

POLICY FOR DEACCESSIONS

(Last updated on 12/15/2023)

A.) Purpose

In periodic reviews of the collections, the Museum considers the permanent removal of objects that meet specific criteria. When conducted in an orderly, ethical, and legal manner, this activity is an important part of the collection management function that strengthens the quality of the collections, as well as ensuring adequate space and care for all accessioned objects.

B.) Criteria

UCLA Standard Procedure, Policy 742: *Acquisition of Works of Art, Antiquities, and Artifacts** states, “The University shall retain the right to the deacquisition of any items, however acquired, which do not meet its overall standards of quality or relevance as described herein. Deacquisition of materials, within legally imposed restrictions, shall be related to the policies here set forth, rather than to temporary needs or to the dictates of taste.”

Deaccessioning Criteria: Objects may be considered for deaccessioning with the support of one or more of the following circumstances:

1. The object does not support the mission of the Museum, or its retention violates the Museum’s Collections Policy.
2. The object is no longer relevant or useful to the purposes and activities of the Museum.
3. The Museum is unable to properly preserve, store, or exhibit the object.
4. The object is duplicative.
5. The object is of inferior quality to pieces in the collection.
6. Inadequate documentation or absence of documentation critically reduces the cultural or scientific value or significance of the object.
7. The object has been destroyed, damaged, or has deteriorated and cannot be preserved to the extent that it no longer conforms to the Acquisitions criteria in section VIII.C, in the Collections Policy, and is no longer of any cultural or research value.
8. The object represents an unacceptable hazard to personnel or to other collections.
9. The object has been approved for repatriation under the Native American Graves Protection and Repatriation Act (NAGPRA and CALNAGPRA).
10. The object has been approved for repatriation to an international party or descendant community.
11. The Museum is instructed to deaccession an object or collection by its legal owner.
12. The object belongs more appropriately in the collection of another museum.
13. The object was stolen and has been indicated as such within the records (either digital or paper files).
14. Compliance with the change or implementation of a law that requires the removal of the object from the museum.

* Denotes a reference policy located in the appendix of this document

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C.) Procedure

1. Proposals for deaccession may be initiated by any member of the Fowler Museum's Deaccessions Committee by submitting a Deaccession Recommendation Form to the other committee members. The form must justify the proposed action based on one or more of the criteria listed above.
2. If the Deaccessions Committee supports the recommendation, it passes as a proposal to the Advisory Committee with a suggested method of disposal. After approval by the Advisory Committee, recommendations are passed to the Museum Director. (UCLA Standard Procedure, Policy 742.2-IV.1*).
3. The Registrar checks the Registration source file for a deed of gift, other legal documents, and donor correspondence, and consults with the UCLA Gift Policy Department to determine that the object to be deaccessioned is free of restrictions. Disposal of an object must never interfere with the donor's tax status or with Internal Revenue Service regulations.
4. Acceptable methods of disposal vary with the material considered. This can include, exchange, repatriation, return to the donor or living artist, sale, transfer, and destruction.
 - a) **Exchange** - *objects may be exchanged with a nonprofit institution or a dealer.*
 - i. Exchange proceeds in accordance with applicable University policies as outlined in UCLA Standard Procedure, Policy 742.2-II.B; 742.2-IV.3*.
 - b) **Repatriation** - *objects or specimens may be deaccessioned for return to the appropriate national government, tribal entity, cultural group, individual, or designated representative.*
 - i. If a national government, tribal entity, cultural group, individual, or designated representative has approached the museum with a request for repatriation, the request needs to be reviewed and determined as valid for repatriation by the designated curator and the Deaccession Committee. Once the object(s) has met the criteria for repatriation, the steps as outlined in section C.2 -.3 of this policy will need to be initiated and then the return of the deaccessioned object(s) can proceed.
 - c) **Return to donor** - *museums may wish to return certain deaccessioned objects to the donor or the donor's heirs.*
 - i. Contact the donor to offer the object(s) for return and provide the reasoning for the deaccession of their donated object(s). In the event of no response or decline of offer, the committee will seek other means of disposal as outlined in this policy, section C.4.a, e, or f.
 - d) **Return to living artist** - *museums may wish to donate, sell, or exchange deaccessioned works of art to the artist.*
 - i. Contact the living artist to offer the object(s) and provide the reasoning for the deaccession. In the event of no response or decline of offer, the committee will seek other means of disposal as outlined in this policy, section C.4.a, e, or f.

