

# Due Diligence Guidelines

for Dealers & Collectors of Ancient & Ethnographic Art

Revised: October, 2015



## DUE DILIGENCE GUIDELINES

One of the ADCAEA charter objectives is to promote “due diligence” on all objects to ensure the property has not been looted or illegally exported from the country of origin. These guidelines aim to assist ADCAEA members when considering the purchase of ancient objects by promoting responsible collecting.

**These guidelines are provided as an information guide only.  
They are not a full and authoritative statement of the law and do not  
constitute professional or legal advice.**

### What is Due Diligence?

Due Diligence is the process where the collecting history (provenance) of the object is investigated and recorded.

Many objects appear on the market with no physical evidence of their collection history. In many cases, this is because objects have passed through numerous hands and previous owner(s) did not receive, lost or threw away relevant documentation and/or did not think to record what they knew. This results in the collection history being lost and the need to conduct due diligence.

The level of due diligence should depend on several factors, including the value of the object, how common it is, its potential origin, and should take into account the following criteria:

1. Documentary evidence of ownership and history;
2. Initial examination of the object;
3. Consideration of the countries in which the object has been located and when;
4. Seller Reputation
5. Expert Advice; and
6. Discussions with the seller.

When purchasing from an established, reputable dealer or specialist auction house, such due diligence has already been conducted and known collection history will be included with the paperwork provided at time of sale. However, when purchasing from other venues, this is seldom the case so it is important to establish, to the best of your ability, a sound collection history. If you cannot establish a verifiable collecting history, do not purchase.

## 1: DOCUMENTARY EVIDENCE

Documentary evidence can take many forms and can provide invaluable information regarding the original acquisition and any subsequent transfers of ownership. Documentation can include but is not limited to:

- Export License
- Written correspondence, personal notes, labels
- Inventory list as part of a will, appraisal or the like.
- Publication in a reputable source such as auction catalogs, exhibition catalogs, journals, books or other such related publications,
- Image, sound and film resources
- Excavation field notes
- Dated invoices

Do not underestimate the value of associated documentation; it is a precious resource and every effort must be made to maintain and preserve this information.

## 2: INITIAL EXAMINATION

Examine the object itself for it can indicate an old collection history, known as secondary information. Look for:

- Traces of ingrained dust, dirt or other accretions. This could suggest it has been displayed or stored for many years and could therefore be from an older collection.
- A distinctive type of mount, mounting or binding that is likely to be from a particular period.
- Whether the object has been mended, partially restored or otherwise interfered with. If so, a professional conservator might be able to determine whether the methods used are old or new and estimate when work was done.
- Carries old labels, inscriptions, or other marks. These could offer clues about presence and/or use in former collections.

Should the object retain patches of fairly fresh-looking soil or encrustations that can easily be removed, it might have recently been excavated. Also look for signs of doctoring with mounts, labels, strange patina or cabinet toning as the object is therefore more likely to be illicit or fake. Make sure to keep a record of everything you find so that it becomes part of the collection history.

### 3: OBJECT TYPE & COUNTRY OF ORIGIN

Consider the type of item and likely place of origin. If there is nothing obviously suspicious about the physical appearance of the item (point 2), then consider the following factors:

- Ensure the object was not taken illegally during a time of conflict or natural disaster. These events often result in the creation of 'hot' areas i.e. an area where extensive looting is presently occurring or has happened in the recent past. Objects from these areas come onto the market illegally and in increased volume. Similarly, certain objects are categorized as 'at risk' by international bodies because it is likely they are illicit.
- Check the "red list" compiled by ICOM to ensure the object does not fall into high risk category and is therefore extremely likely to be illicit.
- Obtain an Art Loss Register Certificate: the ALR operates a permanent international database of stolen and missing works of art, antiques and valuables.
- Conduct an Internet search: check news reports to ensure no similar objects have been reported stolen or missing in the international press.

### 4: SELLER REPUTATION

Acquisition from reputable sources is always recommended. Specialist auction houses and reputable dealers, for example, not only know their objects well, but have also conducted the necessary due diligence and will guarantee the collecting history they provide.

Avoid questionable sources and pay particular attention to any item offered for sale when the asking price does not equate to its market value. Look carefully at the seller and what else they offer. Consider how the object is described, whether the seller provides collection history or a registration number (eg: UK Portable Antiquities

Scheme or Treasure process), and any appropriate export papers from the residing country (eg. France, Israel, Germany). Lack of information can suggest a greater chance the object has been illicitly obtained. When purchasing, avoid paying cash and look critically at any instance when requested to do so. In the absence of a strong and reputable reason, pay by a method that provides an audit trail.

## 5: SEEK EXPERT ADVICE

Ask for assistance and advice from specialists such as reputable dealers, specialist auction houses, and collecting institutions, particularly those with designated collections or schools of Archaeology, are a useful starting point. Legal or other advice from the country of origin, such as through the cultural attachés in embassies, may also be beneficial given the wide range of approaches internationally. Such experts may be able to directly assist or put you in touch with others who can provide further information, object parallels, particular types of item and possible sources of evidence for provenance.

Check whether the export of the item was in line with the regulations of the country of origin, and other cultural property legislation applicable at the time the item was exported. If necessary seek legal advice about whether the export of the item complies with current legislation.

