

## San Francisco Museum of Modern Art Collections Management Policy

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## 1. Museum Mission

The San Francisco Museum of Modern Art (“SFMOMA” or “Museum”) believes the art of our time is vital and shares it with passion and purpose. We cannot imagine life without art; it inspires and connects us every day. We believe that art provides new ways to see the world and each other. Now more than ever, these connections matter, and we bring our best effort to this endeavor.

Founded in 1935, SFMOMA was the first West Coast museum devoted to modern and contemporary art. Today, SFMOMA is one of the largest museums of its kind in the United States. From the outset, the Museum has championed the most innovative art for its time. SFMOMA has been a pioneer in collecting and public programming in the fields of photography, architecture, design, painting, sculpture, installation, and media arts. The collection is regional, national, and international in scope, and begins in 1900, with the exception of photography, which encompasses the entire history of that medium (1839 to the present). The collection is fundamental to the Museum’s mission, strategic priorities, and programmatic goals and serves as the intellectual and creative base for discovery, exhibition, education, and research. By embracing the challenge of the new, SFMOMA hopes to encourage fresh ways of seeing, thinking, and engaging with the world.

## 2. Purpose of the Collections Management Policy

As stewards of its collections, held in trust for the public, SFMOMA has a responsibility to properly manage, preserve, and make accessible the collections in its care for current and future generations to discover, experience, enjoy, and study. SFMOMA’s collections include its art collection, library collection, archives collection, and the Artist Materials Collection. Except where indicated, this Collections Management Policy (“Policy”) primarily addresses stewardship responsibilities related to artworks or objects accessioned into SFMOMA’s art collection (hereafter “Collection”), as well as those on loan to SFMOMA. Through this Policy, as it is formally adopted and may be revised from time to time by the SFMOMA Board of Trustees (the “Board of Trustees” or “Board”), SFMOMA affirms its commitment to communities represented in its Collection and a shared future regarding knowledge-sharing, collaborative engagement, and ongoing stewardship.

To properly manage its Collection, the Museum must deliberately develop, acquire, document, care for, preserve, use, make accessible, and refine the Collection. SFMOMA carries out its Collection stewardship responsibilities through systematic collections management procedures and plans based on professional and discipline-specific best practices to ensure adherence to current legal, ethical, and professional standards.

This Collections Management Policy is the principal policy document guiding SFMOMA’s management, preservation, and use of its Collection and works on loan to the Museum. This Policy covers all aspects of collections management, including accessioning, provenance, deaccessioning, preservation, documentation, inventory, risk management, access, loans, and intellectual property management.

About this Policy:

- This Collections Management Policy is available to the public on SFMOMA’s website.
- Additional and more detailed procedures implementing this Policy may be found by staff in the Museum’s internal document libraries and workflow-related applications.
- Terms specific to certain subsections of this Policy are defined at the beginning of such section.
- This Policy is effective immediately upon approval by the Board of Trustees and shall supersede all prior policies on the topics covered herein. Additionally, the Board authorizes the Director or their designee, in consultation with (i) the General Counsel and (ii) Chief Operating Officer and/or Chief Financial Officer, to make non-material typographical or other clerical edits to this Policy from time to time as needed to ensure clarity and compliance with

professional standards and legal requirements, provided that the updated policy shall be provided to the Chair of the Board and posted on the Museum’s website.

### **3. Responsibilities**

Stewardship of the Collection imposes legal, ethical, and professional obligations on the Museum to provide proper management, preservation, and use of works in the Collection and their associated documentation. SFMOMA’s collections management responsibilities are designated as follows.

#### **3.1. Board of Trustees**

The Board of Trustees retains ultimate oversight authority and responsibility for SFMOMA while delegating to the Museum Director (“Director”) overall collections management authority.

The Board has the powers listed below with respect to the Collection. Generally, the Board will exercise such powers after review by, and based upon the recommendations of, Museum staff and the Accessions Committees:

1. accept or decline the acquisition and accessioning of works into the Collection through gift, bequest, fractional gift, purchase, or joint ownership, in accordance with the Acquisition and Accessioning Policy (Section 6);
2. approve any proposed restrictions on acquisitions of works (Section 6);
3. approve the accessioning of works which have been approved for acquisition by the Director at the end of the calendar year when accepting Year End Gifts (Section 6);
4. approve the deaccession of works in accordance with the Deaccessioning Policy (Section 8); and
5. approve the expenditure of restricted art acquisition funds, including funds from the sale of deaccessioned works (Section 8).

#### **3.2. Museum Director**

The Director is the artistic and administrative head of the Museum and is responsible to the Board for managing and operating the Museum, its collections, and its programs in exhibitions, interpretation, education, and conservation.

The Director is responsible for:

1. providing policy guidance, program direction and planning, and budgetary support to carry out the requirements established by this Collections Management Policy;
2. working with senior management to develop long-term strategies and priorities to address collections needs, including collections care and space, and the allocation of collections care resources;
3. delegating to appropriate staff the responsibility to implement policies and carry out the direct, day-to-day management and care of SFMOMA collections; and
4. ensuring compliance with this Policy.

#### **3.3. Museum Staff**

Staff are responsible for carrying out assigned collections management responsibilities to ensure:

1. implementation of this Collections Management Policy, as well as other Collection-related procedures and plans;
2. adherence to applicable laws and professional ethics and practices;
3. responsible acquisition, management, preservation, documentation, use, and accessibility of works in the Collection; and

4. the integrity and availability of Collection documentation.

### **3.4. Accessions Committees**

The Board of Trustees appoints an Accessions Committee for each curatorial department. SFMOMA has five (5) Accessions Committees charged with cultivating and expanding the Collection: Painting and Sculpture, International Contemporary, Photography, Media Arts, and Architecture and Design. The primary purpose of each Accessions Committee is to help the Museum develop an outstanding Collection by reviewing the recommendations of the Director and/or their designated curatorial staff regarding the purchase, sale, exchange, or acceptance of gifts or bequests of works of art, including any recommended deaccessions of art, and recommending to the Board for its approval the action to be taken with regard thereto.

### **3.5. Collections Committee**

The Board of Trustees appoints a Collections Committee to provide direction and advice to SFMOMA's collections and curatorial staff in developing, monitoring, and implementing research and community engagement initiatives related to the Museum's art collection, library collection, archives collection, and Artist Materials Collection. Collections research and stewardship are fundamental to the Collections Committee's charge; therefore, the Committee advises staff on policies, priorities, initiatives, and funding strategies related to collections management.

## **4. Ethics**

SFMOMA recognizes and accepts its responsibility to provide proper management, resources, preservation, use, and accessibility of works in the Collection and associated documentation it holds for the benefit of the public.

