

TASK FORCE FOR THE PROTECTION OF UNIVERSITY COLLECTIONS



A Ready Reference Guide for
Academic Museum Professionals

**Leading Academic Museums & Galleries
in the 21st Century**

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INTRODUCTION

Purpose of the Task Force

Founded in 2009 under the aegis of Association of Academic Museums and Galleries (“AAMG”) and with critical support from the Samuel H. Kress Foundation, the Task Force for the Protection of University Collections brings together leaders from the American Alliance of Museums (“AAM”), the Association of Art Museum Directors (“AAMD”), the Association of Art Museum Curators (“AAMC”), the College Art Association (“CAA”), and the International Council of Museums/University Museums and Collections (“ICOM/UMAC”). The Task Force’s stated purpose is to serve as an advocate of and resource for college and university museums whose collections are under threat. Please refer to Appendix 1 for the Task Force’s full charge.

Foundational Principle

Museum collections and the objects they comprise are not cash-equivalent assets or fungible goods, but rather, material manifestations and cultural expressions of humanity and its many histories. Furthermore, as they frequently enjoy tax-exempt status under IRS Code §501(c)(3), museums have an obligation to use the works entrusted to their care and stewardship for the benefit of the public, which effectively subsidizes their very existence. Such organizations equally owe a debt of trust to the public, which extends the same trust to them. Accordingly, the Task Force condemns the inappropriate monetization of museum collections as well as the inappropriate use of monetary gains realized through their sale.¹

The Task Force does, however, support legitimate deaccessioning practices that abide by all governing legal, ethical, and moral considerations as well as accepted standards of best professional practices for museums driven by sound collections management considerations rather than financial imperatives or concerns.

¹ Monetization in this context refers to the treatment of collection objects as assets (including collateralization) and/or their conversion into cash.

The Value of University & College Museums

University museums are places of discovery, wonder, and enjoyment that offer a plurality of audiences direct experiences with original works of art and material culture objects.² They also provide critical support for their parent organizations' core academic missions through the teaching, learning, and research they foster, promote, and support. Often nimble by design, campus museums excel at cross-curricular, interdisciplinary collaboration, which enables them to function as fertile incubators, laboratories for learning, catalysts for changes, and accelerators for creativity and novel problem solving. In addition, such institutions train the next generation of museum professionals while also supporting the object-centered learning and visual literacy of all students. Beyond their core campus constituencies—including the faculty, students, and staffs affiliated with their parent organizations—the vast majority of American academic museums also cater to a wide range of other constituencies, including scholars and researchers, PK12 students and educators, lifelong learners, casual visitors, and (for those in a more urban setting) cultural tourists. From exhibitions to galas, mindfulness activities to student docent training—and a seemingly boundless array of things in between—the modern-day museum's "menu" of offerings is remarkably broad and intentionally designed to meet the needs of manifold constituents. In this, college and university museums have kept pace with stand-alone and municipals museums in that they are increasingly not about people but rather by, for, and of people. Accordingly, we:

- Play an integral role in the teaching, research, and service missions of colleges and universities across the country and around the world.
- Supports students' personal journeys of growth and development.
- Train the next generation of museum professionals.
- Foster the creation and dissemination of new knowledge through our work with faculty and students as well as independent scholars, researchers, and specialists.
- Nurture all disciplines, including STEM fields as well as the Humanities.
- Provide a meaningful bridge between our campuses and the communities they serve.
- Serve as a forum for intellectual inquiry, the free exchange of ideas, and civic as well as civil engagement.
- Support individuals from all walks of life on their personal journeys of education, enrichment, enjoyment, and empowerment through art and culture.
- Are dynamic repositories of collections that reflect our shared humanity, past, present, and future.
- Offer sustained engagement with original works of art, unique artifacts, and/or living collections.
- Uphold rigorous professional standards while still being nimble in our unending search for truth.
- Are places of awe, places of wonder.
- Catalyze new research, interdisciplinary experimentation, and learning.
- Transform lives and uplift spirits.

² Though the 2020 global health crisis has required museums to pivot to digital and embrace the network turn, the overwhelming majority of such institutions (and their patrons) agree that there is no substitute for in-person experiences.

Clearly, campus museums are not auxiliary or ancillary service units. Rather, their work—like that of their library counterparts (See Yale University 2019 Self-Study, Report to the New England Commission of Higher Education)—lies at the heart of the academy; a place where the disciplines meet, and a plurality of audiences enjoys a sense of belonging. A growing body of literature articulates the value of university museums, including:

- Holland Cotter, “Why University Museums Matter,” *New York Times* (February 19, 2009).
- “Audacious Ideas: University Museums and Collections as Change Agents for a Better World. Plenary Presentations: Why We Matter,” *University Museums and Collections Journal*, vol. 11, no. 2 (2019): 176-202.
- Corrine Glesne, *The Campus Art Museum: A Qualitative Study. A Report to the Samuel H. Kress Foundation* (2012).

