

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

James HATT, Kristin HATT, and Elizabeth WEINBERG, individually and derivatively on behalf of the Trustees of the Berkshire Museum
 Plaintiffs,
 v.
 TRUSTEES OF THE BERKSHIRE MUSEUM, a/k/a the Berkshire Museum of Art, History, and Science, a corporation, and Elizabeth MCGRAW; Stacey Gillis WEBER; Ethan KLEPETAR; Stephen BAYNE; Lydia S. ROSNER; Mike ADDY; Jay BIKOFSKY; Douglas CRANE; Howard J. EBERWEIN III; Ursula EHRET-DICHTER; David GLODT; Wendy GORDON; William M. HINES, JR.; Joan HUNTER; Eric KORENMAN; Barbara KRAUTHAMER; Donna KRENICKI; Suzanne NASH; David NEUBERT; Jeffrey NOBLE; Caitlin PEMBLE; and Melissa SCARAFONI, individuals in their capacity as Trustees of the Berkshire Museum of Art, History, and Science,
 Defendants.

CIVIL ACTION NO.

AFFIDAVIT OF DAN L. MONROE

I, Dan L. Monroe hereby depose and state under the penalties of perjury:

1. I am over 18 years of age and I make this affidavit based on my personal knowledge. I am not a party to this case and I have not been compensated by any party to this case. As explained below, the Trustees of the Berkshire Museum's (the "Berkshire Museum's)

present plan of action represents a fundamental and egregious violation of public trust and fiduciary duty and responsibility.

2. I have been the Rose-Marie and Eijk van Otterloo Director and CEO of the Peabody Essex Museum in Salem, Massachusetts since 1993. I am also past President of the Association of Art Museum Directors ("AAMD"), the American Association of Museums (now the American Alliance of Museums, or "AAM"), and of the Western Conference of Museums. I submit this affidavit in my personal capacity and not on behalf of the PEM, the AAMD, the AAM, or the Western Conference of Museums. I have also served as a senior advisor to the Getty Institute's Museum Management Institute.

3. I have studied for many years the issue in the museum community known as "deaccessioning," which refers to the sale or other transfer of an object of visual art or cultural property from a museum's collection. I helped write the AAMD Policy on Deaccessioning and Professional Practices in Art Museums, and the AAM Code of Ethics and the AAM Deaccessioning Activity Guide, which are attached hereto as Exhibits 1, 2, and 3.

4. Deaccessioning is an issue unique to museums because art and cultural artifacts are both property in one sense, but something of different and larger significance in another sense.

5. The AAMD Policy on Deaccessioning sets forth the critical requirements for collections management to be consistent with museum's duties to the public. Among these are:

- Museums must have clear written collections management policies.
- Museums must not capitalize or collateralize collections or recognize as revenue the value of works of art. Consistent with this, Financial Accounting Standards Board Statement No. 116 provides 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.

- A museum must research any object that it proposes to deaccession considering its prior ownership history, donor intent, and relevance to the existing collection.
- Funds received from deaccessioning may never be used for operating or capital expenses, but rather only for the acquisition of works for the collection.

6. The AAM Deaccessioning Activity Guide requires a museum considering the removal of an object first to “assemble and review the information on proposed and actual deaccessions for the past five years. Conduct a tour of collections (including storage) for the group working on this. Have them re-read the collections plan and collections management policy.” Then, the museum must determine whether, among other considerations:

- Past deaccessions have been conducted in accordance with the policies and procedures of the organization;
- Any exceptions were made;
- Deaccession proceeds were used in accordance with the museum’s policies on capitalization of collections; and
- The historical reason it holds this material.

7. The AAM Code of Ethics states that with respect to collections management (emphasis added):

disposal of collections through sale, trade or research activities is solely for the advancement of the museum's mission. Proceeds from the sale of nonliving collections are to be used consistent with the established standards of the

museum's discipline, but **in no event shall they be used for anything other than acquisition or direct care of collections.**

8. The principles are simply stated, and the policy behind them is also straightforward. Nonprofit museum collections are held in trust to benefit the public through exhibitions, publications, research and public programs. The public includes not only the people of Pittsfield in the case of the Berkshire Museum. It includes citizens of the Commonwealth and the American public at large. Museum collections cannot be considered as a slush fund that trustees and administrators can tap anytime a museum needs money.

