



## Fact Sheet

### RELOCATION OF THE BARNES COLLECTION

#### **Indenture of Trust**

The Barnes Foundation was established in 1922 by Dr. Albert C. Barnes through an Indenture of Trust. Among its many provisions, the Indenture, and the Bylaws of the nonprofit corporation he established at the same time, set forth the Foundation's purposes, Board structure, rules of governance, and exclusive ownership of the Barnes Collection by the Foundation. The Indenture included the condition that "[a]ll paintings shall remain in exactly the places they are at the time of the death of Donor and his said wife." This condition asserts that the specific arrangement of the paintings within the Gallery should survive him and his wife.

The Indenture governed the Foundation throughout the remainder of Dr. Barnes's life, until his death in 1951. It continues to govern the Foundation, in amended form, today.

#### **Last Will and Testament**

Dr. Barnes's Last Will and Testament makes no stipulations about the installation of the Collection in Merion. Among its provisions, it simply restates Dr. Barnes's prior gift of the Collection to the Foundation. It also addresses the gift of Dr. Barnes's country estate Ker-Feal and other real estate to the Foundation.

#### **Changes to the Indenture**

During his lifetime, Dr. Barnes amended the Indenture several times. Today, amendments to the Indenture require approval of the Orphans' Court of Montgomery County.

#### **Petition to Expand the Board**

In 2002, the Barnes Foundation Board of Trustees (then composed of five Trustees) petitioned the Orphans' Court to amend the Indenture and the Bylaws. The petition included a request to expand the Board to fifteen from five members. The Trustees believed that the larger Board would facilitate the Foundation's ability to fundraise and develop a sustainable business plan.

**Petition to Relocate the Collection**

In the same 2002 petition asking to expand the Board, the Trustees also requested permission of the Court to move the Collection to Philadelphia in order to take advantage of the generous offer made by numerous Philadelphia foundations and philanthropists to assist the Barnes in raising funds for the construction of a new facility on the Benjamin Franklin Parkway and an endowment capable of sustaining the institution.

**Reasons for the Petition to Relocate**

The Foundation was facing severe financial distress, with a depleted endowment and many years of shortfalls in operating revenue, caused by many factors, including restrictive zoning and years of litigation. It was also clear that donors were unwilling to contribute the significant funds needed to support the Foundation and ensure the well-being of the Collection so long as the Gallery remained in Merion and faced the threat of continued litigation over zoning and related issues. Accordingly, after exploring numerous alternatives, the Trustees moved forward with their petition to relocate the Gallery to Center City Philadelphia, where they were confident the Foundation would find adequate support to sustain its operations and further the mission Dr. Barnes established for the Foundation.

**Decision of the Court**

Following years of litigation, including weeks of hearings, review of voluminous archival materials, and consideration of the numerous alternatives that had been put forth, the Court came to a reasoned conclusion that the move of the Collection and the requested modifications of the Bylaws furthered the primary mission of the institution as established by Dr. Barnes. Subsequent efforts to challenge that Court's holding and/or reopen the petition litigation have all been unsuccessful.

**Ownership of the Collection**

Since the original Indenture of Trust was established in 1922, the Collection has been owned by the Foundation, with responsibility for its stewardship vested in the Board of Trustees of the Foundation.