



TO: John A. Sebert  
Executive Director  
Uniform Law Commission  
111 N. Wabash Ave., Suite 1010  
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FROM: Randy Hotz  
President  
Choice Plus LLC  
1001 Avenida del Circo  
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RE: Initiative to Update the Unclaimed Disposition of Unclaimed Property Act

DATE: November 2, 2014

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## **INTRODUCTION**

Dear Mr. Sebert:

Choice Plus, LLC ("Choice Plus") thanks the Uniform Law Commission ("ULC") for this opportunity to comment during the drafting of an update to the Uniform Disposition of Unclaimed Property Act ("Act"). Choice Plus is grateful for the opportunity to share its thoughts and those of the Professional Claimants' Representative Association ("PCRA") to further the public debate regarding the needs of owners. Choice Plus is a claimants' representative firm working daily with claimants and with unclaimed property administrators, primarily in Florida and California. Choice Plus would also like to thank attorney Samuel Dean Bunton for his efforts in collecting unclaimed property data state unclaimed property administrators. Mr. Bunton is a former staff attorney, for the Florida Department of Financial Services, Legal Services Division, who acted as legal counsel for the Florida Bureau of Unclaimed Property.

The major stakeholders who will be impacted by states that adopt all or portions of the Act are owners, holders, states, and the contractors who serve these stakeholders. Although at times the interests of these stakeholders are in conflict with each other, the owner is the stakeholder whose interest should be paramount.

The survey of state unclaimed property administrator data submitted by Mr. Bunton is compelling. The data and conclusions that follow do not always align with conventional wisdom. However, decades of state unclaimed property data support these conclusions.

Based upon information submitted to the ULC by attorney, Samuel Dean Bunton, states have an obligation to return approximately \$56 billion. In 2013 states collected approximately \$5.6 billion. The national average return rate is approximately 30%. This position paper and the data submitted by Mr. Bunton demonstrates that a national benchmark return rate of 50% is achievable. Approximately 60% of the owners who make up the benchmark return rate will utilize free public resources to claim their property without paying a fee. The remaining 40% need or want greater access to private sector resources for the convenience it would afford them, or out of necessity.

This position paper will support the view that public policy and laws that excessively restrict owners' access to professional resources and comprehensive unclaimed property information has caused the unintended consequence of depriving owners of the use and enjoyment over \$1 billion annually and \$12.7 billion of the \$56 billion in state custody cumulatively.

Through the process of updating the Act, the ULC has the opportunity to influence all states in a direction which serves the owners by increasing national return rates from 30% to about 50%. Including the private sector in the quest to return funds is necessary to achieve this. The Act should adapt best practices to include the private sector; it should communicate this intent in preamble comments; and it should explain the reasons.

It is informative to study those states whose laws and administration have created restrictive environments that, in effect, prevent economic viability of the business of claimant representation, thereby barring owners from access to those resources. Many states do this, and there are many ways to do it (restricting information, use of absolute fee caps, etc.). States that do this have created a "lucrative silence" for themselves --- the same "lucrative silence" among holders which prompted the first unclaimed property laws. Removal of private competition and the public/private check and balance comes at a huge price: 40% of returnable funds remain out of owners' reach.

### **COMMON MISCONCEPTIONS**

1. Service providers are merely locating or finding the unclaimed property.

The terms "Locator" and "Finder" fail to capture the full scope of services and convenience provided by the private sector. These terms imply that service providers are compensated for merely locating or finding the property. This does not account for the significant efforts and cost involved in documenting entitlement to unclaimed property (See "Nature of Claimants' Representative Business", later.). This misconception has led to restrictions that have proven to be very detrimental to owners.

2. A "One Size Fit All" fee cap is in the best interests of owners.

The spectrum of owners who hire claimants' representatives ranges from those whose claims are complex, costly, and difficult to prove, to those whose claims are fairly straightforward. Owners elect to hire a service provider for three primary reasons; task complexity, resources required, and convenience. Owners make the same type of preference decision as do consumers who pay to have their tax returns prepared, oil changed, or go out for a meal. All these activities are demonstrably less expensive for the do-it-yourselfer, who chooses to do so for personal reasons --- usually convenience --- to access resources and expertise.

3. Preventing unwanted solicitations serves the greater public good.

This misconception is natural, since about 60% of unclaimed property that is recovered is claimed by owners who file their own claims, largely in response to notifications sent by the state. Most of those reading this would be a part of this 60%, and many of those may be offended by a phone call proposing to take a cut of the proceeds. The focus should be on the remaining 40% of unclaimed property owners --- those that most want or need the service. It is undeniable that the 40% are better off by getting most of their property than by getting none of it. In fact, they are so much better off --- by about \$13 billion --- that the 60% crowd should be more than willing to suffer the occasional unneeded solicitation.

