent on these objects
- Inability to deaccession objects that do not fit their collection scope

Ethical Considerations for Delaware Law

- Honoring the institution's commitment to the loaner

Obstacles to the Passage of a Law

- Lack of time for institutional professionals to work out what would make a good law
- Lack of education of the legislature
 - Not necessarily opposition- more lack of education, so no sense of urgency

Suggested Provisions for a Law

- Clear, simple, and affordable policy
- Specific to *museum cultural* property
- Title granted to museum after the object is legally deemed unclaimed or abandoned

Resources Provided

- “Report on Old Loans,” Compiled by Winterthur Intern Danya Pilgrim (2012)
- Winterthur Museum Documents
 - Museum Collections Management Manual
 - Incoming Loan Agreement Form
 - New Receipt Form

SUZANNE SAVERY

Deputy Director, Delaware Division of Historical and Cultural Affairs

Museum Objects Lacking Clear Title In Delaware

- Delineation between abandoned *cultural* property and *corporate/personal* abandoned property
 - The law would only address *cultural* property
 - If *cultural* property is lumped in with other types of property, institutions will not be able to deal with the problem effectively
 - *Cultural* property has its own, specific issues and nuances
- Existence of these objects not a result of museum negligence
 - It is the result of institutional collections that predate professional standards, and institutions with severely limited funding that must rely on volunteers who do not have the same training as professionals in the field
- Avoidance of a problem that already exists, and which 46/50 states have acknowledged
- Recognition that with no law in place, institutions may take other steps to address this problem

Problems with Museum Objects Lacking Clear Title

- Practical considerations
 - Take up space and resources
 - Valuable, climate-controlled space
 - Limits what else can be taken in
 - Involve lapsed insurance policies, which increases institutional liability
 - Cannot be deaccessioned
 - Sometimes necessary for the benefit of the institution or the well-being of the object
 - Cannot be loaned or transferred to institutions that would be able to better use the object
 - Cannot undergo conservation

Ethical Considerations for a Delaware Law

- These objects hurt the institution's ability to serve the public and meet its mission
- These objects cannot reach their "best and highest" use
 - This compromises the institution's obligations to these objects' original donors

Potential Obstacles to the Passage of a Law

- Complexity of the issue
- Lack of time and resources for institutions to join together and develop a plan to address these issues

Potential Obstacles to the Passage of a Law, Continued

- Institutional powerlessness to resolve the issue, which means it is often not addressed
- Lack of education of legislators
 - Lack of clarity confuses *cultural* property with *corporate/personal* property
 - Importance of seeking out legislative allies

Suggested Provisions for a Law

- Establish online portal?
- Keep things practical and achievable

WALTER FONT

Curator, The History Center (Fort Wayne) / Allen County Historical Society

Experiences with Property Lacking a Clear Title

- The Allen County-Fort Wayne Historical Society started collecting in 1923. Early records were maintained but with varying levels of competence through the years until the early 1960s when more professional standards were implemented. In forty years they ended up with a large accumulation of orphaned objects and loans that were not resolved--especially when there were unanswered questions about the legality of disposing of property the museum did not own. Additionally small staffs and meager funding forced the organization to prioritize public education over collections issues.
- A complete inventory of the collection was done twenty years ago and the data was entered into a database. Smaller inventories and many data updates have been conducted since that time. The data was used to comb through collection records to identify abandoned and loaned objects. The inventory uncovered over 5,000 objects that did not have any documentation assigning title.

Effects of a Having A Law

- Indiana passed a law in 1990 regarding Museum Cultural Property. It was revised in 2008 and again in 2016.
- The older versions and the 2016 amendments prescribe a legal methodology on how to deal with undocumented property and abandoned loans. It is useful because housing and caring for collections that do not serve the mission is costly and inefficient. Since the post-publication wait times were reduced in the 2016 amendment, Mr. Font was pleased with the law and could not recommend further changes.

Resolving Abandoned Cultural Property

- The staff printed public notices in local newspapers late in 2013. Under the old terms of the property law, the museum had to wait three years before they could claim ownership--the end of that period is nearly at hand, January 2017. The 2016 amendments will be helpful in the future--the wait time differences between one to three years and sixty days is a major improvement. The objective is to gain legal title to the property and then decide which objects will be accessioned or disposed of in some fashion. If they don't own them, they can do neither.

MARK A. GREENE

Senior Archivist Emeritus & Past Director, American Heritage Center, University of Wyoming
Contributor, Society of American Archivists Abandoned Property Project

Experiences with Property Lacking a Clear Title

- Mr. Greene wrote a recent article in *Archival Outlook* that mentioned museum professionals in states without this legislation dismissing the problem either because they believed there wasn't a problem or because they thought a law existed. He was "pretty taken aback" by this response. Every repository where he has worked has had a problem with objects lacking title. In his work in Minnesota and Wyoming, there were numerous occasions to deal with absence and presence of law. He finds it hard to imagine a state where repositories haven't run into this annually or more frequently.
 - Unlikely, but one of the following must be true:
 - Institutions are ignoring the problem
 - Institutions are taking the steps to solve without legal backing

Problems with Museum Objects Lacking Clear Title

- Cannot be accessioned and made available (including through digitization)
- Cannot be deaccessioned
- Cannot be conserved
- Essentially, cannot be dealt with effectively without documentation
 - Accumulate and occupy cubic feet, "gumming up the works"

Suggestions for Moving Forward

- Garner institutional support and support from local organizations- DMA, MERAC, MAAM?
- Identify a legislator tied to institution (donated papers, performed legislative work for, etc.)
- Look at this as an educative process
 - Justify why the law is significant and necessary
 - Delaware is "behind the times"
 - The lack of a law creates "unnecessary work" and "unease"
 - Not a simple fix, "but at least there is such a path" to acquire ownership
 - Emphasize that this is not novel, as many states already have laws
 - Establish that there is no downside
 - No financial cost to the state
 - Unlikely that anyone would be harmed
 - Positive reputation for legislator
 - Make sure that it is viewed as a priority
 - Accept that many legislators will not advocate for it, but will not resist it, either
- Draft a piece of legislation so that the legislator doesn't have to start from scratch

CLIFF HIGHT

University Archivist, Kansas State University

Contributor, Society of American Archivists Abandoned Property Project

Experiences with Property Lacking a Clear Title

- Experience with updating laws on the SAA’s Abandoned Cultural Property Project website
 - Connects the two “bursts” during which these laws were passed to happenings in the field
 - The first (ca. 1990): result of the increasing professionalization of the field that had taken place over recent decades
 - Seeking legal backing for professional practices
 - The second (late 2000s): recognizing that other states have these laws, and want to continue the professionalization process
- Some familiarity with Kansas laws (does not use as often as others because much of the University’s collection is state-owned)
 - Simple, fairly standard law
 - Seven-year waiting period for a museum to consider something “abandoned”
 - Relatively old law (passed 1989)

Effects of a Having A Law

- Provides institutions with the flexibility to handle objects they want to deaccession, etc.
- Helps to manage risk for institutions, especially small ones that could not handle a lawsuit

