

**POLICIES – MANAGEMENT OF
PROPERTY**

BOARD MEETING NUMBER: CC-177

RESOLUTION NUMBER: 565

DATE: March 2, 2012

**CANAL PERSONAL PROPERTY
DISPOSAL POLICY**

I. INTRODUCTION

The New York State Canal Corporation (Corporation) is responsible for the maintenance, operation, construction, reconstruction, improvement, development, financing and promotion of the Canal system and for implementation of the New York State Canal Recreationway Plan (CRP). In furtherance of such responsibilities, the Corporation may occasionally have Personal Property that requires disposal. Such Personal Property may include surplus Corporation property, lost and found property, and abandoned tangible and intangible property of others.

The purpose of this Policy is to detail the Corporation's operative policy and instructions regarding the disposal of Personal Property.

II. DEFINITIONS

A. Transactions

For purposes of this Policy, Transactions shall include, but not be limited to, Disposals and the issuance of permits, licenses and other temporary use documents for the use of Personal Property.

B. Disposals

Disposals include the sale of Personal Property, the transfer of any beneficial interest in Personal Property such as leases, and the exchange of Personal Property. Disposals do not include the transfer of Personal Property secured by a loan or other financial obligation of another party. Disposals do not include permits, licenses or temporary use documents that are otherwise revocable due to operational requirements or in the best interests of the Corporation. Consistent with prior Board action, permits do not convey or transfer a beneficial interest in the Personal Property. Statutory enactments in 2005 and 2009 govern the disposition of Personal Property in excess of \$5,000 in value.

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C. Personal Property

Personal Property includes Tangible Personal Property and Intangible Personal Property.

1. Tangible Personal Property is property possessing a physical form and includes Surplus Personal Property, property lost and found on Corporation property, Personal Property purposely left behind on real property under the jurisdiction of the Corporation, and Abandoned Motor Vehicles on Corporation property.
2. Intangible Personal Property is property that may have no intrinsic and marketable value on its own, but is merely the representative or evidence of value and may include instruments payable, drawn or issued to a payee, a bearer or to cash and may include items such as unclaimed wages, bonds, checks and other instruments representing a right with respect to property, or a share, participation or other interest in property or in an enterprise.

D. Abandoned or Lost Personal Property

1. General:

Abandoned or Lost Personal Property can be Tangible or Intangible Personal Property that remains unclaimed after notification to an owner, if known, and/or after being held for the required holding periods as prescribe by statute. This includes all lost or mislaid property found on Corporation property/premises, as well as property which is knowingly abandoned.

2. Special:

Structures and other Tangible Personal Property purposely left behind on formerly permitted, licensed or leased Canal lands, whether in violation of or in conformance with the terms of such permit, license or lease, or contrary to the direction of the Corporation which property then becomes, or is deemed to be, an encumbrance on the Corporation's real property (Canal Law §10).

E. Abandoned Motor Vehicles

An Abandoned Motor Vehicle is a type of Tangible Personal Property with special statutory and regulatory requirements for disposal and processing (see Section V.A.).

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F. Surplus Personal Property

Surplus Personal Property is a type of Personal Property that includes equipment, materials, inventory and other Personal Property that have been determined to be no longer needed for corporate purposes or where disposition of such items is in the best interest of the Corporation.

III. GENERAL LEGAL REQUIREMENTS

All Transactions shall comply fully with applicable State, federal and local laws, rules and regulations as well as policies, procedures and executive orders including, but not limited to, the Canal Law, the Abandoned Property Law, the Personal Property Law, the Public Authorities Law, the Vehicle and Traffic Law and any subsequently enacted statutes, rules and/or regulations.

IV. GENERAL PRINCIPLES

- A. The Corporation shall maintain adequate inventory controls and accountability systems for all Personal Property under its control.
- B. Tangible Personal Property that is 1) encroaching on real property under the jurisdiction of the Corporation; or 2) located on real property under the jurisdiction of the Corporation that is: (a) not authorized by the applicable permit, license or lease; or (b) left behind following the expiration, revocation or termination of a permit, license or lease; shall be handled in accordance with this Policy, the terms and conditions of the lease, license or permit regarding the removal of such property, and/or the Canal Law, if applicable.
- C. The Corporation may dispose of any Surplus Personal Property not necessary for its corporate purposes in whatever timeframe that either the Contracting Officer or the Board deems appropriate.
- D. The Corporation may authorize the use of Corporation Personal Property by an entity for any period or term using a temporary, revocable permit, license or other document that does not transfer a beneficial interest in the Personal Property. Such temporary, revocable use is not considered a Disposal for purposes of this Policy.

