

# Legal Implications: Cameron Rowland's Rental Contract

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*In creating property “rights,” the law draws boundaries and enforces or reorders existing regimes of power. The inequalities that are produced and reproduced are not givens or inevitabilities, but rather are conscious selections regarding the structuring of social relations.<sup>1</sup>*

—Cheryl I. Harris

*Formal, procedural, and iconographic investigation and performative experimentation are elaborated as figures of radical social and even economic critique, while the social and economic conditions of the works themselves and of their production and reception are completely ignored or recognized only in the most euphemized ways.<sup>2</sup>*

—Andrea Fraser

Laws that govern the transfer of artists' works remain entangled in expectations of property and ownership.<sup>3</sup> The resulting presumption of exclusion, so

1. Cheryl I. Harris, “Whiteness as Property,” *Harvard Law Review* 106, no. 8 (June 1993), p. 1730.
2. Andrea Fraser, “There’s No Place Like Home,” in *Whitney Biennial 2012*, ed. Elisabeth Sussman and Jay Sanders (New York: Whitney Museum of American Art, 2012), p. 32.
3. Artists’ efforts to inform legal terms and conditions governing the transfer of ownership of their work have a long, if fragmentary, history. In the US this history includes the American Artists’ Congress (AAC, 1936–42), the Artist Equity Association (AEA, 1947–1965), the Art Workers’ Coalition (AWC, 1969–71), Robert Projansky and Seth Siegelaub’s Artist’s Reserved Rights Transfer and Sale Agreement (1971), the Artists Meeting for Cultural Change (AMCC, 1975–77), and the Black Emergency Cultural Coalition (1971–84). Artists in the US have also been directly involved in efforts at the legislative level, including the California Resale Royalty Act (1976) and the Visual Artists Rights Act (1990). The Artist’s Reserved Rights and Transfer Sale Agreement has been an influential document, directly informing contracts used by artists including Michael Asher, Hans Haacke, and Adrian Piper. This essay aims in part to reexamine how these histories are actualized through a particular artist’s contract today.

deeply entrenched in divergent and intersecting histories of race, gender, and class domination, is inculcated further by individuals and institutions commissioning, acquiring, maintaining, loaning, and selling art as legal property. Inextricably bound to the political economy of private ownership, the art field increasingly deploys, retrenches, disposes of, and redevelops property and its attendant labor.<sup>4</sup> These legislatively ratified practices of monetary extraction and exploitation—rooted in the legacy of slavery, and which became particularly visible most recently during the 2008 financial crisis—evidence an art field that is not merely coexistent with the continued history of property as subjugating economic regime but that actively reproduces this regime. Indeed, despite persistent characterizations of an art world dissociated from “real world” problems, it is widely known that by utilizing property speculation, exploited labor, financialized investments, tax avoidance, abusive loans, and insuperable debt, the field of art today is yet another site where socially accepted and legally legitimated economic violence is prevalent. Because artists, their work, and their institutions continue to be governed by property relations, many artists who assert rights for their work must contend with this legal-economic bias, as well as social, psychological, and ideological conflicts over their role as producers of property. Artists who assert rights over work they created but no longer own face a legal battle that inherently advantages the owner of the work. Artists who anticipate the possibility of a cost-prohibitive lawsuit by proposing to negotiate legal provisions for their work at its initial and subsequent points of transfer may be dismissed as too difficult to be bothered with, or as nonetheless failing to prevent their work from being subsumed by commodity logic.<sup>5</sup> Enacting standardized regulations governing the artwork may seemingly contradict the principle that art is an intangible expression of one’s personal experience. And artists continually grapple with how to acknowledge the emotionally unsustainable contradictions between the social and economic claims they ascribe to their art and the actual social and economic conditions that constitute its production, distribution, reception, and possession.

These complex problems are illuminated by a legal contract the New York-based artist Cameron Rowland has implemented in the transfer of his artistic work since 2014. This essay examines how the evolving terms and conditions of Rowland’s rental contract steered the Museum of Modern Art in New York’s rental of his works *Attica Series Desk*; *Leveler (Extension) Rings for Manhole Openings*, *New York State Unified Court System*; *1st Defense NFPA 1977, 2011* (1); and *1st Defense NFPA*

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The artist Maria Eichhorn has also examined how artists actualize these histories in her book *The Artist’s Contract*, ed. Gerti Fietzek (Cologne: Walther König, 2009), p. 336.

4. Our understanding of the political economy of ownership must include the expropriation of ownership and what that ownership subserves.

5. Paula Cooper claims that collectors are consistently dismissive of artist contracts in Eichhorn, *The Artist’s Contract*, p. 39. See also Alexander Alberro’s assertion that artist contracts have further inscribed Conceptual art in the commodity in Alberro, *Conceptual Art and the Politics of Publicity* (Cambridge, MA: MIT Press, 2004), p. 239.

1977, 2011 (2), a process initiated in April 2016 and finalized in March 2017.<sup>6</sup> Through an analysis of how Rowland's contract was negotiated between the artist, MoMA staff, the museum's acquisitions committee and legal counsel, this essay reflects on why the agreement represents a significant precedent that complicates established parameters for the ownership of art as legal property. Rather than render these parameters abstract by externalizing contentious institutional functions as an artistic intervention, the critical project of Rowland's contract is actualized in lived relations. The specificities of this negotiation at MoMA thereby elucidate the enmeshed dependencies that are repeatedly figured between the symbolic, sensorial, and affective systems of an artwork and the social conditions, property interests, and legal-economic determinations that situate it in the museum context. To write about Rowland's contract is to consider the extent to which it presents new challenges to prescribed notions of cultural competency and artistic experimentation, as well as to predominant relations of exchange, capital accumulation, ownership, and racialized dispossession that rely on property law. Rowland's contract responds to the ways property constructs circumstances of alienation and exclusion by economic advantage that have historically been legislated into our social order, while it obligates the artist, and the artist's working relations, to respond to the ways in which encountering art is also an encounter with just such circumstances. In its responsibility to the distressed social realm of practical and critical position-taking too frequently elided by art discourse, Rowland's contract asks us to rethink how art practice and the reception of art today might engender a more inclusive capacity for recognizing the situationally specific intermediate functions, legal framings, property relations, and labor conditions that artistic production operates within.

### *Rental Contract*

Rowland began drafting his rental contract in 2013, not in preparation for a specific exhibition or sale of work but as a result of his research into legal scholarship on property relations, rental-contract law, and the rent-to-own industry. The political imperatives of Rowland's research were motivated by his reading of Cheryl I. Harris's *Whiteness as Property*, an influential text in the field of critical race theory.<sup>7</sup> Harris's text argues that through legal ratification, defined property rights in the United States are founded on the privilege of white identity and person-

6. These five rented works by Rowland are from 2016.

7. Harris, "Whiteness as Property," pp. 1707–91. Critical race theory (CRT) fully emerged in the mid-1980s as a nexus of critical theory and legal scholarship that challenged the construction and representation of race and racial power in American law. For a comprehensive selection of key writings associated with the history of CRT, please see *Critical Race Theory: The Key Writings That Formed the Movement*, ed. Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas (New York: the New Press, 1996).