The Challenges of Monetizing Collections

The perceived value (whether appraised, assumed, or fair market) of certain collection objects may tempt those entrusted with their stewardship to convert them into liquid assets to generate funds for museum operations. This is particularly true for organizations facing economic distress or other severe management pressures. Ceding to this temptation, however, weakens the museum by undermining its fiduciary obligation to preserve collections for future generations. As Stephen Weil notes in his seminal article, *The Deaccession Cookie Jar*: “[T]he museum that evidences its willingness to apply deaccessioning proceeds to meet operating expenses may ultimately be perceived, both by its community and its staff, to have made available to itself the functional equivalent of a cash reserve, a reserve equal in amount to the total market value of its collection.”³

Special Concerns for University & College Museums

As embedded institutions, college and university museums lie at the crossroads of intersecting fiduciary obligations: those of the museum and those of their parent organization. In such circumstances, institutions of higher learning facing financial hardship may claim that the fiduciary demands of its educational mission trump those of its museum. The Task Force believes that such dichotomies are false and entirely ignore the legal, ethical, and moral commitments made by a college or university when they chose to accept collection objects into their museum for the benefit of their campus and the wider community.

3. S. E. Weil, “The Deaccession Cookie Jar,” in *A Deaccession Reader* (Washington, DC: American Association of Museums, 1997), 88.



Why This Matters

By upholding field-wide standards of responsible deaccessioning practices, academic museums are not only committing themselves to the highest of professional standards but also supporting and safeguarding peer institutions. Conversely, when one academic museum monetizes its collection, it undermines and erodes accepted ethical standards by tacitly licensing other organizations to follow suit, thereby weakening the entire community of museums.

GOVERNING STANDARDS & PROTOCOLS

While every academic museum is unique, the field is bound together by a shared commitment to honor and abide by governing standards and protocols, both legal and ethical. These include, but are not limited to international treaties, bilateral agreements, and memoranda of understanding.

- Federal and state laws
- Local ordinances
- College or University By-Laws
- AAM Museum Accreditation Standards
- FASB (Financial Accounting Standards Board) or GASB (Governmental Accounting Standards Board) principles
- Contractual obligations (including Deeds of Gifts and other binding agreements).
- Moral obligations
- Standards of Best Professional Practice
- Collections Management Policies

The sections that follow present summaries and examples of each of the above. These lists are not intended to be definitive or exhaustive, but rather to provide museum personnel with a basic roadmap as they begin to navigate the challenges related to voluntary deaccessions other than those that are effectively mandated due to concerns related to authenticity, provenance, repatriation demands, etc. This material, like this document and, indeed, the work of the Task Force itself, is not intended as legal or financial advice and should not be considered or construed as such. The reader is urged to seek counsel from qualified professionals and experts as their circumstances demand.

International treaties, bilateral agreements, and memoranda of understanding

Though international agreements and MOUs play a significant role in provenance-related collection management issues, they do not have a significant impact on deaccessioning in the US. Information on non-US deaccessioning policies and protocols is available here:

- Guidelines on Deaccessioning of the International Council of Museums (ICOM)
- UMAC Resolution on the Protection of University Collections
- CIMAM (ICOM) General Principles of Deaccession
- Museums & Deaccessioning in Europe

Federal and state laws

Many people are surprised to learn that, unless specific restrictions or obligations accompanied the acquisition (and, more to the point, accessioning) of an object, deaccessioning is not typically restricted or even regulated by federal or state law.⁴ In other words, deaccessioning of unrestricted, unencumbered works is frequently perfectly legal. This does not mean, however, that it can or should occur unfettered; indeed, there are a whole range of other considerations—from contractual obligations to field-wide standards of professional practice to ethical concerns—that come into play when a work is deaccessioned.

New York State is a leader in this arena of state regulation, having established specific rules for deaccessioning and use of proceeds. See, e.g., New York Codes, Rules and Regulations, 3.27 Chartering and registration of museums and historical societies with collections

Florida, too, restricts the deaccessioning activities of organizations that fall under its aegis, including the Florida State University Ringling Center for Cultural Arts, the parent organization of the John and Mable Ringling Museum of Art (an academic museum). Specifically, prior authorization from FSU's President is required and all proceeds must be "deposited in the Ringling Museum Art Acquisition, Restoration, and Conservation Trust Fund." See Title XLVIII, Chapter 1004.45.2(e) (Ringling Center for Cultural Arts).

Local ordinances

In addition to observing relevant state statutes and governing federal law, museums should be aware of any and all local ordinances that specifically address collections and their management. This is particularly true for institutions whose governing agency is a municipality, county, parish, prefecture, etc. such as the Oakland Museum of California, whose deaccessioning activities are governed by city ordinance. See City of Oakland, Ord. 13461, § 1, 11-28-2017 (Oakland Museum of California Collection Acquisition and Disposition/Disposal Procedures).

