

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 12-171—HB 5355

Education Committee

Judiciary Committee

AN ACT CONCERNING MUSEUM PROPERTY

SUMMARY: This act allows a museum, after giving required notice, to take ownership of certain property loaned to it if the lender fails to reclaim it after the loan agreement expires or, if there is no agreement or the loan is for an indefinite period, the property is unclaimed and has been in the museum's possession for at least five years.

In addition, unless a written loan agreement provides otherwise, it allows a museum to apply conservation and protective measures to loaned property in its possession without the lender's permission under certain circumstances. In the absence of a contrary provision in the loan agreement, it gives the museum a lien against the property for the cost of the measures and, as long as its actions were reasonable, relieves it from liability for any damage to the property the measures cause.

The act also requires:

1. museums to keep records of loaned property and provide a written copy of both the act and the property loan record to anyone who loans property to them;
2. owners loaning property to give museums written notice of (a) any change of address, (b) appointment of any designated agent and the agent's address, and (c) if ownership changes, the new owner's name and address; and
3. the state librarian to adopt regulations specifying the form of the required museum records and notices to lenders.

The act applies to (1) nonprofit or public institutions organized for scientific, educational, cultural, historic, or aesthetic purposes, including historical societies, parks, historic sites and monuments, archives, and libraries and (2) tangible objects in their possession and care that have intrinsic educational, scientific, historical, aesthetic, artistic, or cultural value. It does not apply to property a museum holds under the federal Native American Graves Protection and Restoration Act.

The act states that its provisions (1) cannot be construed to abrogate a museum's, lender's, or other claimant's rights and obligations identified in a written loan agreement and (2) do not preclude a museum from using other means to establish or perfect title to property in its possession.

EFFECTIVE DATE: October 1, 2012

GAINING OWNERSHIP OF LOANED PROPERTY

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Property Subject to the Ownership Process

A museum may use the act's procedure to take ownership of loaned property in its possession when:

1. for property subject to a loan agreement and loaned for a specified time, no one claims ownership or seeks to recover the property after the loan is terminated or expires;
2. for property subject to a loan agreement and loaned for an indefinite period or for which the loan agreement specifies a permanent loan, no one claims ownership and the museum has held the property for at least five years; and
3. for property not subject to a loan agreement, the property is unclaimed and has been in the museum's possession for at least five years.

Under the act, loaned property is property deposited with a museum without any transfer of ownership, and includes property deposited under a loan agreement, whether or not the agreement gives the museum an option to acquire the property later.

Notice Requirements

Before taking ownership of loaned property, a museum must make a reasonable good faith effort to find the lender's address and send him or her written notice that it may do so. Under the act, the lender is the person whose name appears in the museum's records as being legally entitled to the property or, if the person has died, his or her heirs.

The museum must send the notice by certified mail, return receipt requested, to the address listed in its records. If the museum has no address listed or if, after 30 days, it does not receive written proof that the notice was received, it must publish a notice at least once a week for two consecutive weeks in a general circulation newspaper in the towns where the museum and, if available, the lender, are located.

The newspaper notice must:

1. give a brief and general description of the property;
2. provide the lender's name and address as listed in the museum's records;
3. ask those with knowledge of the lender's whereabouts to notify the museum; and
4. state that, if the museum does not receive a written ownership claim or notice of any other action to reclaim the property within 60 days after publishing the second notice, the property will be considered abandoned or donated and become the museum's property.

If the property was loaned to a museum branch, the museum's location is considered to be that of the branch. Otherwise, the museum's location is considered to be the town where it has its principal place of business.

Ownership Claims

If, after giving the required notice, the museum receives a written claim of ownership for the property from the lender or his or her designated agent, it must

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return or dispose of the property within 60 days after receiving the claim according to the lender's written instructions. Unless the museum and the lender agree on other arrangements, the lender is responsible for any costs of disposing of or returning the property.

If the written claim is from a person other than the lender specified in the museum's records, the museum must determine the validity of the claim within 60 days after receipt, based on proof of ownership the claimant must submit with the claim. If the museum receives more than one written claim of ownership, the act allows it to delay its ownership determination until the competing claims are resolved by agreement or legal action.

Once ownership is determined, as is the case with the specified lender, the act requires the museum to return or dispose of the property as the owner requests. Unless the owner and the museum agree on other arrangements, the owner is responsible for any costs for returning or disposing of the property.

If No One Claims Ownership After 60 Days

If the museum receives no written ownership claims within 60 days after it publishes the second required notice, the property is considered donated or abandoned and the museum becomes its owner. But, if the museum receives a valid ownership claim after taking title to the property, the act requires the museum to return it. In such a case, the property's title reverts to the owner.

The act specifies that anyone who buys or otherwise acquires the property from a museum that obtained it under the act's provisions acquires good title to it.

AUTHORIZATION TO APPLY CONSERVATION AND PROTECTIVE MEASURES

Unless the written loan agreement provides otherwise, the act allows a museum to apply conservation or protective measures to loaned property without formal notice to, or permission from, the lender if:

1. the action is required to protect the property itself, other museum property, or, because the property is a hazard, the health and safety of the museum staff or the public and
2. within three days before applying the measures, the museum (a) cannot contact the lender at the address in the museum's records or (b) the lender does not respond or agree to the recommended measures and fails to take the property back within three days after being contacted.

Unless the written loan agreement says otherwise, if the museum applies the measures, either without the lenders permission as described above or with the lender's agreement, the act gives it a lien on the property for their cost. It also relieves the museum of any liability for damage or loss the measures cause to the property if it (1) reasonably believed the measures were needed to protect (a) the property or other property in its possession or (b) museum staff or the public from a health and safety hazard caused by the property and (2) exercised reasonable care in choosing and applying the measures.

MUSEUM RECORDKEEPING

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The act requires museums to keep records of all loaned property according to regulations the state librarian must adopt. Each loan's record must include (1) the lender's name and address, if known; (2) the dates the property is to be on loan; and (3) a copy of the loan agreement. The museum must give the lender a copy of the record and the loan agreement when he or she loans the property. If notified of a change in the ownership of any loaned property, the museum must create a new record, update the loan agreement, and provide copies to the new owner. If the museum becomes the property's owner, it must maintain an ownership record according to the state librarian's regulations.

OLR Tracking: JSL:LH:PF:eh