4. State notification methods are sufficient to reach all owners and encourage them to act.

Florida posts accounts on its public website and sends written notice to every owner they can locate, within 45 days of that posting. If this effort were sufficient, claimants' representatives would not exist. Yet 25% of all Florida unclaimed property recovered annually is due to the efforts of claimants' representatives.

5. Denying owners access to service providers for extended periods of time is good for owners.

There are many owners who must expend considerable resources and gain access to specialize expertise in order to recover property they have located. Probate, document reformation, and heir finding are good examples. Claimants' representatives typically advance the costs of these. Contract prohibition time periods unnecessarily deny owner access to these services and ultimately, deny them recovery of their property. The state is the only beneficiary of such prohibitions. Owners should have sole control over the timing of contracting for services.

6. Free public resources are sufficient for all owners to recover their property.

Locators, finders, and representatives would not exist if state administrators were able to provide owners with the full range of services and financial

resources required in many cases. The Florida model proves that free public resources are not enough to achieve high return rates. Severe economic restrictions benefit states far more than owners.

7. The majority of owners lack the capacity to evaluate the value of a proposal for services.

Attached is a representative sampling of hundreds of Florida customer feedback surveys taken of owners who have utilized claimants' representatives' services. The fees owners paid for the services range from 0.5 to 50%, with an average fee of 25%. These surveys were designed to measure quality control and to ascertain whether claimants who used such services were satisfied with their bargain and with the performance of the claimants' representatives. The survey responses refute the notion that most owners believe they have been overcharged. As the surveys indicate, owners appreciate high levels of customer services, and access to the resources and expertise they bargained for.

8. Preventing comprehensive public access to account and claim information serves a vital public interest by limiting fraudulent claims.

All states make access to recorded documents regarding real and personal property interests available to the public, usually via county auditor web sites. This has proven vital to commerce and economic interests. This transparency prevents fraud and increases the opportunity to identify one's property and recover it. Transparency similarly reduces the administrative burden on unclaimed property administrators by reducing the number of invalid claims.

Severely restricting owners from accessing comprehensive account information --- such as name, last known address, amount, holder name, property type, date of last contact, relationship between co-owners, the year property was reported, and prior claim attempts and payments --- deprives the public of valuable information necessary to make informed decisions about claiming their property. California, Texas, Indiana, Iowa, Nevada, Hawaii, and South Dakota, home to over a quarter of the national population, make much of this information available to the public.

Secrecy conceals fraud and prevents some owners from recovering their property.

9. Restricting service providers from access to comprehensive account lists and claim information is in the best interest of owners.

The State of Florida provides registered claimants' representatives copies of its current unclaimed property data in a searchable CD format upon request and provides those registrants login access to a Locator's website that provides account and claim history details. California provides registrants property data in a searchable CD format upon request. The data on the CD is

updated annually. The data included on the CDs includes the apparent owner's name, last known address, amount, holder name, property type, date of last contact, relationship between co-owners, and the year property was reported. These states return much more to owners. As the State Survey illustrates: When private sector service providers have access to data, owners recover more of their property.

10. Denying an owner the right to alienate the property and denying the assignees the right to collect their property is good public policy.

For personal reasons, not just including convenience, there are property owners who prefer to sell or assign their claims for immediate access to cash, to give it as a gift, or for payment of compensation. Not all States' departments of unclaimed property recognize claim assignments, even when state laws would otherwise allow it. In such states, owners cannot assign an unclaimed property right because the assignment is useless to the assignee. The reasoning usually given for forbidding assignment of such rights is a potential for fraud. However, states do not likewise forbid people from selling other forms of personal property merely because fraud is a potential threat. Instead, states prosecute offenders.

11. Issuing payment of the representative compensation to the owner as opposed to issuing payment directly to the owner's representative is good public policy.

Separating payment ensures that neither party to the transaction has possession of the other's property, and properly respects the rights assigned to the representative. Giving the owner property that owner has relinquished is contrary to good public policy and merely serves to restrict the private sector.

12. Owners do not need Locators, Finders, and Representatives.

Some legislators and administrators incorrectly presume that it is always a claimants' representative who initiates contact with property owners. Property owners seek out representatives. When an owner does not have the financial resources needed to establish entitlement unassisted, or lacks the experience necessary for a claim to succeed, that owner needs access to professionals who will provide-services on a contingent fee basis --- just like states that need access to contingent fee auditors.

Owners choose to use representatives for carefully considered reasons. The Act must recognize this reality and avoid stripping owners of property and contract rights and making it unlikely or impossible for them to recover their property.

