



New York State Archives

Alienated Records

How to find, recover, and keep from losing them in the first place
www.archives.nysed.gov



How Records Become Alienated

- Left custody of original owners
- Thrown away but recovered by others
- Lost but recovered by others
- Taken or kept by employees
- Stolen



Why Records Stray

- Lack of control over records
- People keep records
- People take records home
- Records are lent out
- Records are informally given to another organization to clear space



When Records May Not Be Alienated

- When you abandon them
- When you give them away
 - Unless done without authority
- When records are naturally transmitted
 - A letter sent from a town is not alienated
- When records are destroyed
 - Not all gaps in records can be filled



Protecting Your Records from Escape

- **Set up controls over records**
- Teach that records are government property
- Track any transfer of records to others



Documenting Ownership of Records

- Records Inventory
- Finding Aids
- Records Disposition Policy



When You Have Reasons to Let Records Leave Your Custody

- Consider deposits
- Consider donations



Reasons to Deposit or Donate Records

- Not enough space to store records
- Inadequate environmental controls
- Can't provide reference services



Deposit (vs. Donation)

- Deposit
 - You retain ownership
 - You can regain physical possession
 - You can ensure records are not destroyed
 - Necessary for records you cannot dispose
 - More common with government records
 - Consider setting a time limit



Must Get Permission for Deposit Arrangements

- Section 57.31, Local Government Records Law
 - Permits participation in cooperative records storage
 - Must meet criteria of the State Archives



Donation (vs. Deposit)

- Donation
 - You give away ownership
 - You cannot reclaim the records afterwards
 - Only possible for records you can destroy
 - Less common with government records
 - No permission needed from state unless the records predate 1910



Agreeing to and Documenting Record Transfers

- Determine What You Need
- Review Sample Agreements
- Use Formal Agreements
- Document Existence of Agreements
- Use Legal Counsel
- Get approval of governing body



Records Donated to Local Governments

- Follow the same procedures
- Ensure donor has clear title to records
- Document all agreements
- These become government records
- Keep track of costs of maintenance



Shenendehowa Central Schools,
Shenendehowa Public Library
and Records of the Predecessor School Districts

CASE STUDY # 1 DEPOSITING RECORDS



Town of Stockholm,
the Stockholm Historical Society
and the Town's Early
Chattel Mortgages

CASE STUDY # 2 DONATING RECORDS



When Receiver of Records Wants to Dispose of Records

- Insist on right of first refusal
- Determine if you want the records
- If not, see who may want them
- Document the re-transfer of records
- Ensure the issues covered by contract



Other Records Transfer Relationships

- Transfer to a central repository
 - With a legal relationship
 - With an informal relationship
- Transfer to a cooperative entity
 - Multiple entities join forces
 - Cooperative solution



Legitimate Methods For Transferring Your Records

- Deposit
- Donation
- Transfer to a central repository
- Transfer to a cooperative entity



What About Those Records You are Missing?

- Before you start the search
 - Be sure the records really existed
 - Determine whether disasters may have destroyed them
- If you know the records existed, start the search



Searching for Alienated Records

- Interviews/Investigations
- Historical Societies
- Private Collectors
- Auctions - live and online
- Bookstores - printed and online catalogs
- Place ad in paper seeking records



Searching for Records Online

- Online auctions
 - ebay.com
 - yahoo.com
- Online used booksellers' catalogs
 - bookfinder.com
 - abebooks.com
- Online library catalogs
 - RLIN/NUCMC
lcweb.loc.gov/coll/nucmc/nucmc.htm
 - HDI www.archives.nysed.gov/hdi.htm



Retrieving Alienated Records

- More than one way to do this
- Choice depends on the exact situation
- Examine case studies



Saratoga County
and its Lists of Paupers
Admitted into the Poor-House

CASE STUDY # 3 RECORDS RECOVERY BY PAYING



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LIST OF PAUPERS ADMITTED TO POOR HOUSE SARATOGA 1893
Item #59662967

[Click here to view item details](#)

align="center">Bidding is closed for this item.

Currently	\$2,340.00 (view details)	First bid	\$2.00
Quantity	1	# of bids	23 (view history) watch counts
Time left	Auction has ended.	Location	UPSTATE NEW YORK
Started	01/24/99 04:20:04 PST	View all the records in a browser	
Ends	01/31/99 04:20:04 PST	View a picture gallery	

Seller: [jherold@depot.com](#) (27) 
[View seller's feedback](#) ([17](#)) [View seller's other auctions](#) [Ask seller a question](#)

High bid: [anjette@mad.com](#) (1)

Payment: See item description for payment methods accepted.
Shipping: Seller ships internationally. See item description for shipping charges.