hood in commodifying black lives through chattel and plantation slavery, as well as in expropriating land from Native Americans. Harris's legal scholarship into this legacy of "propertized" human life and dispossession of land greatly affected Rowland's thinking regarding how, through the social and legal order, individuals today may come to expect, rely on, and protect forms of historical subordination and domination as normalized relations and conditions of exchange for property. During this research period, Rowland increasingly considered existing juridical relations and legal instruments that enforce the ownership and withholding of property. The artist examined the transaction structure utilized by Rent-A-Center, a company headquartered in Plano, Texas, with over three thousand stores in the US, Puerto Rico, Mexico, and Canada. Rent-A-Center stores are strategically located in areas of concentrated poverty, offering products including furniture, appliances, and electronics for rental and eventual purchase.<sup>8</sup> Under the company's rent-to-own model, consumers who do not have the financial resources to buy a product up front at retail price contractually commit to regular payments toward the eventual purchase of the product. Additionally, Rent-A-Center's rental contract is accompanied by a background check, or a "rental order form," which requires the customer to disclose income, employer history, and references. Rent-A-Center profits from the low-wage incomes of its customers by adding fees to the rental transaction so that the total cost for their products over a pre-specified period is three to six times the amount for the same product at any typical retailer. The vast majority of Rent-A-Center customers are not able to sustain the fee-laden payments required to achieve ownership, instead paying out for the short-term rental of the product what the product's entire purchase price is at retail or more.<sup>9</sup> Through this confiscatory disciplining of time (enforced by late penalties and brutal collection practices), Rent-A-Center is able to charge full retail cost many times over for the very same product. Rent-A-Center's business plan and legal order evidence a familiar cycle—a naturalized bargaining—that generates profit through extraction and deprivation. Operating largely in poor, underserved communities of color, the company maximizes profits not by selling merchandise but by promising ownership while preventing acquisition. What ultimately interested Rowland in

8. According to the US Census Bureau, areas of concentrated poverty are defined as those in which forty percent of the tract population lives at or below the federal poverty threshold. Bureau of the Census, *Low-Income Areas in Large Cities, Subject Report* (Washington, DC: United States Department of Commerce, 1970).

9. Research conducted in 2003 found that ninety percent of rent-to-own merchandise is returned after fewer than thirty-six percent of the scheduled weekly payments have been made. Michael H. Anderson and Raymond Jackson, "Rent-to-Own Agreements: Purchase or Rentals?," *Journal of Applied Business Research* 20, no. 1 (2004), p. 20. Rowland offers an example of the particular exploitation through price gouging practiced by Rent-A-Center in his contribution to Richard Birkett's "Rotate the Pass-Thru," *Parse Journal* 2 (November 2015), pp. 64–68. The substantially inflated transaction amounts for specific products offered by Rent-A-Center are also available (in hard-to-find small print) on the company's website as a result of the disclosure requirement stipulated by the California Transparency in Supply Chain Act.

Rent-A-Center was this strategic withholding of property, imprinted with the racially specific historical continuum of monetizing dispossession. Although this condition is present to varying extents in all rental contracts, it is particularly confrontational in the case of Rent-A-Center, where the very same products being rented are sold outright at nearly all other retail outlets. For Rowland, the comparative social, psychological, and economic dynamic between ownership and restricted ownership became central to considering how his own rental contract would function.<sup>10</sup>

The terms and conditions, as well as the enumeration and paragraphing format, of the contract Rowland drafted in 2013 are primarily those of a boilerplate equipment-rental agreement the artist sourced from Law Depot, a website providing customizable legal documents. Rowland chose this particular contract in part because of its existing use, in part because it clearly stated within the body of the document that ownership was not an option. Of the legal documents used to organize the rental of items (referred to as “Equipment”), equipment-rental agreements are the most widely circulated. Rowland’s rental contract maintains the use of “Equipment” when referring to his artworks in consideration under the terms of the contract and “Lessee” in identifying the individual or institutional representative who acts as signatory to renting the artwork. Rowland’s rental contract also utilizes Rent-A-Center’s background-check form, unchanged, as a supplemental requirement for all potential lessees. Rowland’s artist contract as lease agreement allows an individual collector or collecting institution to possess his artwork for a monthly payment on the condition of its return to the artist after a finite, pre-specified duration, with no option for renewal. The equipment-rental agreement Rowland sourced allows the artist to customize on a case-by-case basis the terms of monthly-payment amounts and the pre-specified duration of time for the rental. The artist retains the right to rent his artwork for any price, with rental payment established at the onset of the agreement.<sup>11</sup> Rental status is always determined before the work is offered for transfer, so it is in no way contingent on the individual or institution renting or being offered a rental. Rowland has committed never to sell works that are designated for rent; they therefore cannot generate a speculated market value. However, each time the artist decides to rent the work—drawing a new contract for a new lessee—the artist has an opportunity to raise, maintain, or lower the previously assigned rental-payment amount, perhaps taking into account the work’s appreciating market value. Rowland’s contract, then, does not foreclose the process of anticipating growth in the market value of his work, but it does regulate, and potentially resist, the process of accumulation, which the art market has increasingly accelerated. While Rowland’s rental contract does not ensure an equalizing solution to the problem of sales, its deceleration and regulatory functions

10. Interview with the artist, June 9, 2017.

11. *Ibid.*

operate as a distinct set of problems through which the normalization of sales and market-determined pricing are reconsidered.

By adopting the terms of the widely circulated equipment-rental agreement and Rent-A-Center background check, Rowland's rental contract redeploys these existent parameters and contractual relations within an art context. For Rowland, the primary function of this imposition is to confront predominant property relations, which establish the assumed right to own, with the possibility of that property's being withheld. Rowland insists that art and its production not be exempt from a critique of the interrelated regimes of property and poverty formed by histories of racial and capital domination, precisely because these relations and conditions are so evident within the art field itself. In order to fully articulate and enact this dynamic of withholding property, the artist designates some of his artworks as for rent only and others for sale outright. In another reference to the comparative inequity exacted by Rent-A-Center through its pricing model, Rowland stipulates that, over the entire course of the rental period, the payments shall amount to slightly more than what the artist has determined a similar work would be sold for. Rowland consciously implements a balance—a psychic, social, and material tension—between these contrasting designations through a concerted intent to maintain a similar number of artworks for rent as artworks for sale. For Rowland, if his artworks were available solely through the rental contract, the actuality of its operative function as a withholding would be diminished.<sup>12</sup> Because the artist makes works available for either rent or sale, ownable assigned status may be expected, yet the possibility of ownership is always set against the opposing possibility of temporary possession.

Rowland's overarching critical project destabilizes expectations of ownership rather than simply reflecting on the implicit inequalities and exclusion created by property ownership.<sup>13</sup> The artist actualizes—in day-to-day lived relations—a practiced methodology of continually challenging, complicating, and refusing the expectation of ownership and the assumption that artworks are bought and sold property. The consciously adopted obligations Rowland lives by, of course, obligate others as well. The contingent relations that the artist's rental contract anticipates include any individual's or institution's engaging directly in the acquisition or rental of his artistic work, as well as those individuals subsequently engaged in the maintenance of the terms and conditions stated in the contract. It is through these relations that the rental contract's regulatory demands and potential penalties exert pressures—outlining the settled expectations of the right to property that typically governs the art field, and self-locating economic subjectivities within the political life of artistic works.

