

DONATIONS

This is a short paper summarising the legal issues around accepting donations for your museum or gallery.

It includes a sample Deed of gift in a proper form for accepting donations.

Many museums are brought into existence by a generous collector who has decided to give his or her collection to the community. Many more are able to enhance their collections thanks to donations. At a time in which acquisition funds are limited, many museums have to develop their donor programs if their collections are to grow in size and quality.

In spite of the importance of donations, many administrators do not go about the acceptance of donations in a legally safe manner. There are three matters which should be considered:

- (a) the power to accept donations;
- (b) the means used to secure legal ownership of the material.
- (c) whether the museum really wants the gift.

Power To Accept Gifts

As has already been discussed, the museum only has the power to do things that its constitution allows it to do. With museums established by State or Federal governments there is rarely a problem for the statute which establishes the museum will invariably provide the power to accept or refuse gifts. Usually this power is limited to the extent that the gift must be accepted in pursuance of the museum's objects (as set out in that statute). Thus a natural sciences museum may not have the legal power to accept the gift of a vintage motorcycle, even if it were inclined to accept it.

Museums established by local councils do not have the benefit of an individual statute and they vary so much from instance to instance that the best advice is to contact the relevant local government authority, in writing, and ask it to advise of any such restrictions. (This is called passing the buck).

Museums which are non-profit companies or incorporated associations will have to examine their articles or constitutions and ensure that they have the power to accept donations. (If this reveals that the museum has been accepting gifts without having the legal power to do so, the board should immediately amend the powers to include such a power and then ratify their earlier decisions).

Approval Of Gifts

The board must approve all gifts to the museum. In this it will be advised by the director, but the final word must lie with the board.

A common approach is for all offers of gifts to be channelled through the registrar or the director. They will prepare a recommendation for the board. No staff member should indicate that a gift will be accepted until it has been considered by the director and the board.

Means Used To Secure Legal Title

Many museums have important material in their collections but cannot prove that they own it. More than once, relatives of recently deceased benefactors have turned up at a museum and asked for "their" property back and all too often the museum has to hand the material over, for although it is sure that it was the intention of the benefactor to donate the material it can not prove that the transaction was other than a loan.

Others have been promised a future gift and not done sufficient to legally secure it.

Ordinary gifts

Legal title in a gift passes upon its delivery. The difficulty arises from having to prove that the transaction was truly a gift.

Briefly, for a gift to be legally effective one must be able to show that:

- (a) there was a clear intention to make a gift;
- (b) the object was delivered; and
- (c) the gift was accepted.

The most difficult of these to prove is the intention to make a gift. For example, unless the documentation is sufficient, it is difficult to prove that a transaction was a gift and not a loan. For example, in 1987 the Museum of Contemporary Art in Madrid announced that it was having to return 61 works by Picasso that had been allegedly donated to the museum by the artist's widow, because of the absence of documentary proof of her intention. To overcome this surprisingly commonplace sort of problem, all museums should develop standard procedures which protect them.

The most powerful proof of ownership is provided by a **Deed of Gift**. Although not essential for the legal efficacy of a gift, the deed form is undoubtedly the safest way to record the museum's ownership of the gifted item. The following provides a standard form: