

# ETHICS POSITION PAPER #3

By AASLH Standing Committee on Standards and Ethics



**1800 House, Nantucket Historical Association, Nantucket, MA.** In 2004 the Nantucket Historical Association converted the 1800 House, a site previously used as a house museum, into an educational facility for lifelong learning programs on Nantucket Island decorative arts and crafts.

## REPURPOSING OF A HISTORIC HOUSE/SITE

Photos by Donna Ann Harris

**T**he heritage of our country is richly celebrated through a broad and diverse array of historic houses/sites that remind us daily of the people, places, and events that have shaped our nation.

Each contributes to the life of their community and region; each benefits from the commitment of talented staff, concerned boards, and dedicated volunteers. But even when there is a strong level of commitment and dedication, a historic house/site may struggle to stay open and to operate in a sustainable and viable way. The board and staff may have explored options for how best to continue operating as a museum and reached the decision that the best stewardship is to repurpose the historic structure(s) and its grounds and gardens, and, if possible, to place the collections with another institution. There is no doubt that this is a difficult decision to make, and board and staff are to be commended for seeking ways to ensure the ongoing preservation of the structures and grounds and the care and public benefit of the collections.

### Guidelines for Action

The American Association for State and Local History issues periodic position papers to assist individuals and institutions with implementation of AASLH's Statement of Professional Standards and Ethics (revised 2002). This document, the AASLH Ethics Position Paper #3, "Repurposing of a Historic House/Site," is designed to provide guidance to institutions considering the future of their organization and the potential repurposing of a historic house/site.<sup>1</sup>



Once the board and staff make the decision that it is advisable to repurpose the structures and grounds and seek alternate means for the care and public benefit of its structures and collections, they must plan the next steps carefully and expeditiously. Without careful planning, it is possible that the historic house/site may run short of operating cash or not have enough cash to complete the repurposing process which can require thousands of dollars. It is important to keep the numerous components of the organization in mind as the board and staff work through the process. The components include:

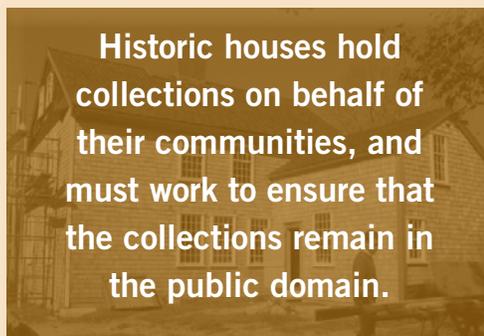
- structures;
- grounds, gardens, and interior features that may be accessioned separately from the structures;
- object and document collections associated with the house;
- collections acquired that may/may not have local meaning and connection to the house but have been acquired to complete a furnished period room;
- reproductions and educational study collections;
- endowment(s) or board-restricted savings;
- other property or assets.

## Legal and Ethical Considerations

As a historic house/site works through the decision-making process, its first step is to give particular and careful attention to legal and ethical issues. It is important for the historic house/site to have the advice of counsel throughout the process. At an appropriate time, it may also be necessary to contact the state's attorney general to clearly understand what laws affect the decision-making process.

Questions and issues to be addressed include:

- What are board and staff responsibilities related to the decision to repurpose structures and grounds and seek alternate means for the care and public benefit of the collections?
- How is the historic house/site organized? Is it a charitable trust or a nonprofit? This may determine what statutes and legal principles apply.
- What are the legal limits in seeking alternative stewards?
- What collections exist (e.g., structures, gardens, grounds, interior furnishings, decorative objects, works of art, manuscripts, organizational records, etc.); what options are there for repurposing of structures and grounds and providing ongoing care and stewardship of collections (and reproductions); and, how can these be protected?
- What is the status of items donated to the organization? Consider notifying donors about disposition and repurposing plans even though the historic house/site may not be obligated to seek approval for disposition of unrestricted gifts or collections. Full disclosure may reduce misunderstandings by reassuring donors that another institution will care for the collections and that structures and gardens/grounds will be appropriately repurposed and protected.
- What options exist for preserving the buildings/gardens/grounds; what covenants or easements can be placed on these to ensure their ongoing protection? Seek advice and assistance from area, regional, or national preservation organizations on repurposing options and procedures for the historic structures and gardens/grounds. Options may include transfer to another institution or sale to a private owner. In the event of a transfer or sale to another steward/owner, protective easements and other restrictions are strongly recommended.
- What endowment(s) exist; what options exist for the endowment(s) if the organization is dissolved; and, how can the endowment(s) be protected from creditors?
- What other assets exist and what options are available for use or disposal of those assets?
- What legal requirements affect the site and collections?
- Are all legal documents that may be associated with the historic house/site, its collections, and structures compiled? These may include deeds, wills, endowments, restricted gift agreements, purchase and sale documents, and contracts. It is also important to gather accession files and other collection documentation that may exist, for such records are critical to document clear title, donor restrictions, and other concerns that may affect the



