



# AAMD Policy on Deaccessioning

June 9, 2010

Amended 10/2015

## **AAMD Mission Statement**

The Association of Art Museum Directors promotes the vital role of art museums throughout North America and advances the profession by cultivating leadership and communicating standards of excellence in museum practice.

### **Preamble**

Deaccessioning is defined as the process by which a work of art or other object (collectively, a “work”), wholly or in part, is permanently removed from a museum’s collection. Disposal is defined as the transfer of ownership by the museum after a work has been deaccessioned; in the case of false or fraudulent works, or works that have been irreparably damaged or cannot practically be restored, removal from the collection and disposition is determined by the museum and may include destruction of the work.

AAMD recognizes the unique challenges museums face in managing and developing collections largely built through gift and bequest by private donors. Most art museums continue to build and shape their collections over time to realize more fully and effectively their mission. Acquisitions to or deaccessions from the museum’s collection must be guided by well-defined written collecting goals and acquisition and deaccession principles, procedures, and processes approved by a museum’s Board of Trustees or governing body. These goals, principles, procedures, and processes must conform to AAMD’s *Professional Practices in Art Museums* and AAMD’s Policy on Deaccessioning\* .

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\* Canadian and Mexican member museums should follow applicable legal restrictions and policies of national associations and, to the extent not inconsistent with either of the foregoing, AAMD’s *Professional Practices in Art Museums* and AAMD’s Policy on Deaccessioning.

Deaccession decisions must be made with great thoughtfulness, care, and prudence. Expressions of donor intent should always be respected in deaccession decisions and the interests of the public, for whose benefit collections are maintained, must always be foremost in making deaccession decisions.

### **Policy Statement**

- A. AAMD requires member museums\* to develop clear written collections management policies including written collection goals and acquisition and deaccession principles, procedures and processes, as well as those that address preservation, conservation and collection care.
- B. AAMD encourages member museums to accept into the collection only gifts of works that support the mission of the institution and to be thoughtful about accepting gifts of works with restrictions.
- C. Member museums must comply with all applicable laws, including, if applicable to the AAMD member museum, the filing of required Internal Revenue Service forms, in deaccessioning and disposing of works from the collection.
- D. Member museums should not capitalize or collateralize collections or recognize as revenue the value of donated works. In 1992, following proceedings involving the museum profession, the Financial Accounting Standards Board (FASB) established standards regarding how museums (and other entities) that are subject to FASB<sup>†</sup> may account for their collections assuming certain conditions are met. As a result, in 1993, FASB issued Statement No. 116. The Statement, as amended, provides

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\* "Member museums" means those museums whose director is a member of the AAMD.

<sup>†</sup> Museums that follow other accounting rules, such as those of the Government Accounting Standards Board (GASB), or are subject to contrary legal restrictions, may be required to treat collections for financial statement purposes in a different manner, but museums still should not collateralize their collections.

that contributions of works of art, historical treasures, and similar assets need not be recognized as revenue or capitalized if the donated items are added to collections that are (a) held for public exhibition, education, or research in furtherance of public service; (b) protected, kept unencumbered, cared for and preserved; and (c) subject to an organizational policy that requires the proceeds from sales of collection items to be used to acquire other items for the collection.

- E. When recommending a work to the museum's Board of Trustees for deaccessioning, a member museum's staff should provide thorough research on prior ownership history, an explanation of expressed donor intent, if any, current scholarly evaluation, and relevance to the existing collection and future collecting goals.
- F. A member museum should publish on its website within a reasonable period of time works that have been deaccessioned and disposed of.

### **Application**

#### **I. Purpose of Deaccessioning and Disposal**

- A. Deaccessioning is a legitimate part of the formation and care of collections and, if practiced, should be done in order to refine and improve the quality and appropriateness of the collections, the better to serve the museum's mission.
- B. Funds received from the disposal of a deaccessioned work shall not be used for operations or capital expenses. Such funds, including any earnings and appreciation thereon, may be used only for the acquisition of works in a manner consistent with the museum's policy on the use of restricted acquisition funds. In order to account properly for their use,

AAMD recommends that such funds, including any earnings and appreciation, be tracked separate from other acquisition funds.

## **II. Criteria for Deaccessioning and Disposal**

There are a number of reasons why deaccessioning might be contemplated.