Problems with Museum Objects Lacking Clear Title

- Summed up as less flexibility, more risk

MARCELLA HUGGARD

Archives & Manuscripts Coordinator, University of Kansas

Contributor, Society of American Archivists Abandoned Property Project

Experiences with Property Lacking a Clear Title

- Had used museum cultural property laws in the past
 - In professional work
 - In helping to write SAA's guidelines on reappraisal and deaccessioning
 - In updating the SAA's Abandoned Cultural Property Project website's listings of U.S. state and territorial laws that address this issue

Effects of a Having A Law

- Gives cultural heritage institutions a legal framework to claim ownership over the property at their institutions
 - Including property lacking clear title that has been at the institution for years/decades and has yet to be dealt with
- Gives cultural heritage institutions the ability to accession property that can be used for research, exhibit, etc. or to ethically deaccession items that do not meet the institution's scope of collections or that cannot safely be used for research or exhibition
- Resolves the liability that institutions face with these objects otherwise
- Allows the institutions to invest resources legally to preserve an object
- Creates a process that can be time-consuming and labor-intensive but is worthwhile for improving collections management
- Establishes consistency in how these situations are resolved
 - Provides legal backing to ethical, professional practice

Provisions Typical to Museum Cultural Property Laws

- Provide steps for the acquisition of ownership
 - Legal notices over set timeframes

D. CLAUDIA THOMPSON

Head of Arrangement & Description, University of Wyoming

Experiences with Property Lacking a Clear Title

- Advocated for the passage of a Museum Cultural Property Law in Wyoming
- Used this law at the American Heritage Center at the University of Wyoming to resolve many of the issues it had with objects it lacked title to
- With Laura Uglean Jackson, co-wrote “But You Promised: A Case Study of Deaccessioning at the American Heritage Center,” which described the passage and employment of a Museum Cultural Property Law in Wyoming

Suggested Provisions for a Law

- Wyoming’s law used a fixed date before which the property had to have been acquired (July 1, 1982), rather than using a timeframe that would address objects that have surfaced since this date
 - Recommends using a rolling timeframe, as issues have arisen because of the fixed date

Moving Forward

- Find a sympathetic state legislator
 - In Ms. Thompson’s case, the state legislator who championed the bill was on her institution’s Board of Advisors

LAURA UGLEAN JACKSON

Archivist, University of California Irvine

Experience

- With D. Claudia Thompson, co-wrote “But You Promised: A Case Study of Deaccessioning at the American Heritage Center,” which described the passage and employment of a Museum Cultural Property Law in Wyoming

Moving Forward

- Directed us to consult more of the resources available from the SAA’s Abandoned Cultural Property Project website
- Directed us to consult the September/October 2016 issue of *Archival Outlook*, which featured an article by Mark Greene about the issue of museum cultural property lacking a clear title

LINDA WHITAKER

Director of Library & Archives, Arizona Historical Society

Contributor, Society of American Archivists Abandoned Property Project

Problems with Museum Objects Lacking Clear Title

- Takes up time and takes up money
- Restricts what objects museums can collect because they have to store all objects to which they lack title
- Prohibits institutions from allowing all objects entrusted to them to achieve their “best and highest use”

Effects of a Having A Law

- All institutions that Ms. Whitaker has worked with that have had a state law available to use have done so.
 - She also noted a “domino effect” resulting from laws like these, which tend to lead to tighter collections management policies that can further benefit institutions

Suggested Provisions for a Law

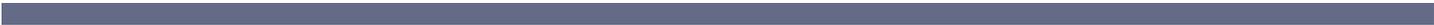
- Be brief
- Define the problem
- Define critical elements of the law and use legislative language

Moving Forward

- Remember that carrying out this process is equivalent to running a political campaign
 - Clarify that this is about *cultural* property, rather than *corporate/personal*
- Educate people at all levels
 - Within the University of Delaware
 - Within the state’s museum community
 - Within the state legislator
- Consider the steps necessary in the immediate future:
 - Gain the support of the University lobbyist
 - Meet with the University’s Legal Department to review language of proposed law
 - Locate and gain the support of the Delaware Museum Association and other museum professionals in the state
 - Create a dialogue with these institutions to determine a solution
 - Procure letters of advocacy
 - Locate a sympathetic legislator
 - Need to reach the radar of the legislature

Moving Forward, Continued

- Consider the following recommendations for the education process:
 - Emphasize the liability that institutions face without a law like this
 - Emphasize that this law will not affect budgets
 - Emphasize that this is a tool that will allow museums to manage collections in a smart, ethical way
 - The problem is rapidly reaching a critical mass
 - Almost every other state [46/50] have adopted a law
 - Delaware is *behind*
- Research legislature's meeting schedule and how the legislature functions



Appendix C: ANNOTATED BIBLIOGRAPHY

This annotated bibliography provides relevant background information on abandoned and unclaimed loans in cultural institutions across the United States. These sources include legal codes, books on museum law and ethics, scholarly articles, case studies of different states, and newspaper articles. Generally speaking, the sources here either discuss the problems presented by abandoned or unclaimed loans, how states have enacted laws to solve these problems, or what the results of these laws have been. The newspaper articles also offer excellent rhetorical models for writing articles to raise awareness in Delaware. Not included in this bibliography are the citations for a number of interviews conducted by our team with both museum professionals from the state of Delaware and national advocates for cultural property law. These citations are located in Appendix B.

Buck, Rebecca and Jean Allman Gilmore. *Collection Conundrums: Solving Collections Management Mysteries*. Washington, D.C.: American Association of Museums, 2007.

Collection Conundrums provides guidelines for museums to follow when dealing with legally difficult or ambiguous objects. These objects may have been abandoned at the museum, left on old loans, or otherwise found without adequate documentation. The book also offers a background on the history of collections standards, and provides several sample documents to help museums navigate the processes associated with ambiguous items.

Butler-Clay, Karen. "Implementing Indiana's Museum Property Law." *Collections Advisor*. Issue 37, November 2014. <http://www.indianahistory.org/our-services/local-history-services/connect/collections-advisor-1/all-issues-by-date/2014.11%20IN%20Museum%20Property%20Law.pdf>

This article describes the process behind passing Indiana's Abandoned Cultural Property Law, and provides a brief sketch of what the law means for museums. Staff from the Allen-Fort Wayne Historical Society noted about 5,000 undocumented items in their collection, and formed a committee to work on passing a law. In terms of implementing the law, the author stresses that museums of all sizes may benefit from establishing ownership of abandoned property. The steps listed for this process are: 1) identify abandoned property in the collection 2) attempt to contact the lender via mail and published advertisements 3) claiming ownership of the property or returning it to the lender. The article closes by recommending ways to keep track of artifacts and donors in order to prevent future issues.

