THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
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REPORT ON LEGISLATION

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A. 995 — **M. of A. Brodsky**
S.3593 — **Senator Maltese**

AN ACT to amend the education law, in relation to property of museums other than the state museum.

THIS BILL IS APPROVED

Summary of Museum Bill

Museums across New York face obstacles in dealing with property that was left on their doorsteps or was lent to them years or decades ago by lenders, who can no longer be located or identified. A.995/S.3593, the Museum Bill, refers to these objects as "undocumented property", which is defined as objects with "intrinsic historic, artistic, scientific, or cultural value" in the museum's possession "for which the museum cannot determine the lender, donor, or owner by reference to its records". Small museums, with limited budgets and staff, especially local historical societies, historic homes, and natural history museums, are especially burdened by "undocumented property".

The Museum Bill was drafted to help museums manage "undocumented property" in their collections while also preserving the rights of lenders, donors and claimants to reclaim their property. The bill gives museums a legal framework by which to clarify and/or acquire title to "undocumented property". If and when a museum deaccessions "undocumented property", the subsequent purchaser obtains all of the museum's ownership rights to the object. In particular, the Museum Bill:

- Provides explicit notice and publication procedures pursuant to which a museum may "acquire the rights of the lender, donor, or owner to the undocumented property".

- Specifies circumstances in which museums may apply "conservation measures" to loaned property and acquire a lien for the costs incurred.

- Mandates that the proceeds from the sale of "undocumented property" shall be used only for acquisition, conservation, protection, or preservation purposes and not to defray operating expenses.

At first glance, the Museum Bill seems uncontroversial, especially considering that approximately thirty states have similar laws and a nearly identical statute applies to New York state museums. However, as originally drafted in 2004, the bill might have provided museums with good title to stolen property (including objects that were lost, looted, or sold under duress during the Nazi-era) and thus greater ownership rights than those of the donor or lender from whom the museum obtained the property. Thus, a Holocaust carve-out provision was added to the Museum Bill to prevent this unintended consequence.

Association's Revisions to 2005 Museum Bill

The Museum Bill has passed the Legislature in previous years, but was vetoed by Governor Pataki, who has had several objections, including his belief that the bill had insufficient protections for Holocaust victims to recover art stolen from them, and that it insufficiently protected the rights of lenders. In September 2005, the Art Law Committee formed a Subcommittee to review, revise, and make recommendations on the Museum Bill to address these concerns. The Subcommittee worked closely with the New York State Banking Department and its Holocaust Claims Processing Office (HCPO), the Museum Association of New York (MANY), and the Conference on Jewish Material Claims Against Germany (Claims Conference). Here are the most significant changes made by the Subcommittee:

- Clarified the language prohibiting museums from acquiring title to Nazi-era spoliated objects, as well as other stolen property reported to a law enforcement agency, insurer or The Art Loss Register.
- Narrowed the scope of "undocumented property" to "identifiable works of art" for notices that must be sent to The Art Loss Register.
- Deleted provision requiring museums to keep comprehensive records of its activities, which most museums do anyway as a matter of course. This obligation unnecessarily burdened small local museums.

After circulating several versions, the Subcommittee garnered the full support for its revised language from the New York State Banking Department, MANY, and the Claims Conference, who had previously voiced objections. This revised language is now part of the current bill.

Conclusion

If the Museum Bill is enacted, New York would become the first state to not only provide museums with statutory guidelines to responsibly deal with "undocumented property", but also preserve the rights of claimants to recover objects in museums that were involuntarily lost, looted, or sold under duress during the Nazi-era. We believe that the Museum Bill strikes an appropriate balance between the needs of New York's world-class museum community and New York's established commitment to Holocaust survivors and their heirs.

NEW YORK
CITY BAR

May 8, 2008

Mr. David Nocenti
Counsel to the Governor
The Executive Chamber
State Capitol
Albany, NY 12224

Re: A995/S3593

Dear Mr. Nocenti:

The Art Law Committee of the New York City Bar Association supports the enactment of A995-A/S3593 (the "Bill"), which enables not-for-profit museums to acquire rights to abandoned, undocumented and/or loaned property. The bill has now passed both houses of the Legislature, and we are urging Governor Paterson to sign it into law. The Committee and the City Bar Association believe that this bill is necessary for the following reasons:

- The Bill gives museums a much needed administrative procedure to deal with the large quantity of accumulated, unwanted property that was left on their doorsteps or was lent to them years and/or decades ago by lenders, who can no longer be located or identified. This procedure is especially helpful for small museums, with limited budgets and staff, local historical societies, historic homes, and natural history museums.

- The Bill protects the ownership rights of victims, who lost cultural property during the Holocaust-era, and their heirs. It specifically prevents museums and any subsequent purchasers from obtaining rights to artworks that "changed hands due to theft, seizure, confiscation, forced sale, or other involuntary means in Europe during the Nazi era (1933-1945)". If enacted, New York would become the first state to protect the rights of pre-War owners and their heirs to recover museums' abandoned, undocumented and/or loaned property that was involuntarily lost during the Nazi-era.

- The Bill was intended to provide museums with a cost-effective, reasonable way to deal with abandoned, undocumented, and/or loaned property. It alleviates hardships under the current law, which requires museums to go to court to seek

declaratory judgments. Instead of the courts, the Bill relies on the attorney general to protect lender's and/or owner's rights and act as an independent arbiter of the museums' claims. If the attorney general raises no objection within the 180-day period (after the extensive notice, publication and posting requirements have been met), the museum acquires rights to the property. Of course, if the attorney general or anyone else objects to the museum's property claims, they can and should go to court to clarify issues of title.

- The Bill addresses previous concerns about earlier versions, by requiring museums, *inter alia*,: (1) To provide donors and potential donors copies of their mission statement and collections policies; (2) To give lenders prompt written notice of injury to or loss of property; (3) To advise lenders that in lieu of conservation measures they can choose to terminate their loan agreements; and (4) To maintain detailed records and information about new acquisitions (whether by purchase, bequest, gift or loan) and of deaccessioning or loan of property.

We hope to see this bill enacted into law in this legislative session. If you have any questions or need more information, please contact Jayne Bigelsen, director of Legislative Affairs at (212) 382-6655. Thank you.

Sincerely,

Howard N. Spiegler
Chair, Art Law Committee
New York City Bar Association