Primary among these are:

- A. The work is of poor quality and lacks value for exhibition or study purposes.
- B. The work is a duplicate that has no value as part of a series.
- C. The museum's possession of the work may not be consistent with applicable law, *e.g.*, the work may have been stolen or illegally imported in violation of applicable laws of the jurisdiction in which the museum is located or the work may be subject to other legal claims.
- D. The authenticity or attribution of the work is determined to be false or fraudulent and the object lacks sufficient aesthetic merit or art historical importance to warrant retention. In disposing of or retaining a presumed forgery, the museum shall consider all related ethical issues including the consequences of returning the work to the market.
- E. The physical condition of the work is so poor that restoration is not practicable or would compromise the work's integrity or the artist's intent. Works damaged beyond reasonable repair that are not of use for study or teaching purposes may be destroyed.
- F. The work is no longer consistent with the mission or collecting goals of the museum. The Board of Trustees or governing body of the museum must exercise great care in revising a museum's mission or reformulating collecting goals.

- G. The work is being sold as part of the museum's effort to refine and improve its collections, in keeping with the collecting goals reviewed and approved by the museum's Board of Trustees or governing body.
- H. The museum is unable to care adequately for the work because of the work's particular requirements for storage or display or its continuing need for special treatment.

**III. Authority and Process**

- A. Deaccessioning and disposal must comply with all applicable laws of the jurisdiction in which the museum is located and must observe any terms or obligations that pertain to the acquisition of the work by the museum.
- B. The final authority for the deaccessioning and disposal of works rests with the Board of Trustees or governing body or its designee.
- C. The process of deaccessioning and disposal must be initiated by the appropriate professional staff and any recommendations, with full justification, presented to the director, who will review the facts and circumstances of the proposed deaccession and disposal. As part of this process, the staff must undertake a thorough review of all records to determine donor intent, clear title, donor restrictions, and current market value. If the director determines that deaccessioning is appropriate, the proposal shall be presented to the Board of Trustees or governing body or its designee in accordance with the steps outlined in the museum's collection policy with regard to deaccessioning.
  - 1. The director shall exercise care to assure that the recommendations are based on authoritative expertise.

2. Third-party review and appraisal may be considered in the case of objects of substantial value.
  3. In the case of work(s) by a living artist, special considerations may apply.
- D. The timing and method of disposal should be consistent with the museum's collection policy. Attention must be given to transparency throughout the process.
- E. No member of a museum's board, staff, or anyone whose association with the museum might give them an advantage in acquiring the work, shall be permitted to acquire directly or indirectly a work deaccessioned, wholly or in part, by the museum, or otherwise benefit from its sale or trade; provided, however, that the foregoing shall not apply to a sale by a museum of its interest in a work to one or more of the co-owners of such work.
- F. If a museum is proposing to dispose of less than all of its interest (sometimes known as fractional deaccessioning) in a deaccessioned work (unless the interest to be retained is insubstantial\*), the disposal should only be made to an organization† or organizations that are open to the public. Examples of the foregoing are provided on Annex A.

#### **IV. Selection of Methods of Disposal**

The following may be taken into account in selecting a method of disposal:

- A. Preferred methods of disposal are sale or transfer to, or exchange with another public institution, sale through publicly advertised auction, and

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\* For example rights of reproduction or the right to borrow the work.

† "Organization" means a museum or institution exempt from federal income tax and classified as a public charity or a private operating foundation (or substantially similar organization in Canada or Mexico) or governmental entity or agency.

sale or exchange to or through a reputable, established dealer. Every reasonable effort should be taken to identify and evaluate the various advantages and yields available through different means of disposal.

- B. In the case of a work of art by a living artist, consideration may be given to an exchange with the artist.
- C. While it is understood that museums must fulfill their fiduciary responsibilities and act in the museum's best interests, museums may give consideration to keeping a deaccessioned work in the public domain.

**V. Interests of Donors and Living Artists / Notifications**

- A. Museums should notify the donor of a work, when practicable, under consideration for deaccessioning and disposal. Circumstances may warrant extending similar courtesy to the heirs of a donor.
- B. When a work by a living artist is deaccessioned, consideration must be given to notifying the artist.

**VI. Documentation**

When a work is deaccessioned, all electronic and paper records must be updated. Prior to disposal, an image should be taken of the work and retained in the museum's records. As works are disposed of, the method of disposition, including possible consignee, new owner, sale price and location, if known, should be recorded according to the museum's collection management policy.

**VII. Special Circumstances**

AAMD recognizes that part of the mandate of a contemporary arts organization is to expand the definition of what constitutes a work of art, as well as to question traditional exhibition practices. Therefore, if the organization's written policy provides for the sale of deaccessioned works, the funds derived from such sales

may in exceptional cases be used for purposes analogous to the purchase or commission of works of art, specifically the creation of new works, including some that may not be collectible. Expenditure of these funds for operations or capital expenses is precluded.

#### **VIII. Sanctions**

In the event an AAMD member or museum violates one or more of the provisions of this policy, the member may be subject to censure, suspension, and /or expulsion; and the museum may be subject to censure and /or sanctions in accordance with the relevant provisions of the code of ethics of the AAMD, which have been amended consistent with the following:

Infractions by any art museum may expose that institution to censure and /or sanctions, as determined by the Board of Trustees of the AAMD (the "Board"), that may, in the case of sanctions, include, without limitation, suspension of loans and shared exhibitions between the sanctioned museum and museums of which the AAMD members are directors.

Prior to censuring or recommending suspension or expulsion of a member or censuring or issuing any sanction against an art museum, the Board shall provide to the director or museum in question the opportunity to be heard and to explain the reason for the actions considered for censure, suspension, expulsion, or sanction; such presentation to be by the affected director unless otherwise determined by the Board or, in the case of a museum, the director or any member of the board of trustees or governing board of the museum, as determined by the museum with the concurrence of the Board. If the Board determines to censure or recommend suspension or expulsion of a member or to

censure or sanction a museum, the Board shall, contemporaneously with the issuance of a censure or sanctions or the recommendation of suspension or expulsion, determine and advise the affected director or museum of the process that may be followed, as the case may require, to allow the censure to be rescinded or modified, the suspension to be lifted, the expulsion to not bar a subsequent application for admission or the sanction to be lifted.

In the event that the museum is not a legal entity but rather part of an entity or controlled by another entity, any censure or sanction may be issued against the museum, the entity of which the museum is a part, the entity controlling the museum, or, as applicable, all of the foregoing as the Board shall determine **(collectively, a “museum”)**

**IX. Process for Review of Sanctions**

The process to be followed for a censure against a member or museum to be rescinded, a sanction against a museum to be modified or rescinded, a suspension of a member to be lifted, or an expulsion of a member to not bar a subsequent application for admission, shall be as follows.

- A. Censured Member or Museum. If a censure has been issued against a member or museum, the Board may, at any time, on its own motion or at the written request of the affected member or museum, after due deliberation, rescind, modify or declare as no longer in effect any censure.
  
- B. Suspended Member. If a member has been suspended from membership in good standing with the AAMD, such suspension shall

remain in place for the period, if any, specified in the suspension as issued or subsequently modified. If no period is indicated, the suspension shall remain in place indefinitely. Prior to the expiration of a stated suspension period, the Board should determine if the suspension should be extended and, if so, if the suspension should be modified. For suspensions with an indefinite period, the Board should review the suspension not less than every two years from the inception date of the suspension and determine if the suspension should be modified, terminated or remain in place.

At any time, the suspended member may deliver a request in writing, addressed to the Executive Director of the AAMD, asking that the Board lift the suspension and reinstate the member as a member in good standing. In order to be considered by the Board, the request should (i) articulate the reasons that the suspension should be lifted, (ii) affirm that there are no continuing adverse effects caused by the action or actions of the member that resulted in the issuance of the suspension in the first instance, (iii) affirm that the suspended member has ceased practicing the sanctioned behavior and will not practice the sanctioned behavior in the future, and (iv) confirm that the member meets all of the qualifications for reinstatement as a member in good standing of the AAMD. Generally speaking, the Board shall be guided by the following considerations with respect to the lifting of suspension of a member: (a) if the violation that resulted in the suspension or the negative effects of such violation are not continuing at the time of the request and (b) the member has agreed to

be vigilant in using his or her best efforts to avoid or prevent any future violation of the provisions of the Professional Practices in Art Museums.

- C. Expelled Member. If a former member has been expelled from membership, after a period of five years has elapsed since the issuance of the expulsion, that person may deliver a request in writing, addressed to the Executive Director of the AAMD, requesting that the Board permit the former member to submit a subsequent application for admission as a member in good standing with the AAMD. In order to be considered by the Board, the request should articulate the reasons for seeking permission to submit a subsequent application for admission and, in connection therewith, shall confirm that there are no continuing adverse effects caused by the action or actions that resulted in the expulsion in the first instance and that the expelled member has ceased practicing the sanctioned behavior and will not practice the sanctioned behavior in the future. Generally speaking, the Board shall be guided but not bound by the following considerations with respect to permitting the submission of a subsequent application for admission as a member: (a) if the violation that resulted in the expulsion or the negative effects of such violation are not continuing at the time of the request or personal appearance and (b) the former member has agreed to be vigilant in using his or her best efforts to avoid or prevent any future violation of the provisions of the Professional Practices in Art Museums.
- D. Sanctioned Art Museum. If a sanction has been issued against an art museum, such sanction shall remain in place for the period, if any,

specified in the sanction as issued or subsequently modified. If no period is indicated, the sanction shall remain in place indefinitely. Prior to the expiration of a stated sanction period, the Board should determine if the sanction should be extended and, if so, if the sanction should be modified. For sanctions with an indefinite period, the Board should review the sanction not less than every five years from the inception date of the sanction and determine if the sanction should be modified, suspended, terminated or remain in place.