Concurrently with his decision to offer artworks both for rent and for outright acquisition, Rowland finalized, without the assistance of an attorney, the initial rental

12. Ibid.

13. There is, of course, overwhelming scholarly and journalistic evidence as to the inequalities and exclusion created by property ownership. For a thorough recounting of recent relations within this inequality and exclusion, see Matthew Desmond, "How Home Ownership Became the Engine of Inequality," *New York Times*, May 9, 2017.

contract and its amended background check in the fall of 2013. It was this contract that was first implemented for artworks included in Rowland's exhibition *Bait, Inc* (April 3–27, 2014), the artist's debut at Essex Street, a commercial gallery in New York owned and operated by Maxwell Graham. Graham's willingness to work with Rowland's rental contract was, and continues to be, central to its implementation. In the run-up to the opening, Rowland decided, after consulting with Graham, to add a loans section to the contract. This section stipulates that if Rowland approves a loan request organized between the lessee and loanee, the rental period may be extended by the number of days of the loan. Rowland added this stipulation within the contract to oversee the loan of rented works and so that loans would not infringe on the term.<sup>14</sup> This section—an effort to regulate the circulation of the work while recognizing the private collector's interests in promotion and patronage—was the first of several added provisions to what would evolve into the contract as it is currently implemented. Rowland exhibited eight transferable artworks in *Bait, Inc*, three of which were organized under the rental contract.<sup>15</sup> The correlation between artworks for rent and those for purchase was underscored by Rowland's artistic and curatorial decisions within the exhibition context itself. Rowland exhibited two similar sculpture works—security pass-through cabinets the artist constructed using acrylic glass, both titled *Pass-Thru*—side by side in the gallery. One of these *Pass-Thru* works, nearly identical to the other in medium and dimensions, was offered under the rental contract and the other for purchase. The only distinguishing features between the two works were the terms of ownership and a square piece of cardboard fitted over the open window of the purchasable pass-through cabinet—a common improvisation by store clerks to control the temperature in their cubicle by restricting airflow. Two additional rental works in the exhibition also mirrored the comparative aspects of the contract through artistic decisions. Both works share the same title, *Loot*, and both comprise cut copper tubing the artist purchased at a scrapyards. During the 2008 financial crisis, the trafficking of materials legally and illegally sourced from foreclosed properties increased dramatically, and scrapyards have stockpiled these parts and infrastructure components—fraught signifiers of the abusive loans and insurmountable debt obligations exacted on working-class and low-income home buyers. The subprime-mortgage market, scrapyards, and art galleries alike are sites not just where exchange occurs but also where property and dispossession are legitimated.<sup>16</sup> I draw this connecting thread between the comparative symbolic and material aspects of Rowland's sculptural works and the comparative function of the rental contract not to conflate these differentiated modes of work. Rather, my assertion is that even though symbolic outcomes are not central to Rowland's practice, there are numerous references and

14. Interview with the artist, June 9, 2017.

15. The three works were *Pass-Thru*, 2014; *Loot* [copper fittings, bag], 2014; and *Loot* [cut copper tube, cardboard box, crate], 2014.

16. These sites are also not incidental. According to a 2015 report released by the Corporation for Enterprise Development, fifty-six percent of Americans have subprime credit scores. As the scrapyards market has become a globalized industry, scrap metal has become the US's second-most-valuable export, after computer components. The Gini Index, which tracks global financial inequality, indicates that locations of the largest art sales by profit of the past decade are also sites of the steepest rise in inequality.

associations that articulate a particularly close-knit relation between the symbolic systems of Rowland's artistic work and the far-reaching social conditions that constitute its production, reception, circulation, and consumption (both symbolic and economic). This tightly bound circuit and its intended exposure demand that we recognize our encounter with art as one that pursues, with equal commitment, the symbolic, material, and intersubjective dimensions.

All three works under the rental contract exhibited in *Bait, Inc* were rented by individual collectors, and Rowland, Graham, and potential lessees held lengthy discussions and legal negotiations in order for the contracts to become fully executed.<sup>17</sup> One particular collector—an attorney with a complex understanding of Rowland's artistic work—who was offered *Pass-Thru* at rental voiced concerns over relinquishing

17. The works were rented by individual collectors under the following terms: *Pass-Thru*, 2014: three-year rental, 3/14/2016–3/14/2019; *Loot* [copper fittings, bag], 2014: three-year rental, 11/1/2014–11/1/2017; and *Loot* [cut copper tube, cardboard box, crate], 2014: three-year rental plus six-month exhibition loan extension, 6/1/2014–12/1/2017. At the time of writing this essay, no artwork has been rented for more than one term, and the works whose rental periods have ended have been returned to Rowland. Interview with the artist, June 9, 2017.

*Cameron Rowland. Pass-Thru. 2014. Acrylic, hardware, 24-hour rotator disc. 23 x 20 x 21 inches (58.42 x 50.80 x 53.34 cm). Rental.*

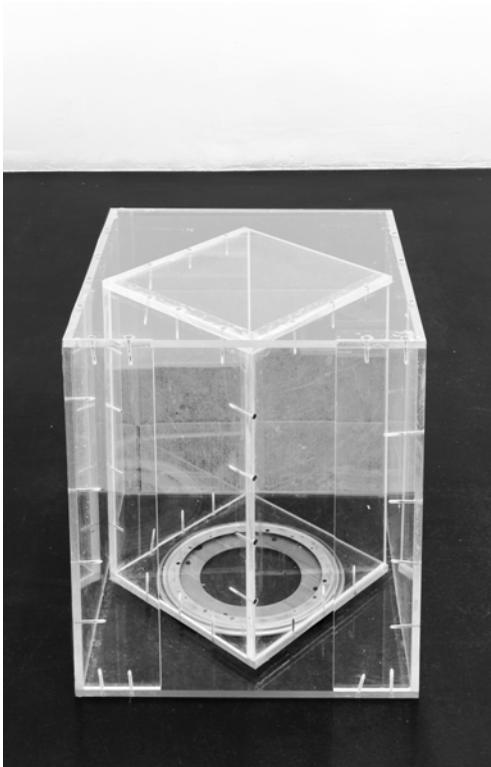
*In some places, businesses use a pass-thru to pass cash or goods back and forth; this could be at a bank or a liquor store. The highest standard of pass-thrus use bullet-proof glass, although this material is far too expensive to be used as a protective measure by those businesses where it might be most effective. Therein plastic is used in place of bullet-proof glass. They are made either by a manufacturer or by the shop owner. This pass-thru was made by Rowland.*

*All images courtesy of the artist and Essex Street, New York.*



the opportunity to retain the artwork for an indefinite future period of time. This collector noted that when an artwork that has an unlimited useful life is rented, the potential appreciation of that work is forfeited. The collector questioned how much that forfeited potential depreciated the value of the work, and asked whether there were incentives for his agreeing to such a deal. The question strikes at the core of Rowland's critical project. For the collector as property owner, the expectation that value will be accumulated, retained, and extracted from the artwork, not just in its acquisition but also in its temporary possession, is inherent in the bargain. And the comparative anxiety of not being able to own a work that another collector was able to acquire outright (the purchasable *Pass-Thru*) results in this collector's asking how to hedge against the exclusionary function of property ownership. Within this line of inquiry, two requests were made by the collector: first, that he be given a discount if he paid the entire rental up front upon taking possession of the work; second, that he retain the non-salable rental-contract document itself.<sup>18</sup> This second request delves

18. These specific questions from an undisclosed collector are available in transcribed email communications between Cameron Rowland, Maxwell Graham, and the collector in Birkett, "Rotate the Pass-Thru," p. 67.



