

Title 13. Libraries, Archives, and Cultural Resources

Chapter IX. State Parks Division, Department of Parks, Heritage, and Tourism

Subchapter A. Generally

Part 90. Museum Property Act

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"MARCH 1, 2006"

"MUSEUM PROPERTY ACT
(Act 2242 of 2005)"

Subpart 1. Generally

13 CAR § 90-101. Purpose.

The purpose of this part is to assist Arkansas museums who possess loaned or undocumented property further defined by Acts 2005, No. 2242, Arkansas Code § 13-5-1002, for:

- (1) Establishing procedures for vesting in a museum ownership of abandoned or undocumented property in the possession of the museum;
- (2) Establishing procedures to terminate loans of property to a museum;
- (3) Allowing a museum to conserve or dispose of loaned or undocumented property under certain conditions; and
- (4) Limiting actions to recover loaned or undocumented property.

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-102. Definitions.

As used in this part:

(1) "Address" means the most recent location of a claimant or lender as indicated by a museum's records pertaining to the property;

(2)(A) "Claimant" means a person who has established or claims entitlement to or an interest in property held by a museum.

(B) "Claimant" does not mean a lender;

(3) "Lender" means the person identified by the records of a museum as the owner or rightful possessor of a loan held by a museum;

(4)(A) "Loan" means property that a lender has placed in the custody of a museum.

(B) "Loan" does not include a consignment of property for the sale or property donated to a museum;

(5)(A) "Museum" means an institution or entity located in Arkansas that:

(i) Is operated by a:

(a) Nonprofit corporation;

(b) Trust;

(c) Association;

(d) Public agency; or

(e) Educational institution;

(ii) Is operated primarily for educational, scientific, historic preservation, cultural, or aesthetic purposes; and

(iii) Owns, borrows, cares for, exhibits, studies, archives, or catalogues property.

(B) "Museum" includes:

(i) Historical societies;

(ii) Historic sites;

(iii) Landmarks;

(iv) Parks;

(v) Archives;

(vi) Monuments;

(vii) Botanical gardens;

- (viii) Arboreta;
- (ix) Zoos;
- (x) Nature centers;
- (xi) Planetaria;
- (xii) Aquaria;
- (xiii) Libraries;
- (xiv) Technology centers; and
- (xv) Art, history, science, and natural history museums;

(6) "Permanent loan" means a loan to a museum for an indefinite term;

(7) "Person" means:

- (A) An individual;
- (B) An association;
- (C) A partnership;
- (D) A corporation;
- (E) A trust;
- (F) An estate; or
- (G) Another entity;

(8) "Property" means a document or tangible object, animate or inanimate, with intrinsic historic, scientific, artistic, or cultural value that is in the custody of a museum;

(9) "Unclaimed property" means property meeting the following conditions:

(A) The property was placed with the museum for exhibition or other purposes; and

(B) The original person placing the property with the museum, or a person acting legitimately on the original person's behalf, has not contacted the museum in writing regarding the property for at least:

(i) Ten (10) years from the date of the beginning of the period for which the property was placed with the museum if the property was placed with the museum for an indefinite or undetermined period; or

(ii) Five (5) years after the date upon which the definite period in which the property was placed with the museum expired; and

(10)(A) "Undocumented property" means property:

(i) That is held by a museum; and

(ii) The ownership of which cannot be determined from the museum's records.

(B) Undocumented property shall not be construed to include loaned property.

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-103. Procedure for obtaining ownership of an abandoned loan.

(a) A museum may obtain ownership of a loan if:

(1) The loan agreement has expired; or

(2) The loan has been in the museum's custody for more than ten (10) years and the loan agreement does not provide for a longer term for the loan or another disposition.

(b) If the address of the lender is known, the museum shall notify the lender by certified or registered mail, return receipt requested (see attachments 1 and 2, letters).

(c)(1) If the return receipt showing receipt of the notice is returned and the lender fails to object within ninety (90) days of the date of the return receipt:

(A) The loan shall be considered abandoned; and

(B) Its ownership shall vest in the museum.

(2) If the museum did not receive a return receipt showing receipt of the notice, the museum may proceed as follows:

(1)(A) If the museum is unable to determine the identity of the lender or the lender's address, the museum shall publish the legal notice at least one (1) time a week for four (4) consecutive weeks in at least one (1) newspaper with general

circulation in the county of the last known address of the lender, and in which the museum is located, or a newspaper of statewide circulation.

(B) See attachment 3, sample ad; and

(2) If the lender fails to object within ninety (90) days from the last date of the publication, the loan shall be considered abandoned and its ownership shall vest in the museum.

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-104. Legal notice.

The legal notice shall contain:

- (1) The name, address, and telephone number of the museum;
- (2) A complete description of the loan;
- (3) The lender's identity if that information is available from the museum's records;
- (4) The lender's last known address if that information is available from the museum's records; and
- (5) A statement that the loan shall be considered abandoned and shall become the property of the museum if the lender does not make a timely objection in accordance with 13 CAR § 90-103(c).

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-105. Museum's right to claim ownership of undocumented property.

