

ESTABLISHING TITLE TO UNDOCUMENTED PROPERTY

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In the last three Law Notes we discussed the importance of securing good title to artifacts added to collections. The provenance of an artifact is important both for curatorial reasons and legal reasons. There is, regrettably, a growing black market in cultural artifacts that have been stolen from private owners or museums, or have been looted from archaeological or cultural sites. It is, therefore, important to check not only the donor's title, but to check the chain of title leading to the donor.

We also discussed the importance of avoiding loan agreements of indefinite duration (including "permanent" loans).

I am sure that all present day curators are aware of these issues and have and follow a good collections policy that addresses them. Unfortunately, their predecessors were not always so careful. All museums have artifacts that have been on indefinite loan for a long time and in many cases the lenders' whereabouts are unknown. Also there is property found on the premises, for which there is no record to show when it was acquired or from whom, or whether it was acquired by purchase, gift or loan, the so called "undocumented property". There have been cases where a museum has carefully (and expensively) restored an artifact and placed it on exhibit only to have someone who can prove good title come and claim it.

What can be done about unclaimed loans and undocumented property? The answer is found in Chapter 63.26 RCW "*Unclaimed Property Held By Museums or Historical Society*", adopted by the Washington State Legislature in 1988. Your writer can modestly acknowledge authorship of this legislation on behalf of WMA.

This statute divides such unclaimed and undocumented property into two classes:

Abandoned Property: Any property held (except by the terms of a loan) by a museum or historical society for five years or more and has remained unclaimed is deemed to be abandoned. Such property becomes the property of the museum or historical society if they publish notice as required by the statute and no claim is asserted.

Loaned Property: Property loaned to a museum or historical society is deemed to have been donated if no claim has been made to recover the property after expiration or termination of the loan and published notice has been given as provided by the statute and no claim has been asserted.

The museum or historical society may terminate the loan of property loaned to the museum or historical society for an indefinite term which has been held for five years or more. Property on "permanent loan" is treated as property loaned for an indefinite term.

The statute makes it the responsibility of the owner of loaned property to notify the museum or historical society, in writing, of any change of address or change in ownership.

The key provision of this statute is the requirement to give notice. To give notice of abandoned property or of the termination of a loan the museum or historical society shall:

1. Mail notice by certified mail, return receipt requested, to the last known owner at the most recent address on the museum or historical society's records.
2. If the museum or society has no address of record, or does not receive proof of the receipt of the written notice within 30 days from the date the notice was mailed, the museum or society shall publish notice at least once a week for two consecutive weeks in a newspaper of general circulation in both the county in

which the museum is located and in the county in which the last known address, if available, of the owner is located.

The published notice shall contain:

1. A description of the property;
2. The name and last known address of the owner;
3. A request that all persons who may have any knowledge of the whereabouts of the owner provide such information to the museum or society; and
4. A statement that if no written claim of title is presented by the owner to the museum or society within ninety days from the date of the second published notice, the property shall be deemed abandoned or donated to the museum and shall become the property of the museum or society.

If no written claim of title has been presented by the owner to the museum or society within ninety days of the date of the second published notice, title to the property vests in the museum or historical society free of all claims of the owner and of all persons claiming title from the owner.

The museum or society should, of course, keep a record of its actions pursuant to the statute, for that record is the evidence of its title to the property.

It will be noted that the key to the procedures set forth in the statute is that the museum or historical society must be able to show from its records that the property in question has been in its possession for a period of at least five years.

What if the museum or historical society has no records showing when the property came into its possession? The very least that can be done is to make a record of the property as of the current date. This starts the five-year clock running so that the museum may make use of the statute five years in the future.

Frequently, a date the artifact on which the museum had the property in its possession can be established indirectly. For example it may have been part of an exhibit shown on certain dates. There may be persons who can recall seeing the artifact on a certain date. Some staff member may remember moving the artifact at a certain time, e.g., the time artifacts were moved into the new storage room, the time artifacts had to be moved in order to repair the heating system. These dates can be established by other records, e.g., construction records, repair bills, etc. An affidavit, under oath, of the staff member, or members, who witnessed the event and saw the artifact at that time is necessary. The facts set forth in the affidavit must be based on the person's personal knowledge, not on what someone told him or her. The affidavit should describe what the affiant was doing that called the artifact to his or her attention and why they were doing it.

This statute should not substitute for good practices in acquiring artifacts or in setting up loans.

LEGAL NOTICE

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