Complicated Loan Negotiations: Informal Study of Various Industry Requirements and Solutions

Presenters: Frank Avila-Goldman, Michelle Bennett Simorella, Elayne Rush
Moderator: Mary Pontillo
Total of 48 responses to the survey

- Foundations: 27%
- Estates: 13%
- Private Collections: 6%
- Galleries: 4%
- Museums: 27%
- University Museums: 8%
- Other: 15%
- Private Collections: 6%
48 Participants Include

**Artist-Endowed Foundations (13):**
- Dedalus Foundation
- Niki Charitable Foundation
- Richard Diebenkorn Foundation
- Robert Rauschenberg Foundation
- Roy Lichtenstein Foundation
- Saul Leiter Foundation
- The Willem de Kooning Foundation

**Artist Estates/Private Collections (13):**
- The Richard Pousette-Dart Estate
- The Estate of Paul Jenkins
- Private collector: Barbara Castelli and Campisi Art Collections Management on behalf of private collections and estates

**Museums/Other (22):**
- Asia Society
- Kimbell Art Museum
- Asian Art Museum
- Walters Art Museum
- Museum of Art and Design
- Grey Art Gallery, NYU
- Richmond Art Center
- Pace Gallery
- Indiana Museum of Art
- Dallas Museum of Art
- Rubin Museum of Art
2. Who on your staff handles outgoing loans?

- Foundations: 62%
- Estates: 69%
- Museums: 91%

• “Estates” refers to Artist-Endowed Estates and Private Collectors
• “Museums” refers to Museums/Other
3. Do you use your own outgoing loan agreement or do you accept the agreement from the Borrower?
3M. **Museums**: As a Borrower, do you use your own incoming loan agreement or do you accept the agreement of the Lender?
4. Do you accept Indemnity programs?

- Foundations: 54%
- Estates: 62%
- Museums: 95%
5. Do you have any special Insurance requirements?
5. Do you have any special Insurance requirements?

![Bar chart showing the percentage of institutions requiring additional insured. Foundation: 62%, Estates: 77%, Museums (Lender): 64%, Museums (Borrower): 73%.]
5. Do you have any special Insurance requirements?

- [Diagram showing Loss Payee percentages for different entities: Foundation 54%, Estates 62%, Museums (Lender) 82%, Museums (Borrower) 82%]
5. Do you have any special Insurance requirements?

![Waiver of Subrogation Chart]

- Foundation: 15%
- Estates: 31%
- Museums (Lender): 55%
- Museums (Borrower): 77%
5. Do you have any special Insurance requirements?

Borrower is responsible for the loss even if not covered by insurance

- Foundation: 38%
- Estates: 38%
- Museums (Lender): 23%
- Museums (Borrower): 32%
5. Do you have any special Insurance requirements?

Zero deductible on Borrower’s insurance or other contractual language that makes the Borrower responsible for the deductible.
5. Do you have any special Insurance requirements?

Specific coverages required depending on location - Earthquake, Windstorm, Flood

- Foundation: 46%
- Estates: 31%
- Museums (Lender): 68%
- Museums (Borrower): 55%
5. Do you have any special Insurance requirements?
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<table>
<thead>
<tr>
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<th>Immunity from seizure</th>
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<td>Foundation</td>
<td>15%</td>
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<tr>
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</tr>
<tr>
<td>Museums (Lender)</td>
<td>64%</td>
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<tr>
<td>Museums (Borrower)</td>
<td>82%</td>
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</table>
6. Do you require a Certificate of Insurance evidencing coverage?

- Foundations: Yes (100%), No (0%)
- Estates: Yes (100%), No (0%)
- Museums: Yes (100%), No (0%)
7. Do you require a copy of the Borrower’s policy to review?
8. Do you require a list of policy exclusions, endorsements and any conditions of the policy that could affect the loan?
9. Are there any specific exclusions you would have removed from a Borrower’s insurance policy?

