

LEGISLATIVE BILL 1276

Approved by the Governor April 9, 1996

Introduced by Maurstad, 30; Brown, 6

AN ACT relating to museums; to adopt the Museum Property Act.
Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Museum Property Act.

Sec. 2. For purposes of the Museum Property Act:

(1) Claimant means a person who files a notice of intent to preserve an interest in property on loan to a museum as provided in section 6 of this act;

(2) Claimant's address means the most recent address as shown on a notice of intent to preserve an interest in property on loan to a museum or notice of change of address, which notice is on file with the museum;

(3) Lender means a person whose name appears on the records of the museum as the person legally entitled to or claiming to be legally entitled to property held by the museum;

(4) Lender's address means the most recent address as shown on the museum's records pertaining to the property on loan from the lender;

(5) Loan means a deposit of property not accompanied by a transfer of permanent title to the property;

(6) Museum means an institution located in Nebraska and operated by a nonprofit corporation or a public agency, primarily for educational, scientific, historic preservation, or aesthetic purposes, and which owns, borrows, cares for, exhibits, studies, archives, or catalogs property. Museum includes, but is not limited to, historical societies, historic sites or landmarks, parks, monuments, libraries, and zoos;

(7) Permanent loan means a loan of property to a museum for an indefinite period;

(8) Property means a tangible object, animate or inanimate, under a museum's care, which has intrinsic historic, artistic, scientific, or cultural value; and

(9) 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.

Sec. 3. (1) In addition to any other information prescribed for a particular notice, each notice given pursuant to the Museum Property Act shall contain the following information:

(a) The lender's or claimant's name as appropriate;

(b) The lender's last-known address or the claimant's last-known address as appropriate;

(c) A brief description of the property on loan;

(d) The date of the loan, if known;

(e) The name of the museum; and

(f) The name, address, and telephone number of the appropriate person or office to be contacted regarding the property.

(2) Each notice given by a museum pursuant to the act shall be mailed to the lender's and any claimant's last-known address by restricted certified mail. Notice is deemed given if the museum receives proof of receipt within thirty days after mailing the notice.

(3) Notice may be given by publication if the museum does not:

(a) Know the identity of the lender;

(b) Have the address or telephone number for the lender or the address or telephone number for the claimant; or

(c) Receive proof of receipt of the notice by the person to whom the notice was sent within thirty days after the notice was mailed.

(4) Notice by publication must be given at least once each week for three consecutive weeks in a newspaper of general circulation in both the county where the museum is located and the county of the lender's or claimant's address, if any.

Sec. 4. Subject to any existing security interest in the property, a museum may acquire title to property on permanent loan or loaned for a specified term that has expired if:

(1) The museum gives written notice that the museum is terminating the loan of the property;

(2) The notice that the loan of the property is being terminated includes a statement containing substantially the following information:

The records of (name of museum) indicate that you have property on loan to it. The institution wishes to terminate the loan. If you desire to claim the property, you must contact the institution, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so promptly, you will be considered to have donated the property to the institution; and

(3) The lender does not respond to the notice of termination provided under subdivision (1) of this section within one year after receipt of the notice by filing a notice of intent to preserve an interest in the property on loan.

Sec. 5. Subject to any existing security interest in the property, a museum may acquire title to undocumented property held by the museum for at least seven years as follows:

(1) The museum must give notice as provided in subsection (3) of section 3 of this act 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 three years, you will be considered to have waived any claim you may have had to the property; and

(3) If a claimant or lender does not respond to the notice provided in subdivision (2) of this section within three years 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.

Sec. 6. (1) A notice of intent to preserve an interest in property on loan to a museum filed pursuant to the Museum Property Act shall be in writing and contain all of the following information:

(a) A description of the property adequate to enable the museum to identify the property;

(b) Documentation sufficient to establish the claimant as owner of the property or a holder of a security interest in the property;

(c) A statement attesting to the truth, to the best of the signer's knowledge, of all information included in or with the notice; and

(d) The signature, under penalty of perjury, of the claimant or a person authorized to act on behalf of the claimant.

(2) The museum need not retain a notice which does not meet the requirements set forth in subsection (1) of this section. If the museum does not intend to retain a notice for this reason, the museum shall promptly notify the claimant at the address given on the notice that the museum believes the notice is ineffective to preserve an interest and the reasons for the insufficiency. The fact that a museum retains a notice under section 10 of this act does not mean that the museum accepts the sufficiency or accuracy of the notice or that the notice is effective to preserve an interest in property on loan to the museum.

