



Exploring Old Loans: A Quest for Resolution

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OUR DEFINITION OF “OLD LOANS”

Any object in your collection for which you have some sort of documentation indicating when it arrived, who it belongs to, or what its intention was, which you are unable to easily resolve and which the museum does not own.

Examples: exhibitions loans, long-term loans, gift offers, purchase considerations, etc.

DUTIES AND DUE DILIGENCE

Duty to notify the lender of any damage to loaned work or preservation that needs to be conducted

Duty to insure

Duty to document in writing all the terms of the loan

Duty to keep current and accurate records of museum property

Duty to diligently try locate the lender or lender's heirs at the expiration of the loan

Duty to treat the loan with the same standards as museum-owned property

COMMON PROBLEMS

Lender moved and did not maintain contact

Lender died and you need to locate the heirs

Staff turnover

No loan renewal process

Objects remaining after their initial purpose has been fulfilled

RISKS VS. BENEFITS

Lender/heir lawsuit

- Fraudulent claims
- Loss of an object the museum wants
- Staff time and expense

Resolve a strain on limited resources

- It only gets harder to resolve over time
 - Up-to-date records
- Ability to adequately insure your collection

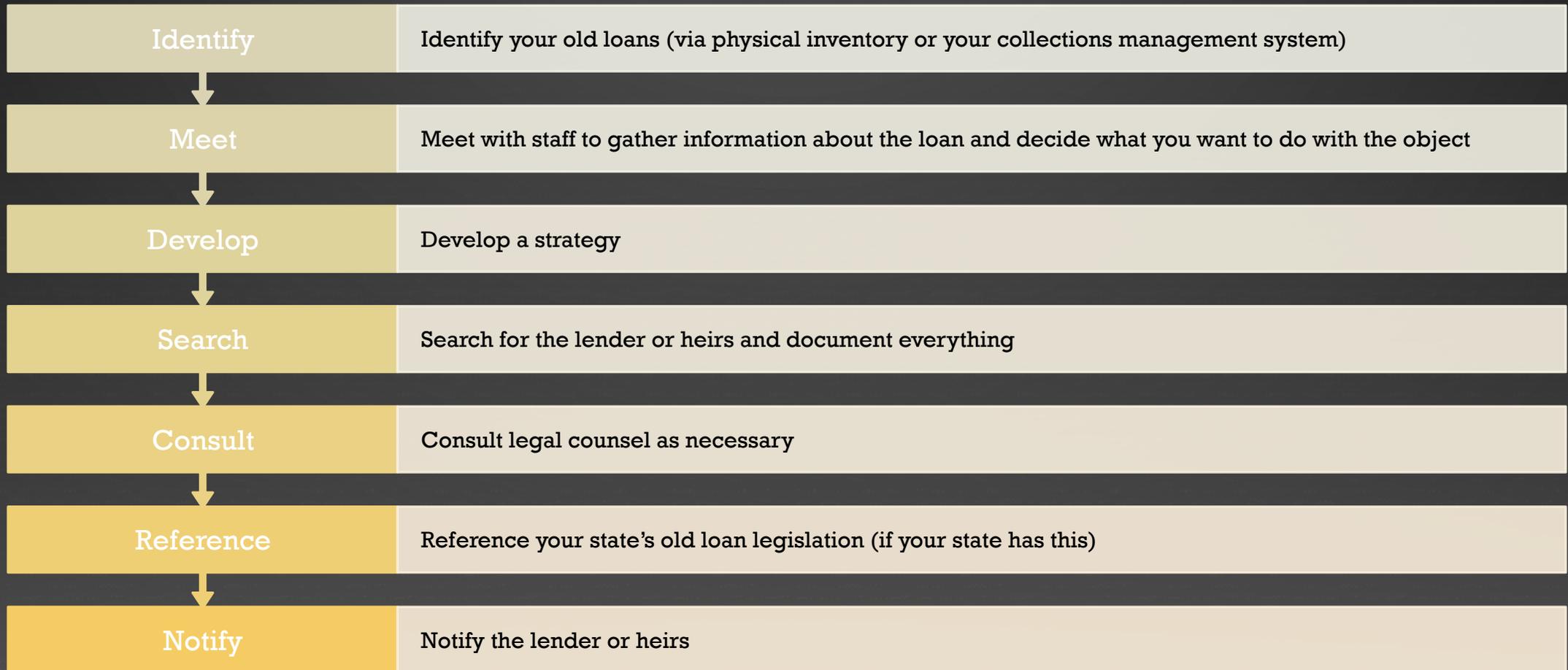
OLD LOAN STATUTES

Only 4 states and Washington D.C. do not have abandoned property laws with language specific to cultural institutions

- **Hawaii, Idaho, Maryland, West Virginia**

Some states will have limited abandoned property laws, such as Alabama where the law only covers property on loan to the State Archives.