View [Seller's view](#) of this item before the bid.

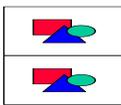
Refer item **Seller:** Now that the auction has ended, you can visit the item's [Seller's view](#).

Seller assumes all responsibility for listing this item. You should contact the seller to resolve any questions before bidding. Currency is U.S. dollars (USD) unless otherwise stated.

Description

THIS IS AN ANTIQUE SARATOGA ALBUM BOOK CONTAINING THE LIST OF PAUPERS ADMITTED INTO THE COUNTY POOR HOUSE OF THE COUNTY OF SARATOGA STARTING NOV 30 1861 ENDING OCT 30 1908. TOTAL NUMBER OF PAGES ENTERED IS 622. EVERY PAGE AND EVERY LINE IS FILLED IT HAS FULL NAMES NATIONALITY WHEN ADMITTED FROM WHAT TOWNSHIP THESE GOVERNMENT DEPARTMENTS IN WHAT MANNER REMAINS KNOWNNESS IN LINES. (OLD AGE DEWICYS NANCY, ESTABLISHED IN THE PERSONS OF AGENCY, TRAGEDY) WHEN CORRESPOND WITH LIXORS LIKE OVER 800 PAGES THE OUTSIDE BEING VERY MARK THE THREE IN FACT AND IN GOOD SHAPES YOU MAY FIND SOME NAMES OF AN HISTORICAL NATURE BOOK MEASURES 14 1/2 INCHES BY 11 1/2 INCHES THIS IS A RARE ONE OF A KIND ITEM. THANKS GO SHIRTLES OUTSIDE US. must check one GOOD LUCK

On 01/28/99 at 23:47:22 PDT, seller added the following information:




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Tell us what you think. Complete the [short survey](#).

Need a **Valentine's Day gift**? Check out our special [gift section](#).

eBay bid history for LIST/PAUPERS ADMIT POOR HOUSE SARATOGA 1893- (item #59860987)

If you have questions about this item, please contact the seller at the User ID provided below. Seller assumes all responsibility for listing this item.

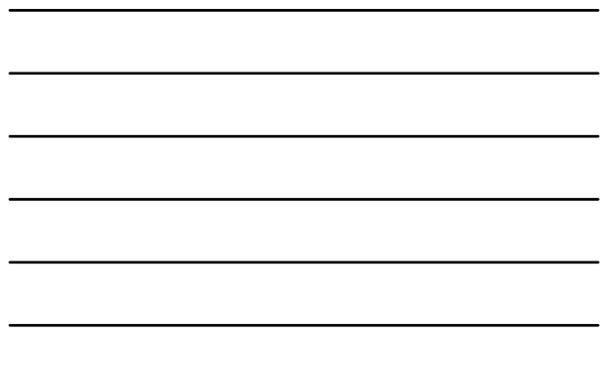
Last bid for this item: **\$234.00** [View listing](#)
 Date auction ended: **01/28/99 04:20:06 Pacific Standard Time**
 Date auction started: **01/24/99 04:20:06 Pacific Standard Time**

Seller: [biddirkman](#) (197) 

Final bid: **\$234.00**
 Number of bids made: **33** (only include multiple bids by same bidder)

Bidding history (in order of bid amount):

Buyer	Last bid at:	Date of bid:
assetsemail.com (1)	\$234.00	01/28/99 02:25:19 Pacific Standard Time
www (24)	\$231.50	01/21/99 04:18:41 Pacific Standard Time
mymoochidnew (2)	\$217.00	01/21/99 04:18:36 Pacific Standard Time
mishel (1)	\$170.00	01/20/99 06:57:27 Pacific Standard Time
shondal (24)	\$170.00	01/20/99 08:48:48 Pacific Standard Time
reflexion (1)	\$114.00	01/20/99 10:24:42 Pacific Standard Time



[saratogahistorical](#) (0)

Last bid at:	\$60.00
Date of bid:	01/27/99 08:06:55 Pacific Standard Time

[com1971dmsm.com](#) (4)

Last bid at:	\$35.00
Date of bid:	01/24/99 07:32:27 Pacific Standard Time

[dianecan](#) (13)

Last bid at:	\$22.99
Date of bid:	01/24/99 05:48:18 Pacific Standard Time

[buddirkman.com](#) (197)

Last bid at:	\$6.00
Date of bid:	01/24/99 08:59:52 Pacific Standard Time

Remember that earlier bids of the same amount take precedence.