*Rowland. Pass-Thru. 2014.*

*Acrylic, hardware, 24-hour rotator disc. 23 x 20 x 21 inches (58.42 x 50.80 x 53.34 cm).*

*In some places, businesses use a pass-thru to pass cash or goods back and forth; this could be at a bank or a liquor store. The highest standard of pass-thrus use bullet-proof glass, although this material is far too expensive to be used as a protective measure by those businesses where it might be most effective. Therein plastic is used in place of bulletproof glass. They are made either by a manufacturer or by the shop owner. A pass-thru is also an open window; when it is too cold or too hot, it may be covered with cardboard. This pass-thru was made by Rowland.*

into the long history and discourse of artist contracts (printed documents and verbal agreements), as legally functioning terms and conditions protecting artistic and practical interests for artists' work, as certificates of authenticity and attribution, as artistic works in and of themselves, and as coveted extra-art materials that become imbued with the significance and value of art objects.<sup>19</sup> Rowland's rental contract, written to prevent its specific definitions, terms, and conditions from being misinterpreted, undermined, or diminished, is intended to function as a practicable legal agreement. Its considerations serve to enforce the artist's interests for the transfer of his artistic work, and the contract operates through this distinct juridical intermediate function. As a legally binding, enforceable directive, Rowland's contract cannot be identified solely as an artistic intervention or conceptual gesture, statement, or instruction. Nor can his artistic work, which includes non-transferable works, be reduced to the terms and conditions of the rental contract. In his communications with the undisclosed collector, Rowland clearly reiterated that the rental-contract document could not be resold.<sup>20</sup> However, the question remains as to how Rowland's contract might be deployed beyond its legal function—as a kind of archival object, signifier, or stand-in for the artwork—after that artwork is no longer in the collector's possession. Rowland's contract does not stipulate return of the legal document itself to the artist following the rental period, which from a legal standpoint may be an oversight considering that document-retention and -destruction policy is a major debate within legal practice.<sup>21</sup> Lawyers often negotiate policy that allows for the destruction of legal documents after their use to avoid potentially having to turn over damaging information in the case of a lawsuit, while contracts will often include stipulations ensuring that legal documents are kept for a certain number of years to comply, for instance, with accounting standards and regulations concerning customs. Whether the collector's request to retain the document itself was in the interests of record-keeping or of fetish, it is significant that the issue of document retention was raised by a collector who also happened to be the first attorney to come into contact with Rowland's rental contract.<sup>22</sup> In response to the collector's request regarding payment terms, Rowland did not agree to full payment of the term up front and instead requested monthly payments over the course of the term. The collector never did rent the work.

19. It is no longer critically sufficient to conclude that artist contracts function as certificates that ensure that artworks—however immaterial, transient, or conceptually defined—may be commodified. Rather than become resigned to the dualism of art-as-commodity and art-as-art, this essay seeks to recognize how artists actually reconsider and complicate the situationally specific economic conditions of artistic production and reception.

20. Birkett, "Rotate the Pass-Thru," p. 66.

21. The Sarbanes-Oxley Act of 2002 is the legal precedent most often cited in debates of document-retention and -destruction policy. Sarbanes-Oxley was passed as a direct result of major corporate accounting scandals such as the widespread destruction of files by Arthur Anderson, Enron's accounting firm.

22. It is also worth mentioning that Rowland has never exhibited his rental contract.



Rowland. *Loot*. 2014.

*Cut copper tube, cardboard box, crate.*

*11 x 18.5 x 13 inches (27.94 x 46.99 x 33.02 cm).*

*Rental.*

*At some point, basic utilities like electricity and water were services controlled by the state, because they relied so heavily on public infrastructure. More and more, these flows are valued by private corporations. When abandoned buildings are broken into and stripped of their copper piping, it is sold to scrapyards, where it is cut down. This cut copper was bought from a scrapyard. Copper has a function; its base material has an inherent value.*

#### *Rental-at-Cost Contract*

Following *Bait, Inc*, Rowland would implement the rental contract for five additional artworks featured in different group exhibitions he participated in between 2014 and 2016.<sup>23</sup> In January 2016, working with the curator Richard Birkett, Rowland opened a large solo exhibition of new works at Artists Space in New York.<sup>24</sup> The exhibition's title, *91020000*, is the registration number assigned to Artists Space, which Rowland enlisted as a purchaser of goods manufactured by

23. A version of the rental contract applied to the following works: *U20E*, 2013 (one-year rental, 10/20/2014–10/20/2015); *Intermediate Preventative*, 2014 (ten-year rental, 9/1/2014–9/1/2024); *Deal Tray*, 2014 (six-month rental, 4/1/2014–10/1/2014); *Intermediate Preventative (2)*, 2014 (three-year rental, 4/1/2016–4/1/2019); and *U66*, 2014 (three-year rental, 8/1/2015–8/1/2018).

24. *91020000*, Artists Space, New York, January 17–March 13, 2016.

prison inmates and offered for sale at below-market rates from Corcraft, the market name for the Division of Correctional Industries within the New York State Department of Corrections and Community Supervision. Corcraft items can be sold only to New York State governmental entities and registered nonprofits, such as Artists Space. Rowland additionally registered the Wattis Institute for Contemporary Art at California College of the Arts, a nonprofit arts space in San Francisco, as a buyer of goods manufactured by inmates in California distributed by the California Prison Industry Authority (CALPIA) under similar restrictions. In the Artists Space exhibition, Rowland presented, without alteration, the goods purchased by the collaborating art spaces through Corcraft and CALPIA. These objects, manufactured by inmates earning wages that average less than one dollar per hour, included four oak benches built at Greenhaven Correctional Facility and used in New York State courtrooms; a steel-and-laminated-particleboard desk built at Attica Correctional Facility and used in New York State government offices; cast-aluminum manhole-leveler rings made at Elmira Correctional Facility and used on New York State public roads, and two Nomex fire suits used by California State wildfire workers, which were manufactured by inmates at Mule Creek State Prison in Ione and at the California Institution for Women in Chino.<sup>25</sup> In addition to these goods manufactured by prison inmates and sold in markets sanctioned and relied on by the carceral state, Rowland displayed within his exhibition at Artists Space other works that evidence historically specific ways in which slavery in the United States has propertized human life: three sets of lashing bars used to secure containers to the decks of ships that were inspected by Lloyd's Register, a company that oversaw marine shipping equipment for slave-ship insurers; two membership badges to the National Ex-Slave Mutual Relief Bounty and Pension Organization, founded by Callie House and Isaiah H. Dickerson in 1898 to advocate for the awarding of pensions to ex-slaves; and a collection of trust-agreement documents—the component of the work intended for exhibition—that detail a ten-thousand-dollar investment established by Rowland and Artists Space in the insurance company Aetna, which issued insurance policies to slave owners for the lives of slaves.<sup>26</sup> Rowland stipulates in this agreement that the trust can be dissolved only if the US federal government pays financial reparations to the descen-

25. *New York State Unified Court System*, 2016; *Attica Series Desk*, 2016; *Leveler (Extension) Rings for Manhole Openings*, 2016; *1st Defense NFPA 1977, 2011* (1), 2016; *1st Defense NFPA 1977, 2011* (2), 2016. Rowland published this information regarding the correctional facilities, as well as the wages of New York State prison inmates, in a pamphlet he wrote to accompany the exhibition.

26. *Insurance*, 2016; *National Ex-Slave Mutual Relief, Bounty and Pension Association Badges*, 2016; *Disgorgement*, 2016. There is a kind of violence in furnishing these deeply charged objects with only brief descriptions, and I urge the reader to review carefully the extant critical reception of these objects, which, fortunately, at least within the context of *91020000*, offers significant contributions for their reconsideration. See Rhea Anastas, "Property and Community in the Recent Work," in *Louise Lawler: Receptions*, ed. Roxana Marcoci (New York: Museum of Modern Art, 2017); and Alex Kitnick, "Cameron Rowland," *Artforum* 54, no. 7 (March 2016), pp. 260–65. In addition, Cheryl I. Harris's public lecture "The Afterlife of Slavery: Markets, Property and Race," which reflects on the objects presented within *91020000*, may be found on the archives page of the Artists Space website.

dants of slaves, at which point the holdings would be transferred to the federal agency charged with their distribution. Reparations for slavery is an ongoing, albeit marginalized, policy discussion at the state and federal levels. Policy advocates, legal scholars, and activists for reparations cite slavery as foundational to capital and commodity production in the US, and argue that the historical reality of racially specific propertization and economic subordination was protracted, well after the 1865 passing of the Thirteenth Amendment to the Constitution, in the form of convict-leasing programs and peonage. *91020000* testifies to just how durable this historical reality is, how it is reproduced today in our formed expectations of commodity logic and economic subjectivity—extending from the accepted public benefit of prison labor to the fundamental presumption that all individuals have the possibility of controlling critical aspects of their lives rather than being the object of others' domination.<sup>27</sup>

27. My formulation here of these fundamentally flawed assumptions is indebted to a specific passage of Harris's "Whiteness as Property," p. 1713.



