

February 23, 2015

Ms. Katie Robinson
Staff Liaison
Uniform Law Commission
11 N. Wabash Ave., Suite 1010
Chicago, IL 60602

re: Comments for Commission concerning UUPA Draft for Feb 27/28 meeting.

Dear Ms. Robinson:

Please find below my comments and proposed language for specific sections of the recently distributed Revised Draft of the UUPA (2-27 / 2/28).

Borrowing from Mr. Trost's comments found in Section 20, I submit the following:

State Administrators receive very large amounts of money and have a substantial economic incentive to retain the greatest amounts possible, which can be reasonably expected to cause them to adopt aggressive legislation and claims evaluation policies in order to deny some claims. It also incentivizes them to select certain claims (those larger in size) in choosing which to approve or deny.

The powerful conflict of interest facing States (that of Administrators receiving and transferring to the general fund large amounts of unclaimed money and at the same time, being mandated to return unclaimed property to owners) is at the core of my participation in this drafting process. This same conflict of interest is also at the core of problems facing owners who struggle to get their property released from the tight grip of some (not all) Administrators. When it comes to release and return of unclaimed property, the issues that owners face and the issues that I face are one in the same.

The revisions that I have suggested to the Commission prior to today and below, are aimed at addressing this conflict of interest and ultimately, returning more property to owners.

While many stakeholders are providing input to the Commission, no input should be given more weight than the input received that directly and **positively** affects the reuniting of owners (the ultimate stakeholders) and their property. This is the core purpose of the Act. Everything else, although perhaps important, is subservient.

Even as the Commission deals with time constraints and competing complex input, I urge you and the other members to consider that a critical measurement of the Revised Act should be its application to, and impact on, owners. Owners are the ultimate stakeholders of unclaimed property, not the state. Although I fully support

the states secondary position in having the use of funds until they are claimed, they are not the ultimate stakeholders. Nor are those in the claimant representative field such as myself, nor Administrators, nor Holders, nor Auditors.

The Act first serves owners of unclaimed property. Any revision that further supports the ability of owners to recover their property deserves to receive the highest attention and consideration from all of those participating in this process.

The Commission, along with all of the stakeholders, has a rare opportunity to ensure that the Acts language and influence is not eroded in the interests of subordinate stakeholders.

I believe that more can, and should be done in the Act to protect and advance owner interests. The areas that I believe deserve your consideration and support are as follows:

PREFATORY NOTE: The Act deserves a statement as to its ultimate purpose. Revised language could be included in the opening sentence as proposed below or a separate statement could be drafted:

Proposed language:

This Act, the goal of which is reuniting owners with their lost, abandoned or unclaimed property, is a revision of the Uniform Unclaimed Property Act (1995) which was preceded by the 1954 Uniform Disposition of Unclaimed Property Act (1954) etc...

SECTION 2. DEFINITIONS:

Define "Increment".

Proposed language:

"Increment" means an amount such as any dividend, interest, gain, or other financial benefit that derives from the underlying producing asset or instrument.

SECTION 3. PRESUMPTIONS OF ABANDONMENT.

15(C). A Business-to-Business exclusion serves the subordinate interests of holders and is harmful to the interests of owners. Sole proprietors using dba's and retired owners of businesses including tightly held corporations, LLC's and other entities have an equal right to receive notice of their unclaimed money. No valid argument (other than from subordinate interests) can be made for depriving them. My company recovers unclaimed property for clients from holders that my clients have vast ongoing transactions with. Such credits/refunds are not being adjusted,

caught by, or acknowledged in any way by the accounting departments of my clients as proponents of this provision have suggested should be the case.

15(i). While a de minimus threshold of \$50 may sound reasonable because the dollar amounts involved appear small and it may create some efficiency for holders, this is far from accurate. By excluding amounts under \$50.00, many small properties in which the accompanying records and information would contain valuable information that could substantiate an owners claim on larger properties, would not be remitted thereby reducing the ability of owners on many occasions to claim larger amounts. Claimant Representatives know this because we deal with providing evidence on denied claims regularly. It is often the record of a smaller property that provides the needed evidence to get a larger property approved. A \$50 threshold can result in the non-payment of \$100,000 asset. Holder efficiency is not a good enough reason to exclude properties that could cost owners (businesses and private citizens) their ability to recover unclaimed property.

Note: Fractional Shares can be very valuable as evidenced by the current price of Berkshire Hathaway at **\$221,000** per share. The determination to report (or not) fractional shares should be strictly based on the value thereof and treated no differently then cash under this provision.

Proposed language:

Delete business-to-business exclusion in its entirety.

Delete de minimus threshold in its entirety.

SECTION 13. PUBLIC SALE OF ABANDONED PROPERTY.

I support and encourage the use of **Alternative B**.

I am in favor of changing the word "must" in the first sentence of Alternative "B" to "may" so that it reads as follows:

Proposed language:

(b) Securities listed on an established stock exchange ~~must~~ may be sold at prices prevailing on the exchange at the time of the sale.

SECTION 14. DEPOSIT OF FUNDS.

\$100,000 is ineffective and serves no significant purpose. A separate Trust Account that is a meaningful percentage of the yearly amount received or paid to owners is meaningful. A meaningful Trust Account would be a considerable step in addressing the powerful conflict of interest that exists as described above. A meaningful Trust

Account would provide for less conflicted administration of the program by removing pressure from the Administrator to retain funds for use in the general fund. Anything less than a meaningful Trust Account provides for the continued abuse of the program by those states who already abuse it. As states may face increased budgetary pressures in the future, the lack of a meaningful Trust Account invites and encourages unchecked abuse of administrator decisions and policies.