13. State unclaimed property search websites that restrict access to the actual account value protect owners.

When the owner is deceased, a beneficiary must decide if it is worth expending funds to probate the estate of the deceased to prove entitlement to the unclaimed property. Knowing that an account value is more than \$50 or \$100 does not help. It is a deterrent. In fact, this is quite true even when no estate is involved. Clearly, this key restriction on information simply drives more funds to the state, at the expense of owners. Hiding account values also effectively bars third parties from assisting. The most populous states do provide account values without ill effect. There is no defensible purpose to such information restrictions.

14. Fraud and scam occurrences are frequent, and locators, finders and representatives are to blame.

Of the unclaimed property departments surveyed nationwide, 47 states and Washington DC (all respondents) reported that no cases of fraud or scam were referred for prosecution in the past three years. Prior fraud cases typically involved individuals who are not claimants' representatives who have fraudulently claimed other peoples' property or have lied about facts regarding a claim. Much of this activity is discovered by claimants' representatives, and is reported by them to administrators and law enforcement. Fraud and scams do occur, but their frequency and severity should not be exaggerated at the owners' expense

### **SUMMARY OF THE FLORIDA MODEL – KEY ELEMENTS**

The Florida Act represents best practices in unclaimed property administration. Below are the key elements of the Florida Act.

- a) 45 days solicitation and engagement prohibition period
- b) Contingent Fee and Purchase Agreements without Fee Caps when contracts meet prescribed Full Disclosure requirements
- c) Contingent Fee and Purchase with Fee Cap for Agreements that do not include full disclosures
- d) Contingent Fee and Purchase Agreements without Fee Caps or full disclosures when circumstances fit prescribed exceptions: (1) claim requires probate; or (2) claimant is not a United States Resident.
- e) Assignees may make claims and be paid.
- f) Claim payments are made to owner and to representative separately
- g) Claimants' Representative Registration provided for
- h) Claim Evidentiary Standard is defined as a "preponderance of evidence".

- i) Public Access to Comprehensive Account Information is provided

### **NATURE OF CLAIMANTS' REPRESENTATIVE BUSINESS**

Claimants' representatives have long been painted with a broad brush, sometimes in the most unflattering terms, because they charge fees to recover property owners can claim for free. It is true that anyone can file a claim with a state custodian for free. However, it is misleading to suggest that locating and establishing evidence to prove entitlement is free.

Claimants' representative businesses revolve around assisting property owners, their heirs, devisees and assigns, by informing them of the existence of their property, and by facilitating the collection and establishment of evidence that proves entitlement. The representative then organizes and summarizes the evidence for submission to state custodians in order to successfully claim and secure release of the owner's property.

Gathering and establishing evidence often requires hiring outside resources such as domestic and international genealogists, translators, and attorneys. Attorneys are necessary to petition the court for orders of estate administration, reformation of lost documents, and other civil actions. Attorneys are also required to file a judicial or administrative action to challenge an adverse determination.

All of these activities require payment of considerable financial resources long before the claim is approved and paid. Representatives are willing to advance these costs on a contingent fee basis on behalf of owners who do not have the resources or confidence to pursue their property. Representatives also absorb all costs if the claim fails. In fact, many of our clients seek us out to assist them in claiming funds they have already discovered, in order to take advantage of this risk free arrangement.

Many state laws governing finders or locators agreements narrowly define the service as "locating or purporting to locate any property" (Washington RCW 63.29.350). If an owner paid a finder's fee for merely locating or purporting to locate property, and then did everything else necessary to get its claim paid, the locator and finder business would be very profitable indeed. This oversimplified view fails to serve all of the needs of owners and needs to be more fully addressed by the ULC.

### **SUMMARY**

The purpose of the Act is to return as much property to owners as is possible. State legislators need to know what account information and private sector resources owners need or want to make informed decisions regarding their property. The Act should avoid creating restrictions that bar owners from access to private sector resources by stifling or destroying that business through imposition of severe economic restrictions. More generally, it must preserve the property and contract rights of the owners as they existed prior to escheat.

The collecting and holding the private property of owners is something that should be carried out with the highest degree of transparency. A thriving private sector of claimants' representatives provides the public at large great insight to the inner workings of unclaimed property administration and entitlement determination process. Choice Plus LLC has been

very active and successful at overcoming adverse determinations and interpretations of law. Worldwide Research provided information to Florida Bureau of Unclaimed Property that resulted in the Bureau's discovering that it had paid \$4.6 million in unclaimed property to a person who falsely claimed funds using fraudulent records and forged identities. The public benefits when there is ample oversight of the private sector by the government, and of the government by the private sector.

Respectfully,

A handwritten signature in black ink that reads "Randy Hotz". The signature is written in a cursive, flowing style. The word "Randy" is written in a larger, more prominent script, and "Hotz" is written in a smaller, more compact script to its right.

Randy Hotz  
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