SFMOMA's staff, Board of Trustees, Accessions Committees, and Collections Committee have legal, ethical, and professional obligations to discharge their responsibilities in accordance with the Museum's Code of Ethics and Conflicts of Interest Policy. SFMOMA's Code of Ethics Policy governs certain matters for trustees and staff (including interns and volunteers) who may be involved with the Collection, including such issues as personal collecting by trustees or staff within the areas of the Museum's collecting interests, sales to the Museum by staff, dealing in art by staff, gifts to staff, and confidentiality. SFMOMA's Conflicts of Interest Policy governs certain matters for individuals with a fiduciary relationship to the Museum (such as trustees and key staff), including prohibiting participation in transactions in which the Museum is a party and in which the individual or their family members have a material financial interest or benefit from material non-public information. An annual conflicts of interest disclosure is required for all individuals with a fiduciary duty to the Museum. SFMOMA staff are also expected to be aware of the standards of conduct issued by professional associations relevant to their respective disciplines and general responsibilities.

## **5. Financial Accounting**

SFMOMA holds its Collection for public exhibition, education, and research in furtherance of its charitable purpose rather than financial gain. The Collection is protected, kept unencumbered, cared for, and preserved, and is subject to the requirement that proceeds from sales of works in the Collection are to be used for the acquisition of additional works, the direct care of existing works in the Collection, or for purposes analogous to the purchase or commission of new works in accordance with this Policy (Sections 8.6 - 8.8). Accordingly, SFMOMA does not treat its Collection as an asset for purposes of reporting in its financial statements. SFMOMA adheres to the applicable financial reporting standards governing collections held in public trust.

## **6. Acquisition and Accessioning**

*Acquisition* is the act of gaining legal title to a work. *Accessioning* is the formal process used to legally acquire and record a work into the Collection.

## **6.1. General Principles**

Acquiring and accessioning works is fundamental to ensuring the continual development, refinement, use, and relevancy of the Collection in support of SFMOMA's mission and programmatic goals.

Works accessioned into the Collection are subject to a high standard of care and comprise works SFMOMA intends to keep, steward, preserve, and document for an indefinite period of time for public exhibition, education, research, and/or other mission-enabling activities. Some works may be acquired and designated for non-accessioned status for exhibit, education, research, or consumptive use. Non-accessioned works require the same review and documentation as accessioned works for accountability and use.

SFMOMA provides responsible collections management through disciplined acquisition and accessioning procedures consistent with current museum standards of stewardship, preservation, care, and use. Essential records, as set forth in Collection Documentation (Section 10) must be maintained and available for all works acquired and accessioned into the Museum's Collection. All applicable laws, treaties, regulations, and conventions will be observed and compliance documented for acquisitions and accessioned works.

## **6.2. Acquisition Policy**

SFMOMA adheres to the following policies regarding the acquisition of works:

1. SFMOMA may acquire works by a variety of methods, including gifts, bequests, fractional gifts, purchases, joint purchases, exchanges, and transfers.
2. The Museum may only acquire works in accordance with established responsibility (Section 3) and only when consistent with established acquisition criteria (below), applicable law, professional standards, and SFMOMA's Code of Ethics.
3. SFMOMA observes the highest legal, ethical, and professional standards in the acquisition and care of works, including making reasonable inquiries into provenance to determine that the Museum can acquire valid title to works and that acquisitions will conform to all legal and ethical standards (Section 7).
4. Potential acquisitions must undergo a rigorous evaluation process based on the following criteria:
  - i. consistency with the mission, values, strategic priorities, and programmatic goals of SFMOMA;
  - ii. potential for having an active life at SFMOMA through exhibition, education, and/or research;
  - iii. intellectual, aesthetic, and/or cultural significance, quality, physical condition, and functionality or behavior;
  - iv. size, volume, and/or quantity;
  - v. ability and resources to provide appropriate management, care, and accessibility, including conservation, documentation, storage, and long-term preservation; and
  - vi. documentation of legal title, provenance, and any restrictions on use.
5. The same criteria are used for accepting gifts as for making purchases.
6. SFMOMA must gain legal title, or its equivalent, to all works acquired and recorded as accessioned or non-accessioned works.
7. For proposed acquisitions, SFMOMA will obtain representations and warranties from sellers and donors that they have valid title in works and that the works are free from any liens, claims, and encumbrances held by any person or entity. For purchases (including joint purchases), the Museum will also seek indemnification from the seller for a full refund for the work in the event of any breach of these representations and warranties. Exceptions to this are limited and shall be made by General Counsel in consultation with the responsible curator and Head of Collections.

8. As a general rule, SFMOMA only acquires unrestricted works. Restrictions that would substantially limit the Museum's ability to use or dispose of an acquisition may be accepted only after consultation with the Board of Trustees and disclosure to the relevant Accessions Committee. Under no circumstances, however, may SFMOMA agree to conditions requiring the retention or display of a work in perpetuity.
9. Gifts of art are subject to provisions in SFMOMA's Gift Acceptance Policy, including provisions related to gift acceptances, termination or refusal of gifts, and naming recognition.
10. If gifts are acquired with a specific intent at the time of acquisition not to accession them into the Collection but rather to sell, exchange, or use them for financial gain, donors are notified that the works will be acquired for these purposes and the General Counsel and the Board of Trustees must be notified in advance of approving acquisition of the works.
11. Large collections (comprising thirty or more works) generally should not be accepted as Year End Gifts. Exceptions may be made at the recommendation of the Head of Collections and with the permission of the Director and Chief Exhibitions and Collections Officer.

### **6.3 Acquisition Agreements**

1. Agreements for gifts, purchases, and joint acquisitions are drafted prior to Board approval and formalized after Board approval to acquire and/or accession works.
2. General Counsel must review and approve all non-standard agreements or any substantial alterations to the Museum's standard agreements, including questions about signatories.
3. All gifts:
  - Agreements evidencing a gift to SFMOMA must be signed by the donor or, in the case of a bequest, their executor or personal representative, prior to presenting the gift or bequest to the Board for approval.
  - The Director of Registration must obtain the review and approval of the General Counsel for any bequest documents requiring signatures.
  - The Director signs gift agreements (such as deeds of gift and bequest documents) after Board approval or, in the case of Year End Gifts, prior to the end of the calendar year.
  - Title to donated works transfers to SFMOMA upon completion of gift agreements and upon the Museum's possession of the works.
  - The Museum provides donors with an acknowledgment letter within 30 days following the completion of gifts. The letter must acknowledge receipt of the donation and state whether or not any goods or services were provided to the donor in return for the gift. General Counsel has established standardized acknowledgment letters and may be consulted regarding tax requirements.
  - It has been the Museum's longstanding policy not to provide appraisals to donors. Under current IRS guidelines, the Museum cannot act as a qualified appraiser because of the inherent conflict with its role as a donee. If a donor asks for assistance in locating an appropriate appraiser, staff can assist the donor by suggesting several qualified appraisers to avoid the appearance of favoritism and must always provide more than one reference. The Museum cannot make arrangements for the appraisal and cannot pay for the appraisal. Upon request, staff should provide appraisers with access to works, images of works, or any appropriate relevant non-confidential factual information in the Museum's records.
4. Year End Gifts:
  - Title to such approved acquisitions shall be transferred to SFMOMA upon completion of a deed of gift prior to the end of the calendar year and upon the Museum's possession of the works.
  - The Museum will own these works but shall not accession the works into the Collection until final approval by the Board of Trustees at its next meeting.