*Rowland. Attica Series Desk. 2016.*

*Steel, powder coating, laminated particleboard, distributed by Corcraft. 60 × 71½ × 28¾ inches (152.4 × 181.61 × 73.03 cm).*

*Rental at cost.*

*The Attica Series Desk is manufactured by prisoners in Attica Correctional Facility. Prisoners seized control of the D-Yard in Attica from September 9th to 13th, 1971. Following the inmates' immediate demands for amnesty, the first in their list of practical proposals was to extend the enforcement of "the New York State minimum-wage law to prison industries." Inmates working in New York State prisons are currently paid \$0.10 to \$1.14 an hour. Inmates in Attica produce furniture for government offices throughout the state. This component of government administration depends on inmate labor.*

*Rental at cost: Artworks indicated as "rental at cost" are not sold. Each of these artworks may be rented for five years for the total cost of the Corcraft products that constitute it.*

The work of tracking the interrelated property histories of slavery, convict leasing, debt servitude, and the contemporary prison industry is accomplished through the two cohabiting groupings of works at Artists Space, and the exhibition pamphlet, which includes an exacting text by Rowland that reflects on this freighted genealogy. Rather than render the groupings of objects disembodied from their laboring subjects, the artist's legal agreements (the Aetna trust and Artists Space and Wattis registration and, as we will see, a rental agreement) obligate the artist, and art-world relations, to recognize and disclose the continued histories of enslaved labor from which these objects derive. Rowland's elaboration of the legal entanglements of exhibition, transfer, and possession—which all art operates within to a certain degree—straddles the historical socioeconomic conditions of property rights and the social expectations of property ownership reproduced by the field of artistic production today. Rowland anticipated this interconnectedness, this intersubjectivity, early on in the planning stages of his exhibition at Artists Space. It is well known that nonprofit, non-collecting exhibition venues have become sites for art acquisition and market activity. Individual collectors and collecting institutions frequently negotiate the acquisition of works, either through the artist directly or with the artist's representative gallery, during and immediately following an exhibition's run at a nonprofit, non-collecting space.<sup>28</sup> Instead of foreclosing or disavowing this economic reality, Rowland utilized his rental contract in considering the terms for distribution of the transferable works exhibited at Artists Space. The artist made one crucial alteration to the rental contract for these particular works, stipulating fixed pricing that directly corresponded to the actual price of the objects sold by Corcraft and CALPIA. This rental "at cost" contract pegs the price of the rental period to the total cost of the products constituting the artwork. Rowland uses this contract for all works consisting of Corcraft or CALPIA products. The rental-at-cost contract reasserts the below-market price of the products manufactured by prison inmates—a cost savings that state and nonprofit institutions have come to expect—to anyone who rents the work from Rowland. What does it mean for an art collector or collecting art institution to then become the beneficiary of this context-specific savings?<sup>29</sup> How is this exploited labor repurposed by the artist within his own work? Rowland's exhibition recognizes that the historically founded and legally legitimated conditions of property that produce inequality and subordination (materialized in the many enmeshed relationships that rely on public institutions in the US) also constitute both the carceral state and the field of art. Beyond the association and fungibility of prison-made goods

28. Of course, nonprofit representatives have also been known to be directly involved in these sales through back channels, whereby a sale is also part of a deal spearheaded by the director, development director, or curator to secure (tax-deductible) donations to the nonprofit institution or illegally procure commissions on these sales.

29. "Savings" here is not purely a euphemism, or mere provocation, if we consider how the fixed rental price of these artworks—in replicating the below-market price of the prison-made goods—is substantially lower than works by the artist that fall under the rental contract.

and artworks, it is the rental-at-cost contract—a legal instrument inextricably bound to the artistic form and its surrounding relations—that concretizes a socioeconomic link between seemingly distant realms that nonetheless operate through settled expectations of property. Rowland might have channeled this critique of possession/dispossession and its legally framed racial order through the externalized art form alone, strictly as an artistic proposal or conceptual gesture. However, by utilizing the transaction structure itself, Rowland directly implicates himself in the tangible risks, conflicts, and questions that result from instigating a property withholding where property ownership is widely expected. The rental-at-cost contract is distinct from the artist's initial rental contract in that it ties specific characteristics of the work into the contract. The rental-at-cost contract relies on both the dollar amount and the significance of that amount within the works it governs. This is distinct from the rental contract, which for Rowland has intentionally been used without a specific, direct relation to the artworks it governs. The artworks designated as “rental” or “rental at cost” in their captions use such contracts in perpetuity. The distinct language indicating pricing structures disclosed in the caption information is visible beside the work when exhibited and featured in the exhibition checklist, exhibition pamphlets, and any images reproducing the work. For Rowland, this disclosure becomes a way of hold-



*Rowland. Leveler (Extension) Rings for Manhole Openings. 2016.*

*Cast aluminum, pallet, distributed by Corcraft. 118 × 127 × 11 inches (299.72 × 322.58 × 27.94 cm).*

*Rental at cost.*

*Manhole-leveler rings are cast by prisoners in Elmira Correctional Facility. When roads are repaired, the rings are used to adjust the height of manhole openings and maintain the smooth surface of the road. Work on public roads, which was central to the transition from convict leasing to the chain gang, continues within many prison-labor programs. The road is a public asset, instrumental to commercial development.*

*Rental at cost: Artworks indicated as “rental at cost” are not sold. Each of these artworks may be rented for five years for the total cost of the Corcraft products that constitute it.*

ing all parties accountable for maintaining the particular assigned status.<sup>30</sup> Rowland's substantial writing practice includes authoring the captions for his artistic work. The informationally descriptive and analytically reflective paragraphs that form the captions often stem from his research, and in their operational disclosure, analytical insight, and educational function are integral to encountering Rowland's artistic works.

*Contract Negotiations at MoMA*

It is, of course, significant that Rowland's contract, in asserting temporally finite possession rather than permanent ownership, would be negotiated at the Museum of Modern Art. MoMA has a sordid and oft-cited history with artists who intervene in the museum's permanent-collection practices. In 1968, the artist Panagiotis "Takis" Vassilakis submitted a letter formally requesting that his work *Tele-sculpture*, which MoMA owned, be withdrawn from the museum's thematic group exhibition *The Machine as Seen at the End of the Mechanical Age*.<sup>31</sup> MoMA did not comply with Takis's request despite the artist's argument to the museum's curator, Pontus Hulten, that the particular sculpture was no longer representative of his artistic practice and that, as the producer of the work, he had a right to determine its exhibition even if he no longer owned it. Takis's contested claim of proprietary rights directed at MoMA's ownership privileges became a catalyst in the formation of the Art Workers' Coalition, which in part advocated for legal and organizational policies to defend artists' claims for greater control over the terms and conditions of ownership of their work. As an extension of the wide-ranging discourse and actions that the AWC organized, coalition members submitted a list of specific demands and museum-policy reforms to museum director Bates Lowry in January 1969.<sup>32</sup> The AWC's request to hold a public hearing at MoMA to discuss the "museum's relationship to artists" was turned down by Lowry, as was their

30. Interview with the artist, June 9, 2017.

31. Following his rebuffed request, Takis physically removed his sculpture from the exhibition and relocated it to the MoMA sculpture garden. The artist also requested a conversation with the director of MoMA to discuss museum reform; the request was denied. Julia Bryan-Wilson, *Artworkers: Radical Practice in the Vietnam War Era* (Berkeley: University of California Press, 2009), p. 13.