## 6: DISCUSSIONS WITH SELLER

Oral history and personal communication with the seller can also be important when establishing a collecting history. A seller can give assurance about provenance, but may not be able to provide supporting documentation to show it has a collection history. All reputable dealers and specialty auction houses will provide you with written documentation, usually in the form of a Certificate of Authenticity and/or invoice that includes information on an object's collection history. However, the absence of such records should not immediately condemn an object or require its rejection. Still, vague descriptions such as "private USA collection" or the like are not acceptable and should prompt further questioning.

When no documentary evidence is available, have the seller prepare a document that records all known collecting history for the object. This document should be notarized with a lawyer or notary public. An example of such a document is provided in Appendix A.

## CONCLUSION

As a general rule, lack of documented provenance is not an immediate indication that the object is illicit, and the level of due diligence will depend on several factors, including the value of the object, how common it is, and its potential origin. One may acquire such an object unless further investigation reveals it has dubious collection history or bad title. Ensure the seller holds proof of valid title and is able to transfer the title free from encumbrances.

However, with the growing international concern about issues of provenance, it is vital a record of the object's collection history is recorded and maintained. When purchasing, ensure you receive a written guarantee of the collection history for the object, such as a Certificate of Authenticity, an invoice or an affidavit, together with any supporting documentation available.

Record any "secondary provenance" you might find such as mounts, labels, repairs etc and keep all documentation associated with each object in a safe place and where it can be easily located. If possible, make an electronic copy of all associated paperwork (especially if made on pressure sensitive paper as this will fade in time) and your records as a support backup. This way you are able to show the object was acquired responsibly and this will assist considerably in the future should you decide to sell.

If you are suspicious, do not purchase!

## APPENDIX A

### DECLARATION OF [JOHN DAVID SMITH]

I, [JOHN DAVID SMITH], of [address] do hereby declare:

1. The facts set forth in this declaration are true of my own personal knowledge except for those facts set forth upon information and belief, which are so identified.
2. I am the lawful owner of the objects listed in the attached Schedule A and am competent to make a sale and that in so doing, I hereby transfer full legal and equitable title together with all copyright and associated rights.
3. All of the objects identified in Schedule A were [acquired by my great uncle and aunt Dr. & Mrs. Joseph Smith of 100 Main Street, Mainville NY 10000 during their travels overseas in the early 1930's. The objects were subsequently passed down to my father, John David Smith Snr and resided in our family home until his passing in 2011. Thereafter, the objects were inherited by myself although they were not expressly mentioned in his will.]
4. I am informed and believe that all of the objects identified in Schedule A are authentic, are free of all liens and encumbrances, that their exportation from any foreign country has been in conformity with the laws of such country and are as represented in the descriptions provided.
5. I declare under penalty of perjury under the laws of the State of [New York] that the foregoing statements are true and correct.

Executed this [30th] day of [September], [2015] in [New York, USA].

Signed: \_\_\_\_\_

[John David Smith], declarant

Drivers license #: \_\_\_\_\_

Sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, [year]

Notary Name: \_\_\_\_\_

My commission expires \_\_\_\_\_

County of \_\_\_\_\_

Signature: \_\_\_\_\_

Notary Seal

## RESOURCES

### **ART LOSS REGISTER:**

[www.artloss.com](http://www.artloss.com).

Private international database of lost and stolen art, antiques and collectibles that provides recovery and search services to collectors, the art trade, insurers and law enforcement through technology and a professionally trained staff of art historians.

### **GETTY OBJECT IDENTIFICATION SYSTEM:**

<http://www.getty.edu/publications/virtuallibrary/0892365722.html>

The illicit trade in art and other cultural objects now constitutes one of the most prevalent categories of international crime. Law-enforcement agencies have long recognized that documentation is critical to the protection and recovery of these objects. Developed through the collaboration of museums, police and customs agencies, the art trade, the insurance industry, and appraisers of art and antiques, Object ID is an international standard that defines the minimal information needed to identify art, antiques, and antiquities.

### **ICOM RED LIST DATABASE:**

<http://icom.museum/resources/red-lists-database/>

provides a category list of objects particularly at risk from looting. Also contains useful links to other sites and information.

### **US DEPARTMENT OF STATE - REWARDS FOR JUSTICE:**

[https://www.rewardsforjustice.net/english/trafficking\\_oil\\_and\\_antiquities.html](https://www.rewardsforjustice.net/english/trafficking_oil_and_antiquities.html)

The Rewards for Justice program is offering a reward of up to \$5 million for information leading to the significant disruption of the sale and/or trade of oil and antiquities by, for, on behalf of, or to benefit the terrorist group Islamic State of Iraq and the Levant (ISIL), also known by its Arabic acronym as DAESH.

### **ICE HSI: CULTURAL PROPERTY, ART AND ANTIQUITIES INVESTIGATIONS:**

<http://www.ice.gov/cultural-art-investigations>

The Cultural Property, Art and Antiquities Program is unique to Homeland Security Investigation's (HSI) portfolio. The public, government and private institutions often aid HSI in identifying, investigating and prosecuting illicitly trafficked cultural property. If you have information about the illicit trade of cultural property or art, call the HSI Tip Line, 1-866-DHS-2-ICE or via email at [HSIculturalproperty@dhs.gov](mailto:HSIculturalproperty@dhs.gov).

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