“Code of Ethics for Museums.” American Alliance of Museums, last modified in 2000, accessed on October 25, 2016. <http://www.aam-us.org/resources/ethics-standards-and-best-practices/code-of-ethics>

Grounding its statements in the public service role of museums, this code of ethics provides museums with guidelines regarding governance, collections, and programs. The code emphasizes that, because collections are at the heart of a museum’s mission, public trust depends on proper care and rightful ownership of artifacts. In cases of contested ownership, the document advises that museums act responsibly and with transparency.

Although it does not go into the issue of abandoned cultural property in detail, it is evident that a law establishing procedures for handling these items would fit into a museum’s mission. The need for museums to have the public’s trust, which could be undermined by contested property, is specifically emphasized.

Endersby, Linda. “Old Loans, Found in Collection and Inventories, Oh My: Cultural Institution and the Missouri Museum Property Act.” *Collections: A Journal for Museum and Archives Professionals* 9 (Spring 2013): 181-190.

This article both details the history of the Missouri Museum Property Act and provides case studies to show how the law has been applied and amended since its creation. Like many states, issues of abandoned property began with museums’ early collections policies, which were often broad and vague. This led to many artifacts being inadequately documented, and over time the ownership of these artifacts became unclear. Missouri’s legislature enacted the Missouri Museum Property Act in 1991 to help museums solve this issue. After twenty years, Endersby rates the law as largely effective, although it has been amended since its inception.

Greene, Mark A. “Who Owns This?: The Abandoned Property Project.” *Archival Outlook*. September/October 2016.

Mark Greene writes how he became involved in advocating for Abandoned Cultural Property legislation. Greene first became aware of issues concerning abandoned property when he began working for the Minnesota Historical Society. During his time there, he realized that many small collections were full of undocumented or abandoned property, and the institutions possessing the collections had no legal means for de-accessioning unwanted goods. Greene and others began researching the matter in 1999, and Minnesota eventually

adopted the law in 2004. Greene continues by outlining the issue, and he expresses surprise that the inability to deaccession property is not considered a universal problem by all curators. He closes by presenting samples of the state statutes he and others aggregated at www.archivists.org.

Harder, Clark. "Who Owns What in a Museum?" *The Argus-Press*. March 30, 1992.

Written by a Michigan State Representative, this article provides an excellent overview of the issues concerning abandoned cultural property laws. Harder emphasizes the important role museums play in preserving artifacts of cultural value and the necessity of having a law meant to protect museums from the financial and legal pitfalls surrounding abandoned property. He also emphasizes that recordkeeping within museums has not always been a precise matter, which leads to the issue of items found in their collection with little or no record. The article offers a very concise summary of the actions required by museums in order to take ownership of an abandoned artifact. Like many state laws, it requires museums to track down the donor. Failing that, the museum has to place an advertisement in a local newspaper.

Harris, John. "Indiana's Museum Property Law." *Museogram*. 1989-1990, No. 8.
<http://www.indianamuseums.org/upload/newsletters/Indiana%20Museum%20Property%20Law.pdf>

This overview Indiana's Abandoned Property Law was written shortly after it had been introduced. It also outlines procedures for museums to act in compliance with the new law. The author begins by explaining the issue of abandoned cultural property and how the law works to help museums with abandoned property. With these options established, the article then provides details for notifying lenders and placing advertisements in newspapers. Harris also states that an implied requirement of the law is that museums must take better care to properly document items that they receive. This article also provides helpful appendices of sample notifications for both direct mail and newspaper advertisements. Finally, the actual text of the law is presented.

Illicit Trafficking of Cultural Property. United Nations Educational, Scientific, and Cultural Organization. 1970 Convention, accessed October 25, 2016. <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/text-of-the-convention/>

Although an older source, this report is important for understanding the legal implications of abandoned property and establishing a precedent for creating a law to protect abandoned cultural property. The convention provides an extended definition of cultural property, and continues with establishing the rights and obligations of the parties involved. The articles in this convention may not always apply to the issues facing Delaware's abandoned cultural property, but they are useful for taking a broader approach to this issue.

Jackson, Laura and D. Claudia Thompson. "But You Promised: A Case Study of Deaccessioning at the American Heritage Center, University of Wyoming." *American Archivist* 73 (2010): 669-685.

This article provides a case study for a deaccessioning project in Wyoming, a state that has an abandoned cultural property law. The study presents the American Heritage Center's (AHC) attempts to deaccession a large number of artifacts acquired over several years of unfocused collecting. Many of these artifacts were abandoned by the lenders, but the cost of contacting the lenders was too much for the AHC to bear. In light of this, the AHC resolved to change the law to more favorable terms, which they succeeded in doing. The authors also discuss the impacts of the deaccessioning campaign. Lenders' responses to the return of their artifacts varied across a spectrum from disappointment to relief. The article also advocates close communications with lenders during deaccessioning, as well as responsibly documenting collections.

Malero, Marie. *A Legal Primer on Managing Museum Collections*. Washington, D.C.: Smithsonian Institution Press, 1998.

Written by a lawyer who has devoted her career to working with cultural institutions, Marie Malero's book has become an indispensable resource for museum professionals. This book is one of the most comprehensive guides available that covers the legal issues faced by museums. It was particularly useful for obtaining background information on laws on deaccessioning, objects found in collection, and acquisition. Additionally, the book contains an impressive bibliography that offers another excellent resource for further information.

McGlone, Peggy. "N.J. Bill Would Allow Museums to Become Owners of Loaned Items that were Abandoned." *NJ.com*. December 27, 2010, accessed October 25, 2016. http://www.nj.com/news/index.ssf/2010/12/nj_bill_would_allow_museums_to.html.

This article discusses a bill in New Jersey intended to solve the state's abandoned cultural property problems. McGlone presents the state's problem by showcasing a museum that held an abandoned piece of art. Even though the museum had attempted to make contact with the donors or their descendents since 1940, they were unable to find them. McGlone briefly discusses the law, writing that it is modeled after the policy used by the Smithsonian. In short, the museum must attempt to contact the lender through direct contact and published notices. The lender then has 180 days to provide a valid claim before the museum takes ownership of the property. The article closes by advocating the importance of the law to New Jersey's museums.

Oklahoma Museum Association. "Guidelines Relating to Unclaimed, Undocumented, and Abandoned Property." September, 2012. http://www.okmuseums.org/sites/oma2/uploads/documents/OMA_Donated_Loaned_Abandoned_Property_Guidelines_9-26-2012_Final.pdf

In response to Oklahoma not yet having well defined Abandoned Properties Legislation, the Oklahoma Museum Association (OMA) created this document to establish best practices for legally dealing with unclaimed, undocumented, and abandoned property. It explains the differences between the three categories of property, and then outlines the obligations of museums towards them. They caution against relying on the contemporary law, the Oklahoma Uniform Unclaimed Property Act, which defines unclaimed property as property that a museum cannot return because they cannot contact the lender.

The OMA believes that this leaves too much room for abuse on the part of museums, and instead advocates different guidelines. These guidelines begin by establishing a museum's obligations to a lender, which involves formally working through a loan agreement to get the donor's contact information, a description of the item, and restrictions on the item's use amongst other things. For existing loans, the OMA recommends consistently updating records, as well as establishing or maintaining contact with the lender. While they are not legally binding, the document also outlines what conservation measures a museum may take with undocumented property, as well as what to do if the someone claims ownership of the item.