At any time, an authorized representative of the art museum (e.g., the director or any member of the board of trustees or governing board of the museum) may deliver a written request to the Executive Director of the AAMD, asking that the Board modify, suspend or terminate the sanction. The request should articulate the specific steps that the museum has taken to ameliorate the conduct which gave rise to the sanctions. Generally speaking, the Board shall be guided but not be bound by the following considerations with respect to modifying, suspending or terminating sanctions against a museum: (a) if the representative has introduced new facts not previously disclosed that are of such significance that they would, in the view of the Board, cause the Board to change its initial determination of the imposition of the sanction or (b) if the museum has ceased the activity that gave rise to the sanctions, has affirmed that it will not practice the sanctioned conduct in the future and has demonstrated that it has taken the appropriate steps to avoid a repetition of the conduct that gave rise to the sanctions.

E. General.

1. Board Review of Petitions; Delegation of Authority. The Board may delegate to (i) a committee of the Board, or (ii) the Executive Director acting in conjunction with the President, (A) the authority to review and make recommendations to the Board with respect to any requests referenced herein, (B) to determine, in the Board's stead, whether any request for personal appearance should be granted and, (C) if granted, to attend in the Board's stead, any such personal appearance.

2. Personal Appearance. Any request made in accordance with this Section IX may include a request to make a personal appearance before the Board to afford the requesting member, former member or museum to explain his, her or its position regarding the matters addressed in the request; provided, however, that the sole purpose of any such personal appearance shall be to elucidate the points made in the request and in no event shall such personal appearance take the place of the request itself. The Board or its delegates shall review any such request for personal appearance and determine, in its sole discretion, whether or not to grant a personal appearance. If a personal appearance is permitted, the person to appear shall be given notice and a mutually convenient time shall be scheduled by the Executive Director for the person to personally appear to present the request. In the case of a museum, the director or any member of the board of trustees or governing board of the museum may appear on the museum's behalf if a request for a personal appearance is made and granted.

3. Counsel. At any personal appearance under Subsection E(2) above, the person to appear may be accompanied by counsel at such person's expense; provided that ten (10) days' advance notice of the appearance of counsel at such personal appearance is provided to the Executive Director. If properly noticed, such counsel may accompany the person making the personal appearance; however, unless the Board otherwise determines, only the person requesting the personal appearance will be permitted to address the Board or its delegates to articulate his, her or its position with respect to the request during the personal appearance.

4. Board Determination; Timing. Normally, the Board will issue its determination with respect to the requests properly submitted hereunder within 120 days after the regularly scheduled Board meeting next following (i) the delivery of the written request to the Executive Director or, in the event of a personal appearance, (ii) the date of the personal appearance. Written notice of the determination of the Board will be provided in writing to the person making the request. The decision to rescind a censure, the issuance or subsequent review of any censure, sanction, suspension or expulsion or rescind, suspend or modify a sanction, lift a suspension or allow an expulsion not to bar a subsequent application for admission and the imposition of any conditions or limitations as to any of the foregoing are solely within the discretion of the Board, and the Board may take into account any facts it deems relevant to its decision and may conduct, or not conduct, any investigation it may

deem relevant. Any determination of the Board with respect to a request delivered hereunder will be final and non-appealable.

5. No Third Parties. Professional Practices in Art Museums and its Appendices, as well as Guidelines and Policies of the AAMD, are solely for the benefit of AAMD Members, and no third party shall have any right to enforce or demand that the AAMD enforce any provision of any of the foregoing.

## **X. University and College Museums**

University and college museums play a significant role in acquiring, preserving and presenting collections. While the primary focus of the university or college is education, it must also adhere to professional standards and ethics when operating a museum.

- A. The director is responsible for the development and implementation of policy related to all aspects of the museum's collections, including acquisition, deaccessioning and disposal, preservation, conservation, and exhibition, as well as scholarly research and interpretation. The director is responsible for ensuring that the university or college is aware of its ethical responsibilities to the art museum's collection, including issues around its deaccessioning, use, and the physical conditions under which it is maintained
- B. Deaccessioning and disposal from the collection must result from clear museum policies that are in keeping with the AAMD's Professional Practices (see also the section on The Collection and Appendix B). Deaccessioning and disposal from the art museum's collection must

never be for the purpose of providing financial support or benefit for other goals of the university or college or its foundation. In no event should the funds received from disposal of a deaccessioned work be used for operations or capital expenditures.

- C. Policies developed by the director with regard to acquisition and deaccession should be adopted or ratified by the central governing authority of the university or college.