

Annotated¹ Full text of New York State Education Law 233-AA

1. Definitions [alphabetical order]

Conservation Measures: any actions taken to preserve or stabilize a property, including, but not limited to, proper storage, support, cleaning, and restoration.

Deaccession: 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. [This definition conflicts with that of Regents Rule 3.27]

Lender: 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.

Loan: a deposit of property with a museum not accompanied by a transfer to such museum of title to the property. [This law does not consider a deposit, or temporary custody – anything on your site with a known owner is considered a loan per this definition – this definition conflicts with other definitions of loans in NYS law.]

Museum: 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. [For-profit museums are not included in this definition]

Person: any natural person, partnership, corporation, company, trust association, or other entity, however organized.

Property: any inanimate object, document, organism, or tangible object under a museum's care which has intrinsic historic, artistic, scientific, or cultural value. [Per this definition, anything on your site is “property,” whether you agree to accept it or not; the term “acquisition” is used throughout the law but not defined in this section. This law specifies that “property” is something that has “value.” However, it does not indicate who is the arbiter of “value.” As a working definition, depending on your museum, you might consider replacing property in this law with “property of value.” Many museums have abandoned property that could be considered valueless. For the unclaimed property portion of this law, combining the “loan” and “property” resulting in “deposit of property with value.”]

Unclaimed Property: 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. [Unclaimed essentially means that you know the rightful owner, but the person has not claimed their property. Loans become unclaimed property when 1) no lender contact for ten years after the start of a “permanent loan” or 2) no lender contact for five years after the end of a temporary loan]

¹ Annotations made by Erin Richardson are personal interpretations intended to provide plain language explanation of the intention of the law. Problematic and contradictory language is indicated to aid in understanding of more difficult sections of the rule. This is not legal advice. Richardson is not a legal professional. Seek legal advice if you need help interpreting the law in relation to a specific situation, or if you are unclear about how to apply the law to an undocumented or unclaimed property item at your museum.

Undocumented Property: 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. [Undocumented property has no known rightful owner or claimant. For items on your site prior to 1/1/2009, undocumented property must be undocumented and on your site for 10 years from date of discovery.]

2. The acquisition of property by a museum pursuant to this section must be consistent with the mission of the museum.

[Acquisition is not in the definitions section, but the intention here, I think, is to ensure that if you claim title to property, then accept it into the collection, it should meet the acquisitions criteria set forth in your Collection Management Policy]

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.

[This does not apply only to undocumented or abandoned property. It means that you must make your public, especially anyone considering a donation, aware of the provisions of your Collection Management Policy. To fulfill this requirement, most museums in NYS post their CMP on their website.]

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.

[If you decline to accept abandoned or undocumented property to which you have claimed title, and subsequently sell that item, proceeds should be used for acquisition or direct care – see AAM direct Care White Paper.]

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; [<https://www.usps.com/ship/insurance-extra-services.htm>] 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.

[If you do not know the who lent the item, know the last known address, or if your mail is not received by the lender, then you must provide newspaper notice]

(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.

[If you are not successful in part 6a, then you must publish a legal notice for three consecutive weeks in BOTH the county paper of record for the museum AND the lender's last known address. If you don't know the origin of the lender, you only need to post notice in your own county paper]

(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. [as noted in (2), acquisition is not defined for this law; alternative interpretation is "presence of the property on the museum's grounds"]
- (v) The name and address of the museum.
- (vi) The name, address, and telephone number of the person to be contacted regarding the property.

[Example legal notice: The Anytown Museums seeks the owner of a tea kettle presume to have been deposited by Jane Doe of 1122 Anystreet, Anytown, NY in 1942. Claimants should respond, in writing, within thirty days to: Collection Manager, Anytown Museum, Anytown. Call 555-555-5555 with questions]

(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. [Follow all existing federal and state laws related to Nazi-era property]

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. [If you know the last known address of the lender, skip step 6 and go right to this step – send the notice of termination.]

(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.”

[do not include 7(b)(iii) unless you really want to continue a loan with an unresponsive lender. – My recommendation is that you offer only options 7(b)(i) and 7(b)(iii).]

(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.”

[Both notices should be sent via certified mail, return receipt, signature require]

(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.

[At this point, the property belongs to the museum. You should proceed to consider it as a gift just like all other potential acquisitions.]

(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.

[If you have property that you cannot process through part 7 because you do not know the identity of the owner, then you can claim title through this part.]

(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.”

[This legal notice goes in your county paper of record]

(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.

[If no response is received from your legal notice, then you must register and post the property with the NYS comptroller's office of unclaimed funds section for museum and military abandoned property: <http://www.osc.state.ny.us/ouf/property/property.htm>]

(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.

[The post is up for 180 days on the comptroller's website, then wait an additional 30 days to claim 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.

[If the property is Nazi loot, or has been reported stolen, then follow the procedures for Nazi loot or otherwise documented stolen property. The FBI has an art theft section; Art Loss Register: <http://www.artloss.com/en.>]

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.

[Any doorstep donations received after 1/1/2009 -keep for 90 days, then process as any new potential acquisition.]

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.

[If a loan is damaged on your site, notify the lender, and allow them to recall the loan. If the damaged property is undocumented, no notice of any kind is required.]

(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.

[If property requires conservation to protect the property itself, other collections held by the museum, or museum staff or visitors, you may do that without the lender's permission if the lender does not respond within 30 days. Essentially, don't wait for permission if the property will become further damaged by lack of immediate attention, or if people or collections will be harmed by failing to treat the object immediately.]

(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 of [FN1] the public or the museum staff; and
- (ii) exercised reasonable care in the choice and application of conservation measures.

[you can place a lien on the conserved property for the amount of the conservation treatment IF the damage was not a result of your negligence or recklessness]

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.

[The lender is also responsible for updating you of their whereabouts; or if the property on loan has been transferred to another owner – almost always an heir or assign in case of death.]

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;

[The museum will keep records of all transactions.]

- (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

[The museum will keep copies of all loan or gift agreements, deaccession and disposal documentation.]

(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.

[Keep track of everything you did to claim title to undocumented or unclaimed 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.

[If you have a written agreement with a property owner, this law does not supersede that agreement.]