

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 255

(Senators Hayes and Miller)

Judicial Proceedings

Abandoned Property in Possession of a Museum

This bill authorizes a museum to acquire title to property that is on permanent loan to the museum (or that was loaned for a specified term that has expired) by giving notice that it is terminating the loan of the property. If a loan of property to a museum is not a permanent loan and does not have an expiration date, the property is presumed abandoned if there has not been any written communication between the museum and the lender (or the lender's designated agent) for seven years or more.

The bill also authorizes a museum to acquire title to undocumented property held for at least three years or an unsolicited donation found on museum property by giving notice that the museum is asserting title to the property or donation. After providing the required notice, the museum may acquire title to such property after 60 days if the lender does not respond (or if ownership is not claimed). In addition, the bill authorizes a museum to apply conservation measures to property on loan and to establish a lien on the property in specified circumstances.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Methods of Notice

A museum must provide notice required under the bill by certified mail to the last known address of the lender. The notice requirement is satisfied if the museum receives proof of receipt within 30 days after the notice was mailed.

A lender must provide written notice to a museum of a change in address of (1) the lender or (2) any designated agent of the lender. If ownership of property on loan to a museum changes while the museum is in possession of the property, the new owner of the property must provide written notice to the museum indicating the change of ownership and providing contact information for the new owner.

If the museum does not know the identity or address of the lender (or a designated agent of the lender) or receive proof of receipt of a notice that was sent by certified mail within 30 days, then the museum may provide required notice by publication. A notice by publication must be published at least once a week for two consecutive weeks in a newspaper of general circulation in (1) the county in which the museum is located and (2) the county of the lender's last known address, if the identity of the lender is known.

Contents of Notice

Any notice given by a museum pursuant to the bill's authorization must contain certain information, including (1) the name and last known address of the lender (or designated agent), if known; (2) a brief description of the property on loan; (3) the date of the loan, if known; (4) the name of the museum; and (5) the name, address, and telephone number of the person or office at the museum to contact regarding the property.

In addition to the general requirements that each notice must include, the bill requires specific language for each notice for property on permanent or temporary loan, undocumented property, and an unsolicited donation. Among other information, the notices must state that unclaimed property becomes property of the museum if a response is not received within 60 days.

Conservation Measures

Unless there is an agreement between the museum and the lender, the bill authorizes a museum to apply conservation measures to property on loan without receiving the lender's permission (or giving formal notice if) (1) action is required to protect the property on loan

or other property in custody of the museum or (2) the property on loan is a hazard to the health and safety of the public or the museum staff.

If a museum applies such conservation measures (or with the agreement of the lender, unless otherwise specified), the museum acquires a lien on the property in the amount of the cost of the conservation measures. In addition, in such cases, the museum is not liable for injury to (or loss of) the property if the museum exercised reasonable care in the choice and application of conservation measures and had a reasonable belief that the conservation action was necessary to protect the property or the health and safety of the public or museum staff.

Current Law/Background: Maryland law does not explicitly address how unclaimed property left with a museum must be handled.

According to the [Society of American Archivists](#), as of 2016, four states (including Maryland), most of the U.S. territories, and the District of Columbia have not adopted abandoned property laws with language specific to cultural institutions. However, since that time, at least one state – Delaware – has enacted its own law regarding abandoned property held by a museum.

Title 17 of the Commercial Law Article generally governs abandoned property in the State.

The Comptroller is required to publish the names of newly reported owners of property presumed abandoned within 365 days of the filing of the report by the holder of the abandoned property if the property has a value of at least \$100. Notice of property valued at \$100 or less is not required to be published, unless the Comptroller considers publication to be in the public interest.

Any holder of presumed abandoned property is required to send written notice to the apparent owner of the presumed abandoned property, at the apparent owner's last known address, informing the owner that the holder is in possession of the property and that the property will be considered abandoned unless the owner responds to the holder within 30 days after the notification.

Generally, property is presumed to be abandoned if it is left unclaimed for three years. A person holding abandoned property must file a report with the Comptroller including information on the nature of the property and the property's presumed owner. Within 365 days after the report's filing, the Comptroller must publish a notice in a newspaper of general circulation in the county where the presumed owner's last known residence is located, naming the owner and holder of the property, and stating the means by which the owner may claim the property. The Comptroller must then mail out notices to owners of abandoned property valued at \$100 or more within 120 days of receipt of the report filed

by the holders. The property must be delivered or paid to the Comptroller at the time an abandoned property report is filed, at which time the State takes custody of the property.

Within one year of taking custody of abandoned personal property the Comptroller must sell the property at auction. A person who claims a legal interest in property delivered to the Comptroller must file a claim to the property or to the proceeds from its sale. For property sold at auction, if the Comptroller allows the claim, the Comptroller must pay the claimant an amount equal to the sales price.

The Comptroller has an electronic [abandoned property database](#) on the agency's website. In addition, the Office of the Comptroller advises that, while it has no data on abandoned museum-related property, it rarely (if ever) has had reported as unclaimed such property.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Commerce; Comptroller's Office; Judiciary (Administrative Office of the Courts); St. Mary's College of Maryland; Department of Housing and Community Development; Society of American Archivists; Laws of Delaware; Department of Legislative Services

Fiscal Note History: First Reader - February 11, 2019
an/kdm

Analysis by: Eric F. Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510