32. On April 10, 1969, the AWC presented a series of artists' statements and criticism at an open hearing held at the School of Visual Art in New York. The open hearing was a culmination of months spent negotiating with executive administrators of MoMA on a range of reforms, including equal representation of artists, museum professionals, and patrons on museum boards; royalties paid to artists when their work was exhibited; free admission; and increased representation of women artists and artists of color. Robert Projansky and Seth Siegelau's contract resulted from the AWC's hearings. It is also important to note that the Projansky and Siegelau contract includes provisions establishing ongoing rights for artists after the transfer of their work (the right to be consulted if their work is loaned or repaired, a fifteen percent resale royalty, and reproduction rights). However, enforcement of these rights devolves on the individual artist, who must engage in a lawsuit against an individual or entity (e.g., an LLC) with full ownership of the work. The inherent financial cost of such a legal recourse makes enforcement a prohibitive task for many artists faced with the complexities of asserting rights over property they no longer own. See Eichhorn, *The Artist's Contract*, p. 39.

request that “artists . . . be paid a rental fee for the exhibition of their works.”<sup>33</sup> It is worth mentioning again here that the large group of artists, curators, and writers that made up the AWC included individuals from MoMA’s professional and front-line staff. Director of Public Information Elizabeth Shaw, Director of the Department of Architecture and Design Arthur Drexler, Associate Curator Jennifer Licht, and other MoMA staff members were involved in supporting the AWC initiative to produce a poster condemning the My Lai massacre of hundreds of unarmed civilians by US soldiers in South Vietnam. However, William S. Paley, president of the MoMA board of trustees, ultimately forced the museum to withdraw its support of the AWC initiative.<sup>34</sup> The divergent interests of MoMA’s professional staff and the museum’s board resulted in hard-fought negotiations culminating in a labor contract for the professionals along with their unionization in 1971. MoMA’s unionization process was supported by artist-oriented groups such as the AWC, and the stipulations of their contract mirrored concurrent demands by artists for a greater role in determining museum policy.<sup>35</sup>

This history of internal conflict and occupational anxiety continues in our historical present. Despite MoMA’s growing endowment, unprecedented executive-level compensation packages, major building expansions, and blue-chip art acquisitions, MoMA’s union (PASTA/Local 2110) has had to repeatedly engage in contested contract negotiations to keep staff health-care benefits intact, receive appropriate wages, and settle terms that define the museum’s obligation to serve a public that supports the institution through tax deductions and for whose benefit it exists as a charitable organization.<sup>36</sup> With a staff of over twelve hundred across multiple departments, active acquisition and publishing programs, and one of the largest museum operating budgets in the US, MoMA has a profound effect on lives locally, as well as on the nested ecology of art institutions in the US and beyond. Large-scale institutions have a way of occupying our attention for strategic reasons, but also as a matter of necessity. MoMA’s history of social, economic, and artistic contestation presents distinct challenges for artists who intervene in the museum’s policies and conduct. Yet it is precisely because MoMA embodies such a particularly messy, embattled, high-stakes site that artists have implicated themselves—through their artistic work, agitations, and countervailing reforms—in its constituent relations and conditions. While artists’ challenges to museum authority have become increasingly expected, even welcomed, by museum representatives, it is important to recognize that there are limits to this

33. Alfred H. Barr, Jr. Papers, IA.536, the Museum of Modern Art Archives, New York.

34. Francis Frascina, *Art, Politics and Dissent: Aspects of the Art Left in Sixties America* (Manchester, UK: Manchester University Press, 1999), pp. 176–78.

35. See Andrea Fraser, “What’s Intangible, Transitory, Mediating, Participatory, and Rendered in the Public Sphere,” in *Museum Highlights: The Writings of Andrea Fraser*, ed. Alexander Alberro (Cambridge, MA: MIT Press, 2005), p. 58.

36. The most recent PASTA contract negotiations took place in 2015. The union’s 2015 open petition to director Glenn Lowy discusses these demands, and they are reflected in legal documents including recent memorandum agreements available on the 2110 UAW website, <http://www.2110uaw.org/moma.htm>.

acceptance. Artists have had to rely on the divisions of labor and differentiated interests within the hierarchy of museum workers in order to realize projects contending with the socioeconomic conditions of exchange within the museum. For his contribution to the 1999 MoMA exhibition *The Museum as Muse*, the artist Michael Asher compiled a list of permanent-collection works sold off or exchanged by the Department of Painting and Sculpture since the museum's founding in 1929. Asher's analysis of MoMA's deaccession program and subsequent publication of the compiled list tracking these contentious property relations were dependent on support from registrars and archivists working at MoMA, as well as the exhibition's curator, Kynaston McShine, in advocating on the artist's behalf.<sup>37</sup> Art has been pestered for so long by the assertion of autonomy that dependency is regarded as an aberration, a purely negative condition. Artists and art institutions alike consistently tout independence. And yet the effort to more fully recognize dependencies—the conflicting lived relations within circumstances of necessity—has also led artists to continually intervene in the enmeshed social struggles and economic transactions within the museum.

MoMA associate curator Thomas Lax first initiated the process of acquiring Rowland's work for MoMA's permanent collection in March 2016, just as the artist's exhibition at Artists Space was concluding. Lax had worked with Rowland previously as a curator co-organizing the *Greater New York* exhibition for MoMA PS1 (October 11, 2015–March 7, 2016), which included works by Rowland under the rental contract. Lax maintained a dialogue with the artist over the course of *Greater New York* and the overlapping *91020000* exhibition. After numerous visits to the Artists Space exhibition, Lax approached Ann Temkin, chief curator of painting and sculpture at MoMA, and MoMA associate director Kathy Halbreich to gauge the feasibility of his leading an acquisition of Rowland's work from the Artists Space exhibition. In her role overseeing the museum's Fund for the Twenty-first Century—a fund targeting works produced within five years of the time of acquisition—Halbreich's participation in these early conversations was crucial. With the support of Temkin and Halbreich, Lax consulted with Laura Hoptman, curator for contemporary art in the Department of Painting and Sculpture, and Peter Eleey, chief curator at MoMA PS1, to decide which works from *91020000* might be proposed for transfer to the museum. Lax, Hoptman, and Eleey together decided which works could function outside of the Artists Space context, considering a network of relations within the installation that could be captured, and meaningfully registered, within the context of MoMA.<sup>38</sup> The curators decided on proposing all of the work in *91020000*, except for two of the three works titled *Insurance* and the work titled *Partnership*, which is non-transfer-

37. *Painting and Sculpture from the Museum of Modern Art: Catalog of Deaccessions* (New York: MoMA, 1999). Asher's initial proposal for the exhibition was rejected by MoMA, while the realized publication included a disclaimer statement from MoMA's chief curator of painting and sculpture, Kirk Varnedoe, undermining the artist's intent. See Martha Buskirk, *The Contingent Object of Contemporary Art* (Cambridge, MA: MIT Press, 2003), p. 173. The deaccessioning of art from museum collections continues to be argued for as a means by which less relevant work can be replaced by stronger work. This argument, perhaps commendable as an effort to diversify collections, does not, however, disclose the fact that these sales require museums to support and benefit from the speculative secondary-market industry.