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- e) **Sale at public auction** - *Sale must be handled by a disinterested third party to avoid conflict-of-interest or the appearance of conflict-of-interest.*
 - i. The sale proceeds in accordance with applicable University policies as outlined in UCLA Standard Procedure, Policy 742.2-II.B; 742.2-IV.3*. In addition, we will comply with the State of California Resale Royalties Act of 1976 (Civil Code section § 986*).
 - ii. The preferred method of sale is a catalogued, widely publicized public auction. This ensures that the objects are being offered to the largest possible audience to obtain the highest possible price and provides a public forum for deaccessions (UCLA Standard Procedure, Policy 742.2-III*).
 - iii. Proceeds from Sale:
 - 1) The Museum uses funds realized from the deaccession of objects to augment University holdings in art, antiquities, and artifacts, or otherwise to fulfill the intent of the original donation, bequest, or appropriation as determined by the UCLA Chancellor on the recommendation of the Museum Advisory Committee (UCLA Standard Procedure, Policy 742, Section III.C*). The original donors are credited with the subsequently purchased object.
 - 2) In keeping with the guidelines provided by the Association of Art Museum Directors Professional Practices in Art Museums, all funds derived from the sale of objects may be used solely towards the acquisition of objects for the collections or direct care of objects (as defined in the updated AAMD policy from September 30, 2022*). Funds received from the disposal of deaccessioned works shall not be used for operations or capital expenses of the museum.
- g) **Transfer** - *Objects may be transferred to another department within the institution or donated to another nonprofit institution.*
 - i. Object(s) could be reassigned to the Museum's Education collection (these items would be assigned an "E" number for trackability), another acceptable UCLA campus department, or another nonprofit institution.
- f) **Destruction** - *sometimes appropriate for severely deteriorated objects or items, fakes, forgeries, or hazardous material.*
 - i. Destruction must be documented and, when culturally appropriate, should be witnessed by a non-committee member.

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5. The Director sets forth the approved terms of deaccession in the Deaccession Authorization Form to be signed by the Director, on behalf of the Museum, and countersigned by the Dean of School of Arts and Architecture at UCLA. If the deaccession involves restitution to an international government or community, the authorization form should be forwarded to the Executive Vice Chancellor and Provost.
6. The Registration Department or in the case of NAGPRA/CalNAGPRA repatriations, the Repatriation Coordinator, fully documents all deaccession transactions including proposals for deaccession, justifications for the disposal, photo documentation of the items, a description of the method of disposal. The Registration Department enters all data regarding deaccession/repatriation into the ARGUS collections database and makes an entry in the Registration Department's source file. Records are retained in perpetuity and are open for public examination, if appropriate.

APPENDIX: Reference Documents

UCLA Standard Procedure, Policy 742: Acquisition of Works of Art, Antiquities, and Artifacts - <https://www.adminpolicies.ucla.edu/APP/Number/742.0>

II. BACKGROUND

The University of California at Los Angeles serves as a repository for works of art, antiquities, archaeological materials, and other artifacts acquired by gift, bequest, or purchase which are under the jurisdiction of either the Frederick S. Wight Art Gallery, the Grunwald Center for the Graphic Arts, or the Fowler Museum of Cultural History.

The purpose of the University is primarily educational; therefore, it must exercise some control over the acquisition of art and related materials to assure that its holdings complement its educational charge.

III. STATEMENT

A. Criteria

The acquisition of all works of art, antiquities, and artifacts is conducted according to the following criteria: All items shall be adjudged as to whether they demonstrably enhance an existing campus collection, fill an identifiable instructional purpose, add to the aesthetic value of the campus, or contribute in a significant way to an academic program or research activity conducted by a recognized research unit.

B. Refusal

In the case of gifts and bequests, the University retains the right to select those materials which it deems to be of value to its overall purpose and programs, and to refuse or to exercise the right to dispose of items which are outside of its parameters of quality, relevance, authenticity, and overall purpose.

Gifts-in-kind shall not be accepted if offered subject to conditions such as display in perpetuity or other restrictions of use without the prior approval of the Chancellor. Items shall not be acquired from other than the legal owner. The University will not furnish evaluations of items to the offeror.

C. De-acquisition

The University shall retain the right to the de-acquisition of any items, however acquired, which do not meet its overall standards of quality or relevance as described herein. De-acquisition of materials, within legally imposed restrictions, shall be related to the policies here set forth, rather than to temporary needs or to the dictates of taste.