9. Museum collections in Massachusetts alone are worth billions of dollars. If museums were allowed to monetize their collections by selling art or other objects in their collections to pay for deficits, new exhibits, staff salaries or other expenses, then public trust in museums would be severely compromised and the financial underpinning of museums would be severely eroded. Individuals will not contribute works of art or other objects to museums for their collections if museums could sell objects from their collections to generate cash. That is a model of untrustworthy practice and an assured way to undermine the financial base of American museums.

10. Trustees of a nonprofit museum are fiduciaries who are responsible for representing and acting in prudent ways to assure that museum collections, facilities and funds are used as intended to benefit the public; to assure that the non-profit organization they oversee operates in a prudent and financially sustainable manner; and to help generate the resources required to fulfill the mission of the organization through fund and friend raising activities. The Board of the Berkshire Museum has, by all commonly accepted non-profit professional standards, fundamentally failed to meet many of its basic fiduciary duties and responsibilities. The Board has allowed the museum to operate with exceptionally large deficits for more than a

decade. The Board has failed to launch a public fundraising campaign to meet its needs. As a result of these failures, the Board now argues that it faces a financial crisis that dictates that it sell its most valuable and important resources by selling major works of American art.

These works of art were given to the Berkshire Museum by individuals who intended that they be presented and shared with the public on a permanent basis. The Board of the Berkshire Museum was entrusted with the responsibility to fulfill these donor intentions and to serve as responsible stewards of the art given to the museum to be forever accessible to the people of Pittsfield, the citizens of the Commonwealth and the American public at large.

11. In this case, there is no possibility that Norman Rockwell, an artist who achieved appropriate fame in his own lifetime and whose paintings were sought after around the world, gave one of his most important paintings to the Berkshire Museum as a funding source to pay for interactive history and science exhibits and make up for deficit spending. Likewise, no donor who gave art to the people of Pittsfield and beyond could conceivably have done so with the intention that it could be converted to cash and used as a slush fund to meet the Berkshire Museum's financial needs.

12. At the time donors gave works of art to the Berkshire Museum it was simply accepted as a 'given' that the works would be permanently retained in the collection. Consequently, very few donors explicitly prohibited sale of gifts of works of art to museum collections. The Berkshire Museum has argued that the absence of donor prohibitions against sales of works of art given to the museum supports their view that they are not violating donor intent. They should be held to a standard that requires the museum to prove that donors were amenable to their gifts of art being converted to cash to support general museum operations. In any case, it is clear that donors obviously intended that the important and valuable art treasures

they gave to the people of Pittsfield through the museum would remain accessible and beneficial to everyone in perpetuity.

13. The Berkshire Museum has argued that new interactive history and science exhibits will generate new community financial support that will enable the museum to survive. This is an extremely doubtful proposition. In my experience as a museum administrator and director for more than forty years and as past president of AAMD and AAM, effective interactive history and science exhibits are *generally* expensive to create and maintain and they become dated very quickly. This is especially true given rapid technological and generational changes affecting all museums. Further, such exhibits generally appeal to a limited audience and they very seldom generate repeat visitation. These exhibits will not realistically be a greater *visitor* draw over time than exceptional works of art by Norman Rockwell and many other major American artists.

14. If the Berkshire Museum proceeds as it plans, it will have forever deprived its community and the nation of the opportunity to see and experience exceptional American art entrusted to them to benefit the public through exhibition and programs. I can state unequivocally that the professional museum community is overwhelmingly opposed to the Berkshire Museum's plan to sell art to support operations and capital improvements. Monetizing the Berkshire Museum's extremely important collection of American art will assure that all or most of the works will disappear into private hands while concurrently corroding the financial underpinnings of American museums and compromising trust in their integrity.