4. Technically speaking, a work that has not been accessioned (or formally added to a museum's collection) cannot logically be deaccessioned. "Disposal" is the correct terminology in such cases.

College or university by-laws

As embedded or nested institutions, college and university art museums are beholden to the governance structures and mechanisms of their parent organization, including their by-laws. Though deaccessioning is not generally addressed in such documents, disposition of institutional assets—including “personal property” (as opposed to real estate or “real property”)—generally is; often by ceding decision-making authority to the Finance Committee or equivalent. This can cause confusion when deaccessioning issues arise, as it suggests that museum objects are the equivalent of, e.g., surplus furniture. It is preferable, then, that colleges and universities craft policies—in close consultation with their museum’s director and senior staff—to specifically address the collections entrusted to their care.

The following examples are instructive:

- Boston University Deaccession Policy
- George Mason University, University Policy, Art Collection Management
- University of Oregon Policy Library, Museum of Art

AAM museum accreditation standards

The AAM’s Accreditation Program certifies that a museum operates according to best practices as established by the profession. Recognizing that academic museums face unique challenges, AAM’s Accreditation Commission announced in 2011 that, henceforth, college and university museums are required to secure a “Statement of Support” specifically designed to protect such institutions and their collections.

Just as accreditation is a harbinger of excellence and a public recognition of accredited museums’ commitment to accepted standards of best professional practice, de-certification by the Accreditation Commission (which can result if such standards are not upheld, including inappropriate deaccessioning activities) can badly tarnish an organization’s reputation. The same holds true—in both a positive and negative context—for its parent institutions. The Rose Art Museum learned this painful lesson in 2009 (see, e.g., *New York Times*, *Outcry Over a Plan to Sell Museum’s Holdings*, 1/27/2009). Academic museums—particularly those that are accredited—are well-advised to ensure that their parent organizations understand the possible repercussions of activities that violate accepted ethical standards and best professional practices for museums.

FASB (Financial Accounting Standards Board) and GASB (Governmental Accounting Standards Board)

Generally accepted accounting standards recognize that museum collections are not financial assets, but instead constitute resources that are fundamental to the museum’s mission and public service. This separation of collections from the financial assets means that the value of collections need not be reported on an institution’s balance sheet.

See FASB 116, 11.a.b.c. and Guide to Implementation of GASB Statement 34 and Related Pronouncements.

The American Association for State and Local History (AASLH) explained how this practice benefits museums in a 2020 position paper, *Valuing History Collections*.

An institution that does not capitalize collections on its financial statements, but then monetizes them to pay for operations risks a qualified audit, which may hamper future fund-raising efforts.

Contractual obligations

A Deed of Gift is, at its core, a binding contract that commits all signatories to a specific set of commitments and obligations. If such a document prohibits—either explicitly or even implicitly—the deaccessioning of the relevant donated property or, indeed, restricts the use of proceeds generated through deaccession, the donee museum is generally obliged to abide by these terms and conditions. Such contractual restrictions were the basis for a dispute that involved the estate of Georgia O’Keefe and Fisk University. See:

- Fisk Follies, *Nashville Scene*, 4/12/2007
- Georgia O’Keefe Foundation (Museum) v. Fisk University, Court of Appeals of Nashville, 1/7/2009

Moral obligations

Unlike stocks, bonds, or similar investments, artworks and collection objects are often imbued with the donor’s own sense of self and personal history. When such works are gifted to an academic museum, there is generally an understanding (whether tacit or explicit) that they will be productively used by the donee museum for a range of mission-appropriate activities, including exhibitions, interpretation, research, teaching, learning, enjoyment, etc. In the rare instance in which a benefactor expects a collection object to be converted into cash, these intentions are generally made clear, as such gifts carry different tax consequences for the donor.

- How to Make Tax-Deductible, Charitable Donations of Artwork (BNY Mellon)
- About Form 8283, Noncash Charitable Contributions (IRS)

This breach of faith with donors was at the heart of the abandoned effort to disband Brandeis University’s Rose Art Museum. See, e.g., Richard Lacayo, "Brandeis' Attempt to Turn Art into Assets, *Time* (February 5, 2009) 2/5/2009 and “Breaking Up Is Hard to Do: The Sale of a Charitable Art Donation,” *The Tax Lawyer*, vol. 66, no. 2 (Spring 2013).