(a) Undocumented property in the possession of a museum shall become the museum's property if no person has claimed the undocumented property within seven (7) years after the museum documented possession of the previously undocumented property.

(b) The museum does not own the undocumented property in the museum if the undocumented property is determined later to be:

- (1) Stolen property; or
- (2) Property whose ownership is subject to federal law.

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-106. Duties of the museum concerning a loan.

(a) At the time of a loan to a museum, the museum shall make and retain a written record of the following:

- (1) The lender's name, address, and telephone number;
- (2) A description of the loan;
- (3) The date of the loan; and
- (4) The expiration date of the loan.

(b) The museum shall provide the lender with a signed receipt or copy of the loan agreement containing the information set out above.

(c) The museum's general duties with respect to a loan include:

(1) Updating museum records whenever:

(A) A lender informs the museum of a change of address or change in the ownership of the loan; and

(B) The lender and museum negotiate a change in terms of the loan; and

(2)(A) Providing the lender with notice about any update concerning the lender's loan and providing copies of these sections of the statute, Arkansas Code § 13-5-1004, procedure for obtaining ownership of an abandoned loan, Arkansas Code § 13-5-1007, duties of lender concerning the lender's loan, and Arkansas Code § 13-5-1009, conservation measures, to each lender who made a loan to the museum before the effective date of August 11, 2005, of Acts 2005, No. 2242, and that loan is in the custody of the museum, to the lender at the time of the loan and upon a lender's request.

(B) A copy of the aforementioned sections, Arkansas Code §§ 13-5-1004, 13-5-1007, and 13-5-1009, shall be provided by the museum to the lender.

(C) See attachment 4.

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-107. Duties of a lender concerning the lender's loan.

(a) A lender who has made a loan to a museum shall promptly notify the museum in writing about a change in the lender's address and a change in the ownership of the loan.

(b) It shall be the responsibility of the owner of a loan to provide sufficient proof of his or her ownership to the museum.

(c) If there is a dispute about ownership, the museum shall not be liable for its good faith refusal to surrender a loan unless ordered by a court of competent jurisdiction.

(d) If the museum notifies the lender by certified or registered mail, return receipt requested, that the loan is terminated, the lender shall:

(1) Acknowledge in writing the termination and inform the museum whether the lender wants the return of the loan; and

(2) Retrieve the loan no later than six (6) months from the date of the museum's notice terminating the loan if the lender wants the loan returned.

(e) If the lender fails to retrieve the loan within the time set out in the Museum Property Act (Acts 2005, No. 2242):

(1) The loan shall be considered abandoned; and

(2) Ownership shall vest in the museum.

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-108. Lien for expenses for care of unclaimed property.

A museum has the right to claim a lien on unclaimed property for any expenses incurred while caring for the unclaimed property.

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-109. Conservation measures.

(a) If immediate conservation is necessary to protect a loan, a museum's property, or the safety and welfare of the public and the museum's staff, and the loan agreement between the museum and the lender does not provide otherwise, a museum has the right to apply conservation measures to a loan without the lender's permission.

(b) If immediate conservation is not necessary but conservation is needed to preserve the loan's value, a museum has the right to apply a conservation measure to a loan:

(1) After the museum has notified the lender by certified or registered mail, return receipt requested, that a conservation measure is needed; and

(2) If the lender or claimant:

(A) Does not respond to the notice within seven (7) days after the date on the return receipt showing receipt of the notice; or

(B) Refuses to consent to the protective measures and will not agree to the termination of the loan and the immediate retrieval of the loan.

(c) When a conservation measure is undertaken, the museum:

(1) Has a lien on the loan and on the proceeds of any disposition of the loan for the cost of the conservation measure; or

(2) Is not liable for any injury to or loss of the loan if the museum:

(A) Had reasonable belief at the time conservation measures were taken that the conservation measures were necessary; and

(B) Exercised reasonable care in the choice and application of conservation measures.

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-110. Transfer of title to the museum.

A museum that acquires ownership of property under the provisions of the Museum Property Act, Acts 2005, No. 2242, receives the property free of any claim by a claimant or lender.

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-111. Records retention.

A museum shall keep all records relating to loans and undocumented property while the museum has possession of the property or for twenty-five (25) years, whichever period of time is longer.

Authority. Arkansas Code § 13-5-1013.

13 CAR § 90-112. Rules.

(a) In accordance with Acts 2005, No. 2242, also known as the Museum Property Act, the Department of Parks, Heritage, and Tourism, in consultation with the Division of Arkansas Heritage, shall promulgate rules to carry out the provisions of the Museum Property Act, including, but not limited to, rules concerning the form and substance of loan agreements.

(b) This policy was reviewed by the Administrative Rules Subcommittee of the Legislative Council on December 1, 2005.

Authority. Arkansas Code § 13-5-1013.

Appendix A. Sample Letter 1 to Lender

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/48/13CARpt.90AttachmentA.pdf>

Appendix B. Sample Letter 2 to Lender

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/49/13CARpt.90AttachmentB.pdf>

Appendix C. Sample Notice for Publication

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/50/13CARpt.90AttachmentC.pdf>

Appendix D. Applicable Sections of the Museum Property Act

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/51/13CARpt.90AttachmentD.pdf>