

ART & ADVOCACY

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Abandoned Loan Bill Signed Into Law Statute Grants Title to Certain Property in New York State Museums' Possession

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Overview

On July 7, 2008, Governor Paterson signed into New York State law a statute that provides nonprofit museums located in the state procedures for acquiring title to abandoned works of art and, if they choose, for deaccessioning them. In doing so, the statute provides a solution to the problem of “stale loans,” where museums are unable to locate the lenders or original owners of abandoned works of art. The procedures for deaccessioning these artworks cover, among other things, how museums are to use the funds generated by the artworks. According to the Museum Association of New York (“MANY”), this statute “has been a long time coming.”

Background

Previous versions of the bill had been vetoed by Governors Pataki and Spitzer. The legislation in its current form addresses their concerns, including protecting the interests of Holocaust victims and their families who may be unaware that a museum may possess artworks looted from them by the Nazis. To protect their rights, the statute requires that museums notify the Art Loss Register (a database of stolen artwork) whenever they attempt to acquire title to abandoned artworks that were created before 1945 and that changed hands in Europe between 1933 and 1945. In addition, the statute exempts art that “changed hands due to theft, seizure, confiscation, forced sale or other involuntary means in Europe during the Nazi Era (1933-1945)” from the provisions of the new legislation granting museums title to the abandoned artworks.

“Stale loan” legislation has been passed or is pending in other states (including Alaska, Arkansas, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, New Mexico, Ohio, Texas, Vermont, and Wisconsin), but only a limited number of states have included provisions directed at the issue of Nazi-looted art. The drafting and enactment of the New York statute is a result of the combined efforts of a number of individuals and groups, including the Art Law Committee of the New York City Bar Association, of which Herrick Partner Howard Spiegler is the chair.

Impact

This statute affects museums, families of Holocaust victims, and anyone whose artwork is the subject of an outstanding or planned loan or donation to a museum. The statute targets property that has been in possession of museums for a minimum of 10 years where the

museum is unable to determine the lender, donor, or owner after making a “good faith and reasonable search.”

Notice procedures are as follows:

1. Once a museum determines that it is unable to locate the original lender of an artwork, it must provide notice by certified mail to the lender’s last known address.
2. If the identity or address of the lender is unknown, or if within 30 days the museum does not receive proof that a mailed notice was received, the museum must provide notice by way of publication.
3. Notice that is provided via publication must appear at least once a week for three consecutive weeks in a generally circulated newspaper.

If no one claims the artwork after compliance with these notice procedures, the museum obtains title to it (unless the artwork was created before 1945 and changed hands involuntarily in Europe between 1933 and 1945).

To avoid the issue of unclaimed works in the future, museums must now provide potential donors with a written copy of the museums’ policies and procedures for deaccessioning. With regard to works of art for which museums have acquired title pursuant to this statute, proceeds derived from deaccessions must be used either toward acquisition of new artworks or for preserving and caring for the museums’ existing collection. Proceeds may not be used for ongoing operating expenses.