

Putting the new Minnesota Museum Property Law to work

by G. Nicole Delfino, Central Registrar, Minnesota Historical Society

During the 2003-04 legislative session, Nicole Delfino joined forces with a group of museum professionals from several Minnesota museums and historical organizations to create and shepherd through the legislature a bill governing disposition of unclaimed museum loans. The new law puts Minnesota in the company of more than 30 other states that have enacted similar statutes. For this article Delfino drew from that experience as well as an American Association of Museums workshop, "How to Deal with Old Loans."

Minnesota's new Museum Property Law provides a process for museums and archives repositories (hereafter referred to collectively as museums) to establish ownership of property loaned to them that has long gone unclaimed. The law, which went into effect in August 2004, is not regulatory in nature. Rather, it is a tool created for voluntary use by Minnesota museums.

Specifically, the law establishes a fair mechanism by which museums may terminate a loan and take title of the property in question, free from all claims by the owner or their heirs. This article summarizes how to put the law into practice. One word of advice: Anyone preparing to implement the provisions of the law should first seek the advice of an attorney.

The need

Without legislation governing disposition of loans, museums have been reluctant to deal with unclaimed property left in their care. The potential liabilities are simply

too great. With no clear title to an item, explains Ildiko DeAngelis, director of museum studies at George Washington University, "a museum acts at its peril if it disposes of that object, or attempts to repair or conserve it, or gives permission to others to use it. In effect, such an object becomes a burden - it cannot be used effectively, yet the museum feels compelled to hold and care for the object indefinitely."¹

There have been too few court cases nationwide to offer common-law guidance in this area. Such legal precedents are time-consuming and costly to establish, says DeAngelis. And legal action by museums might be construed by the public as an effort to deprive owners of their property, thus discouraging future loans. So museum organizations in many states have, over the last 20 years, sought clarifying legislation instead.

What's covered

Two types of objects are covered by the Minnesota Museum Property Law - unclaimed loans and presumed gifts.

A **loan** is any object for which there is evidence that it was placed

on loan to the museum at an earlier time and that the lender intended to retain title to it. Evidence may include, but is not limited to, a written loan agreement, a letter of intent or designation of the object as a loan by



Anoka County Historical Society

This painting commemorating Anoka High School graduates who served in World War I was presented to the school by the Class of 1919. Seven decades later it was found at the back door of the Anoka County Historical Society. Staff eventually learned who left the item and how he acquired it. But determining clear ownership will require further research and application of the new Minnesota Museum Property Law.

its number or catalog record. A loan is considered **unclaimed** if the museum cannot, after reasonable search, identify or locate the owner of the object. The law deals primarily with unclaimed loans.

Presumed gifts are objects found in or on your museum's premises that are from an unknown source and so might reasonably be assumed to have been intended as gifts. There are two variants of presumed gifts:

- A **doorstep donation** is an unsolicited gift from an unknown source. There is, of course, no need to accept every such donation. However, if you do wish to add the object to your collection, the law provides an abbreviated process for doing so. (See "What to do if no one claims the property," page 6.)
- An **object found in collections, or FIC**, is an object that has been in the museum's possession for some time but for which there are no definitive records or other information explaining how it was acquired. The same process that establishes ownership of doorstep donations applies to FICs.

Filing a Notice of Abandonment

The Minnesota Museum Property Law defines a loan as abandoned once it has remained unclaimed in the borrowing museum's possession for at least seven years past the loan expiration date or, in the case of an indefinite loan, at least seven years past the last written correspondence between both parties.

Once property is deemed abandoned, the museum shall, not less than 60 days later, attempt to deliver a notice of abandonment of property. This is called actual notice. It must be

sent by certified mail with return receipt to the owner's last known address and should include the following information in substantially this form:

NOTICE OF ABANDONMENT OF PROPERTY

To: *Name of owner*
Address of owner

Please be advised that the loan agreement is terminated for the following property:
[Describe property in sufficient detail to identify it]

The above-described property that you loaned to *[name and address of museum]* will be considered abandoned by you and will become the property of *[name of museum]* if you fail to submit to the museum a written claim to the property within 60 days after receipt of this notice.