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- E. Personal Property shall not be disposed of by the Corporation for less than fair market value, except in limited circumstances as set forth in E.1. below. Fair market value may be determined through the use of appraisals, requests for proposals, the bid or auction process, or other means.
1. No asset owned, leased or otherwise in the control of the Corporation with a value in excess of \$5,000 may be sold, leased, or otherwise alienated for less than its fair market value except if:
 - (a) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
 - (b) the purpose of the transfer is within the purpose, mission or governing statute of the Corporation; or
 - (c) in the event the Corporation seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the Corporation's mission, purpose or governing statutes, the Corporation shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the legislature receives notification of a proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the Corporation may effectuate such transfer.
 2. In the event a below fair market value asset transfer is proposed, the following information must be provided to the Corporation Board and the public:
 - (a) a full description of the asset;

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- (b) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Corporation Board;
 - (c) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
 - (d) a statement of the value to be received compared to the fair market value;
 - (e) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (d) of this paragraph, a statement of the value to the private party; and
 - (f) the names of any other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
3. Before approving the disposal of any property for less than fair market value, the Corporation Board shall consider the information described in paragraph 2 of this section and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.
- F. The Corporation must use a competitive process as required by the Public Authorities Law and related statutes, including public advertising for Disposals exceeding \$15,000 in value, except in limited circumstances. In order to dispose of Personal Property by negotiation or public auction without public advertising, one of the following must be met:
1. The Personal Property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the Personal Property is to be sold in such quantity that, if it were disposed of by public advertising, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
 2. The fair market value of the property does not exceed \$15,000;
 3. Bid prices after advertising are not reasonable, either as to all or some part of the Personal Property, or have not been independently arrived at in open competition;

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4. The Disposal will be to the State or any political subdivision, and the estimated fair market value of the Personal Property and other satisfactory terms of disposal are obtained by negotiation;
 5. Under those circumstances permitted by Section IV.E. of this Policy; or
 6. The action is otherwise authorized by law.
- G. For Personal Property valued at over \$15,000 disposed of by negotiation, an explanatory statement is required. Not less than 90 days in advance of the Disposal, an explanatory statement shall be prepared and distributed by the Contracting Officer in accordance with Public Authorities Law §2897, detailing the circumstances of the Disposal including, but not limited to, the proposed price.
- H. The Corporation shall create a clear and comprehensive record for each Transaction that documents its compliance with this Policy. Such record shall be maintained in a manner and for a period consistent with the applicable document retention policy.

V. GENERAL PRACTICES

A. Abandoned Motor Vehicles

The handling and disposal of Abandoned Motor Vehicles is statutorily covered under Vehicle and Traffic Law and not under this Policy.

B. General Lost, Found or Abandoned Tangible Personal Property

Lost, Found or Abandoned Tangible Personal Property with a value over the statutory limits must, within ten days after the finding or acquisition by Authority/Corporation employees or the Corporation's related agents (for example, contractor), be turned over to Troop T for processing and forwarding to the Bureau of Office and Building Maintenance Services (Office Services) at Headquarters in Albany. Office Services will return the property to the owner, if known; if the owner of the property is not immediately known, then the property must be held until the statutory holding period has run. At that time, if the property has not been claimed by the true owner or someone with verifiable ownership rights, then Office Services shall return the property to the known independent finder. If the original finder was an Authority/Corporation employee or one of its related agents as defined above, ownership then vests in the Corporation and may be treated as other Corporation owned property.

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C. Special Abandoned Tangible Personal Property

Personal Property purposely left behind on Corporation property after termination of a previously issued permit, license or lease shall be handled, removed or disposed of under the terms of the permit, license or lease, or if required, pursuant to the applicable provisions of the Canal Law governing encroachments.

D. Lost, Found or Abandoned Intangible Personal Property

1. Lost, Found or Abandoned Intangible Personal Property with a value over the statutory limits must, within ten days after the finding or acquisition by Authority/Corporation employees or the Corporation's related agents (for example, contractor), be turned over to Troop T for processing and forwarding to Office Services at Headquarters in Albany. Office Services will return the property to the owner, if known; if the owner of the property is not immediately known, then the property must be held until the statutory holding period has run. At that time, if the property has not been claimed by the true owner or someone with verifiable ownership rights, then Office Services shall return the property to the known independent finder. If the original finder was an Authority/Corporation employee or one of its related agents as defined above, the property vests in the Corporation and may be redeemed or negotiated for payment to the Corporation.
2. Abandoned Intangible Personal Property originally issued by the Corporation such as unclaimed wages or benefits, or unclaimed consumer balances shall be held for the required holding times as prescribed by the Personal Property Law and Abandoned Property Law, at which time the property vests in the Corporation.
3. Other Intangible Personal Property such as unclaimed bonds, dividends, interest, securities, etc. owed to security holders shall be held for the required statutory periods by the Corporation's properly delegated trustees or other fiduciaries.