PROCESS FOR CLEANING UP OLD LOANS



HOW TO NOTIFY WHEN YOU HAVE AN ADDRESS

- Send letter to lender/heir via certified mail with return receipt requested
- Include in the letter a description of the object and date of the loan along with a statement noting that if the museum is not contacted to return the object within 45 days, a gift to the museum will be inferred
- If letter received but not responded to, send another letter same as the first (giving a total of 90 days to respond)
- If second letter received but not responded to, send a third letter indicating the museum has now asserted title to the object
- Statute of limitations starts from this point; prudent not to dispose of the object until after this period runs out

REASONABLE SEARCH FOR THE LENDER/ HEIR

- When there is no address or the letter has returned, the museum should conduct a “reasonable search” for the lender or heirs
 - The goal is to establish whether you can still give actual notice or you will have to resort to constructive notice
 - For a reasonable search, consult the following types of records:
 - Probate records
 - Telephone records
 - Real estate tax records
 - Vital (death) records
- * Refer to the handout for tips on descendant research

HOW TO NOTIFY WHEN YOU DO NOT HAVE AN ADDRESS

- You must resort to constructive notice
- Constructive notice should be published, including:
 - Name of lender
 - Lender's last known address
 - Description of the object
 - Date of loan
 - Name of contact person at the museum
 - Notice that the museum is terminating the loan
- Publish notice for 3 consecutive weeks in the newspaper both in the county where the museum resides and the county of the lender's last known address

* Alternatives include: online publication, public radio, physical posting at courthouse

- All loans should have a signed loan form with a finite loan period and should be renewed promptly
- Standard loan agreement language should state that upon expiration of the loan, the lender is on notice that a return or renewal must be effected or a gift of the object to the museum will be inferred
- Loan agreement should state that it is the responsibility of the lender to notify the museum of any change of address or ownership
- Issue temporary custody receipts for works on premises for identification, conservation, purchase consideration, etc.
- Return unsolicited items ASAP
- Do not allow “drop-offs” of artwork to the museum

HOW TO AVOID OLD LOANS IN THE FUTURE

BEST PRACTICES: LOAN AGREEMENTS

Loan agreements should be in writing and signed by the lender and borrower

Date of the exhibition or term of loan – Do not leave the loan term open-ended

Lender's identification and contact information (if the loan is long term, include contact information of legal representatives or authorized representative)

The exact work being placed on loan (e.g. not '43 jugs'; each should have a descriptive title if not an exact title)

Will the borrower (museum) insure or will the lender keep their insurance (If the loan is for the benefit of the lender, it is okay to ask them to insure)

Right to photograph the loaned work

BEST PRACTICES: LOAN AGREEMENTS CONTINUED

Framing condition and
ability to reframe

Shipping
responsibilities and
insurance during transit

Standard of care
museum will adhere to

Requirement for lender
to update contact
information

What to do if the loan is
unreturnable – this
should take into account
any abandoned
property legislation
your state has

LOANS & INSURANCE VALUES

Insurance Valuation – Property of Others

What if there's no value provided?

Old Loans and Outdated Values

Best Practices

INSURANCE VALUATION - PROPERTY OF OTHERS

- **Agreed Value:** Listed on the Loan Agreement by the Lender.
- **Why Agreed Value?** Provides certainty in the event of a loss. This allows registrars to know if they have enough coverage for loans as well as their collections.

If No Value:
Then Current
Market Value at
the time of loss

**Independent
Appraisal
Required**
after the loss

**Lender May
Disagree:**
Arbitration
Process

**Lengthens
Claim
Settlement ...**
which nobody
wants!

**WHAT IF
THERE'S NO
VALUE?**

OLD LOANS – GET UPDATED VALUES

Artwork value is Agreed Value, *even* if the value is outdated.

It is the Lender's responsibility to provide updated values if there has been a change in the art market.

Loan periods should not be longer than 1-3 years.

BEST PRACTICES: INSURANCE

Get

Get Agreed Values on all loans. If the lender does not provide this make sure to ask. You should not sign a loan form without an agreed upon value.

Make

Make sure loan paperwork is updated regularly.