Funds realized from the de-acquisition of materials shall be used to augment University holdings in art, antiquities, and artifacts or otherwise fulfill the intent of the original donation, bequest, or appropriation as determined by the Chancellor on the recommendation of the appropriate Advisory Committee or Committees.

UCLA Standard Procedure, Policy 742.2-II.B; 742.2 III-IV.1-3

II. GENERAL POLICY

De-acquisition of works of art **by sale or exchange** is accomplished according to the following guidelines:

- The Gallery honors all legal restrictions attached to a gift or bequest of a work of art. In addition, requests which do not impose any legal obligation accompanying the bequest or gift but contain certain stipulations will be respected to the extent possible, unless modified by the donor, or if the donor is not living, the donor's heirs or legal representatives.
- All reasonable means are used to locate the donor or heirs to obtain permission for de-acquisition.
- Sale or exchange is carried out in accordance with applicable University policies. In addition, the State of California Resale Royalties Act of 1976 requires that anyone in the State of California who resells an original work of art for more than \$1,000 and in excess of the purchase price, must pay the artist five percent of the gross proceeds. If the artist cannot be located, the percentage must be turned over to the California Arts Council which will take over the search.

III. STATEMENT

- Sale at auction ensures that the objects are being offered to the largest possible audience to obtain the highest possible price. Further, sales at auctions provide a public forum for de-accessions. It is difficult for institutions to be criticized if carefully chosen objects are offered in well-catalogued and widely publicized public auctions.
- Note: Reserves are established by the auction house to protect the museum's property at auction. The term "Reserves" refers to the vendor's right to bid on his own property or to a price below which the property may not be sold.
- The auction house should guarantee every object it sells against being a counterfeit. All research is done by their specialists prior to the sale assuring that all works sold are genuine.
- The auction house contract will state that there is a commission payable by the buyer on the hammer price and a commission payable to the auction house by the seller. In certain instances, the commission paid by the seller is negotiable.
- The auction house should determine which of the artists involved in the sale are living and will take responsibility for the terms set forth by the California Resale Royalties Act of 1976.

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• IV. PROCEDURES

RESPONSIBILITY	ACTION
Advisory Committee of Gallery	Recommends deacquisition of work(s) to Gallery/Museum Director.
Gallery/Museum Director (with advice of Campus Counsel)	<p>Ascertains, with advice of Campus Counsel if necessary, that there is no legal restriction against disposal of any work(s) of art, and whether The Regents or other approval is needed.</p> <p><u>Note</u>: All legal restrictions are honored in accordance with Section II of this policy.</p>
Gallery/Museum Director	Uses all reasonable means to locate donor(s) or heirs using Skip Tracing Work Sheet.
	Advises donor(s) or heirs by letter of Gallery's intention to sell or exchange works of art.
	Reviews sales procedures and approves exact terms. Sets forth such terms in a Letter of Agreement signed by the Director on behalf of the Gallery and by the Office of the Chancellor for The Regents of the University.
	Initiates appropriate accounting and recording procedures.
	Recommends to Chancellor best use of funds from sale or exchange.
	Informs Gift Administration, External Affairs and Equipment Management upon completion of sale.
	Utilizes proceeds in accordance with University policy or according to decisions made at the time de-acquisition plans were finalized.

The California Resale Royalty Act: Civil Code section § 986

Section 986 - Right to collect royalty payment

(a) Whenever a work of fine art is sold and the seller resides in California or the sale takes place in California, the seller or the seller's agent shall pay to the artist of such work of fine art or to such artist's agent 5 percent of the amount of such sale. The right of the artist to receive an amount equal to 5 percent of the amount of such sale may be waived only by a contract in writing providing for an amount in excess of 5 percent of the amount of such sale. An artist may assign the right to collect the royalty payment provided by this section to another individual or entity. However, the assignment shall not have the effect of creating a waiver prohibited by this subdivision.

(1) When a work of fine art is sold at an auction or by a gallery, dealer, broker, museum, or other person acting as the agent for the seller the agent shall withhold 5 percent of the amount of the sale, locate the artist and pay the artist.

(2) If the seller or agent is unable to locate and pay the artist within 90 days, an amount equal to 5 percent of the amount of the sale shall be transferred to the Arts Council.

(3) If a seller or the seller's agent fails to pay an artist the amount equal to 5 percent of the sale of a work of fine art by the artist or fails to transfer such amount to the Arts Council, the artist may bring an action for damages within three years after the date of sale or one year after the discovery of the sale, whichever is longer. The prevailing party in any action brought under this paragraph shall be entitled to reasonable attorney fees, in an amount as determined by the court.