E. Surplus Personal Property

The Office of Equipment and Inventory Management will provide the Director of Purchasing or designee with information on all items of Personal Property declared surplus.

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VI. DISPOSAL PROCESS

The Director of Purchasing or designee will prepare a list of all Surplus and Abandoned Personal Property to be disposed of and prepare an internal estimate of the value of such property.

A. The method of disposal shall be based on the following Personal Property values:

1. Personal Property valued at less than \$1,000 may be sold or donated, or when having an estimated resale value less than the cost of handling and sale may be disposed of as scrap or junk;
2. Personal Property valued at \$5,000 or less may be sold by a competitive process [sealed bid, public auction or electronic auction (e.g., Internet auction such as eBay)] or when approved by the Director of Purchasing, by negotiation or informal canvassing of selected purchasers;
3. Personal Property valued in excess of \$5,000 up to and including \$15,000 may be sold by a competitive process, or by negotiation when approved by the Contracting Officer or, where required, by the Board, such as in Section IV.E. (paragraphs 2 and 3);
4. Personal Property valued in excess of \$15,000 shall be offered for sale by a formal competitive process that includes public advertising unless one of the exceptions listed in Section IV.F. is met. If such an exception exists, disposal may be by negotiation or public auction without public advertising, when approved by the Contracting Officer or, where required, by the Board, such as in Section IV.E. (paragraphs 2 and 3).

Note: For Personal Property valued in excess of \$15,000 disposed of by negotiation, an explanatory statement is required as described in Section IV.G.

B. When public advertising is required for Disposals, the following steps must be taken pursuant to Public Authorities Law §2897:

1. The advertisement shall be made at such time, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the Personal Property;

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2. All bids shall be publicly disclosed at the time and place stated in the advertisement; and
 3. The award shall be made with reasonable promptness by notice to the responsible bidder whose bid, in conformance with the solicitation, will be most advantageous to the Corporation, price and other factors considered, provided that any and all bids may be rejected when it is in the best interest of the Corporation to do so.
- C. When property is sold by sealed bid, by public auction or by an electronic auction, sale prices are approved by the Director of Purchasing or designee. If the Director of Purchasing or designee determines that property should be offered at an established or set price due to its unusual nature, or any other special conditions that would make competitive bidding impractical, the Director of Purchasing or designee will recommend an acceptable price and a method of sale to the Contracting Officer for approval.
- D. If the Director of Purchasing or designee determines that the best interests of the Corporation are served by selling at public auction, the Director of Purchasing or designee shall supervise the auction and may reject any and all bids considered to be unacceptable.
- E. Where permitted by law, Disposals may be performed by the Commissioner of General Services on behalf of the Corporation when the Corporation has entered into an agreement with the Commissioner of General Services pursuant to Public Authorities Law and/or other applicable statutes.

VII. REPORTS

The Corporation will develop and distribute reports regarding Personal Property management activities as required by law including, but not limited to, an annual Personal Property disposition report.

VIII. PROCUREMENT OF SURPLUS PERSONAL PROPERTY BY EMPLOYEES

Authority/Corporation employees may not have any personal interest in, or engage in, any activity that would create or appear to create a conflict with the proper discharge of their public duties. It is important, even in the absence of any impropriety, that no appearance of impropriety is given. Therefore, pursuant to the Public Officers Law, all Authority/Corporation employees, their spouses and any children and stepchildren under age 18 are prohibited from procuring Corporation Surplus Personal Property or otherwise securing such property through the use of an agent or other third party.

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In addition, Authority/Corporation employees, other than the Director of Purchasing or designee, shall not disclose to any non-employee any information that they obtain regarding such property due to the nature of their employment. Such disclosure by the Director of Purchasing or designee shall only be made in the course of the proper discharge of their official duties.

IX. RESPONSIBILITIES AND AUTHORIZATIONS

The Board shall designate a Contracting Officer who is responsible for compliance with and enforcement of the Policy as it applies to the disposal of Personal Property.

The Executive Director is authorized to interpret, implement, and administer this Policy and shall develop procedures necessary to carry out its intent, as well as to delegate such authority to members of his/her staff (see below). These procedures should identify the roles and responsibilities of Corporation personnel who implement and administer this Policy and define the manner in which those responsibilities are to be fulfilled. The Executive Director is also authorized to oversee the actions of Corporation staff to ensure compliance with applicable laws, rules and regulations, and with this Policy.

The Executive Director may delegate, expressly in writing, directly to the Contracting Officer, the authority to sign and execute any and all documents related to any form of property auction or other disposal methods and may also authorize the Contracting Officer to further delegate such authorization to other members of his/her staff in order to carry out the intent of this current Policy.