disposition of objects and the repurposing of structures and grounds. A review of all board minutes may assist in clarifying whether endowment and other asset funds are restricted or not restricted. Prompt action to secure all documentation is critical. A copy of all records should be stored offsite in a secure location, for essential information may disappear. For example, while collections can be carefully protected, the computers storing collections records can become separated from the collection, thus requiring new collection stewards to reconstruct the records. Also, natural disasters may strike or staff and/or board members may resign, again putting documents in jeopardy.

- Is the status of the structures and gardens/grounds clear? Creditors may seek assets that can be liquidated, and houses, along with other real property, can be immediate targets. Historic houses/sites may consider the structures and gardens/grounds to be part of the collections but records may not exist to back this up, thus potentially leaving structures and gardens/grounds in legal limbo. Board minutes may contain information about the status of these assets.
- Is the status of site components clear? For example, a mantel or garden statuary may be accessioned objects, while the structures and gardens may not be protected.
- Has a new steward been identified? If merger with another institution or the transfer of collections to another institution has not been explored, either may serve as a viable option. Return of objects to private ownership or disposition through sale may also be considered.
- Has a communication plan been developed? It is beneficial to assume a proactive public relations position. A historic house/site that is considering new stewardship, through closure, repurposing, or sale, should appoint a single spokesperson to represent the house museum and its interests. The board and staff should discuss and review talking points regarding structures, grounds, collections, and other assets and property with the board granting final approval. If the board and staff decide to affirmatively publicize the process, they should prepare and distribute press releases that inform stakeholders and communities of interest about the process and its progress. In the event of transfer or merger, each institution should appoint a spokesperson for its own institution or, in the best case, appoint a single spokesperson to represent the interests of both, using talking points agreed upon by both institutions.

For additional information and insight into these issues, AASLH recommends *New Solutions for House Museums: Ensuring the Long-Term Preservation of America's Historic Houses* by Donna Ann Harris.<sup>2</sup>

## Disposition of Collections

The historic house/site likely holds a variety of collections. These may include interior furnishings, decorative objects, costuming and textiles, works of art, manuscripts, organizational records, and more. An organization considering the repurposing of a historic house/site is, in effect,

preparing to deaccession and dispose of its collection(s), which shifts the discussion from whether an object should be removed from the collections to what should be done with it. Options may include transfer of an object to another institution, sale, or some other method deemed appropriate.

Historic houses are obligated to protect the collections they hold in the public trust. The AASLH Statement of Professional Standards and Ethics states that historical organizations, including historic houses, “are challenged to be advocates on behalf of the historical resources within their communities.” The Association’s insistence that “collections not be capitalized or treated as financial assets” extends to dissolution, and a historic house/site facing that prospect is obligated to make every effort to protect the collections from being seized to satisfy debts. Historic houses/sites hold collections on behalf of their communities, and must work to ensure that the collections remain in the public domain.<sup>3</sup>