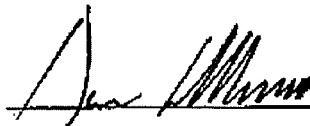
15. By violating the professional standards outlined above, the Board of Trustees will assure that many potential individual donors, foundations, corporations and public funding

agencies will never invest in the Berkshire Museum. Once again based on my decades of experience at specific institutions and in museum associations, I know that cultivating relationships with donors, both large and small, is fundamentally an exercise in trust. The Berkshire Museum's plan breaks all faith with that trust with a broad spectrum of potential donors.

16. If the Berkshire Museum cannot manage its finances in a sustainable way, then the only responsible course to take as fiduciaries charged with preserving and protecting the Berkshire Museum's collections, reputation and resources on behalf of the American public is to transfer the collections and other resources to museums who can and will assure that the exceptional art entrusted to them remains accessible to the American people. The Berkshire Museum's art treasures do not belong to the museum's Board of Trustees. The trustees are stewards. These treasures belong to the American public.

17. If the planned sale of the Berkshire Museum's art treasures proceeds as planned, the residents of Pittsfield, the commonwealth and the American people will be the losers. The bar for fiduciary responsibility in overseeing nonprofit organizations in Massachusetts will be set at an extremely low level and Massachusetts will have permitted the Berkshire Museum to encourage other museums nationwide to pursue the same tragic course. And the Board of Trustees of the Berkshire Museum will leave a legacy of broken trust that will negatively affect its community and the community of American museums.

Signed this 21 day of October, 2017



Dan L. Monroe

EXHIBIT 1

Connect



**American
Alliance of
Museums**

Code of Ethics for Museums

Adopted 1991, amended 2000.

Please note that the Code of Ethics for Museums references the American Association of Museums (AAM), now called the American Alliance of Museums.

Ethical codes evolve in response to changing conditions, values and ideas. A professional code of ethics must, therefore, be periodically updated. It must also rest upon widely shared values. Although the operating environment of museums grows more complex each year, the root value for museums, the tie that connects all of us together despite our diversity, is the commitment to serving people, both present and future generations. This value guided the creation of and remains the most fundamental principle in the following Code of Ethics for Museums.

Code of Ethics for Museums

Museums make their unique contribution to the public by collecting, preserving and interpreting the things of this world. Historically, they have owned and used natural objects, living and nonliving, and all manner of human artifacts to advance knowledge and nourish the human spirit. Today, the range of their special interests reflects the scope of human vision. Their missions include collecting and preserving, as well as exhibiting and educating with materials not only owned but also borrowed and fabricated for these ends. Their numbers include both governmental and private museums of anthropology, art history and natural history, aquariums, arboreta, art centers, botanical gardens, children's museums, historic sites, nature centers, planetariums, science and technology centers, and zoos. The museum universe in the United States includes both collecting and non-collecting institutions. Although diverse in their missions, they have in common their nonprofit form of organization and a commitment of service to the public. Their collections and/or the objects they borrow or fabricate are the basis for research, exhibits, and programs that invite public participation.

Taken as a whole, museum collections and exhibition materials represent the world's natural and cultural common wealth. As stewards of that wealth, museums are compelled to advance an understanding of all natural forms and of the human experience. It is incumbent on museums to be resources for humankind and in all their activities to foster an informed appreciation of the rich and diverse world we have inherited. It is also incumbent upon them to preserve that inheritance for posterity.

Museums in the United States are grounded in the tradition of public service. They are organized as public trusts, holding their collections and information as a benefit for those they were established to serve. Members of their governing authority, employees and volunteers are committed to the interests of these beneficiaries. The law provides the basic framework for museum operations. As nonprofit institutions, museums comply with applicable local, state, and federal laws and international conventions, as well as with the specific legal standards governing trust responsibilities. This Code of Ethics for Museums takes that compliance as given. But legal standards are a minimum. Museums and those responsible for them must do more than avoid legal liability, they must take affirmative steps to maintain their integrity so as to warrant public confidence. They must act not only legally but also ethically. This Code of Ethics for Museums, therefore, outlines ethical standards that frequently exceed legal minimums.