38. Interview with Thomas Lax, April 7, 2017.

able. Of the nine works proposed, five consisted of objects distributed by Corcraft and CALPIA and fell under the rental-at-cost contract, one was offered as an extended loan, two were offered as acquisitions to the collection, and one as an acquisition to the museum's library.<sup>39</sup> With the framework for this proposal intact, Lax then pursued a conversation with Rowland and Graham to secure the work. Rowland agreed to the proposed acquisition, loan, and rental terms and presented the rental-at-cost contract. Lax took the contract to MoMA general counsel and board secretary Patty Lipshutz, who worked to review it with Nancy Adelson, MoMA deputy general counsel, and Alexis M. Sandler, MoMA associate general counsel. Over the next five months, from October 2016 to February 2017, Lipshutz submitted annotations to the contract to Rowland and the artist responded with revisions or alternative suggestions. During the editing process, Rowland met with Scott Lorinsky, a New York State contracts lawyer, to review the revisions. Lorinsky advised Rowland on several modifications, including two key elements that Rowland would incorporate into the legal document. Lorinsky advised Rowland on the wording of an automatic-renewal clause requested by MoMA, as well as on the use of a stronger force majeure clause, which protects Rowland from lawsuit or remedies in extreme cases (including natural or man-made disaster, armed conflict, and labor disruptions) in which he would be unable to perform any of his obligations under the agreement.<sup>40</sup>

39. The three works proposed that did not fall under the rental-at-cost contract were *Insurance* (one of three from the 91020000 exhibition, it was purchased outright); *National Ex-Slave Mutual Relief, Bounty and Pension Association Badges* (purchased outright); *Disgorgement* (the document collection of Reparations Purpose Trust, Aetna Shares; under a separate trust agreement, MoMA has agreed to continue the trust if Artists Space is no longer able to serve as the grantor); and *2015 NCIA Directory* (a publication of annual prison statistics that Rowland reprinted and made available at Artists Space, and which the MoMA library acquired outright).

40. Interview with the artist, June 9, 2017. The strength of this force majeure clause comes from the obligation it places on MoMA to "use its reasonable endeavors to mitigate the disruption of the performance of its duties and obligations, as the case may be as soon as possible." When I refer to specific clauses or stipulations within the contract, I am sourcing directly from the document itself: Cameron Rowland, "Rental at Cost Contract," 2017, and all citations of contract language are from this document. "Remedies" is a particular euphemism within legal language referring to the penalties sought against a party.



Rowland. New York State Unified Court System. 2016.

*Oak wood, distributed by Corcraft. 165 × 57½ × 36 inches (419.1 × 146.05 × 91.44 cm).*

*Rental at cost.*

*Courtrooms throughout New York State use benches built by prisoners in Green Haven Correctional Facility. The court reproduces itself materially through the labor of those it sentences. Rental at cost: Artworks indicated as "rental at cost" are not sold. Each of these artworks may be rented for five years for the total cost of the Corcraft products that constitute it.*

MoMA was the first institution to propose an acquisition of the works that Rowland offers under rental terms. In dealing with individual private collectors prior to the MoMA acquisition, Rowland assigned wide-ranging rental periods to works: Some were offered for as little as six months or one year, while many others were rented for three years; one work was rented for a ten-year period. Rowland decided on a five-year rental period for the rental-at-cost works included in *91020000* during the planning stages of the exhibition. For Rowland, five years provided a feasible amount of time within which the work could be tracked.<sup>41</sup> Perhaps it was in consideration of this temporal finitude that Lipschutz requested an automatic-renewal clause for the rental-at-cost contract. Rowland agreed to this addendum because he stipulated that the automatic renewal not commit either party to subsequent rental terms nor confer a right of refusal.<sup>42</sup> The automatic renewal merely removes the logistical requirement of re-signing or renegotiating the terms of the contract in the event that both parties want to renew. If at the end of the five-year term either party does not wish to renew the contract, that party provides the other party with written notice at least sixty days before the end of the term. Just as the contract may be renewed, so too may it be revoked. The possibility of renewal creates a structurally consistent regulatory function whereby all parties are obligated to reconsider the rental every five years.<sup>43</sup> While the contract establishes the right of the artist to control how the work circulates over time, introducing the possibility of renewal also creates a potentially indefinite period of time during which MoMA may possess the work. As long as both parties agree to renew at every five-year interval, the work remains in the custody of MoMA, subject to the broader structural asymmetries within which Rowland implicates himself as signatory to the contract. Rather than evade, foreclose, or negate the relations and conditions predicated on large inequities of power, Rowland's contract highlights just how enmeshed these circumstances of agency, vulnerability, and contingency are. While Rowland may always choose not to renew with MoMA, the pressures exerted on him to agree to renewal may become more acute, the incentives greater, the longer MoMA maintains an interest in possessing the artist's work. In addition to the automatic-renewal clause, MoMA made a further request regarding a "successors and assigns" provision stipulating that the agreement inure to the heir, estate, executor, administrator, or successors of either party. Rowland did not

41. Interview with the artist, June 9, 2017.

42. Right of refusal is a specific contractual allowance wherein the lessor is obligated to offer the lessee a new contract at the end of the term. There is no right of refusal in any of Rowland's rental contracts. Indeed, Rowland has been at pains not to offer rights of refusal to any party renting his work.

43. Related to the contingent temporal conditions stipulated within the rental-at-cost contract is the "assignment" section (paragraph 12), which includes but is not limited to "any transfer, sale, resale, lease, sublease, license or sublicense arrangement." In other words, the lessee cannot assign the equipment to another party without Rowland's consent. The assignment section has existed in all versions of the contract. Rowland will give consent only if he has specific knowledge of the terms and conditions. If these are not provided, or if Rowland does not agree to them, the artist does not have to consent.

agree to this proposed clause, arguing that he had no way of knowing what kind of institution, individual, or company would be considered the heir of the Museum of Modern Art if it ceased to exist. As such, the rental-at-cost contract with MoMA only inures to Rowland's successors, heirs, or estate.<sup>44</sup> Both the automatic-renewal and proposed-successors clauses demonstrate how persistent expectations on the part of the museum are mobilized through substantial legal resources to maintain its interests in the continued possession of art.

In January 2017, with the modifications to the contract largely completed, Lax presented his proposal for the acquisition and rental of Rowland's works to the two acquisition committees that would vote on it: the Fund for the Twenty-first Century committee and the Painting and Sculpture Department acquisition committee. Both committees are made up of board members and non-board member patrons.<sup>45</sup> Committee members are advised by curators and deputy directors on the significance of the proposed artworks, yet it is ultimately up to them to decide the fate of the acquisition proposal. That the acquisition committee is composed entirely of patrons is typical of collecting museums in the US, as is MoMA's adoption of the corporate-board model to facilitate commodification. The degree to which voting acquisition-committee members have their own agency, apart from the potential of competing interests of staff curators, or invited artists, is worth considering in assessing the composition of the committee. That the voting body excludes individuals who practice art, as well as individuals who emphasize historically based artistic criteria within their practice, does not, however, avoid the potential conflicts of interest of the committee members themselves given that most maintain private individual collections as well.<sup>46</sup> In March 2017, all of Rowland's proposed works, including the five under the rental-at-cost contract, were approved by MoMA, and the fully executed contracts were delivered to Rowland and the museum's general counsel. Lax was intent on finalizing the acquisitions and rentals by March 2017 so that a number of Rowland's works could be included in the curator's exhibition *Unfinished Conversations: New Work from the Collection*.<sup>47</sup> The title of Lax's exhibition noticeably avoids the term "acquisitions,"

44. Interview with the artist, June 9, 2017.

45. In an effort to emphasize the individuals who worked with the different organizations as they relate to Rowland's contract in my reporting for this essay, I asked MoMA for the names of its acquisition-committee members. My request was denied on the grounds of privacy rights. I am nevertheless grateful to Thomas Lax for conferring with his colleagues and with the museum's general counsel on this, and for his overall efforts in supporting this reporting.