Standards of best professional practice

The museum community—in the United States and around the world—requires that proceeds received from the sale of collection objects be used to replenish that same collection and/or for the direct care of collections. Downstream of this core principle, there may exist modest differences in ethics policies on deaccessioning according to the kinds of collections and discipline-based associations that represent them. Here are some examples:

- American Alliance of Museums (AAM), *Direct Care of Collections: Ethics, Guidelines and Recommendations* (2016). Accredited museums that violate AAM’s best practices risk having their accreditation stripped, as was the case with the Delaware Art Museum.
- Association of Art Museum Directors (AAMD), *AAMD Policy on Deaccessioning* (2010, 2015). Museums that violate AAMD deaccessioning guidelines are subject to censure and sanctions.
- Association of Academic Art Museums and Galleries (AAMG), *Professional Practices for Academic Museums and Galleries* (2017).
- Association of Art Museum Curators Foundation (AAMC), *Professional Practices for Art Curators in Nonprofits* (see “Deaccessions,” p. 29).
- International Council of Museums (ICOM), *Guidelines on Deaccessioning*. ICOM’s Committee for University Museums and Collections (UMAC) issued its own *Resolution on the Protection of University Collections* (2013) and offers related materials.
- American Association for State and Local History (AASLH) *Statement of Standards and Ethics* (Revised 2018; see “Historical Resources”).

Collections management policies

All well-managed museums require a Collections Management Policy, which—as the name suggests—reduces to writing all collections-related protocols, including those related to accessioning and deaccessioning.

- AAM, “Collection Management Policy”

Supplemental resources

A comprehensive listing of deaccessioning resources developed to supplement AAM’s 2017 workshop, “Don’t Raid the Cookie Jar”

- AAMG, *Professional Practices for Academic Museums & Galleries*
- AAHLS Technical Leaflet #278, *Cleaning House: A Guide to Deaccessioning and Abandoned Property*
- The Society for the Preservation of Natural History Collections, *Importance of Collections*
- Natural Science Collections Alliance, *On the Importance of Scientific Collections*

CONTACT INFORMATION

In the event that a college or university collection is under threat (whether patent or latent), museum leadership is encouraged to contact the AAMG Task Force for the Protection of University Collections by emailing aacademicmg@gmail.com.

Please note that the scope of the AAMG Task Force is strictly limited to protecting college and university collections. As such, we cannot intervene in governance or management issues, including issues related to employment law, torts, contracts, free speech, academic freedom, etc.




APPENDIX 1

Charge for the Task Force for the Protection of University Collections

The Task Force for the Protection of University Collections was catalyzed by the proposed closure of Brandeis University's Rose Art Museum in 2009. In the intervening years, the Task Force has successfully functioned as an advocate and professional resource for college and university art museums whose collections are under threat. In the fall of 2017, participating organizations (AAM, AAMC, AAMD, AAMG, CAA, and ICOM/UMAC) recommitted to supporting the Task Force's activities. In doing so, these professional associations recognized the potential of mounting political, economic, cultural, and social pressures around the globe to spur or encourage collections-related activities that contravene professional standards and best practices, particularly for academic art museums and galleries. This includes (but is not limited to) the monetization and/or the inappropriate alienation, sale, or disposal of art and artifacts held in trust for the benefit of the public by registered 501(c)(3) entities, whether private or public.

It is against this backdrop that the Task Force condemns the monetization of collections assets while also affirming its support of legitimate deaccessioning practices, conducted according to the highest standards of best professional practice. This means that, for museums in the United States, any proceeds received from the sale of collection objects must be used to replenish that same collection and/or for the direct care of collections (as appropriate) and that any resulting acquisitions must carry the original donor name. It is the primary charge of the Task Force to encourage college and university administrators to adhere to and comply with these critically important principles.

The Task Force comprises representatives from the following national and international organizations: the American Alliance of Museums (AAM) and its Accreditation Commission, the Association of Art Museum Curators (AAMC), the Association of Art Museum Directors (AAMD), the Association of Academic Museums & Galleries (AAMG), the College Art Association (CAA), University Museums and Collections (UMAC) committee of the International Council of Museums (ICOM), and the Samuel H. Kress Foundation. It operates under the umbrella of AAMG's Professional Practices Committee and is co-chaired by Dr. Jill Deupi (Beaux Arts Director and Chief Curator of the Lowe Art Museum at the University of Miami) and Dr. John Wetenhall (AAMG VP, Strategic Planning and Advocacy, and Director of The George Washington University Museum and The Textile Museum).



The Task Force convenes once a year (coincident with AAMG's annual meeting) and more often when required. Between meetings, the group constantly monitors potential threats to university collections in order to provide rapid response advice and support to museum administrators whose institutions are being threatened. We are also available to mobilize communities and to speak at conferences and professional or public meetings.

This reference guide was prepared and published March 2021.

To access any applicable links or resources outlined in this web publication, please click on underlined items highlighted through the document, or visit aamg-us.org/professional-resources/task-force/ for a full listing of all related resources.

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Check out membership with us at aamg-us.org/membership

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Questions?

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