Rigsby, Jennifer. "Changes to Indiana's Museum Property Law." *Indiana Historical Society Collections Advisor*. Issue 55. May 2016. <http://www.indianahistory.org/our-services/local-history-services/connect/collections-advisor-1/all-issues-by-date/2016.05%20Museum%20Property%20Law.pdf>

This article discusses changes to Indiana's Abandoned Cultural Property Law. Citing excessively long wait times to consider property abandoned and the high workload on museum staff, the law was simplified. These changes include requiring lenders to notify museums if they change addresses and reducing the timeline to consider property abandoned from seven to three years. Additionally, the law allows museums to consider property left on temporary loans abandoned if lenders have no contact with the museum for seven years.

Society of American Archivists. "Abandoned Property Project." <http://www2.archivists.org/groups/acquisitions-appraisal-section/abandoned-property-project> (Accessed October 26, 2016).

This webpage presents all of the Abandoned Cultural Property laws enacted by the states and territories of the United States. Several common themes are present throughout most of the laws. First, they tend to clearly establish a timeframe for considering an artifact abandoned. Second, the laws establish acceptable means of contact for museums to reach out to missing lenders. These usually involve direct mail and phone calls if their contact information is available. If this fails, or the contact information is missing or out of date, the institution must then circulate an advertisement in a local paper for a given amount of time. After these steps are completed, an institution may then claim ownership of the property, or return it to its owner.

Of the states that have passed these laws, we have focused on four for this project: Indiana, Oklahoma, New York, and Ohio. These laws informed us of the general standards for different parts of the law, like how much time is needed to consider a property abandoned. Some also contain innovative elements that might be useful if applied to Delaware, such as Indiana's protection of museums that conserve property without the explicit consent of the owner. Additionally, Indiana and Oklahoma have also had articles written about their laws' enactment or results.

Whittemore, Gilbert. "Found! Abandoned Property in the Museum." *NEMA News*. Summer 2013, accessed October 25, 2016. <http://www.nemanet.org/nemn/summer-2016/abandoned-property/>

This article is meant to help museum workers navigate the issues that stem from inadequately documented or abandoned items in their museum. The author emphasizes the importance of reading the state laws on the matter, and offers ways to plan for different abandoned property operations that a museum might undertake. With the facts of state laws established, the article also details what sort of documentation should be used to establish ownership, and the importance of having procedures for the process ready in advance. The common theme within this article is its emphasis on a clear, systematic approach on the part of the museum.

Witzing, Katherine. "Collections Management of Abandoned Items at Museums, Memorials and Monuments: Legal, Ethical, and Moral Issues" (1999). *Seton Hall University Dissertations and Theses (ETDs)*. Paper 983. <http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1983&context=dissertations>

In addition to the legal and practical ramifications of abandoned property, Witzing also considers the motivational and ethical dimensions to abandoned property. Motivations for leaving property at museums range from being unwilling to throw out the item, to simply not realizing that they needed to clear their donation with the museum first. The author recognizes the legal problems that abandoned cultural property cause for museums, but also examines the ethical problems implied with not being able to take care of abandoned items due to a lack of resources or because the item does not fit within the museum's mission.

Witzing also presents the results of a survey distributed around the United States and Canada regarding abandoned cultural property. The results indicate that the problem is pervasive, but also that many museums lack awareness and internal policies regarding abandoned property. There is also a wide range of opinion regarding how the items should be handled. Some institutions simply leave the items in their collection, and others use them for educational purposes.

The article's policy recommendations draw an interesting comparison between museum property and safety deposit boxes in banks. Banks do not own the contents of safety deposit boxes, and they can only open them after making contact with the owner through phone, mail, and newspaper advertisements. What makes museums different is "an implied responsibility" to take care of items donated to the museum. Regardless, Witzing models the components of her ideal law off banking policy for safety deposit boxes.

Appendix D: SELECTED ABANDONED CULTURAL PROPERTY LAWS

Indiana, New York, Ohio

INDIANA

Indiana Code, Title 32, Article 34, Chapter 5 (IC 32-34-5),
<http://iga.in.gov/legislative/laws/2016/ic/titles/032/articles/034/chapters/005/>

IC 32-34-5 Chapter 5. Property Loaned to Museums

IC 32-34-5-1 "Lender" defined

Sec. 1. As used in this chapter, "lender" means a person whose name appears on the records of a museum as the person legally entitled to, or claiming to be legally entitled to, property held by the museum. As added by P.L.2-2002, SEC.19.

IC 32-34-5-2 "Lender's address" defined

Sec. 2. As used in this chapter, "lender's address" means the most recent address of a lender as shown on the museum's records pertaining to property on loan from the lender. As added by P.L.2-2002, SEC.19.

IC 32-34-5-3 "Loan" defined

Sec. 3. As used in this chapter, "loan" means a deposit of property not accompanied by a transfer of title to the property. As added by P.L.2-2002, SEC.19.

IC 32-34-5-4 "Museum" defined

Sec. 4. As used in this chapter, "museum" means an institution located in Indiana that:

(1) is operated by a person primarily for education, scientific, historic preservation, or aesthetic

purposes; and

(2) owns, borrows, cares for, exhibits, studies, archives, or catalogs property.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-5 "Permanent loan" defined

Sec. 5. As used in this chapter, "permanent loan" means a loan of property to a museum for an indefinite period. As added by P.L.2-2002, SEC.19.

IC 32-34-5-6 "Person" defined

Sec. 6. As used in this chapter, "person" means an individual, a nonprofit corporation, a trustee or legal representative, the state, a political subdivision (as defined in IC 36-1-2-13), an agency of the state or a political subdivision, or a group of those persons acting in concert. As added by P.L.2-2002, SEC.19.

IC 32-34-5-7 "Property" defined

Sec. 7. As used in this chapter, "property" means a tangible object under a museum's care that has intrinsic historic, artistic, scientific, or cultural value.
As added by P.L.2-2002, SEC.19.

IC 32-34-5-8 "Undocumented property" defined

Sec. 8. As used in this chapter, "undocumented property" means property in the possession of a museum for which the museum cannot determine the owner by reference to the museum's records. As added by P.L.2-2002, SEC.19.

IC 32-34-5-9 Mailing notice; change of address or ownership

Sec. 9.

- (a) A notice given by a museum under this chapter must be mailed to the lender's last known address by certified mail. Proper notice is given if the museum receives proof of receipt of the notice not more than thirty (30) days after the notice was mailed.
- (b) If: (1) the lender's address; or (2) the address of any designated agent of the lender; changes, the lender shall provide written notice of the new address to the museum.
- (c) If the ownership of property loaned to a museum changes while the museum is in possession of the property, the new owner of the property shall provide written notice of:
 - (1) the change of ownership of the property; and
 - (2) the address of the new owner; to the museum.

As added by P.L.2-2002, SEC.19. Amended by P.L.125-2016, SEC.2.