46. MoMA does not disclose how its acquisition-committee members are selected. It is worth mentioning here that since the 1980s, we have witnessed how, through their social, economic, and legislative advantages, finance executives assert control over what art is acquired and by what means in their growing capacity as collectors, private advisors, board trustees, and members of museum acquisition committees.

47. *Unfinished Conversations: New Work from the Collection*, Museum of Modern Art, New York, March 19, 2017–July 30, 2017.

while the accompanying press release describes the works featured in the exhibition as “recently acquired.” One might argue that *Unfinished Conversations* could not really be called an “acquisitions” show, as it included a number of Rowland’s rented works. Yet Rowland’s efforts in negotiating the rental-at-cost contract at MoMA were not opposed to the museum’s referring back to its collection, even if this perpetual self-attribution also asserts the primacy of the collection and the front-loaded structural conditions for its expansion. Rowland’s contract instead transforms the very expectations of what constitutes the museum’s collection and the actual policies that govern its collecting practices. By utilizing the transaction structure to withhold the right of ownership of his work within MoMA’s permanent collection, Rowland creates a legal exception—an irregular background against which legal disputes regarding possession of the work are framed, argued, and adjudicated—within the museum’s consolidated authority and settled expectations of property ownership. Rowland’s agreement with MoMA reorients the museum’s collecting practices entirely within their function as an intermediary maintenance of relations between artist, patron, and institutional representatives. While the agreement insists on the role of the museum as a tenant obligated to the temporary holding of artistic works, it must also be recognized as a responsibility to the specific objects bound to the rental-at-cost contract. MoMA’s tenancy of these objects derived from the hyper-exploitation of black labor through the foundational legacy of slavery must contend with this historical interaction between conceptions of race and property.

The museum faces this responsibility each time it presents these objects to audiences (will MoMA continue to charge admission to view these works?), as well as each time the terms of renewal are revisited (what would it mean for the museum to reassert, through legal proceedings or social pressures, its expectations of power, control, and protectable property interests over these objects?). Just as MoMA’s staff and management are responsible for the reception of the objects bound to the rental-at-cost contract, the mutual exchanges of the contract give Rowland an equal capacity to respond to the conditions of reception. Within and beyond MoMA, Rowland’s contract establishes a firm legal precedent that artists might consider useful in resisting the front-loaded ownership demands of museum acquisition departments.<sup>48</sup> Despite

48. In establishing a legal precedent, the lengthy negotiations at MoMA also strengthened Rowland’s rental contract and rental-at-cost contract for future transactions. For instance, the rental contract used for the artist’s exhibition *Birmingham*, which opened in May 2017 at Daniel Buchholz gallery immediately following *Unfinished Conversations*, incorporates the force majeure clause suggested by Scott Lorinsky. And perhaps it is by continuing to expose Rowland’s work that artists, taking on curatorial activity, may further articulate the legal terms and conditions of the rental contract. The artist Louise Lawler provides a recent example for this relayed exposure. Rowland’s *New York State Unified Court System*, the four oak benches built by inmates at Greenhaven Correctional Facility, were exhibited by Lawler in her own retrospective, *Receptions*, which opened at MoMA on April 30, 2017. Louise Lawler, *Why Pictures Now: Receptions*, curated by Roxana Marcoci, Museum of Modern Art, New York, April 30–July 30, 2017. Lawler included Rowland’s bench works after significant discussions with the artist, with whom Lawler had a previously ongoing dialogue. For insights into this collaboration between Lawler and Rowland within *Receptions*, please see Rhea Anastas, “Property and Community in the Recent Work,” and Roxana Marcoci, “An Exhibition Produces,” in *Louise Lawler: Receptions*.

Rowland. 1st Defense NFPA 1977, 2011. 2016.

Nomex fire suit; distributed by CALPIA. 50 x 13 x 8 inches (127.00 x 33.02 x 20.32 cm). Rental at cost.

"The Department of Corrections shall require of every able-bodied prisoner imprisoned in any state prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the Director of Corrections."—California Penal Code §2700

CC35933 is the customer number assigned to the nonprofit organization California College of the Arts upon registering with CALPIA, the market name for the California Department of Corrections and Rehabilitation, Prison Industry Authority. Inmates working for CALPIA produce orange Nomex fire suits for the state's 4,300 inmate wildland firefighters.

Rental at cost: Artworks indicated as "rental at cost" are not sold. Each of these artworks may be rented for five years for the total cost of the CALPIA products that constitute it.



an increase in the support and promotion of strictly ephemeral projects, the acquisition of artworks as property remains dominant within collecting institutions, and it is increasingly evident within the ecology of non-collecting art institutions that rely on auction benefits and the sale of editions.<sup>49</sup>

#### *Withholding Ownership*

Key questions remain for the rental contract as it continues to circulate. Pressure to allow a greater percentage of works to be acquired outright potentially undermines the comparative tension of Rowland's critical project of maintaining a similar number of artworks for rent as for sale, even as works sold outright create a market for the artist against which he may then offer other works for rent. If the demand for ownership ceases, so too does the effort to thwart the expectation of ownership.<sup>50</sup> Yet it must be recognized that Rowland's long-term efforts have already established that the function of the rental contract is to actively withhold

49. Ephemeral projects also often produce objects for acquisition.

50. It should again be noted here that there are works by Rowland that are neither for sale nor for rent: *Incorporation*, 2014, is not transferable; *Partnership*, 2016, is not transferable; *Disgorgement*, 2016, is on extended loan to MoMA; *Public Money*, 2017, was a gift to the Whitney Museum of American Art; and *RWE*, 2017, is not transferable.

the ownership of property rather than generate more ownable value. The significance of this particular effort extends to endowing artists with the fundamental structural capacity to assert rights over their work, and to questioning the decisive role of property and accumulation within our political economy. Given that the law consistently favors the property owner, artists who want to be able to assert their rights over their work after its sale and transfer must conceptualize strategies for retaining ownership. Licensing, joint ownership, trusts, and lease agreements are legal instruments that artists may adopt to retain ownership of their work and to secure a greater role in mediating the transactional order of art. Ultimately, what does it mean for the artist to assert a withholding of ownership, to repeatedly try and thwart the expectations of ownership? The comparative anxiety of renting that which others are able to own is an imposition that Rowland as lessor bears with the lessee of his work. Rowland's project intimates how the racially encrypted and everyday absolute right of property to exclude is particularly confrontational. And the artist's rental contract maintains this confrontation through self-implication rather than distanced critique—an enacted means for recognizing the psychological, social, and material forms of dispossession, deprivation, self-determination, dependency, and vulnerability the artist, the artist's working relations, and the art world's legitimating institutions are defended against. While Rowland's rental contract is a mechanism for critical introspection into the comparative anxieties and damaging lack of basic necessities created by property relations in the art field, by operating on the actual legal-economic terms of property transaction, the rental contract is far-reaching: realizing how art is wrested from the expectations of property, while also evidencing how inextricably bound property is to the pervasive legacy of racial capitalism.