Review

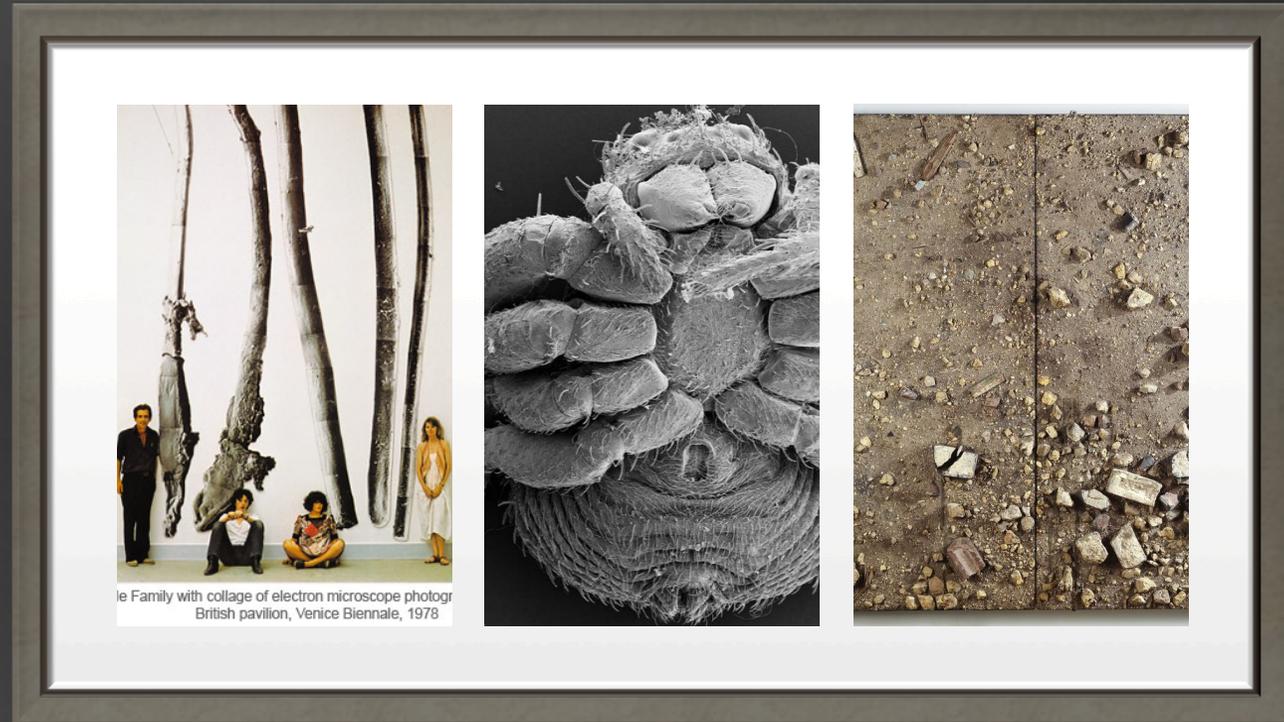
Thoroughly review any loan agreement document before signing.

Evaluate

Evaluate loan total values with insurance broker before annual policy renewal.

MARK BOYLE EXHIBITION RETURN

- Exhibition of 47 works came in to TMA in 1985 but was apparently never displayed
- While at TMA, the artist died and any return was stalled
- In 2013 to resolve the loan we contacted ARS to find out estate management details
- We were able to get in touch with his descendants (one partner, two children)
- TMA paid for the exhibition to be returned to them in London in April 2014





GULOTTA PRODUCTION PROTOTYPE GIFT

- Brought to TMA on loan for an exhibition in 2002
- Paperwork for exhibition expressed desire by lender to gift after the close of the exhibition
- No completed Deed of Gift
- No contact with the lender since 2003; lender now in 90's if alive
- Through research it was discovered that a possible daughter was running a yoga studio in Santa Fe
- Used yoga studio website "contact us" feature to make an inquiry as to whether they were related
- Response received that donor now lived with her in Santa Fe and would be happy to gift the work
- Deed of Gift completed a few months before the lender passed away

CURRENT OLD LOAN ON DECK AT TMA

- Brought in on purchase consideration in 1996
- Approved by Art Committee for purchase in 1997
- Never received proper invoice with verification that object was exported/imported legally
- Research conducted to locate the dealer currently residing in Finland through a Finnish museum contact
- In process of reaching out and attempting to resolve



FAMILY OF LENDERS



- Father (deceased) had loans from 1985 previously donated between (active 1975 -1984) and curator wanted these as donations
- Father (deceased) and one son co-owned three loans and curator wanted these as donations
- One son owned two loans from 1984
- The son that co-owned the works on loan coordinated with the children in the family for them to send lenders offering the objects as gifts.
- The one son who has loans from 1984 gave his portion of his father's loans and took his loans back.

SOMETIMES THEY WANT IT BACK

- Loan renewal project 2013 – curator wanted the owner to donate the work or renew the loan
- December 7, 2016 sent information to curator for donation solicitation
- December 20, 2016 – lender called to say that they would pick-up the object.





QUESTIONS?