Loyalty to the mission of the museum and to the public it serves is the essence of museum work, whether volunteer or paid. Where conflicts of interest arise—actual, potential or perceived—the duty of loyalty must never be compromised. No individual may use his or her position in a museum for personal gain or to benefit another at the expense of the museum, its mission, its reputation and the society it serves.

For museums, public service is paramount. To affirm that ethic and to elaborate its application to their governance, collections and programs, the American Association of Museums promulgates this Code of Ethics for Museums. In subscribing to this code, museums assume responsibility for the actions of members of their governing authority, employees and volunteers in the performance of museum-related duties. Museums, thereby, affirm their chartered purpose, ensure the prudent application of their resources, enhance their effectiveness and maintain public confidence. This collective endeavor strengthens museum work and the contributions of museums to society—present and future.

Join the Alliance

Membership is the foundation for excellence and unites the field.

Resource Library

Reference guides, articles and tools to help you and your museum succeed.

Governance

American Alliance of Museums

2451 Crystal Drive, Suite 1005, Arlington VA 22202

Museum governance in its various forms is a public trust responsible for the institution's service to society. The governing authority protects and enhances the museum's collections and programs and its physical, human and financial resources. It ensures that all these resources support the museum's mission, respond to the pluralism of society and respect the diversity of the natural and cultural common wealth.

Thus, the governing authority ensures that:

- all those who work for or on behalf of a museum understand and support its mission and public trust responsibilities
- its members understand and fulfill their trusteeship and act corporately, not as individuals
- the museum's collections and programs and its physical, human and financial resources are protected, maintained and developed in support of the museum's mission
- it is responsive to and represents the interests of society
- it maintains the relationship with staff in which shared roles are recognized and separate responsibilities respected
- working relationships among trustees, employees and volunteers are based on equity and mutual respect
- professional standards and practices inform and guide museum operations
- policies are articulated and prudent oversight is practiced
- governance promotes the public good rather than individual financial gain.

Collections

The distinctive character of museum ethics derives from the ownership, care and use of objects, specimens, and living collections representing the world's natural and cultural common wealth. This stewardship of collections entails the highest public trust and carries with it the presumption of rightful ownership, permanence, care, documentation, accessibility and responsible disposal.

Thus, the museum ensures that:

- collections in its custody support its mission and public trust responsibilities
- collections in its custody are lawfully held, protected, secure, unencumbered, cared for and preserved
- collections in its custody are accounted for and documented
- access to the collections and related information is permitted and regulated
- acquisition, disposal, and loan activities are conducted in a manner that respects the protection and preservation of natural and cultural resources and discourages illicit trade in such materials
- acquisition, disposal, and loan activities conform to its mission and public trust responsibilities
- disposal of collections through sale, trade or research activities is solely for the advancement of the museum's mission. Proceeds from the sale of nonliving collections are to be used consistent with the established standards of the museum's discipline, but in no event shall they be used for anything other than acquisition or direct care of collections.
- the unique and special nature of human remains and funerary and sacred objects is recognized as the basis of all decisions concerning such collections
- collections-related activities promote the public good rather than individual financial gain
- competing claims of ownership that may be asserted in connection with objects in its custody should be handled openly, seriously, responsively and with respect for the dignity of all parties involved.

Programs

Museums serve society by advancing an understanding and appreciation of the natural and cultural common wealth through exhibitions, research, scholarship, publications and educational activities. These programs further the museum's mission and are responsive to the concerns, interests and needs of society.

Thus, the museum ensures that:

- programs support its mission and public trust responsibilities
- programs are founded on scholarship and marked by intellectual integrity

- programs are accessible and encourage participation of the widest possible audience consistent with its mission and resources
- programs respect pluralistic values, traditions and concerns
- revenue-producing activities and activities that involve relationships with external entities are compatible with the museum's mission and support its public trust responsibilities
- programs promote the public good rather than individual financial gain.