**Artist-Endowed Foundations:**
- Majority do not
- “Wear and Tear” removed based on artwork’s location
- Ask the Borrowers to be responsible in case of third party damage (from art handlers, sub-contractors, transport agents, etc.)

**Artist Estates/Private Collections:**
- Majority do not
- In some cases, terrorism is requested for removal

**Museums/Other:**
- Coverage must be equal to or better than the Museum’s or will use their own
- Removal of:
  - Mysterious disappearance or loss
  - Improper packing
  - Moths and vermin
  - Another country’s/state jurisdiction
  - Interest calculations for buy backs
  - Damage causes by temp/humidity changes
  - Employee dishonesty
  - Gross negligence
  - Clauses assigning the loan as a gift
9M. **Museums:** As a Borrower, are there any specific insurance you would not agree to regarding a Lender’s insurance requirements?

- Absolute liability or liability beyond their insurance coverage, unless underwriters agree
- Inherent vice and Wear and tear
- Standard exclusions
- Jurisdiction out of state
- Additional insured
- Loss payee
- Any clause that restricts packing to the original incoming materials without the inclusive authority to improve or upgrade the wrapping or crating.
- If the lender wishes to carry their own insurance, we put a limit on the premium cost.
10. If the Borrower can’t comply with your requirements, do you ever require the Borrower to take out a policy through your broker/insurance company?
11. Do your requirements vary dependent upon the Borrowing institution (i.e. museum, commercial gallery)?
12. Are your loan requirements flexible?

<table>
<thead>
<tr>
<th>Artist-Endowed Foundations:</th>
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<tr>
<td>• If the Borrower’s insurer doesn’t meet the Lender’s terms:</td>
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<tr>
<td>• Lender may self-insure</td>
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<tr>
<td>• Lender may ask the Borrower to take out a policy with the Lender’s insurer</td>
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<tr>
<td>• Flexible on</td>
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<tr>
<td>• 24-hour human security</td>
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<tr>
<td>• Environmental conditions</td>
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<tr>
<td>• Insurance Amounts</td>
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<tr>
<td>• Governing jurisdiction</td>
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<table>
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<th>Artist Estates/ Private Collections:</th>
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<tr>
<td>• 1/3 of those surveyed are not flexible</td>
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<tr>
<td>• Areas of flexibility with</td>
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<tr>
<td>• Courier requirements</td>
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<tr>
<td>• 24-hour human security</td>
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<td>• Artwork value</td>
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<td>• Certain insurance exclusions may be negotiable.</td>
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<td>• Framing/Un-framing, as well as display</td>
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<td>• Exhibition duration.</td>
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<th>Museums/ Other:</th>
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<td>• Majority depends on the Borrower</td>
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<tr>
<td>• A few said no</td>
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<td>• Some compromises include:</td>
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<tr>
<td>• Environmental conditions</td>
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<tr>
<td>• Displays, mounts, light levels</td>
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<td>• Couriers and courier costs</td>
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<tr>
<td>• Consolidated shipments/methods of shipment</td>
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<td>• Barriers or site-line surveillance</td>
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<td>• Photography</td>
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13. Do you require the Borrower to list you as Additional Insured under their General Liability policy?

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<tr>
<td>• 69% require a Borrower to list them as AI</td>
<td>• 54% require a Borrower to list them as Additional Insured under their General Liability policy.</td>
<td>• Evenly split 50%/50%</td>
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<tr>
<td>• For one, it is only required for large outdoor sculpture loans</td>
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14. **Foundations**: Does your organization/institution have formal guidelines for insurance requirements surrounding Loans? Who on your staff sets the guidelines for insurance requirements surrounding Loans?

- 91% of these institutions do have formal guidelines
- The majority of these institutions have guidelines set by a combination of
  - Board members
  - Trustees
  - Director
  - Registrar
- Often there is consultation with insurance agents and the institution’s legal counsel
15. What is your procedure for condition reports as it pertains to loans?

Artist-Endowed Foundations:
• Majority provide outgoing condition reports and require that the reports be updated at each venue and upon return to the lender.
• Variations include whether the condition reports are performed by the institution registrar, contract registrar, or conservator.

Artist Estates/Private Collections:
• Pertaining to condition reports, Lenders will generally create in-house reports before and after the loan’s duration.
• Some opt to share with the Borrower, while others do not.
• At least one respondent requires the Borrower to send an agent at their own expense.
• Several responses also listed a courier as part of the process for condition reporting.

Museums/Other:
• 100% said photographic and annotated conditions reports are prepared before the work leaves for loan
• Majority prepared by conservators on staff or collections manager/registrar
• Majority required borrower to complete upon arrival and departure (with courier if present) and send a copy to them
15M. **Museums:** As a Borrower, how do you deal with the loans that come in with no baseline condition report? Do you assume that they are in the same condition as when they left the lender?

- Make a photographic and annotated condition report upon unpacking and address concerns with Lender in writing.
- Make sure a report is completed before shipping and hire a contract conservator/Registrar if needed to perform one.
- Majority assume it is in the same condition when received if there is no CR sent with object (many had this stated in their loan agreements).
16. Have your loan agreements evolved over time? If so, how have they changed? What factors contributed to changing your loan agreements?

**Artist-Endowed Foundations:**
- Majority said yes
- More specific details regarding
  - Storage
  - Packing
  - Framing
  - Travel needs and conditions
- State that insurance value is the “agreed value should there be loss or damage”
- Overall, loan agreements are becoming more specific as insurance companies are becoming stricter

**Artist Estates/ Private Collections:**
- A majority have either been largely unchanged or not substantially changed.
- Contributing factors for any changes came about from the advice of an attorney or due to an increase in the artwork’s value resulting in a more specific and detailed agreement.
- Some Estates/Private Collections have evolved into developing their own loan agreements.

**Museums/ Other:**
- Majority said yes to stay current with best practices
- Some revise based on the loan
- Areas of change mentioned
  - Image use/copyright
  - Risks related to Time-based media/interactive artworks
  - Social media
  - Additional language about jurisdiction
  - Indemnity/Immunity from Seizure
  - Photography
  - Shipping requirements
17. Do you have specific security requirements during transport and exhibition?

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</table>
| • Most require: dual driver fine art shippers, airport supervision, museum-quality crates. | • Trends include:  
  • Dual driver, air-ride, temp/RH controlled fine art shippers  
  • No cross docking  
  • Full airport supervision (tarmac and warehouse)  
  • Mandatory courier  
  • 24-hour human security. | • Majority have standard requirements or work case by case based on the artwork  
• More stringent requirements include:  
  • 24-hour manned security, 24 hour alarm system and CC-TV  
  • Require courier on all loan domestic or international if over $1 million in value  
  • Guard during install  
  • Sight-line security presence during opening hours  
  • Numbered seal on door and exclusive use only transport, recording license of driver and if very high value a police follow car |
| • About 69% require couriers. | • 23% of respondents have no specific security requirement. | • Some institutions require their loans to be within a gallery attendant’s sightline.  
• Many require prior approval of packing and transport agents.  
• At minimum, Borrower must provide 24-hour electronic surveillance, but add’l 24-hour human guards are preferred.  
• Some institutions require their loans to be within a gallery attendant’s sightline. |
18. Do you require couriers?
19. Do you request rights of refusal regarding transport agents or carriers as part of your loan agreement?
20. For Estates or Private Lenders, do you require another work be provided by the Borrower in exchange for the one they are lending?

- Foundations: 61% Yes, 0% No
- Estates: 8% Yes, 85% No
20M. **Museums**: If an Estate or Private Lender requires another work be provided by your institution in exchange for the one they are lending, will you comply?

- **Yes**: 32%
- **No**: 64%
Questions?
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