IC 32-34-5-10 Notice by publication

Sec. 10.

- (a) A museum may give notice by publication under this chapter if the museum does not:
 - (1) know the identity of the lender or any designated agent of the lender;
 - (2) have an address last known for the lender or any designated agent of the lender; or
 - (3) receive proof of receipt of the notice by the person to whom the notice was sent within thirty (30) days after the notice was mailed.
- (b) Notice by publication under subsection (a) must be given at least once a week for two (2) consecutive weeks in a newspaper of general circulation in:
 - (1) the county in which the museum is located; and Indiana Code 2016
 - (2) the county of the lender's last known address, if the identity of the lender is known.

As added by P.L.2-2002, SEC.19. Amended by P.L.125-2016, SEC.3.

IC 32-34-5-11 Notice; contents

Sec. 11. In addition to any other information that may be required or seem appropriate, a notice given by a museum under this chapter must contain the following:

- (1) The name of:
 - (A) the lender; or
 - (B) any designated agent of the lender; if known.
- (2) The last known address of:
 - (A) the lender; or
 - (B) any designated agent of the lender.
- (3) A brief description of the property on loan.
- (4) The date of the loan, if known.
- (5) The name of the museum.
- (6) The name, address, and telephone number of the person or office to be contacted regarding the property.

As added by P.L.2-2002, SEC.19. Amended by P.L.125-2016, SEC.4.

IC 32-34-5-12 Acquiring title for property on permanent loan or loaned for specified time; notice

Sec. 12.

(a) A museum may acquire title in the following manner to property that is on permanent loan to the museum or that was loaned for a specified term that has expired:

(1) The museum must give notice that the museum is terminating the loan of the property.

(2) The notice that the loan of the property is terminated must include a statement containing substantially the following information:

"The records at (name of museum) indicate that you have property on loan to it. The museum hereby terminates the loan. If you desire to claim the property, you must contact the museum, establish your ownership of the property, and make arrangements to collect the property. If you do not contact the museum, you will be considered to have donated the property to the museum."

(3) If the lender does not respond to the notice of termination within sixty (60) days after receipt of the notice by filing a notice of intent to preserve an interest in the property on loan, clear and unrestricted title is transferred to the museum sixty (60) days after the notice was received.

(b) If the loan of property to a museum is not considered a permanent loan and does not have a specific expiration date, the property is considered abandoned if there has not been any written communication between:

(1) the lender or the lender's designated agent; and

(2) the museum; for at least seven (7) years after the date the museum took possession of the property.

As added by P.L.2-2002, SEC.19. Amended by P.L.125-2016, SEC.5.

IC 32-34-5-13 Acquiring title for undocumented property; notice

Sec. 13. A museum may acquire title to undocumented property held by the museum for at least three (3) years as follows:

(1) The museum must give notice that the museum is asserting title to the undocumented property.

(2) The notice that the museum is asserting title to the property must include a statement containing substantially the following information:

"The records of (name of museum) fail to indicate the owner of record of certain property in its possession. The museum hereby asserts title to the following property: (general description of property). If you claim ownership or other legal interest in this property, you must contact the museum, establish ownership of the property, and make arrangements to collect the property. If you fail to do so within sixty (60) days, you will be considered to have waived any claim you may have had to the property."

(3) If a lender does not respond to the notice within sixty (60) days by giving a written notice of intent to retain an interest in the property on loan, the museum's title to the property becomes absolute.

As added by P.L.2-2002, SEC.19. Amended by P.L.125-2016, SEC.6.

IC 32-34-5-14 Conservation measures; application without lender's permission or formal notice

Sec. 14. Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to property on loan to the museum without the lender's permission or formal notice:

(1) if:

(A) action is required to protect the property on loan or other property in the custody of the museum; or

(B) the property on loan is a hazard to the health and safety of the public or the museum staff; and

(2) if:

(A) the museum is unable to reach the lender at the lender's last known address within three (3) days before the time the museum determines action is necessary; or

(B) the lender does not respond or will not agree to the protective measures the museum recommends and does not terminate the loan and retrieve the property within three (3) days.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-15 Conservation measures; liens; liability of museum

Sec. 15. If a museum applies conservation measures to property under section 14 of this chapter or with the agreement of the lender, unless the agreement provides otherwise, the museum:

- (1) acquires a lien on the property in the amount of the costs incurred by the museum; and
- (2) is not liable for injury to or loss of the property if the museum:
 - (A) had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan was a hazard to the health and safety of the public or the museum staff; and
 - (B) exercised reasonable care in the choice and application of conservation measures.

As added by P.L.2-2002, SEC.19.

IC 32-34-5-16 Presumption of gift to museum

Sec. 16. Property that:

- (1) is found in or on property controlled by the museum;
 - (2) is from an unknown source; and
 - (3) might reasonably be assumed to have been intended as a gift to the museum;
- is conclusively presumed to be a gift to the museum if ownership of the property is not claimed by a person or individual within ninety (90) days after its discovery.

As added by P.L.2-2002, SEC.19.

NEW YORK

Consolidated Laws of New York, Education Law, Part 1, Section 233-AA,
<http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>:

§ 233-aa. Property of other museums.

1. As used in this section:

- (a) The term "museum" means any institution, including but not limited to museums, historical societies, zoological gardens, aquariums, botanical gardens, and arboreta, having collecting as a stated purpose in its charter, or owning or holding collections, or intending to own or hold collections, that is a governmental entity or not-for-profit corporation. The term museum does not include the state museum.
- (b) The term "deaccession" means the permanent removal or disposal of property from the collection of a museum by virtue of its sale, exchange, donation, or transfer by any means to any person.
- (c) The term "person" means any natural person, partnership, corporation, company, trust association, or other entity, however organized.
- (d) The term "property" means any inanimate object, document, organism, or tangible object under a museum's care which has intrinsic historic, artistic, scientific, or cultural value.
- (e) The term "loan" means a deposit of property with a museum not accompanied by a transfer to such museum of title to the property.
- (f) The term "lender" means a person legally entitled to, or claiming to be legally entitled to, property held by the museum or, if such person is deceased, the legal heirs of such person.
- (g) The term "unclaimed property" means property which is on loan to a museum and in regard to which the lender, or anyone acting legitimately on the lender's behalf, has not contacted the museum for at least ten years from the date of the beginning of the loan, if the loan was for an indefinite or undetermined period, or for at least five years after the date upon which the loan for a definite period expired.
- (h) The term "undocumented property" means property that has been in the possession of a museum for at least ten years and for which the museum cannot determine the lender, donor, or owner by making a good faith and reasonable search for the identity and last known address of the lender, donor or owner from the museum records and other records reasonably available to museum staff.

(i) The term "conservation measures" means any actions taken to preserve or stabilize a property, including, but not limited to, proper storage, support, cleaning, and restoration.

