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

In Friday morning's presentation, *Complicated Loan Negotiations: Informal Study of Various Industry Requirements and Solutions*, the three presenters and moderator, Mary Pontillo, Senior Vice President, DeWitt Stern, discussed the outcome of their recent survey of Artist Endowed Foundations, Artists Estates or Private Collections, and Museums and how these groups treated Loan Negotiations. Artist Endowed Foundations were defined as foundations founded by the artist or their family executives and are tax exempt for their charitable activities whereas an Artist Estate or Private Collection has no charitable activities. The panelist were representatives from each of the three categories: Frank Avila-Goldman, Associate Registrar/Copyright Associate for the Estate of Roy Lichtenstein; Michelle Bennett-Simorella, Head of Collections Management and Registration at Rubin Museum of Art; and Elayne Rush, Registrar at the Willem de Kooning Foundation.

The survey they distributed had 20 questions in total. Some questions had additional sub-questions for museums or a version of the question specific to museums. One of the survey questions was exclusively for Foundations with no version for Artist Estates/Private Collections or Museums. The survey had a total of 48 respondents: 13 Artists Endowed Foundations; 13 Artist Estates/Private Collections; and 22 Museums. The survey overall had a low response rate with a disproportionate number of responses from museums. In looking at the graphs of the responses, Artist Endowed Foundations and Artists Estates/Private Collections always seem lower in percentages than Museums but that is likely due to the relatively low response rate.

The survey questionnaire asked a variety of questions regarding the different requirements each type of organization had for loan agreements. These questions included a range of specifics, including who handles the loan agreements for incoming and outgoing loans, and does the organization as a Lender use its own loan agreement or does it allow use of the Borrower's. The majority of respondents from all three categories responded saying a Collections Manager or Registrar handles their loan agreements. Museums, more so than the other two types of organizations, use their own outgoing loan agreement rather than a borrower's loan agreement with 77% of respondents answering in this manner. Only 54% of Foundations and 46% of Estates/Private Collections responded saying they prefer to use their own outgoing loan agreement. This question had a museum-specific sub-question, inquiring if, as a borrower, the museum would use their own incoming loan agreement or do they accept the agreement of the lender. In response, 91% of museums say they use their own incoming loan agreement.

Another question the presenters went into great deal discussing was which, if any, special insurance requirements do the organizations have for their loans. Some of these requirements included Terrorism, Additionally Insured, and Immunity from Seizure. The presenters spent a significant amount of time talking about the various requirements respondents indicated as well as non-listed requirements written-in under "other." One requirement option discussed was the Additional Insured requirement, commonly seen in loan agreements. The presenters pointed out to the audience that this is generally an unnecessary requirement as Additional Insured is a liability clause and would only cover bodily harm. Interestingly, one of the responding Foundations indicated on their questionnaire that they require the clause when outdoor sculpture is lent. In a case like this one, it does make sense for the Lender then to be listed as Additionally Insured. Few responding Foundations and Estates/Private Collections say they require Immunity from Seizure whereas the museums were much more likely to require. The presenters pointed out though that because Foundations and Estates generally have clear provenance, there is little need for this sort of requirement.

Another interesting question explored by the panel was whether, as a Lender, do the requirements vary depending on the Borrower's type of institution (i.e. museum, commercial gallery, etc). 77% of Foundations, 46% of Estates/Private Collections, and 55% of Museums responded in the affirmative. The following question then asked if the loan requirements were flexible and, if so, on which requirements were the respondents flexible. Because this question was less binary and had the flexibility for open-ended questions, the panelists discussed some of the frequent responses. For Foundations, some were willing to self-insure or ask the Borrower to take out a policy with the Lender's insurance if the Borrower's insurance did not meet their requirements. One third of Estates/Private Collections responded that they are not generally flexible with their requirements, but some indicated flexible requirements included courier requirements, 24-hour human security, and exhibition duration. The majority of museums responded that depending on the Borrower, they would be willing to be flexible on requirements though a few respond no. Some of the areas museums indicated they could compromise with included couriers and courier costs, consolidated shipments, and photography. Since these were written-in responses though, it is hard to gauge, for example, if Museums are more likely to be flexible on couriers and courier costs than Foundations or if a Foundation respondent just did not think of listing couriers and courier costs. If the survey were to be completed again, it would be a good question to have in other words, a list of common areas where Borrowers ask Lenders to be flexible rather than relying on the respondents to think of all the areas in which their institution might be willing to compromise.

Throughout the presentation, the presenters pointed out that the survey was quite binary in nature and that it presented a number of challenges in the interpretation. Like so many other things in our field, there are a lot of "it depends" scenarios. While it is not clear how to draft a questionnaire that captures these subtleties of our field, it is clear that the binary nature of the questions is a start but not a clear end to this project. Ultimately, the panelists presented the information from the survey in clear charts and lists summarizing the responses. Additionally, they spent more time examining areas that warranted a little more time and discussion, such as the various special insurance requirements, why they may or may not be needed, and how different organizations responded. Their acknowledgement of the binary challenges of the questionnaire as it is written for this iteration was welcomingly self-aware. At the end of the presentation, the panel said they wondered if this could be turned into a more robust questionnaire as well as find a way to garner a larger response pool to turn the information into a paper. This sort of information comprised in a formal way could be used as an educational tool for early-career museum professionals as well as curious, mid- and late-career professionals who might wondering how their peers handle loan arrangements.

Submitted by Caitlin R. Rumery