If you submit a written claim to the property within 60 days after receipt of this notice, *[name of museum]* will arrange to return the property to you or dispose of the property as you request. The cost of returning the property to you or disposing of the property is your responsibility unless you have made other arrangements with the museum.

Contact: *Name of person to contact at museum*
Address of museum

If the notice is returned as undeliverable, or if the owner or their location is unknown, then the museum must post a notice by publication and on its web site. This is called constructive notice. The law does not specify where or for how long to publish this notice. However, it is advisable to publish the notice of abandonment once a week for three consecutive weeks in both the county where the lender was last known to live and in the county where your museum is located. Keep copies of all notices for your files. Public notices should contain the following information:

NOTICE OF ABANDONMENT OF PROPERTY

To: *Name of owner*
Last known address of owner

Please be advised that the following property is hereby considered abandoned and will become the property of *[name of museum]* if no person can prove ownership of the property:
[Describe property]

Anyone claiming ownership shall notify the museum in writing of that claim by *[date, 60 days after last legal notice is to be publicized]*. If you are not the original owner of the property, you must include evidence that you are the sole party able to make a claim.

If you submit a written claim to the property within 60 days after receipt of this notice, *[name of museum]* will arrange to return the property to you or dispose of the property as you request. The cost of returning the property to you or disposing of the property is your responsibility unless you have made other arrangements with the museum.

Contact: *Name of person to contact at museum*
Address of museum

Museum property law *continued from page 5*

What to do if a claim is submitted

If you receive a written claim to the property by the owner within the statute of limitations (as defined by the law, 60 days after posting the last legal notice), you must return the property to the owner or dispose of it at their request. If the object is something your museum strongly desires to keep, you could suggest a tax-deductible donation or try to renew the loan for a prescribed period of time.

If someone other than the owner submits a timely written claim, all parties have another 60 days to verify ownership. The burden of proof is on the claimant but the museum should take measures to verify independently any information submitted before turning the property over to a third party.

It is advisable to wait the full 60 days before returning an object to a claimant who is not the original owner in case more than one party comes forward to make a claim. If you do receive more than one claim, you may delay your determination of ownership until the competing claims are resolved by agreement or legal action. If multiple claimants are verified to be joint owners, make sure all parties agree to the object's final disposition before you take action.

For claims made under the 1990 Native American Graves Protection and Repatriation Act, commonly referred to as NAGPRA, you must comply with NAGPRA rules and procedures. For more information go to www.cr.nps.gov/nagpra.

What to do if no one claims the property

If no claim is submitted within 60 days of your final notice of abandonment, the museum assumes ownership of the property in

question. You may then treat it as you would any other museum accession. Be sure to keep all records relating to the object. If you choose ultimately to dispose of the item, the law requires that you keep your records, including value at time of disposal, for at least two years after deaccessioning the object.

Disposition of presumed gifts is different. The law requires no notice to be posted about such items because there is no trail of ownership. If no one comes forward to claim ownership of the property within 90 days of its discovery, it becomes, by law, an unrestricted gift to the museum. If, in the future, someone does claim an item you've presumed was a gift, the burden of proof of ownership rests with the claimant, not your museum.

Special cases

Transferred loans: In the case of a transferred loan, the same rules about property ownership apply. For example, if an organization is dissolved or merges with another and the objects in its care are transferred to a newly designated body, the latter becomes the new borrowing organization with the same responsibilities for the loan as the original borrower. According to provisions of the Minnesota law, the organization must notify the property owner about the loan transfer in writing within 90 days.

Emergency conservation: The law also enables museums to apply conservation measures to borrowed property without the lender's permission if action is required to protect the loaned item or other property in the museum's care, or if the loaned item is a health or safety hazard. This right is invoked if the



Minnesota Historical Society

This pair of moccasins was among 150 items on loan to the Sibley House Association when it transferred ownership of the site and its collections to the Minnesota Historical Society in 1996. Most of the loans date from the early 1900s and have since gone unclaimed. Ownership of each item must now be established under provisions of the Minnesota Museum Property Law.

museum cannot reach the lender within three days of determining that action is necessary. To cover the cost of emergency conservation, the museum may put a lien on the property in the amount of expenses incurred. Note that this provision of the law does not override other written agreements to the contrary.