5. Fractional Gifts:
  - Offers of fractional interest in works are accepted only if accompanied by a legally binding promised gift agreement for the donor's remaining interest in the works.
  - Fractional gifts must be presented to the appropriate Accessions Committee and Board at the time of the initial gift of fractional interest.
  - Fractionally gifted works are accessioned, upon Board approval, to the extent of each fractional gift made by a donor.
6. Promised Gifts:
  - Proposed promised gifts are presented to the Director for approval at the time the promise is made and are not accessioned until the time the gift is formally accepted and completed.
  - Promised gifts must be accompanied by a legally binding promised gift agreement approved by General Counsel and signed by the Director.
7. Purchases:
  - Purchase agreements must be completed prior to issuing payment to vendors.
  - Requests to issue payments according to a payment schedule – such as paying a percentage of the purchase price over time – must be approved by the Chief Financial Officer and tracked by the Head of Collections.
  - The responsible curator signs purchase agreements.
  - Title in purchased works transfers to SFMOMA upon completion of final payment.
8. Co-ownership:
  - SFMOMA may jointly acquire works with other museums or private collectors with which SFMOMA agrees to share ownership and management.
  - Jointly acquired works must be accompanied by a co-ownership agreement stipulating the terms and conditions of the co-ownership arrangement and the responsibilities of each party.
  - Co-ownership agreements for purchases should be completed prior to issuing final payment to vendors, or within 30 days thereafter.
  - The responsible curator signs co-ownership agreements.

#### **6.4 Accessioning Policy**

SFMOMA adheres to the following policies regarding accessioning of works into the Collection:

1. Works accessioned into the Collection should be relevant to the Museum's mission and should be in, or capable of being returned to, an acceptable state of condition, unless the condition is integral to the artist's intent or function of the work.
2. As a general rule, works are accessioned only when there is a good-faith intention to retain them for an indefinite period of time. Certain types of works, such as those acquired for consumptive use, fall outside of this rule and are not accessioned into the Collection.
3. SFMOMA may only accession works after considering the obligations of long-term stewardship to determine that it can reasonably anticipate the ability to meet such responsibilities with existing and projected resources over the life cycle of the works.

#### **6.5. Summary of Approvals**

1. All works proposed for acquisition, including works proposed as promised gifts for future acquisition and discretionary purchases, must first be recommended by the curatorial staff and approved by the Chief Curator and Director.
2. Curators may decide, in consultation with the Director as needed, which gifts offered to the Museum should be recommended for acceptance and which should be declined.

3. Works recommended by curators and approved by the Director for acquisition must be presented by curatorial staff to the relevant Accessions Committee(s). Curators presenting works to the Committee(s) outline the reasons why the proposed work is desirable for the Museum, explaining the work's likelihood to have an active life at SFMOMA, its historical, cultural, or intellectual importance, its relation to other works by the same or related artists already in the Collection, and its particular contribution to the Museum's mission and Collection in the broadest sense. For purchases, curators also report the proposed source of funds for the acquisition to the Committee(s).
4. Proposed works should be received on-site and their contents and condition reviewed by staff prior to presenting the works to the Accessions Committee(s). Exceptions to this may be made under extraordinary circumstances.
5. Whenever possible, proposed works should be available for viewing by the Accessions Committee(s).
6. When a proposed work will incur extraordinary costs to bring it into the Collection, presentation to the Accessions Committee(s) should detail those costs, including outside storage costs, immediate conservation, cataloging, imaging, installation or fabrication or activation expenses, and similar ancillary costs.
7. Accessions Committees vote on the works presented to them for acquisition. A majority vote of the committee members present and constituting a quorum is required to recommend acquisition of any work. Collections staff present the Committee's recommendations to the Board of Trustees for approval at the Board's next meeting.
8. In approving acquisitions, the Board of Trustees shall consider any gift or purchase restrictions, conditions of co-ownership, or other special considerations to ensure that each acquisition is beneficial to the Museum and that no inappropriate private benefit shall result.
9. The Executive Committee of the Board of Trustees must review and the Director must approve the acquisition of any work that would require substantial resources beyond the Museum's allocated budget or substantial resources for the management, preservation, or use of the work.
10. The Director is authorized by the Board of Trustees to approve acquisitions in the absence of an Accessions Committee meeting when holding such a meeting is not feasible, such as at the end of the calendar year when receiving Year End Gift offers. All works acquired in the absence of a Committee meeting must be reported at the next meetings of the applicable Accessions Committee(s) and Board of Trustees or the Executive Committee of the Board of Trustees ("Executive Committee").
11. After the Board of Trustees or Executive Committee meeting at which an acquisition is approved, the Director of Registration or their designee confirms all necessary approvals, confirms completion of final payments for purchases, and formally records the work into the Collection.

## **7. Provenance**

*Provenance* is the history and circumstances of a work's ownership and possession.

Certain works present specific issues because of applicable legal and ethical standards. These include provenance requirements for acquiring art and historic objects and issues related to art and objects that have been or may have been unlawfully appropriated during the Nazi era.

### **7.1. General Principles**

SFMOMA supports efforts of local, state, national, and international authorities to protect art and historic objects from destructive exploitation and illicit dealing or trading.



SFMOMA will not knowingly acquire any work that has been acquired in or exported from its country of origin or an intermediary country in violation of U.S. law, including without limitation the National Stolen Property Act, the Convention on Cultural Property Implementation Act, sanctions enforced by the Office of Foreign Assets Control, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and the Native American Graves Protection and Repatriation Act.

Works which have been stolen, unethically acquired, or unlawfully exported from their country of origin should not be acquired or borrowed by SFMOMA.

## **7.2 Policy**

SFMOMA adheres to the following policies regarding provenance:

1. In acquiring works for its Collection and in borrowing works for exhibitions or research, SFMOMA shall consider and, whenever possible, follow guidelines issued from time to time by the American Alliance of Museums (AAM) and the Association of Art Museum Directors (AAMD). The curator recommending an acquisition or loan must consider the work's provenance and make all reasonable inquiries to determine (a) that the Museum can obtain clear title to the proposed acquisition or (b) that a proposed lender has clear title at the time a loan is made. Specifically:
  - Before acquiring or borrowing a work, SFMOMA must conduct due diligence sufficient to ascertain, from the circumstances surrounding the transaction or knowledge of the work's provenance, that the work was not stolen or wrongfully converted and is not illegally present in the United States.
  - Before acquiring or borrowing a work, SFMOMA must ascertain through provenance research that the work was not unethically acquired from its source, and whether any claims to ownership of the work have been made.
  - For proposed acquisitions this shall include making a rigorous effort to obtain from sellers and donors all available information and accurate documentation with respect to the ownership, display, conservation, exhibition history, and publication history of the work.
2. General Counsel shall be consulted if there are questions about a work's provenance prior to recommending a work for acquisition or loan to ensure proper review of the facts in light of the relevant laws.
3. If it appears that a work offered to the Museum for acquisition or loan is of questionable provenance, may be stolen property, or is in the United States illegally, the responsible curator must promptly report the pertinent facts to the Chief Curator, Head of Collections, Director, and General Counsel for further investigation and action.
4. The provenance of Collection works shall be a matter of public record.

## **7.3. Unlawful Appropriation of Works During the Nazi Era**

SFMOMA is committed to implementing AAM's guidelines concerning the Unlawful Appropriation of Objects During the Nazi Era and the Report of the Association of Art Museum Directors Task Force on the Spoliation of Art during the Nazi/World War II Era.

In addition to the rigorous evaluation and documentation required for all acquisitions, SFMOMA will research, identify, and make public any works in the Collection that were created before 1946, acquired by the Museum after 1932, underwent changes in ownership during the Nazi era, and were or may reasonably be thought to have been in continental Europe between 1933 and 1945.

## **7.4 Policy**

SFMOMA adheres to the following policies regarding unlawful appropriation of works during the Nazi era:

1. SFMOMA shall apply guidance issued by the AAM and the AAMD concerning objects that may have been unlawfully appropriated during the Nazi era to its collections management activities.

2. The Museum shall not knowingly acquire works unlawfully appropriated during the Nazi era without subsequent restitution.
3. If SFMOMA has in good faith acquired a work subsequently determined to have been unlawfully appropriated during the Nazi era without restitution, the Museum will take prudent and necessary steps to resolve the status of the work.

## **8. Deaccessioning**

*Deaccessioning* is the process used to formally approve and record the removal of an accessioned work from the Collection. The term “deaccession” means that a work is removed from the Collection and considered for disposal by sale, exchange, transfer, or other means.

### **8.1. General Principles**

Deaccessioning is an essential component of responsible collections management. The periodic review, evaluation, deaccessioning, and disposal of Collection works is intended to refine and improve the quality, relevance, and usefulness of the Collection in support of SFMOMA’s mission and programmatic goals. As a general rule, SFMOMA accessioned works only when there is a good-faith intention to retain them for an indefinite period of time. Works are retained as long as they can be properly maintained and used and align with the Museum’s Collection stewardship objectives.

The acquisition and possession of works imposes legal and ethical obligations founded on public trust. For this reason, decisions concerning the deaccessioning and disposal of Collection works require careful planning and analysis, an appropriate justification, and due diligence. Deaccessioning and disposal processes are designed to ensure thoughtful, well-documented consideration of such decisions in the context of the long-term interest of SFMOMA, the public, and the Collection.

### **8.2. Deaccession Policy**

SFMOMA adheres to the following policies regarding deaccessioning of works:

1. SFMOMA may deaccession works only when consistent with established criteria (below); approvals (Sections 8.4 and 8.5); applicable law; professional standards and SFMOMA’s Codes of Ethics; the terms of any applicable gift agreement, and any other applicable restrictions. All applicable federal, state, local, and international laws, treaties, regulations, and conventions will be observed and compliance documented as needed.
2. Potential deaccessions must undergo a rigorous evaluation process based on specific criteria, including, but not limited to:
  - i. insufficient relationship between a work and the mission, values, strategic priorities, programmatic goals, scope of the Collection, or Collection stewardship objectives of SFMOMA;
  - ii. duplication or redundancy of works, especially where the work is not necessary for research or study, is of a lesser quality than other works by the same artist or of the same type in the collection, or is not otherwise likely to have an active life at SFMOMA;
  - iii. deterioration of the work beyond repair or usefulness;
  - iv. lack of capacity to provide responsible stewardship;
  - v. The Museum: (i) is ordered to return a work to its original and rightful owner by a court of law; (ii) determines that another entity is the rightful owner of the work; or (iii) determines that the return of the work is in the best interest of the Museum;
  - vi. work has failed to retain its identity;
  - vii. work lacks sufficient aesthetic merit, cultural or art historical importance to warrant retention;
  - viii. work cannot be displayed due to technology obsolescence;
  - ix. work contains hazardous materials which present threats to other works or creates health and safety risks to staff or the public;

- x. selection for educational or consumptive use;
  - xi. the authenticity, attribution or genuineness of the work is questionable or determined to be false or fraudulent;
  - xii. work has been lost or stolen and has not been recovered; and
  - xiii. reconciliation of works accessioned in error.
3. Every effort will be made to ensure that the deaccession process is fair and open.
  4. SFMOMA will not deaccession works by living artists, except in limited circumstances, including to acquire a stronger work by the same artist, or in other exceptional circumstances (such as when a work can no longer be displayed due to condition or technological obsolescence).
  5. General Counsel is consulted if there are questions about the terms of any deaccession restrictions or other restrictions applicable to such work.
  6. If a work is to be deaccessioned, the donor or the donor's successors should be informed whenever possible.

### **8.3. Disposition of Deaccessioned Works**

SFMOMA adheres to the following policies regarding the disposition of deaccessioned works:

1. SFMOMA may dispose of works by a variety of methods, including donation, sale, transfer, exchange, repatriation, return, educational or consumptive use, and destruction.
2. The Director and/or Chief Curator, in consultation with the relevant curatorial and collections staff, have the authority to decide the best method of disposal.
  - When the decision is to sell a deaccessioned work, sale at public auction is encouraged.
  - The Museum generally does not dispose of works whose authenticity is determined to be fraudulent, unless disposal can be accomplished in a responsible manner without confusion to a possible buyer. Curatorial departments generally work with collections staff to transfer these works to the Museum's Artist Materials Collection for study purposes, or may seek the Director's permission to destroy the works.
3. The disposal of a work should be conducted with a view toward maximizing the advantage and yield to the Museum, reputational or financial, without compromising professional standards, SFMOMA's Code of Ethics, the Museum's standing, or its responsibilities to the donor and the artist.
4. Any proceeds realized from the sale of deaccessioned works including all earnings and appreciation thereon ("Deaccession Funds") may be designated only for art acquisitions, the direct care of existing Collection works ("Direct Care") as further provided in Section 8.6, or purposes analogous to the purchase or commission of artworks as provided in Section 8.8. Deaccession Funds may not be used for operating expenses.
5. Curatorial and collections departments should consult with the Direct Care & Deaccession Proceeds Committee regarding the appropriate use of proceeds for Direct Care and special circumstances, as set forth in Sections 8.8 and 8.9 below.
6. When a work is sold or exchanged, the credit line for new work(s) acquired with the proceeds of the sale or by exchange should bear the name of the donor of the work sold or exchanged, unless the original donor preferred to remain anonymous.
7. Transfers of ownership to a third party must be accompanied by an agreement documenting the transfer.
8. Transfers may include removal of an accessioned work for continued holding by SFMOMA in a different capacity, which may include transferring the work to the Museum's library collection, archives collection, or Artist Materials Collection.

9. No member of the Board of Trustees or Museum staff, and no individuals whose association with the Museum might give them advantage in acquiring the deaccessioned work, will be permitted to acquire, directly or indirectly (including through public auction or private sale), a work from the Collection.
10. Essential records, as set forth in Collection Documentation (Section 10), must be complete, accurate, maintained, and available upon request for all works removed from the Museum's Collection.
11. The Museum shall comply with all applicable AAM and AAMD professional standards, IRS regulations, and other legal requirements when carrying out deaccessions under this Policy.

