

SPONSOR: Rep. Spiegelman & Rep. Baumbach & Sen. Lopez & Sen. Poore
Reps. Miro, D. Short; Sen. Cloutier

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 231
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO ABANDONED, UNCLAIMED, OR UNSOLICITED CULTURAL PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Add new Chapter to Title 6 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

Chapter 50C. Abandoned Cultural Property Act

§ 5001C. Definitions

1. "Lender" means a person whose name appears on records of a museum as the person legally entitled to, or claiming to be legally entitled to, property held by the museum.

2. "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.

3. "Loan" means a deposit of property not accompanied by a transfer of title to that property.

4. "Museum" means an institution located in Delaware that:

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

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

5. "Permanent loan" means a loan of property to a museum for an indefinite period.

6. "Person" means an individual, a nonprofit corporation, a trustee or legal representative, the state, a political subdivision of the state, an agency of the state or political subdivision of the state, or a group of those persons acting in concert.

(7) "Property" means a tangible object under a museum's care that has intrinsic historic, artistic, scientific, or cultural value.

(8) "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.

(9) "Unsolicited Donation" means any property that is left at property controlled by the museum that is from an unknown source and might be reasonably assumed to have been intended as a gift to the museum.

(10) "Conservation measures", as defined by the American Institute for Conservation of Historic and Artistic Works, encompass actions taken toward the long-term preservation of cultural property. Conservation activities include examination, documentation, treatment, and preventative care, supported by research and education.

§ 5002C. Mailed notice; change of address or ownership

(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 days after notice was mailed.

(b) If (1) the lender's address, or (2) the address of any designated agent of the lender changes, the lender must 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 must provide written notice to the museum of:

(1) the change of ownership of the property; and

(2) the name and address of the new owner.

§ 5003C. Notice by publication

(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 30 days after the notice was mailed.

(b) Notice by publication under subsection (a) of this section must be given at least once a week for 2 consecutive weeks in a newspaper of general circulation in:

(1) the county in which the museum is located; and

(2) the county of the lender's last known address, if the identity of the lender is known.

§ 5004C. Notice; contents

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.

(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 at the museum to be contacted regarding the property.

§ 5005C. Acquiring title for permanent loaned or loaned property

(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 within 60 days, 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 60 days after the notice required by this chapter by filing a notice of intent to preserve an interest in the property on loan, clear and unrestricted title is transferred to the museum 60 days after the notice required by this chapter was completed.

(b) If the loan of the 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 for at least 7 years after the date the museum took possession of the property between:

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

(2) the museum.

§ 5006C. Acquiring title, undocumented property, notice

A museum may acquire title to undocumented property held by the museum for at least 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 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 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.

§ 5007C. Acquiring title, unsolicited donations, notice

A museum may acquire title to unsolicited donations found on museum property as follows:

(1) Unsolicited donations are conclusively presumed to be a gift to the museum if ownership is not claimed by a person or individual within 60 days after its discovery and notice is given by the museum under this section.

(2) Undocumented property found in the collection(s) of a museum are not unsolicited donations and are subject to § 5006C of this chapter.

(3) The museum must give notice that the museum is asserting title to any unsolicited donation.

(4) Notice that the museum is asserting title to the unsolicited property must include a statement containing substantially the following information:

"The following property was found at (name of museum) and is presumed to be a donation to the museum. The museum hereby asserts title to the following property: (general description of property). Anyone claiming ownership or other legal interest in this property must contact the museum, establish ownership of the property, and make arrangements to collect the property. If you fail to do so within 60 days of notice required under this section, you will have waived any claim to this unsolicited property.

(5) Notice by publication under subsection (3) of this section must be given at least once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the museum is located.

§ 5008C. Conservation measures

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 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 3 days.

§ 5009C. Conservation measures, lien, liability

If a museum applies conservation measures to property under § 5008C 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 conservation measure 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 conservation measure 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.