2. The acquisition of property by a museum pursuant to this section must be consistent with the mission of the museum.
3. Prior to the acquisition of property by gift, a museum shall inform a donor or prospective donor of the provisions of this section and shall provide a donor or prospective donor with a written copy of its mission statement and collections policy, which shall include policies and procedures of the museum related to deaccessioning.
4. If the museum has knowledge of a planned bequest of any property prior to the death of the testator, the museum shall provide the testator with a written copy of its mission statement and collections policy, which shall include policies and procedures of the museum relating to deaccessioning, provided, however, that any museum that routinely makes its mission statement and collections policy available on its website shall be deemed to have complied with this subdivision.
5. Proceeds derived from the sale of any property title to which was acquired by a museum pursuant to this section shall be used only for the acquisition of property for the museum's collection or for the preservation, protection, and care of the collection and shall not be used to defray ongoing operating expenses of the museum.
6. (a) Notice by mail required by this section shall be mailed to a lender's last known address by certified mail, return receipt requested; provided, however, that notice shall be given by publication pursuant to paragraph (b) of this subdivision if the museum does not:
 - (i) know the identity of the lender; or
 - (ii) know the address of the lender; or
 - (iii) receive proof that the notice mailed under this section was received within thirty days of mailing.

(b) Notice by publication must be given at least once a week for three consecutive weeks in a newspaper of general circulation in:

- (i) the county in which the property is held by the museum; and
- (ii) the county of the lender's last address, if known.

The date of notice under this paragraph shall be the date of the third published notice.

(c) In addition to any other information required by this section, any notice given under this section must contain the following:

- (i) The name of the lender, if known
- (ii) The last address of the lender, if known
- (iii) A brief description of the property on loan to the museum referenced in the notice.
- (iv) The date of the loan, if known, or the approximate date of acquisition of the property.
- (v) The name and address of the museum.
- (vi) The name, address, and telephone number of the person to be contacted regarding the property.

(d) A copy of all notices required by this section pertaining to property in the form of identifiable works of art known to have been created before nineteen hundred forty-five and to have changed hands in Europe during the Nazi era (1933-1945) shall be sent to The Art Loss Register or any successor organization having similar purposes on or before the date on which such notices are mailed or first published pursuant to the requirements of this section.

7. Unless there is a written loan agreement to the contrary, and notwithstanding any other provision of law regarding abandoned or lost property, a museum that has made a good faith and reasonable search for the identity and last known address of the lender from the museum records and other records reasonably available to museum staff may terminate a loan for unclaimed property in its possession in accordance with the provisions of this subdivision.

(a) If the museum has identified the lender and the lender's last known address, the museum shall give notice by mail, in accordance with subdivision six of this section, of its intent to terminate the loan.

- (b) Such notice shall be entitled "Notice of Termination" and must include a statement containing substantially the following information: "The records of the (name of museum) indicate that you have or may have property on loan at (name of facility). The museum is seeking to determine whether you wish:
- (i) that the museum return the property to you,
 - (ii) that the property remain on loan to the museum subject to annual renewal (if the museum also wishes that the property remain on loan), or
 - (iii) that the museum obtain all of the lender's rights to the property, either to take the property into its collection or to dispose of the property, in its sole discretion. Please contact (name of contact) in writing within one hundred twenty days to advise the museum as to which of the above alternatives you wish to follow."
- (c) If the lender does not respond to the notice of termination, within one hundred twenty days following receipt thereof, the museum shall send a second notice to the lender containing the following information:
- "On (date of first notice), the (name of museum) sent you a notice concerning property that, according to our records, has been lent to the (name of museum). You have not responded to that notice, a copy of which is enclosed, and the museum will commence proceedings to acquire title to the property if you do not contact (name of contact) in writing within one hundred twenty days of receiving this second notice."
- (d) If the lender fails to respond to the second notice within one hundred twenty days of receipt thereof, the museum shall acquire all of the lender's rights to the property.
- (e) If the museum does not receive proof that the notices mailed pursuant to this subdivision were received within thirty days of mailing, or if the museum has undertaken a good faith and reasonable search of museum records and other records reasonably available to museum staff but has been unable to determine the identity and last known address of the lender, the museum may terminate the loan by complying with the procedures established in subdivision eight of this section for acquisition of title to undocumented property.

8. (a) Notwithstanding any other provision of law regarding abandoned or lost property, a museum may acquire the rights of the lender, donor, or owner to undocumented property by giving notice by publication, in accordance with subdivision six of this section, that it is asserting title to the undocumented property.
 - (b) Such notice shall be entitled “Notice of Intent to Acquire Property” and must include a statement containing substantially the following information:

“The (name of museum) hereby asserts its intent to acquire title to the following property: (brief description of property). If you claim ownership of this property, you must contact the museum in writing and make arrangements to collect the property. If you fail to do so within one hundred eighty days, the museum will commence proceedings to acquire title to the property. If you wish to commence legal proceedings to claim the property, you should consult an attorney.”
 - (c) If the museum does not receive contact from any person who can provide documentation or other evidence establishing an ownership interest in the property within one hundred eighty days of the date of notice by publication, the museum shall cause a brief description of the property to be submitted to the comptroller, who shall post such description on the unclaimed funds registry for not less than one hundred eighty days.
 - (d) If the museum does not receive contact from any person who can provide documentation or other evidence establishing an ownership interest in the property prior to or within thirty days following the conclusion of the unclaimed funds registry posting, the museum shall acquire title to the property.
9. The provisions of subdivisions seven and eight of this section shall not apply to:
 - (a) any property that was created before nineteen hundred forty-five and changed hands due to theft, seizure, confiscation, forced sale, or other involuntary means in Europe during the Nazi era (1933-1945); or
 - (b) notwithstanding any copy of a notice sent pursuant to subdivision six of this section, any property reported as stolen to a law enforcement agency or insurer or The Art Loss Register or any successor organization having similar purposes no later than three years following the theft or discovery of the theft.

10. A museum shall acquire all rights to undocumented property that is not solicited by the museum and that is delivered to the museum or left on museum premises after January first, two thousand nine if no person provides documentation or other evidence establishing an ownership interest in the property within ninety days of delivery of such property to the museum.

11. (a) The museum shall give a lender prompt written notice by mail, in accordance with subdivision six of this section, of any known injury to, or loss of, property on loan or of the need to apply conservation measures. Such notice shall advise the lender of his or her right, in lieu of the application of such conservation measures, to terminate the loan and, no later than thirty days after having received such notice, either retrieve the property or arrange for its isolation and retrieval. The museum shall not be required to publish notice of injury or loss to any undocumented property.

(b) Unless there is a written loan agreement to the contrary, the museum may apply conservation measures to property on loan to the museum without giving formal notice or first obtaining the lender's permission if immediate action is required to protect the property on loan or other property in the custody of the museum or if the property on loan is a hazard to the health and safety of the public or the museum staff; provided that:

(i) the museum is unable to reach the lender at the lender's address or telephone number before the time by which the museum determines action is necessary; or

(ii) the lender either:

(1) does not respond to a request for permission to apply conservation measures within three days of receiving the request or will not agree to the conservation measures the museum recommends; or

(2) fails to terminate the loan and either retrieve the property or arrange for its isolation and retrieval within thirty days of receiving the request.

If immediate conservation measures are necessary to protect the property or to protect the health or safety of the public or museum staff, the conditions set forth in subparagraphs (i) and (ii) of this paragraph shall not apply.

(c) Unless provided otherwise in an agreement with the lender, if a museum applies conservation measures to property under paragraph (a) of this subdivision, and provided that the measures were not required as a result of such museum's own action or inaction, such museum shall acquire a lien on the property in the amount of the costs incurred by such museum, including, but not limited to, the cost of labor and materials, and shall not be liable for injury to or loss of the property, provided that such museum:

- (i) had a reasonable belief at the time when the action was taken that the action was necessary to protect the property on loan or otherwise in the custody of the museum or that such property on loan was a hazard to the health and safety on the public or the museum staff; and
- (ii) exercised reasonable care in the choice and application of conservation measures.

12. A lender shall promptly notify a museum, in writing, of any change of address or change in the ownership of property on loan to such museum.

13. The museum shall maintain or continue to maintain, as the case may be and to the extent such information is reasonably available, a record of acquisition, whether by purchase, bequest, gift, loan or otherwise, of property for display or collection and of deaccessioning or loan of property currently held or thereafter acquired for display or collection. Any such record shall:

- (a) state the name, address, and telephone number of the person from whom such property was acquired, or to whom such property was transferred by deaccessioning or loan, and a description of such property, its location, if known, and the terms of the acquisition or deaccessioning or loan, including any restrictions as to its use or further disposition, and any other material facts about the terms and conditions of the transaction, which records shall be updated if a lender informs the museum of a change in address, ownership of the property or other relevant information, or if the lender and museum negotiate a change in the terms of the transaction;
- (b) include a copy of any document of conveyance relating to the acquisition or deaccessioning or loan of such property and all notices and other documents prepared or received by the museum; and

(c) in the case of property acquired pursuant to this section, include records documenting the search for the identity and last known address of the lender, and copies of all notices and other documents prepared or received by the museum in connection with the acquisition of title to such property.

14. Nothing in this section shall limit the ability of a lender and museum to bind themselves to different loan provisions by written agreement, nor shall this section abrogate rights and obligations of a lender or museum pursuant to a written agreement.

OHIO

Ohio Revised Code, Chapter 3385.01 to 3385.10, PROPERTY ON LOAN TO MUSEUM,
<http://codes.ohio.gov/orc/3385>

Chapter 3385: PROPERTY ON LOAN TO MUSEUM

3385.01 Property on loan to museum definitions.

As used in this chapter:

- (A) "Loan" and "on loan" mean a deposit of property not accompanied by a transfer of title to the property.
- (B) "Museum" means any institution located in this state that is operated by a governmental agency or nonprofit corporation primarily for educational, scientific, aesthetic, historic, or preservation purposes and that acquires, owns, cares for, exhibits, studies, archives, or catalogs property. "Museum" includes, but is not limited to, historical societies, historic sites or landmarks, parks, monuments, libraries, arboreta, and zoos.
- (C) "Property" means any tangible, nonliving object in a museum's possession that has intrinsic historic, artistic, scientific, educational, or cultural value.

Effective Date: 03-14-2003

3385.02 Vesting of title of property on loan.

(A) Property on loan to a museum other than pursuant to a written agreement shall be considered to be abandoned, and title to the property shall vest in the museum, free from all claims of the owner and of all persons claiming under the owner, if all of the following apply:

- (1) The property has been held by the museum within the state for at least seven years and, during that time, it remained unclaimed.
- (2) The museum gave notice of the abandonment of the property in accordance with section 3385.03 of the Revised Code.
- (3) No written assertion of title to the property was made by the owner of the property within ninety days after the date the notice was mailed or, if applicable, within ninety days after the date of the last published notice.

(B) With respect to property on loan to a museum pursuant to a written agreement, the loan shall be considered to be terminated, and title to the property shall vest in the museum, free from all claims of the owner and of all persons claiming under the owner, if all of the following apply:

- (1) If the loan was for an indefinite term, the museum has held the property for at least seven years. If the loan was for a specified term, that term has expired.
- (2) The museum gave notice of the termination of the loan in accordance with section 3385.03 of the Revised Code.
- (3) No written assertion of title to the property was made by the owner of the property within six months after the date the notice was mailed or, if applicable, within six months after the date of the last published notice.

Effective Date: 03-14-2003

3385.03 Notice of abandonment of property or termination of loan.

(A) A museum shall send notice of abandonment of property or termination of a loan by certified mail, return receipt requested, to the owner of the property at the owner's last known address as shown by the records of the museum. If the museum has no address on record, or the museum does not receive written proof of receipt of the notice within thirty days after the date the notice was mailed, the museum shall publish notice, at least twice over a sixty-day period, in a newspaper of general circulation in both the county in which the museum is located and the county in which the last known address of the owner, if available, is located. For purposes of this division, "records of the museum" means documents created or held by the museum in its regular course of business.

(B) The mailed and published notices shall contain the following:

- (1) The date of the notice;
- (2) A general description of the property;
- (3) The name and, if available, the last known address of the owner of the property;
- (4) The approximate date the property was loaned to the museum;
- (5) The name and address of the appropriate museum official to be contacted regarding the notice;
- (6) For published notices, a request that anyone who may know the whereabouts of the owner of the property provide written notice to the museum;
- (7) For published notices, the publication date of the last notice.

(C) (1) A notice of abandonment of property shall include a statement in substantially the following form:

"The (name of museum) hereby asserts title to the following property: (general description of property). If you claim ownership or other legal interest in this property, you must contact (name of museum) in writing, establish ownership of the property, and make arrangements to collect the property. If you fail to do so within ninety days, the property will be considered abandoned and will become property of (name of museum)."

(2) A notice of termination of a loan of property shall include a statement in substantially the following form:

"The records of (name of museum) indicate that you have property on loan to it. The (name of museum) hereby terminates the loan. If you desire to claim the property, you must contact the (name of museum) in writing, establish ownership of the property, and make arrangements to collect the property. If you fail to do so within six months, you will be considered to have waived any claim you may have had to the property."

(D) For purposes of this section, if a loan of property was made to a branch of the museum, the museum shall be considered to be located in the county in which the branch is located. Otherwise, the museum is considered to be located in the county in which it has its principal place of business.

Effective Date: 03-14-2003

3385.04 Conservation measures.

(A) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to property on loan to the museum without notice to the owner or the owner's permission, if such measures are necessary to protect the property on loan or other property in the custody of the museum or if the property on loan is a hazard to the health and safety of the museum staff or the public, and if either of the following applies:

(1) The museum attempts but is unable to notify the owner at the owner's last known address not later than three days before the date the museum intends to apply the conservation measures.

(2) The museum notifies the owner not later than three days before the date the museum intends to apply the conservation measures, the owner does not agree to those measures, and the owner does not terminate the loan and retrieve the property within three days after receipt of the notice.

