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## Measured Relaxation of AAMD Restrictions Provides Some Flexibility for US Museums Navigating COVID Impacts

By *Megan Noh*

Approximately one month ago, the Association of American Museum Directors (AAMD) [announced](#) that its Board of Trustees had passed a series of resolutions relaxing certain restrictions on its member institutions. For a 24-month period, AAMD will not sanction or censure member institutions who, for general operating expenses, draw on the following sources:

- Income (but not principal) from **endowment funds or trusts held by a museum and that are normally restricted** to purposes other than general operations such as art acquisition, conservation, or research;
- Income *and/or* principal from **similarly restricted donations or trusts held by outside entities in support of the museum**; and
- Income (but not principal) from **funds generated by deaccessioned works of art**, regardless of when the works were deaccessioned.

Perhaps even more notably, AAMD has indicated that member institutions may use the **actual proceeds from deaccessioned works of art**—regardless of whether the works were deaccessioned before or after the date of these resolutions—to support the **direct care of their collections**.

These resolutions reverberated through the [art industry press](#), and with good reason: museums are currently facing unprecedented logistical and financial difficulties as a result of the COVID-19 pandemic, and a “free pass” to dip into previously-off-limits coffers would certainly be a game changer, particularly given the [highly controversial nature](#) of deaccessioning in the United States. However, the relaxations on AAMD’s rules are far from a panacea to the museum communities’ current woes: these special dispensations are narrow,

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subject to pre-conditions and external legal requirements, and must be implemented in keeping with broader ethical and policy considerations.

Of these temporary policy changes, the ones pertaining to use of the proceeds of deaccessioning for direct care has sparked the most interest. Unpacking the AAMD's reversal on this issue requires a bit of historical context. Since 1993, the American Alliance of Museums (AAM) has [advocated](#) for the proceeds of deaccessioning to be permitted to be used for this purpose, which use has also been approved by the Financial Accounting Standards Board (FASB), which [adopted](#) an update in 2019 to align with AAM. AAMD had remained an outlier on the point, [providing](#) that funds from deaccessioning "may be used only for the acquisition of works in a manner consistent with the museum's policy on the use of restricted acquisition funds." The April 2020 relaxation of this restriction thus represents a further industry alignment, *i.e.*, an AAMD position consistent with that of AAM and FASB.

However, far from the "[push ... to break the rules](#)" that the art industry press proclaimed, AAMD has emphasized the temporary nature of the shift, the extraordinary challenges faced by museums in light of COVID-19, and the need for museums to balance immediate needs with those of their future audiences. Indeed, in a May 7 [presentation](#) to the Association of Registrars and Collections Specialists, AAMD Board President Brent Benjamin stressed that AAMD's recent resolutions do not change AAMD's professional practices nor any other rules or guidelines in place. Moreover, AAMD has imposed specific conditions on an institution's application of the new relaxations, including the development of a written policy defining direct care, which must be approved by the museum's governing board and made public. Notably, "direct care" is far from a *carte blanche* for AAMD member institutions to recharacterize general operating expenses. AAM's [definition of the term](#) covers only those expenditures that "enhanc[e] the[] life, usefulness or quality" of existing collections, "thereby ensuring they will continue to benefit the public." Thus, replacing an institution's HVAC system would be very unlikely to qualify.

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Mr. Benjamin also rejected the notion that AAMD is encouraging widespread deaccessioning—*i.e.*, a “green light to sell off their art”—further noting that all other aspects of AAMD’s guidelines around deaccessioning remain in place, including the [criteria](#) by which a member institution determines that a collection item is of poor quality, duplicative, or no longer consistent with the museum’s mission.

Inevitably, the AAMD’s response to its member community’s urgent needs will be simultaneously criticized as opening the floodgates to sell off priceless treasures meant to benefit the public, *and* as doing too little to enable museums to stay afloat during the most significant financial crisis faced by the arts and culture sector—and perhaps the world—during our lifetimes. Given the [relatively meager](#) federal aid earmarked for such institutions and the legal and practical hurdles left in place by AAMD’s resolutions, a significant number of US museums are likely to be facing existential crises. One can only hope that in addition to taking advantage of these measured relaxations (and where appropriate in conjunction, seeking support from donors and Attorneys General with regard to the use of restricted funds), museums are exploring collaborative and cost-cutting initiatives, including novel digital models for revenue-generating audience engagement. ###

*The above article was published on May 29, 2020 by The [Art Institute of Law](#) and authored by Megan Noh is a partner at New York law firm Pryor Cashman and co-chairs the firm’s Art Law Group.*