#### **8.4. Summary of Approvals**

1. All works proposed for deaccession and disposal must be recommended by the curatorial staff and approved by the Chief Curator and Director.
2. Curatorial staff propose works to be deaccessioned to the relevant Accessions Committee(s). Curatorial staff offer recommendations and present reasons for proposing the deaccessioning of a particular work.
3. The Accessions Committee(s) votes on the proposed deaccession. A majority vote of the committee members present and constituting a quorum is required to recommend the deaccession of any work. Collections staff or General Counsel then present the Committee's recommendations to the Board of Trustees for approval at the next Board meeting.
4. In the event that vote by the Accessions Committee(s) is not feasible, the Board of Trustees, or its Executive Committee, has the authority to approve deaccessions directly, in accordance with SFMOMA's bylaws and applicable law.
5. The deaccession and disposal of works that, notwithstanding their monetary value, have significant research or historical value, or when the deaccession might create significant public interest, must be approved by the Director, General Counsel, and Board of Trustees prior to presentation to the relevant Accessions Committee(s).
6. General Counsel must review and approve all non-standard agreements or any substantial alterations to the Museum's standard agreements related to deaccessions or disposals.
7. The final decision to deaccession a work is made by a vote of the Board of Trustees or its Executive Committee.

#### **8.5. Disposal of Non-accessioned Works**

1. The disposal of non-accessioned works does not require the same approval process as deaccessioned works.
2. Non-accessioned works with clear title do not need to be presented for disposal to Accessions Committees or Board of Trustees but can be approved for disposal by the Director or Chief Curator, in consultation with the Director of Registration.
3. Nevertheless, the disposal of non-accessioned works should be conducted thoughtfully and consistent with the nature and importance of the works. The disposal of certain non-accessioned works may warrant the same approval process as deaccessioned works. Curatorial and collections departments shall consult with the Director and General Counsel when considering the disposal of significant non-accessioned works.
4. In the event that SFMOMA secures title to unclaimed property or undocumented property, following SFMOMA's processes and California Civil Code Section 1899, et seq. where applicable, and other right to property laws, SFMOMA may elect to dispose of the work following the Deaccession guidelines above, where applicable.

## 8.6. Direct Care of Collection

1. Conservation, protection, and preservation of works from damage, obsolescence, vandalism, and theft, and other uses of Museum resources for Direct Care are essential to preserving SFMOMA's Collection for current and future generations.
2. For purposes of this Policy, and in accordance with Rule 25 of the AAMD's Professional Practices, the expenditures for Direct Care refer to "the direct costs associated with the storage or preservation of works of art. Such direct costs include, for example, those for (i) conservation and restoration treatments (including packing and transportation for such conservation or restoration) and (ii) materials required for storage of all classifications of works of art, such as acid-free paper, folders, matboard, frames, mounts, and digital media migration. Funds received from the disposal of a deaccessioned work of art shall not be used for operations or capital expenses except as provided above. Direct Care does not include (a) salaries of staff or (b) costs incurred for the sole purpose of temporary exhibition display."
3. Direct Care activities for which SFMOMA may use Deaccession Funds include, but are not limited to, the following types of activities and expenditures:
  - i. Costs associated with materials, systems (including collections information systems), and equipment that benefit, or are required for, the direct care, conservation, restoration (including packing and transportation for such conservation or restoration), maintenance, preservation, analysis, treatment, surveying, inventorying, storage<sup>1</sup>, safeguarding, photographing, documenting and condition reporting of works in the Collection (as noted above);
  - ii. Costs associated with contracted Direct Care services, e.g., conservators or a conservation lab for work on individual objects, as well as other contracted Direct Care services for registration, maintenance, cataloguing, audio visual, imaging, framing and documentation services for a specific object or objects (but not for general conservation of the Collection, which is the role of the Museum's staff); and
  - iii. Other Direct Care expenditures that may be identified or further clarified in writing from time to time by a committee consisting of the Museum's Director, the Chief Exhibitions and Collections Officer, the Head of Collections, the Director of Conservation, the Chief Curator, the Chief Operating Officer, the Chief Financial Officer, and General Counsel (or their respective Executive Team or senior staff designees) (the "Direct Care & Deaccession Proceeds Committee") and approved by the Executive Committee.

## 8.7. Governance of Deaccession Funds for Direct Care

1. Deaccession Funds used for Direct Care are recommended by the Direct Care & Deaccession Proceeds Committee and approved by the Executive Committee or the Board.
2. Prior to the Museum expending any Deaccession Funds for any Direct Care expense under this Policy, the Direct Care & Deaccession Proceeds Committee shall recommend such expenditures, including both an itemized list of the expenditures together with a recommended fiscal year cap on such expenses in compliance with this policy and the applicable FASB standards, for final approval by the Finance Committee as part of its approval of the budget that is subsequently approved by the Executive Committee or Board.
3. The Chief Financial Officer (or any position encompassing that position) must confirm that any proposed use of Deaccession Funds, including any expense for Direct Care of collections, complies with this policy and the Financial Accounting Standards Board's (FASB) March 2019 amendment (ASU 2019-03), or any subsequent governing amendments.

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<sup>1</sup> According to the AAMD, "acquiring or leasing a general collections storage space or purchasing storage racks to hold works of art *generally* are considered a capital expense and excluded from the definition of direct care." (*FAQ on AAMD's Policy Change on Deaccessioning*).

4. Deaccession Funds shall be tracked separately from other acquisition funds.

#### **8.8. Use of Deaccession Funds in Special Circumstances**

1. As provided in the AAMD's Professional Practices, the "AAMD recognizes that part of the mandate of a contemporary arts organization is to expand the definition of what constitutes a work of art, as well as to question traditional exhibition practices. Therefore, if the organization's written policy provides for the sale of deaccessioned works, the funds derived from such sales may in exceptional cases be used for purposes analogous to the purchase or commission of works of art, specifically the creation of new works, including some that may not be collectible. Expenditure of these funds for operations or capital expenses, except for 'direct care' (as defined in [Rule] 25 of professional practices) is, however, precluded." (Professional Practices, Appendix B (Deaccessioning and Disposal), subsection vii (Special Circumstances)).
2. In such "exceptional cases," any use of Deaccession Funds for purposes analogous to the purchase or commission of works of art, specifically the creation of new works, must be reviewed, approved, and memorialized in writing by the Direct Care & Deaccession Proceeds Committee and approved by the Executive Committee in accordance with the procedures outlined herein.

### **9. Preservation**

*Preservation* is the protection and stabilization of works and their associated documentation through coordinated activities aimed at ongoing documentation, minimizing chemical, physical, and biological deterioration and damage, mitigating technology obsolescence, and preventing loss of intellectual, aesthetic and cultural significance, and monetary value.

Preservation, preventive care, and remedial conservation are integral components of responsible collections management, ensuring works in the Collection are available for use and are used. The ability of SFMOMA to carry out its mission directly relates to its ability to preserve and safeguard Collection works and associated documentation for public benefit. Given the diverse nature and mission-enabling significance of SFMOMA's Collection, it is imperative to balance use and access with preservation needs.

#### **9.1. Policy**

SFMOMA adheres to the following policies regarding the preservation of works:

1. SFMOMA shall provide the appropriate preservation, care, protection, and security for all works acquired or on loan to SFMOMA, whether on the Museum's premises or stored in an offsite facility.
2. SFMOMA is responsible for developing and implementing preservation strategies, policies, procedures, and plans for the Collection and associated documentation.
3. The Museum will balance exhibition, educational, and research use of the Collection with preservation needs to ensure the Collection is properly maintained and serves its intended purposes.
4. Preservation-related policies, plans, and standards shall be based on the principles of preventive conservation.
5. SFMOMA considers the American Institute for Conservation Code of Ethics and Guidelines for Practice when developing preservation policies, standards, and procedures.
6. Preservation work is conducted by individuals with knowledge and skill in the handling, storage, shipping, conservation, security, maintenance of the environment (physical and digital), and all other conditions. In order to fulfill its responsibilities, SFMOMA encourages and supports professional development and continuing education for its staff.
7. SFMOMA staff work closely with living artists, their studios, and experts from various disciplines in the care and preservation of their works in the Museum's Collection.

8. Conservation intervention, restoration, destructive sampling, or consumptive use of Collection works for the purpose of preservation or research must be justified and documented.
9. SFMOMA is committed to sustainability in the preservation and management of its Collection and works on loan to the Museum. This includes the design, management, and maintenance of collections spaces and preservation environments, as well as to packing, crating, storage, exhibition, and loan activities where the Museum aims to recycle, reuse, and reduce as much material as possible.
10. The Museum aims to provide and actively manage optimized preservation environments based on a balance of artwork needs, scientific research, collections management protocols, engineering capability, and environmental impact.
11. SFMOMA departments shall engage in collaborative, evidence-based, decision-making processes among the professional disciplines and stakeholders who share responsibility for establishing and implementing sustainable collections management.

## 10. Collection Documentation

*Collection documentation* is the incremental, cumulative documentation of the intellectual, aesthetic, and/or cultural significance, characteristics, use, location, legal status, provenance, and history of works in the Museum's Collection, the collections management processes and transactions they undergo, as well as information about people and organizations related to works and transactions.

SFMOMA relies on the well-documented results of historical, cultural, scientific, and aesthetic research to fulfill its mission. SFMOMA acquires, develops, and maintains collection documentation systems that support access to and accountability for its Collection and research to ensure the long-term preservation of the resulting documentation. The value of Collection documentation rests in its multiple perspectives, quality, integrity, availability, and potential for use and public access.

### 10.1. Policy

SFMOMA adheres to the following policies regarding Collection documentation:

1. Collection documentation practices, standards, and systems must support the strategic, programmatic, and public access goals of SFMOMA.
2. Curatorial and collections staff are responsible for the development, maintenance, preservation, and retention of Collection documentation.
3. SFMOMA is committed to remediating biases in its Collection documentation.
4. Collection documentation must comply with SFMOMA practices and standards and be maintained for long-term use according to current professional practices.
5. The systems of record for SFMOMA's collection documentation include a collections management system for information and a digital asset management system for digital assets.
6. SFMOMA is committed to placing information and images related to Collection works in publicly accessible digital platforms and sharing Collection information and images through collaborations with other educational and research organizations and the public. This commitment takes into consideration a range of legal, ethical, and practical factors, and reflects the staff resources required to generate, maintain, and make information and images publicly accessible.
7. In addition to placing information and images in publicly accessible platforms, SFMOMA makes available to researchers documentation relating to its Collection and incoming and outgoing loans. The Museum may restrict access to sensitive information involving privacy, security, storage locations, value, intellectual property restrictions, and culturally sensitive content.

8. Business or financial records containing personally identifiable information (PII) about individuals associated with a Collection work are subject to SFMOMA's Privacy Policy.
9. All records created or received in the transaction of SFMOMA's business are the property of the Museum and must not be dispersed or destroyed except in accordance with its Records Management Policy. Inactive records of enduring value, as defined in the Records Management Policy, are transferred to the Museum's Archives for long-term preservation and access.

## 11. Inventory

*Inventory* is an itemized listing of Collection works that identifies the current physical, network, or hosted location of each work; the process of physically locating all or a selection of works for which the Museum is responsible; and appropriate information to facilitate research, collections management, security, and access.

Effective collections management requires an inventory process to support decisions regarding the management, use, access, growth, storage, intellectual control, value, condition, physical or file information, and security of Collection works. Inventory records serve as a tool for accountability and are useful in supporting mission-enabling activities when augmented with additional documentation.

### 11.1. Policy

SFMOMA adheres to the following policies regarding the inventory of its Collection:

1. Inventory control requires creating and maintaining reliable information about the identification, location, and presence of Collection works.
2. Inventories are conducted in accordance with established responsibility (Section 3), an inventory process, and an inventory schedule and plan appropriate to the character and size of the Museum's Collection and staff resources.
3. Inventories may include a complete inventory, audits using a specific percentage or sampling of the Collection, or project-oriented inventories conducted during Collection moves, rehousing, or digitization.
4. Curatorial and collections staff are responsible for regularly inspecting the Museum's galleries.
5. In the event of any significant irregularity arising from an inventory of the Collection, the Head of Collections shall immediately report the matter to the Chief Collections and Exhibitions Officer, Chief Curator, Director, and Chief Operating Officer, and the latter shall advise the Audit Committee as appropriate.

## 12. Risk Management, Safety, and Security

*Risk Management* is the process of identifying and evaluating risk to prevent or minimize exposure to factors which may cause loss or damage to the Collection or associated documentation or cause injury or illness to staff and the public. *Safety* encompasses occupational health and safety, industrial hygiene, and environmental management. *Security* encompasses activities concerned with the protection of life, facilities, and property, including the Collection and associated documentation, from direct or perceived threats.

The programmatic activities of SFMOMA naturally expose Collection works to certain levels of risk of damage or loss during exhibition, loan, research, transit, storage, treatment, or handling. Collection works may also contain a range of chemical, biological, and physical hazards, whether inherent in the nature, composition, or construction of the work itself or as a result of preparation, treatment, alteration, or degradation.



Certain Collection-related activities may expose staff and affiliated persons to residual hazardous materials associated with a work, storage equipment, or display-related materials or equipment. The Museum's Risk Management Committee and staff responsible for the Collection mitigate exposure to a variety of Collection-related risks by requiring and performing the thoughtful review of potential hazards, including natural and human-made emergencies; climate change; vandalism and theft; space and environmental deficiencies; human error; mechanical or operational system failures; and deterioration.

### **12.1. Policy**

SFMOMA adheres to the following policies regarding the risk management, safety, and security of the Collection and works on loan to the Museum:

1. SFMOMA shall minimize and control the level of risk of damage or loss to works and injury and illness to staff, affiliated persons, and visitors through established risk management practices.
2. The Museum will provide hazard awareness and establish safe work practices in accordance with Cal OSHA standards.
3. The Director of Registration shall annually review the type and amount of insurance carried for the Collection and works on loan to the Museum.
4. The Chief Operating Officer shall update the Audit Committee on material changes to the type and amount of insurance carried for the Museum's Collection from year to year.
5. Works on loan to SFMOMA and SFMOMA Collection works on loan to or in the care of others will be insured as stipulated by an authorized loan agreement or negotiated contract.
6. Insurance proceeds from the settlement of claims for damage to a work in SFMOMA's Collection may be used only for the conservation or restoration of the affected work. Insurance proceeds received due to a total loss of a work or in excess of the cost of conservation or restoration of a damaged work shall be designated only for acquisitions of new works for the Collection, for the direct care of existing works in the Collection, or for purposes analogous to the purchase or commission of new works of art for the Collection in accordance with this Policy.
7. SFMOMA's operations department has a written, comprehensive emergency operations plan for all locations where artwork is stored, managed, or exhibited.
8. The Museum's collections departments maintain a Collections Emergency Plan that is continually updated in accordance with current best practices. The Collections Emergency Plan team is responsible for providing training, procedural, and logistical support in collections emergency preparedness, response, and recovery, and promoting improved communication and collaboration across departments.

## **13. Access**

Access is the availability of works in the Museum's Collection to the public, researchers, and staff to discover, experience, enjoy, and use.

SFMOMA promotes access to its Collection and associated documentation through research and study opportunities, exhibitions, educational programs, publications, loans, and digital platforms.

### **13.1. Policy**

SFMOMA adheres to the following policies regarding access to its Collection:

1. SFMOMA will provide access to its Collection and associated documentation in a manner consistent with its stewardship, management, and preservation responsibilities. Physical and intellectual access to and use of works in the Collection are balanced with preservation and intellectual property concerns.

2. SFMOMA is committed to developing multimodal presentations and interpretations of its Collection and works on loan to the Museum in ways that encourage the broadest accessibility for a range of activities, such as discovering, experiencing, enjoying, and studying works.
3. The Museum provides access to Collection works that are not ordinarily on view upon request to individuals and groups for research and study purposes, with oversight by collections and curatorial staff.
4. SFMOMA will control, monitor, and document physical access to and use of its Collection.
5. The Museum may be required to restrict access to works for various reasons, including resource limitations, security and safety, preservation constraints, work availability, concerns related to cultural sensitivity and privacy, confidentiality, and legal restrictions (such as copyright and restrictions imposed by contract). Departments should consult the Head of Collections when decisions are needed regarding access requests involving sensitive information such as privacy, security, storage location, value, transactions, and intellectual property restrictions.
6. Accessioned works should be published to SFMOMA's online collection with an image in a timely manner.
7. SFMOMA has a collections-related email address posted on its website to receive and answer requests for access to and information about Collection works.

## **14. Loans**

A *loan* is the temporary transfer of possession of works for an agreed-upon purpose and on the condition that the works are returned at a specified time.

### **14.1. General Principles**

The lending of Collection works between SFMOMA and other cultural, educational, and scientific organizations for public exhibition, education, and research is an integral part of SFMOMA's mission and fundamental to its stewardship and public access goals.

Loans to SFMOMA from external sources play a vital role in SFMOMA's mission as an educational institution. Incoming loans are critical in enabling the Museum to present meaningful and comprehensive exhibitions as well as to supplement the Collection, filling gaps in gallery presentations, and aiding research projects. Incoming loans must be consistent with SFMOMA's mission, strategic priorities, programmatic goals, and use of its own Collection.

All loans from or to SFMOMA must adhere to applicable federal, state, local, and international laws, treaties, regulations, and conventions.

### **14.2. Outgoing Loans**

SFMOMA adheres to the following policies regarding outgoing loans of Collection works to external sources:

1. Potential loans must undergo a rigorous evaluation process based on considerations such as the following:
  - i. SFMOMA's need to include the Collection work in its own program;
  - ii. the potential of an exhibition to positively impact artists, communities, and/or history;
  - iii. the condition and/or needs of the work;
  - iv. SFMOMA's ability to meet the loan request with existing resources;
  - v. the borrowing facility's ability to meet SFMOMA's loan requirements; and
  - vi. any ownership restrictions.

2. As a general rule, works in the Collection will only be lent for public exhibition, research, and other educational, scientific, or preservation purposes. Works may not be loaned for private financial gain.
3. The borrowing facility must be able to ensure the safety of the loaned work and a current facilities report must be provided before a loan is approved.
4. Collection works may be lent only in accordance with a loan agreement signed by both parties prior to shipment, and only when consistent with applicable law, professional standards, and SFMOMA's Code of Ethics.
5. All loans are for a specified period of time and may contain an option for renewal or extension.
6. The responsible curatorial department ensures that a recent and reasonable third-party valuation of any Collection work has been obtained before SFMOMA releases the work.
7. Collection works on loan to, or in the care of others (such as tenants in common), will be insured as stipulated by a loan agreement. In cases where insurance is to be provided by a borrower, proof of acceptable insurance naming SFMOMA as an additional insured and loss payee, must be provided before the Museum releases the work.
8. In addition to actual expenses, the Museum may charge loan fees to borrowing organizations.
9. All loan terms, arrangements, activities, contracts, and insurance must be documented and protected in accordance with SFMOMA's loans out process and its policies on Preservation, Collection Documentation, and Inventory (Sections 9 - 11).
10. The Director or their designee (Director of Registration, Head of Collections, or General Counsel) will address risk mitigation including issues of immunity from seizure, federal indemnity, and insurance so as to protect Collection works when on loan.
11. Long-term loans (those over one year at one location) must be reviewed by the relevant curator, registrar, and conservator at specified intervals to determine their future status. The condition of works on long-term loan must be checked and documented by staff on an annual basis.
12. For loans to commercial galleries, appropriate actions are taken to secure SFMOMA's interest in the work against creditors of the borrower and to prevent the appearance of a consignment for sale.
13. Regardless of the length or type of outgoing loans, SFMOMA retains ownership and stewardship responsibility of works in its Collection.

### **14.3. Incoming Loans**

SFMOMA adheres to the following policies regarding works borrowed from external sources:

1. SFMOMA shall consider and whenever possible will adhere to the AAM guidelines on exhibiting borrowed works.
2. SFMOMA is responsible for exercising due diligence in establishing that the lender has clear title to the loaned work and that, in borrowing the work, the Museum is not exposed to and is protected from claims, lawsuits or controversies, including claims that the loaned work had been illegally imported, exported, confiscated, seized, or looted in the past, as set forth in Provenance (Section 7).
3. Works may be borrowed only in accordance with a loan agreement signed by both parties prior to shipment, and only when consistent with applicable law, professional standards, and SFMOMA's Code of Ethics.
4. SFMOMA will exercise the same standard of care for borrowed works as it exercises for works in its Collection.
5. Works on loan to SFMOMA will be insured as stipulated by the authorized loan agreement. The Museum maintains sufficient insurance to cover all loans at the value listed on the loan agreement.

Loan values must be reviewed by the responsible curator. If the lender's value exceeds the curator's understanding, the lender must supply an appraisal supporting the greater valuation. The Museum assumes liability for loans commensurate with its insurance coverage. Any exceptions to this limitation of liability – such as terms and conditions requiring SFMOMA to agree to accept liability for damage or loss potentially in excess of insurance coverage – must be approved by the Chief Financial Officer and tracked by the Director of Registration.

6. In accepting a lender's loan terms, curatorial and collections staff shall consider any special conditions or considerations requested by lenders to ensure that each loan is beneficial to the Museum and that no inappropriate benefit to the lender shall result.
7. All loan terms, arrangements, activities, contracts, and insurance must be documented and protected in accordance with SFMOMA's incoming loans process and its policies on Preservation, Collection Documentation, and Inventory (Sections 9 - 11).
8. All incoming loans are for a specified period of time.
9. Generally, SFMOMA will not accept a long-term loan of a work unless it will be displayed to the public or otherwise accessible by the public during the term of the loan. Commitments to accept loans for more than one year, or for an indefinite period of time, including promised gifts, must be approved in writing by the Director.
10. Approved long-term loans to SFMOMA should be periodically monitored and contact maintained with the lender, as appropriate under the circumstances.
11. Curatorial and registration departments will periodically review the Museum's holdings for unclaimed property and undocumented property.
  - Unclaimed property includes all property that is on loan to SFMOMA for which the loan term has expired, SFMOMA has a lender contact, and either party has failed to maintain contact.
  - Undocumented property refers to works for which SFMOMA has no records reflecting their transfer to SFMOMA.
12. Curatorial and registration departments will work together to identify unclaimed property or undocumented property abandoned on SFMOMA's premises and determine whether the property should be proposed for accession into the Collection or disposed of in the event that title is secured (see Section 8.5). In all such cases, the responsible curatorial department(s) will work with the Director of Registration and General Counsel, following guidelines found in California Civil Code Section 1899, et seq, where applicable, and other right to property laws.

## **15. Intellectual Property Rights**

*Intellectual property rights* are certain protections and rights based on federal or state statutes or common law such as patent, trademark, copyright, privacy, and publicity.

Distinct from the right to possess a work, intellectual property rights arise from the content of a work. SFMOMA's ability to use and provide access to Collection works and their associated intellectual property may be subject to copyright, privacy, and publicity rights held by others, which may restrict access to or use of the works.

### **15.1. Policy**

SFMOMA adheres to the following policies regarding intellectual property rights:

1. Works in SFMOMA's Collection may be subject to intellectual property rights that may be owned by others or SFMOMA. The Museum shall manage its Collection and works on loan to the Museum in a manner that seeks to avoid infringement of intellectual property rights.

2. SFMOMA seeks to balance protecting the intellectual property rights of creators and owners of intellectual property rights, including the Museum itself as a rights holder, with providing the broadest possible access to works in its Collection for mission-enabling purposes.
3. SFMOMA may charge licensing fees to outside organizations and individuals to use and reproduce images of Collection works.
4. SFMOMA may rely on the doctrine of fair use, as defined in Title 17 of the United States Code or globally where it exists, for its use or reproduction of works for standard purposes, such as for archival, research, educational, exhibition, and other similar uses. Fair use assertions must be made on a case-by-case basis, taking into consideration the legal parameters of the fair use doctrine. The Intellectual Property Manager along with the General Counsel should be consulted as necessary concerning fair use determinations.
5. Collection works may be used consistent with SFMOMA's Terms of Use, as amended from time to time.

## **16. Exempt Collections**

SFMOMA's art collection – the primary focus of this Collections Management Policy – is enhanced and supported by the Museum's archives collection, library collection, and Artist Materials Collection. These three significant, corresponding collections are developed in alignment with SFMOMA's mission and strategic priorities at the discretion of the Museum's Director, Chief Exhibitions and Collections Officer, Head of Collections, and Directors of the Archives and Art Resources, Library, and Conservation departments.

Management, preservation, and accessibility of the archive collection, library collection, and Artist Materials Collection adheres to discipline-specific stewardship policies, practices, and procedures relevant to those collections. As such, the three collections are largely exempt from the policies defined in this document for activities such as Acquisitions and Accessioning, Deaccessioning, and Inventory (Sections 6, 8, and 11).

### **16.1 Archives Collection**

SFMOMA's archives ("Archives") collects, preserves, and makes accessible information relating to the Museum's history, including past exhibitions, activities, and events; the Museum's interactions with artistic figures and organizations; and the Museum's role as a vital advocate for modern and contemporary art on the West Coast. The Archives makes historical materials available for use to the fullest extent possible. Although primarily managed for use by Museum staff, the Archives also serves the research interests of the larger arts community by providing reference services both in-person and on-line. Items in the Archives are not formally accessioned by the Board in the manner of Collection works. Additions to and disposals from the Archives' special collections are approved by the Director of Archives and Art Resources.

The Archives is responsible for the SFMOMA's Records Management Program. In this capacity, the Archives staff develops strategies, plans policies, and implements guidelines to ensure the orderly transfer and disposition of the Museum's documentation so that the Museum's historical record is complete.

### **16.2 Library Collection**

The mission of SFMOMA's library ("Library") emphasizes support for the research activities of the Museum's staff, as well as offering access to the Library's collection and outstanding services to an international community of students and researchers. The scope of the Library's holdings mirror the scope of the Museum's Collection, and materials in the Library's special collections often relate to the Museum's connection to particular artists and exhibition research by curatorial staff. New materials acquired for the Library collection are not formally accessioned by the Board in the manner of Collection works. These holdings differ from accessioned works in that their use is deemed to be primarily for research and reference, and secondarily for exhibition. The Library receives gifts and donations regularly. The Director of the Library reviews and accepts gifts for the Library collection; acknowledges gifts in writing; and issues a

deed of gift for gifts that qualify for income tax charitable deductions. In accordance with Museum's longstanding policy not to provide appraisals to donors (as set forth in Section 6.3), the Library's staff may suggest several qualified appraisers if a donor asks for assistance in locating an appropriate appraiser, but staff cannot make arrangements for the appraisal, pay for the appraisal, or offer estimates of value as part of the gift process. Removal of materials from the Library's collection is part of responsible collections management. The Director of the Library reviews and approves the removal of materials and determines the most appropriate method of disposal.

### **16.3 Artist Materials Collection**

The Elise S. Haas Conservation Studio manages the Artist Materials Collection ("AMC"), a study collection of objects related to artists and their artworks in SFMOMA's Collection. Objects in the AMC are typically linked to an artist's practice, including their materials and methods of making, and are acquired, documented, and preserved by conservation staff for the purpose of research, examination, exhibition, and educational objectives for Museum staff, researchers, and visitors. Objects acquired for the AMC are not formally accessioned by the Board in the manner of Collection works. The Director of Conservation reviews and accepts gifts for the AMC; acknowledges gifts in writing; and issues a deed of gift for gifts that qualify for income tax charitable deductions. In accordance with Museum's longstanding policy not to provide appraisals to donors (as set forth in Section 6.3), conservation staff may suggest several qualified appraisers if a donor asks for assistance in locating an appropriate appraiser, but staff cannot make arrangements for the appraisal, pay for the appraisal, or offer estimates of value as part of the gift process. Removal of objects from the Artist Materials Collection is part of responsible collections management. The Director of Conservation is responsible for approving the removal of any object from the AMC, and for determining the most appropriate method of disposal.