Sec. 7. (1) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to loaned property if immediate action is required to protect the property on loan or to protect other property in the custody of the museum, or the property on loan has become a hazard to the health and safety of the public or of the museum's staff, and:

(a) The museum cannot reach the lender at the lender's last address of record so that the museum and the lender can promptly agree on a solution; or

(b) The lender will not agree to the protective measures the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

(2) If a museum applies conservation measures under subsection (1) of this section, the museum:

(a) Has a lien on the property and on the proceeds from any disposition of the property for the costs incurred by the museum; and

(b) Is not liable for injury to or loss of the property if the museum:

(i) Had a reasonable belief at the time the 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 constituted a hazard to the health and safety of the public or the museum's staff; and

(ii) Exercised reasonable care in the choice and application of the

conservation measures.

Sec. 8. (1) An action shall not be brought against a museum for damages because of injury to or loss of property loaned to the museum more than three years from the date the museum gives the lender or claimant notice of the injury or loss or ten years from the date of the injury or loss, whichever occurs earlier.

(2) An action shall not be brought against a museum to recover property on loan more than one year after the date the museum gives the lender or claimant notice of its intent to terminate the loan or notice of acquisition of title to undocumented property.

(3) An action shall not be brought against a museum to recover property on loan more than seven years from the date of the last written contact between the lender or claimant and the museum as evidenced by the museum's records.

(4) A lender or claimant is considered to have donated loaned property to the museum if the lender fails to file an action to recover the property on loan to the museum within the time periods specified in subsections (1) through (3) of this section.

(5) Notwithstanding subsections (3) and (4) of this section, a lender or claimant who was not given notice as provided in the Museum Property Act that the museum intended to terminate a loan as provided in section 4 of this act and who proves that the museum received an adequate notice of intent to preserve an interest in loaned property, which satisfies all of the requirements of section 6 of this act, within the seven years immediately preceding the filing of an action to recover the property, may recover the property or, if the property has been disposed of, the reasonable value of the property at the time it was disposed of plus interest at the legal rate.

(6) A museum is not liable at any time, in the absence of a court order, for returning property to the original lender even if a claimant other than the lender has filed a notice of intent to preserve an interest in the property. If a person claims competing interests in property in the possession of a museum, the burden is upon the claimant to prove the interest in an action in equity initiated by a claimant. A museum is not liable at any time for returning property to an uncontested claimant who produced reasonable proof of ownership or the existence of a security interest pursuant to section 6 of this act.

Sec. 9. In order to take title pursuant to the Museum Property Act, a museum has the following obligations to a lender or claimant:

(1) The museum shall retain all written records regarding the property for at least three years after the date of taking title pursuant to the act;

(2) The museum shall keep written records on all loaned property acquired pursuant to section 4 of this act. Records shall contain the following information:

- (a) The lender's name, address, and telephone number;
- (b) The claimant's name, address, and telephone number;
- (c) The nature and terms of the loan; and
- (d) The beginning date of the loan period, if known; and
- (3) The museum is responsible for notifying a lender or claimant of the museum's change of address or dissolution.

Sec. 10. Beginning on the effective date of this act, a museum shall at a minimum maintain and retain the following records, either as originals or accurate copies, for a period of not less than twenty-five years:

- (1) A notice of intent to preserve an interest in property, if any;
- (2) The loan agreement, if any;
- (3) A receipt or ledger for property delivered to an owner or claimant; and
- (4) Records containing the following information, as available, for property in the museum's possession:

- (a) The lender's name, address, and telephone number;
- (b) The claimant's name, address, and telephone number;
- (c) The donor's name, address, and telephone number;
- (d) The seller's name, address, and telephone number;
- (e) The nature and terms of the transaction (loan for specified term, loan for unspecified term, donation, purchase, etc.); and
- (f) The beginning date of the loan period or transaction date.

Sec. 11. (1) The lender or claimant of property on loan to a museum shall notify the museum of a change of address or change in ownership of the property. Failure to notify the museum of these changes may result in the lender's or claimant's loss of rights in the property.

(2) The lender or claimant of property on loan to a museum may file with the museum a notice of intent to preserve an interest in the property as

provided for in section 6 of this act. The filing of a notice of intent to preserve an interest in property on loan to a museum does not validate or make enforceable any claim which would be extinguished under the terms of a written agreement or which would otherwise be invalid or unenforceable.

Sec. 12. Loaned property in the possession of a museum at the time of the owner's death which would otherwise escheat to the state shall not so escheat but shall become the property of the museum to which it is loaned.