AASLH encourages the organization’s board and staff to become familiar with the legal process for deaccessioning a collection. Marie Malero’s *A Legal Primer on Managing Museum Collections* is an excellent resource on this issue. Malero defines deaccessioning as “the process used to remove permanently an object from a museum’s collections or to document the reasons for involuntary removal (one required by law or due to circumstances not controlled by the museum).” The courts have upheld the legality of deaccessioning, and professional associations across the museum community have deemed it ethical when handled within the context of appropriate policies and procedures. The AASLH Statement of Professional Standards and Ethics recognizes deaccessioning as a legitimate practice as long as it is done to improve or preserve the collections. “Collections shall not be deaccessioned or disposed of in order to provide financial support for institutional operations, facilities maintenance, or any reason other than preservation or acquisition of collections, as defined by institutional policy.”<sup>4</sup>

How the dissolving institution treats its collections, structures, grounds, and other assets is critical. In “The Capitalization of Collections” (Ethics Position Paper #1), AASLH argued against capitalizing collections. Unfortunately, institutions facing pressure to capitalize are frequently the ones in the most precarious situations, with boards or governing authorities considering capitalizing the collections as a way to strengthen the institution in the face of a deteriorating financial picture and potential closure.

Malero advises the organization to consult with the state attorney general’s office very early in the process of repurposing and dissolving of an organization. Generally speaking, the state’s attorney general and the courts, acting on behalf of the public, will ultimately serve as key players in the disposition of the historic house/site’s collections and endowment. While institutional governing boards hold legal title to the collections, structures, grounds, and other assets, they do so in the public trust, and the state’s attorney general is charged with

protecting the public interest in those assets through either common law *parens patriae* power (in which case the government acts on behalf of a child or mentally ill person), specific statutory provisions, or both. Generally speaking, the state attorney general must be notified of dissolution plans, and the state courts may need to review and approve the plan.

## Reproductions and Non-Accessioned Study and Education Collections

Historic houses/sites may also hold reproductions and non-accessioned study and education collections with interpretive and monetary value. These objects frequently have an alternate cataloguing system, and institutions should secure and retain documentation of these collections so it is clear that these objects are indeed reproductions or non-accessioned collections. As non-accessioned items, their disposal is not affected by museum policy; however, sites should carefully consider their disposition. Area museums may welcome the opportunity to utilize these reproductions or study collections within their interpretive framework so they could achieve disposition by donation to area museums or by sale.

## Intellectual Property Rights

Historic houses/sites may own substantial intellectual property rights, including trademarks; copyrights to books, pamphlets, and photographs; and reproduction rights to objects. In considering the transfer to another institution or dissolution, the historic house/site will need to determine an appropriate recipient for its intellectual property rights. If the site is to be transferred to another entity for its continued operation, all of the intellectual property rights may be transferred to the new entity. However, the new entity should review any agreements or restrictions that it may be accepting with the intellectual property rights. For example, if the historic house/site had a reproduction program, board and staff should carefully examine contracts with third-party licensees to determine if they can be assigned and if the new entity wishes to accept them, for the agreements may be subject to exclusivity arrangements or other requirements that could impose obligations on the new entity. If the museum collections and archives are to be distributed separately to different institutions, the historic house/site and the receiving institution should review the intellectual property rights that may or may not be associated with the objects to ensure that the rights are transferred to the appropriate entity.

## Historic Structures/Grounds/Gardens—Repurposing Options and Protective Covenants

The AASLH Statement of Professional Standards and Ethics challenges institutions “to be advocates on behalf of the historical resources within their communities.” When considering the disposition of the historic real estate repre-

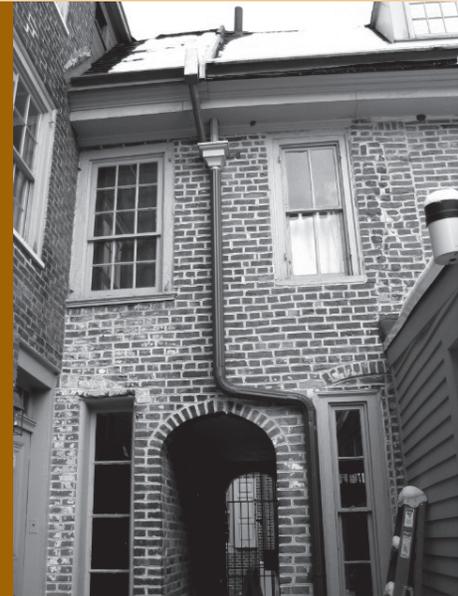


Even though the board and staff have served as good stewards for their historic house/site, the need to repurpose may be unavoidable.