(B) If a museum applies conservation measures in accordance with division (A) of this section or with the agreement of the owner, both of the following apply:

- (1) The museum shall acquire a lien on the property in the amount of the expenses incurred by the museum, unless the agreement provides otherwise.
- (2) The museum is not liable for injury to or loss of the property, if the museum did both of the following:
 - (a) Reasonably believed at the time the conservation measures were taken that the measures were necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan was a hazard to the health and safety of the museum staff or the public;
 - (b) Exercised reasonable care in the choice and application of the conservation measures.

Effective Date: 03-14-2003

3385.05 Museum to provide owner of property written summary of provisions.

Upon accepting property on loan, a museum shall provide a written summary of the provisions of this chapter to the owner of the property.

Effective Date: 03-14-2003

3385.06 Owner to give notice of change of address or change in ownership of property.

The owner of any property on loan to a museum shall promptly notify the museum in writing of any change of the owner's address or change in ownership of the property.

Effective Date: 03-14-2003

3385.07 Presumption of gift to museum.

Any property that, on or after the effective date of this section, is delivered to a museum or left on museum property, is not solicited by the museum, is from an unknown source, and might reasonably be assumed to have been intended as a gift to the museum, shall conclusively be presumed to be a gift to the museum, if there is no claim of ownership to the property within ninety days after the museum receives or otherwise discovers the property.

Effective Date: 03-14-2003

3385.08 Provisions may be varied by written agreement of parties.

The provisions of this chapter may be varied by written agreement of the parties.

Effective Date: 03-14-2003

3385.09 Application of escheat law.

(A) Property on loan to a museum shall not escheat to the state under any applicable escheat law, but shall pass to the museum under the provisions of this chapter.

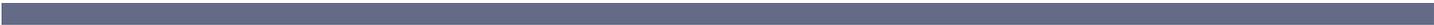
(B) This chapter does not apply to property interests other than those specifically described in this chapter.

Effective Date: 03-14-2003

3385.10 Transfer of property by museum.

A museum that acquires title to property in accordance with this chapter passes good title when transferring that property with the intent to pass title.

Effective Date: 03-14-2003



Appendix E: ABANDONED CULTURAL PROPERTY SURVEY
(Unclaimed loans, doorstep donations, undocumented property)

- 1) What is the name of your museum/cultural institution?

- 2) What is your role at this institution?

- 3) Does your institution have a policy regarding abandoned or undocumented objects?
 - a) Yes
 - b) No
 - c) Uncertain

If **yes**, what is it?

- 4) On a Scale of 1-5, with 1 being no issue, 3 being a moderate issue, and 5 being a major issue, rate the following:

- a) How significant is the issue of abandoned cultural property for Delaware cultural institutes?

Not a problem 1 2 3 4 5 Major issue

- b) How significant is the issue of abandoned cultural property for your institution?

Not a problem 1 2 3 4 5 Major issue

- 5) On a scale of 1 to 5, how does caring for abandoned cultural property impact your institution's resources?

No impact 1 2 3 4 5 Major impact

- 6) Would your institution benefit from a Delaware state law providing an avenue for museums and other cultural institutions to establish legal title to abandoned cultural property?

- a) Yes
 - b) No
 - c) Uncertain

- 7) If you have any other comments concerning abandoned cultural property, please share them below.



Appendix F: DELAWARE MUSEUM ASSOCIATION LETTER

November 14, 2016

Dear DMA Member,

Our names are Sarah Berndt, Sam Christensen, Tess Frydman, Sharon Hess, Kate Lenart, and Sara McNamara. We are currently enrolled in the University of Delaware's Graduate Certificate Program in Museum Studies. Under the supervision of Dr. Kasey Grier, we are developing a policy briefing book for a law concerning abandoned cultural property in Delaware.

We are writing to ask you for a letter of advocacy that we can present to legislators with our policy briefing materials. In your letter, we ask you to describe how the absence of abandoned cultural property law impacts your institution. You could also address how a solution to this problem will enable you to better manage your collections and serve your communities. Your voice will help convey to state legislators the need for a cultural property law. You can submit letters of advocacy in one of two ways:

1. Send a digital copy to **klenart@udel.edu**
2. Send a physical copy to the following address:
University of Delaware Museum Studies Program
77 E Main St
Newark, DE 19711

To assist you in writing a letter of advocacy, the following information outlines our understanding of this problem. Based on our analysis of current scholarship and discussions with state and national museum professionals, we adopted a threefold definition of the term *abandoned cultural property*:

1. *Unclaimed property, unclaimed loans, or old loans* refers to objects under an expired loan to a museum in which the owner has not claimed the property or contacted the museum within a specified period of time established by law.
2. *Doorstep donations* refers to objects left at an institution without a deed of gift to transfer ownership. Thus the burden of proof rests on the museum to prove that the owner has relinquished all rights.
3. *Undocumented property or found in collections* refers to objects in a museum's physical possession or control that lack both documentation of their origins and proof of institutional ownership. The museum cannot determine the lender, donor, or owner after making a good faith search.

As you may know, abandoned cultural property places an institution in a legal and ethical quandary. These objects inflict financial costs on the institutions that house them. They occupy space that could be used for objects that better fit an institution’s collecting scope. Furthermore, abandoned objects compromise an institution’s ability to fulfill its mission of public service to the fullest extent. Additionally, abandoned property cannot be conserved, displayed, lent, deaccessioned, or used by researchers. As a result, abandoned cultural property jeopardizes an institution’s capacity to meet its stewardship obligations and aid these objects in achieving their “best and highest” purpose.

In developing a proposed law for Delaware, we examined laws enacted by the 46 out of 50 states that have abandoned cultural property laws. The proposed policy for Delaware provides a path of resolution for each type of abandoned cultural property as defined above:

1. For *old loans* (also known as *unclaimed loans* or *unclaimed property*), we recommend the institution sends a certified letter to the donor’s last known address, followed by a 60-day waiting period for the donor to respond. If the letter returns without a receipt of recognition or is undeliverable, we propose a two-week published notice in a newspaper in the county or counties of the institution and the donor’s last known address, followed by a 90-day waiting period. We also suggest an online portal for posting these notices.
2. For *doorstop donations*, we propose a 90-day waiting period, after which, if no claimant comes forward, ownership of the property will transfer to the institution.
3. In the case of *undocumented property*, we propose a 3-year period of documented possession of the object, followed by a two-week published notice. If there is no claim made, ownership of the property will transfer to the institution.

We have already spoken with some members of DMA about this issue, and would appreciate the opportunity to speak with others. We firmly believe that the success of this initiative requires collaborative effort. If you would like to discuss your institution’s experiences with abandoned cultural property, or provide feedback on the project, please email klenart@udel.edu. You can also visit our forthcoming blog at demcpl.blogspot.com for more information and future updates. With your help, we hope to craft a legal and ethical solution to resolve issues of abandoned cultural property.

Thank you for your time and consideration.

Sincerely,

Sarah Berndt, Sam Christensen, Tess Frydman, Sharon Hess, Kate Lenart, & Sara McNamara
Graduate Certificate Program in Museum Studies
University of Delaware