Searching for lenders

The seven-year wait required before property is deemed abandoned allows ample time for an owner to come forward with a claim. But it also allows plenty of time to lose their trail. The older a loan gets, the harder it is to pick up the trail again. For this reason, it is advisable to get in touch with all lenders periodically – say, at least once every two to three years.

Other than filing a notice of abandonment, the Minnesota law does not require museums to take further steps to locate lenders. Yet, to honor your public trust and demonstrate due

diligence, you may wish to undertake additional research to locate property owners before taking ownership of unclaimed loans. Should you be challenged in the courts by a property owner at a later date, such research would show that you made a good-faith effort to find the lender.

Thanks to the Internet, you have many resources at your fingertips. Best museum practices recommend that you search at least the following avenues when attempting to locate lenders or their heirs:²

- Probate records
- Telephone directories
- Real estate tax records
- Vital (death) records

Links to these and other Internet resources (people searches, alumni listings, genealogies and so on) can be found on the Minnesota Historical Society's web site at www.mnhs.org/registrar. Be sure to keep a record of all sources checked, whether or not they prove successful.

Stearns County Historical Society



In 1939 the Stearns County Historical Society received on loan these cooper's tools from their owner, a German immigrant woodworker. No end date for the loan was specified and he never came back to claim his property. In 1997 a descendent contacted the museum and requested that the tools be returned to the family. Without a museum property law to follow, it took five years of investigation, documentation and legal counsel to establish the claimant's ownership.

How to ensure trouble-proof loans

There are simple ways to avoid these problems of ownership. Taking the following steps with all future loans will protect your museum's interests and clarify the intentions of the lender. Samples of a Temporary Deposit Receipt and a Loan Agreement are available on the MHS web site referenced above.

1. Issue a Temporary Deposit Receipt.

- Use this form for short-term loans, such as for gift consideration, or as a stopgap measure while a loan agreement is being prepared.
- Make clear the intent of the owner when materials are left.
- Include a "deemed gift after 90 days" provision.
- Make sure you have adequate contact information.
- Define the exact method of return.
- Get signatures of both lender and borrower and furnish copies of receipt to all parties.

2. Secure a Loan Agreement.

- Use this form for all loans of more than three months or for any period when insurance is required.
- Define the loan duration, with beginning and end dates specified clearly.
- Issue signed receipts when possession is taken and released.
- Maintain contact with the lender at least every two to three years.
- Specify that it is the lender's obligation to update the museum on any address or ownership changes. You are required to do so either by integrating language from Section 2 of the Minnesota Museum Property Law into the loan agreement or by including it as an attachment.

- When your museum is notified of a change in property ownership, you must inform the new owner of the provisions of the loan and include a copy of the Museum Property Law, Section 2.

3. Create an internal policy to handle unclaimed loans.

- Decide under what circumstances you will implement the process. For example, will you systematically search your collection to identify old loans? Or will you respond on a case-by-case basis as questions of ownership arise?
- Specify what level of research you will undertake to locate property owners.
- Decide who in your organization will handle any claims submitted.

Want more information? Go to www.mnhs.org/registrar for a bibliography of articles about dealing with old loans. You'll also find the full text of the Minnesota Museum Property Law there. The Registrar's Committee of the American Association of Museum at www.rcaam.org has other useful resources.

Special thanks to Ildiko P. DeAngelis, former legal counsel for the Smithsonian Institution and current director of the Museum Studies Program at George Washington University, for her valuable expertise and scholarship on this subject.

Notes

1. Ildiko P. DeAngelis and Marie C. Malero, *Collections Management: Legal and Ethical Issues*, A Distance Learning Course of the Graduate Program in Museum Studies, CD-ROM, George Washington University, 2002.
2. Agnes Tabah, *Practicalities of Resolving "Old" Loans: Guidelines for Museums*, ALL/ABA Course of Study Materials: Legal Problems of Museum Administration (1992), as cited in *Resolving Unclaimed Loans Using the Internet: Resources and Case Studies*, prepared by graduate students and faculty of the Museum Studies Program, George Washington University, 2001.