Section (a) Proposed Language below. Section (d) No change – fully support.

Proposed language:

(a) The Administrator shall maintain in a separate Trust Fund from which the Administrator shall pay claims duly allowed, an amount equal to the approved and paid claims during the previous calendar year. All funds received under this Act, including the proceeds from the sale of abandoned property under Section 13, exceeding the maintained Trust Account shall be promptly deposited in the [general fund] of this State.

SECTION 16. FILING CLAIM WITH ADMINISTRATOR; HANDLING OF CLAIM BY ADMINISTRATOR; ACTION TO ESTABLISH CLAIM.

Currently, Administrators are not restrained in the policies they implement when denying claims. No statute or policy seems to exist to hold Administrators accountable to a reasonable standard. As a result, many claims are denied on unreasonable grounds. The preponderance of evidence standard should be applied to the Administrators evaluation of claims.

Proposed language:

(b) The Administrator ~~may~~ shall pay or deliver property to the owner if the Administrator has been given proof sufficient to establish to the satisfaction of the Administrator that such person is the rightful owner of the property. Sufficient proof shall be established by a preponderance of the evidence standard.

SECTION 25. AGREEMENT TO LOCATE PROPERTY.

“AGREEMENT TO RECOVER PROPERTY” is a more accurate heading.

The 24-month rule serves the subordinate financial interest of the state. If the purpose behind this rule is truly the states desire to restore 100% of the property to owners without the deduction of a fee, this goal can easily be accomplished with locator agreements within the 24-month period as follows: The administrator can pay the locator fee during the 24 month period and return 100% of the funds to the owner.

Logic: Since the average rate of return of unclaimed property is less than 40% in most states, states can easily pay a locator fee directly to a claimant representative while paying the owner 100% and still be ahead by 50%. For example, the state is holding \$1,000 for John Doe. The Claimant Representative locates John Doe within the 24-month period before the state does. The owner engages the Claimant Representative to recover the funds. The funds are recovered and, under a revised 24-month rule, the state pays the owner \$1,000 and also pays the Claimant Representative \$100. The state gets the benefit of a larger out-reach program (existing locators and claimants representatives) without the costs of putting full or part-time staff on the state payroll. Since such claims would make up a relatively small percentage of approved and paid claims, the reduction in state income from the program would be minimal and insignificant. Note: If the proposed language is not palatable to states, the 24-month rule should be discarded, as it serves no real purpose other than the subordinate interests of the state.

Proposed language:

(a) The locator/claimant representative fee provided for in an agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned that was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Administrator, shall be paid by the Administrator and the owner shall receive 100% of the property claimed. The locator/claimant representative fee during this period shall not exceed 10%. The claimant representative shall be entitled to reimbursement from the owner of reasonable extraordinary costs should they arise in perfecting the claim.

SECTION 27. CONFIDENTIALITY OF INFORMATION.

One of the major hurdles that locators and claimant representatives face on many unclaimed property items is a lack of information to research and pinpoint the proper owner. The withholding of information that is not critically confidential (a name, an address, phone number, or other basic information) does not serve the interest of the owner because it prevents the owner from being located and notified about their property in the first place. The withholding of basic information impedes the return of property to owners while offering little in return in the way of beneficial protection. With the average return rate of states hovering at around 35%, we have a long way to go in returning property to owners. Impediments should be removed, not added or strengthened.

The reality: Where people live today is not confidential. Anyone can go to a county office and review public records to determine who owns what house, how much property tax they paid last year, who else is on the title, who has the first and second mortgage, who the property was transferred from, and many other details. One can review court records and determine who has been sued, who has been divorced,

who has been a plaintiff, who has been a defendant, who obtained a judgment and on and on. Websites that specialize in court information, such as Pacer, allow access to vast information and details about court cases active and past.

The unintended consequence of classifying non-critical information as confidential is the undermining the superior interests of owners in favor of the states, as it is the states that ultimately benefit from fewer owners being located. This is not consistent with the intended purpose of the Act. As Randy Hotz of Choice Plus, LLC has recently brought to my attention, 822 F2d 182 Aronson v US Department of Housing and Urban Development is a case that illustrates that the interests of the public shifts from confidentiality in favor of public disclosure over time to ensure property is returned to owners.

Another example of the negative effects of confidentiality is the United States Savings Bond program managed by the United States Treasury. The Treasury will not make any information available to the public as to the accounts they are holding. As a result, over many decades, very few owners and heirs of Savings Bonds have been contacted and notified of the existence of such assets. The treasury benefits from this "confidentiality" policy by not having to deal with many claims and by the retention of funds.

Similarly, the proposed Section 27 would serve the secondary interest of the state by impeding the location of owners and the verification of claims. Such a provision neglects the negative impact of restricted information in favor of returning less property. With all due respect to the securities industry, if they could not locate their client (the owner) and they DO possess all of the confidential information, what chance does a locator or claimant representative have in locating the owner absent those important pieces of information?

At minimum the following information should be publically available:

Owner Name, Address, City, State, Zip, Reporting Company, Property Type, Total Cash Value or/Quantity of Shares, and Property ID # if applicable.

Proposed language:

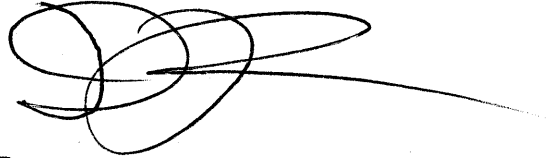
(g) The following information shall not be considered confidential under the Act:

Owner Name(s)
Last Known Address, City, State, Zip,
Reporting Company
Contact Information for Reporting Company
Property Type
Total Cash Value or/Quantity of Shares

Property ID # if applicable.

Thank you.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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