(4) Moneys received by the council pursuant to this section shall be deposited in an account in the Special Deposit Fund in the State Treasury.

(5) The Arts Council shall attempt to locate any artist for whom money is received pursuant to this section. If the council is unable to locate the artist and the artist does not file a written claim for the money received by the council within seven years of the date of sale of the work of fine art, the right of the artist terminates and such money shall be transferred to the council for use in acquiring fine art pursuant to the Art in Public Buildings program set forth in Chapter 2.1 (commencing with Section 15813) of Part 10b of Division 3 of Title 2, of the Government Code.

(6) Any amounts of money held by any seller or agent for the payment of artists pursuant to this section shall be exempt from enforcement of a money judgment by the creditors of the seller or agent.

(7) Upon the death of an artist, the rights and duties created under this section shall inure to his or her heirs, legatees, or personal representative, until the 20th anniversary of the death of the artist. The provisions of this paragraph shall be applicable only with respect to an artist who dies after January 1, 1983.

(b) Subdivision (a) shall not apply to any of the following:

(1) To the initial sale of a work of fine art where legal title to such work at the time of such initial sale is vested in the artist thereof.

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- (2) To the resale of a work of fine art for a gross sales price of less than one thousand dollars (\$1,000).
 - (3) Except as provided in paragraph (7) of subdivision (a), to a resale after the death of such artist.
 - (4) To the resale of the work of fine art for a gross sales price less than the purchase price paid by the seller.
 - (5) To a transfer of a work of fine art which is exchanged for one or more works of fine art or for a combination of cash, other property, and one or more works of fine art where the fair market value of the property exchanged is less than one thousand dollars (\$1,000).
 - (6) To the resale of a work of fine art by an art dealer to a purchaser within 10 years of the initial sale of the work of fine art by the artist to an art dealer, provided all intervening resales are between art dealers.
 - (7) To a sale of a work of stained glass artistry where the work has been permanently attached to real property and is sold as part of the sale of the real property to which it is attached.
- (c) For purposes of this section, the following terms have the following meanings:
- (1) "Artist" means the person who creates a work of fine art and who, at the time of resale, is a citizen of the United States, or a resident of the state who has resided in the state for a minimum of two years.
 - (2) "Fine art" means an original painting, sculpture, or drawing, or an original work of art in glass.
 - (3) "Art dealer" means a person who is actively and principally engaged in or conducting the business of selling works of fine art for which business such person validly holds a sales tax permit.
- (d) This section shall become operative on January 1, 1977, and shall apply to works of fine art created before and after its operative date.
- (e) If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provisions or applications of this section which can be effected, without the invalid provision or application, and to this end the provisions of this section are severable.
- (f) The amendments to this section enacted during the 1981-82 Regular Session of the Legislature shall apply to transfers of works of fine art, when created before or after January 1, 1983, that occur on or after that date.

Ca. Civ. Code § 986

Amended by Stats. 1982, Ch. 1609, Sec. 1.5.

AAMD Policy:

www.aamd.org.

**Membership of AAMD Approves Change to Deaccessioning Rule,
Bringing Policy in Line with American Alliance of Museums (AAM) and
Financial Accounting Standards Board (FASB)**

**New Rule Permits Use of Funds from Deaccessioned Art
For Direct Care of Objects, Narrowly Defined**

New York, NY—September 30, 2022—The Association of Art Museum Directors (AAMD) announced today that following a week of electronic voting, AAMD’s members have approved a change to Professional Practices in Art Museums to narrowly change the approved use of funds from deaccessioned art. The new rule was approved with 109 votes in favor; a simple majority of AAMD’s 199 voting-eligible members was required for this resolution to pass. Members were given four days in which to place their vote, a total of 130 votes were cast. The new rule will allow funds generated by the sale of deaccessioned art to be used for direct care of objects in a museum’s collection, with a very specific definition of “direct care.” This change brings AAMD’s policy in alignment both with the American Alliance of Museums (AAM) and the Financial Accounting Standards Board (FASB)—and goes further than either AAM or FASB by providing a specific definition for “direct care.”