Promulgation

This Code of Ethics for Museums was adopted by the Board of Directors of the American Association of Museums on November 12, 1993. The AAM Board of Directors recommends that each nonprofit museum member of the American Association of Museums adopt and promulgate its separate code of ethics, applying the Code of Ethics for Museums to its own institutional setting.

A Committee on Ethics, nominated by the president of the AAM and confirmed by the Board of Directors, will be charged with two responsibilities:

- establishing programs of information, education and assistance to guide museums in developing their own codes of ethics
- reviewing the Code of Ethics for Museums and periodically recommending refinements and revisions to the Board of Directors.

Afterword

Each nonprofit museum member of the American Association of Museums should subscribe to the AAM Code of Ethics for Museums. Subsequently, these museums should set about framing their own institutional codes of ethics, which should be in conformance with the AAM code and should expand on it through the elaboration of specific practices. This recommendation is made to these member institutions in the belief that engaging the governing authority, staff and volunteers in applying the AAM code to institutional settings will stimulate the development and maintenance of sound policies and procedures necessary to understanding and ensuring ethical behavior by institutions and by all who work for them or on their behalf.

The Code of Ethics for Museums serves the interests of museums, their constituencies, and society. The primary goal of AAM is to encourage institutions to regulate the ethical behavior of members of their governing authority, employees and volunteers. Formal adoption of an institutional code promotes higher and more consistent ethical standards.

EXHIBIT 2



ALLIANCE ACTIVITY GUIDE

Deaccessioning Activity

Deaccessioning is a necessary and appropriate tool in collections management, and a way for a museum to refine its collections. Often times, an object does not fit the organization's scope of collections, cannot be cared for properly or poses a hazard to staff, so it may be considered for deaccessioning. This activity facilitates discussion to determine how well a collections plan and collections management policy help make decisions about deaccessioning. The activity also assesses the appropriateness of deaccessioning and the decision-making process.

1

Museum Assessment Program

Since 1981, the Museum Assessment Program (MAP) has helped museums strengthen operations, plan for the future and meet national standards through self-study and peer review. Supported through a cooperative agreement between the Alliance and the Institute of Museum and Library Services, MAP helps museums do one or more of the following: prioritize goals; plan for the future; strengthen communications between staff, board and other constituents; and build credibility with potential funders and donors.

Part of the MAP process includes a self-study questionnaire, which uses questions and activities to provoke exploration. The activities provide museums with the opportunity to assess the knowledge about its operations in action. The activities are designed to be conducted as group exercises in order to stimulate dialogue about issues and challenges that the museum faces. MAP participants assemble an assessment team to work through all of the activities and self-study questions. Museums not participating in MAP may find it helpful to create a team of appropriate participants for each activity.

This activity is one of many designed by MAP as part of the self-study process. It ranks highly with program participants and has been used in over 2,000 assessments.



Materials

- » Copies of your collections plan and collections management policy
- » Data on your deaccessions for the past five years

Participants

- » Suggested participants include a cross-section of staff involved in collections—curatorial, registration, conservation, collections management—your director, and members of the governing authority (from your collections committee, if you have one).

Part 1: Review Collections Plan, Policy and Materials

Have collections staff assemble and review the information on proposed and actual deaccessions for the past five years. Conduct a tour of collections (including storage) for the group working on this. Have them re-read the collections plan and collections management policy.

2

Part 2: Review the Deaccessioning Process

Have the participants meet to review the deaccessioning data collected in part 1. Start by examining the list of deaccessioned material. Discuss the following:

- » Have the deaccessions that have taken place been conducted in accordance with the policies and procedures of your organization?
- » Have any exceptions been made?
- » Are there deaccessions that have been approved over a year ago, but have not yet been disposed of? If so, why?
- » Are deaccession proceeds used in accordance with the museum's policies on capitalization of collections?