### Elfreth's Alley, Elfreth's Alley Association, Philadelphia

In 1988 the membership of the Elfreth's Alley Association decided to sell three properties to private owners that they had held since the 1960s. Prior to the sale, the organization placed facade and conservation easements on the properties to ensure their perpetual preservation against demolition and insensitive alteration.



sented by a historic house/site, the institution should secure the protection of the historic real estate prior to the disposition. The most common mechanism for protecting historic real estate is a historic preservation easement, which is a perpetual restriction, held and enforced by a preservation organization or agency, that protects the historic property from inappropriate change. Information on historic preservation easements is available in Harris's *New Solutions for Historic House Museums* or from the National Trust for Historic Preservation ([www.PreservationNation.org](http://www.PreservationNation.org)), the National Park Service, and state and local preservation organizations. The institution owning the historic house/site should consult with qualified preservation easement holding organizations within their communities to determine if the property should be protected and if the easement-holding organization will accept the easement. Historic preservation easements are typically tailored to protect the specific aspects of the site that have historic significance, including the historic buildings as well as historic gardens and grounds. Preservation organizations typically require an easement endowment to ensure the perpetual enforcement of the easement, and this should be considered a cost of the dissolution of the historic house museum, which may be paid out of the proceeds of a sale or transfer of the historic house/site.<sup>5</sup>

### Guidelines for an Institution Accepting Collection(s) from a Dissolving Organization

The following recommendations are for institutions agreeing to accept collections, structures, gardens/grounds, and other assets from a historic house/site that is closing:

- Before agreeing to accept the transfer, carefully work through the process. Clarify what is included in the transfer. While acquiring the entire collection as a single entity may appear to be the easiest and cleanest way to handle the transfer, weeding out the collection later will require a formal process of deaccessioning. Making selections from the collection before taking legal ownership may be more efficient.
- Consider costs associated with the transfer process and

with ongoing management. Transfer costs may include packing, moving, processing, storing, handling of associated files from the former institution, etc. Ongoing management may include processing of the transferred collection, providing ongoing maintenance and care for historic structures, gardens/grounds, insurance, storage facilities and supplies, and labor for handling the growth in the institution's collection.

- Donors to the former institution may be concerned or upset. As the recipient organization, initiating a proactive process of notifying all donors of the transfer and assuring them of the recipient institution's commitment to providing ongoing care can serve to diminish concerns.

### Conclusion

Even though the board and staff have served as good stewards for their historic house/site, the need to repurpose may be unavoidable. This document is intended to provide guidance through that process and to support the organization in its responsibility to act in the public trust as it recognizes its obligation to protect its house, additional structures, grounds/gardens, collections, and other restricted assets. The best future the board and staff can give to their historic house/site is to ensure that these treasures continue to be preserved and made accessible to the public in some manner. ●

For additional information or assistance, contact the AASLH Standing Committee on Standards and Ethics, Kathleen Stitso Mullins, Chair, 1717 Church Street, Nashville, TN 37203-2991 or [www.aaslh.org/ethics](http://www.aaslh.org/ethics).

<sup>1</sup> AASLH has posted its Statement of Professional Standards and Ethics and all previous Ethics Position Papers at [www.aaslh.org/ethics](http://www.aaslh.org/ethics).

<sup>2</sup> Donna Ann Harris, *New Solutions for House Museums: Ensuring the Long-Term Preservation of America's Historic Houses* (Lanham, MD: AltaMira Press, 2007).

<sup>3</sup> AASLH Statement of Professional Standards and Ethics.

<sup>4</sup> Marie Malaro, *A Legal Primer on Managing Museum Collections* (Washington, DC: Smithsonian Institution Press, 1998), 217; AASLH Statement of Professional Standards and Ethics.

<sup>5</sup> AASLH Statement of Professional Standards and Ethics.