“This is an important update to AAMD’s policies, an evolutionary change that is the culmination of nine months of work by a Task Force comprised of 18 members and ably led by Rod Bigelow of the Crystal Bridges Museum of American Art,” said Julián Zugazagoitia, AAMD’s president and director of the Nelson-Atkins Museum of Art. “More than a year before the pandemic, members of AAMD were discussing issues around collecting and collections management, recognizing that many within the Association wanted more flexibility, and also noting that our approach was no longer in sync with our colleagues at the American Alliance of Museums or the rules enacted by Financial Accounting Standards Board. This focused change addresses changes requested by members, ensures our approach is consistent with norms across the museum field, and provides crucial guidance to members on how to implement a ‘direct care’ standard should their institutions choose to do so.”

The new rule, number 25 in Professional Practices, reads as follows:

Funds received from the disposal of a deaccessioned work of art including any earnings and appreciation thereon, may be used only for the acquisition of works of art in a manner consistent with the museum’s policy on the use of restricted acquisition funds or for direct care of works of art. Direct care for purposes of this section means the direct costs associated with the storage or preservation of works of art. Such direct costs include for example those for (i) conservation and restoration treatments (including packing and transportation for such conservation or restoration) and (ii) materials required for storage of all classifications of works of art, such as, acid-free paper, folders, matboard, frames, mounts, and digital media migration. Funds received from the disposal of a deaccessioned work of art shall not be used for operations or capital expenses except as provided above. Direct care does not include (a) salaries of staff or (b) costs incurred for the sole purpose of temporary exhibition display. This replaces the earlier version of section 25, which read as follows:

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 of art in a manner consistent with the museum’s policy on the use of restricted acquisition funds. In order to account properly for their use, the AAMD recommends that such funds, including any earnings and appreciation, be tracked separately from other acquisition funds.

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The process that led to this change began in January 2022, when AAMD’s Board of Trustees appointed a Task Force to focus on two questions. The first question was to consider whether to recommend that AAMD change Professional Practices in Art Museums to permit the use of funds from deaccessioned art for direct care of collections. The second question, dependent on the first, was to propose a definition of direct care if the group thought that such a change was recommended. A recommended change from the Task Force would then need to be reviewed and approved first by the Board of Trustees and then by the membership as a whole. The Trustees reviewed and approved the policy change over the summer, and members had the opportunity to vote [last week].

“This is a good change for AAMD, recognizing a philosophical shift within our membership as well as the earlier changes made by important collegial institutions such as AAM,” said Rod Bigelow, chair of the Task Force and director of the Crystal Bridges Museum of American Art. “The Task Force reflected diverse points of view within our membership as a whole, which was essential to achieving this outcome, and I want to thank the members for their time and commitment to the process. We all understood that any change to a rule that this Association has carefully guarded for several decades must be narrow and focused, and we have achieved that. Equally important is the recognition that this change is the ceiling, not the floor. It provides some additional flexibility for our members should their institutions want it, but does not require any museum to change its current policy.”

The electronic vote was managed by Honest Ballot for AAMD. This process ensured voting accuracy and authenticity, with each eligible member allowed one vote through a unique ID tied to their email address—and at the same time ensured anonymity for participating members. Members were given four days in which to place their vote.

In addition to Bigelow, the members of the Task Force were:

- Christopher Bedford, San Francisco Museum of Modern Art
- Thomas Campbell, Fine Arts Museums of San Francisco
- Jill Deupi, Lowe Art Museum, University of Miami
- William Eiland, Georgia Museum of Art
- Brian Ferriso, Portland Art Museum
- Amy Gilman, Chazen Museum of Art
- Lial Jones, Crocker Art Museum (past AAMD President)
- Stephan Jost, Art Gallery of Ontario
- Glenn Lowry, The Museum of Modern Art
- Matthew McLendon, The Fralin Museum of Art at the University of Virginia
- Jill Medvedow, Institute of Contemporary Art, Boston
- Marcelle Polednik, Milwaukee Art Museum
- Janne Sirén, Albright-Knox Art Gallery
- Scott Stulen, Philbrook Museum of Art
- Belinda Tate, Kalamazoo Institute of Arts
- Susan Taylor, New Orleans Museum of Art
- Julián Zugazagoitia, Nelson-Atkins Museum of Art (AAMD President)

About AAMD:

The Association of Art Museum Directors advances the profession by cultivating leadership capabilities of directors, advocating for the field, and fostering excellence in art museums. An agile, issues-driven organization, AAMD has three desired outcomes: engagement, leadership, and shared learning. Further information about AAMD’s professional practice guidelines and position papers is available at www.aamd.org.