Ask the group, based on their tour or their existing knowledge of collections, whether there is any material in your collections which does not seem to belong. This would include material that does not fit your collections plan, or scope of collections statement in the collections management policy, or mission.

- » What is the historical reason you hold this material?
- » Are there political considerations that are a barrier to deaccessioning?
- » If there is material that should be deaccessioned, what are the costs of keeping it (in space, staff time, pest control risk, etc.)?
- » What are the barriers to deaccessioning and disposing of this material?
- » Are there any modifications this group thinks should be made to the collecting plan or collections policy to tighten up deaccessioning, or expedite it?

Summary

3

Write a summary with a list of recommended follow-up actions. Include any conclusions about how well the collections plan and collections management policy are working to guide deaccessioning, and any changes you may make to help you avoid or resolve issues in the future.

Core Documents Verification

The Core Documents Verification program verifies that an institution has an educational mission and policies and procedures in place that reflect standard practices of professional museums, as articulated in *National Standards and Best Practice for U.S. Museums* and used in the Accreditation program. Addressing deaccessioning is a required element of a collections management policy, one of five core documents that are fundamental for basic professional museum operations. Use this Alliance activity guide to help your museum strengthen its collections management policy and its understanding of deaccessioning. For more on collections management, please see the Alliance's reference guide on this topic.

Standards

The Alliance's standards address "big picture" issues about how museums operate. For the most part, they define broad outcomes that can be achieved in many different ways and are flexible enough to accommodate a diverse museum field. These standards can be achieved in tandem with standards issued by other organizations that address aspects of museum operations or the museum profession.

4

Adhering to standards is achievable by all types of museums.

Standards provide a common language that enables museums to self-regulate, demonstrate professionalism and increase accountability. Policy-makers, media, philanthropic organizations, donors and members of the public use standards to assess a museum's performance and evaluate its worthiness to receive public support and trust. Simply stated by Elizabeth Merritt in *National Standards and Best Practices for U.S. Museums*, "Standards are fundamental to being a good museum, a responsible nonprofit and a well-run business."

Having a strong collections management policy helps museums adhere to standards. For more on standards, visit the Alliance's website at www.aam-us.org.



Where to Find Out More

The Museum Assessment Program (MAP) helps small and mid-sized museums strengthen operations, plan for the future and meet national standards through self-study and a site visit from a peer reviewer. IMLS-funded MAP grants are non-competitive and provide \$4,000 of consultative resources and services to participating museums. For more information, visit www.aam-us.org.

- » *National Standards and Best Practices for U.S. Museums*, edited by Elizabeth E. Merritt (AAM Press, 2008)

This guide is an essential reference work for the museum community, presenting the ideals that should be upheld by every museum striving to maintain excellence in its operations. It includes a full outline of the standards, including the overarching Characteristics of Excellence for U.S. Museums and the seven areas of performance they address. Throughout the book is commentary by Elizabeth E. Merritt, director of the Alliance's Center for the Future of Museums. This publication is available as a free PDF to all museum members.

- » *Things Great and Small: Collections Management Policies*, by John E. Simmons (AAM Press, 2006)

This publication comprehensively addresses how to write such a collections management policy for museums of any type or size. It reviews the issues that a collections management policy should address and the pros and cons of choosing one policy option over another. It also includes many excerpted sample collections management policies.

- » Sample Documents

The Information Center's sample document collection is a unique and valuable resource for Tier 3 member museums. The collection contains more than 1,000 samples of policies, plans and forms from museums of all types and sizes, most of which were written by accredited museums. Tier 3 members can request sample documents from the Information Center in order to stimulate a conversation about issues and challenges facing the museum and to explore how different museums approach different issues. Using the sample documents should not replace the process of joining staff, governing authority and stakeholders in fruitful and thoughtful planning and policy-making.

EXHIBIT 3



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*.

* 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[†] 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

^{*} "Member museums" means those museums whose director is a member of the AAMD.

[†] 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

* 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 delegees 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

Amended by Board on 10/2015

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.