[Bid retraction](#) and [cancellation](#) history (if any):

There are no bid retractions.

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City of Plattsburgh
and its First Minute Books

CASE STUDY # 4 RECORDS RECOVERY WITHOUT PAYING



Once You've Tried Everything to Recover the Records

- Negotiation
- Offering alternatives
 - Microfilm or photocopy the records
- Purchase
- If these don't work, consider replevin



Replevin

1. an action for the recovery of goods or chattels wrongfully taken or detained.
2. the common-law action or writ by which goods are replevied.

{Random House Webster's Unabridged Electronic
Dictionary, 1996}



Replevin in the Law

- Action to regain custody of alienated property
 - Covers any property, not just records
- Grew out of common law action of replevin
- Article 71 (sect. 7101 et seq.) of Civil Practice Law and Rules (CPLR)
 - Referred to as “recovery of chattel”



To Prove a Case of Replevin

1. Prove that records do belong to you
2. Prove that the records don't belong to those who now hold them
3. Prove that those with the records refuse to return them to you



1. The Records are Yours

- Prove records are your official records
 - By internal evidence within the records
 - Name of your government
 - Name of the respective department
 - Years
 - Because have not given the records away
 - Have no record of such a transaction
 - Have a policy of not doing this
 - Cannot legally transfer ownership of records before end of retention



2. Records Don't Belong to Other Party

- Because they are your records
- Other party can't prove ownership
- Other party can't prove line of possession



3. Other Party Refuses to Return the Records

- Have contacted the other party
- Have explained your ownership
- Party refuses to return records



New York State Archives
and the Records
of Sing Sing Prison

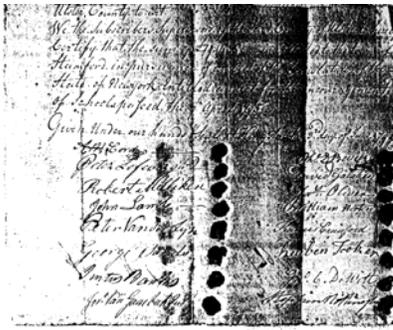
CASE STUDY # 5
AN ACTION OF REPLEVIN



Town of Bolton
and Records of the
Towns of Stamford and Truxton

CASE STUDY # 6 WHEN THE ALIENATED RECORDS ARE IN YOUR POSSESSION



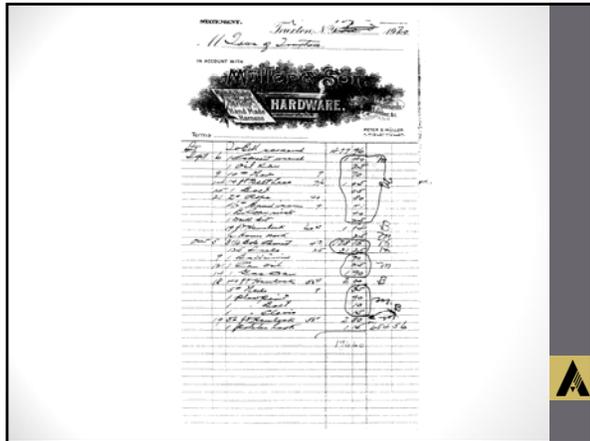


Stamford, February 10 1783

James Barnes
Richard D. Smith
John D. Smith
Charles D. Smith
David D. Smith
Thomas D. Smith
Robert D. Smith
William D. Smith
James D. Smith
Richard D. Smith
for the Town of Stamford

George D. Smith
Richard D. Smith
John D. Smith
Charles D. Smith
David D. Smith
Thomas D. Smith
Robert D. Smith
William D. Smith
James D. Smith
Richard D. Smith
for the Town of Stamford





Hints for Retrieving Records

- Be imaginative
- Look for compromise
 - Microfilming or photocopying
 - Joint ownership
 - Permanent loan (deposit)
- Consider the other side's point of view
- Don't be demanding

If These Issues Arise

- Call Archives for advice
- Avoid confrontation if possible
- Work cooperatively
- Use legal counsel before and while attempting replevin

www.archives.nysed.gov

THANK YOU.
PLEASE COMPLETE YOUR
EVALUATION SURVEY.