UnclaimedProperty
PROFESSIONALS ORGANIZATION

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Date: December 22, 2014
RE: UPPO Submission to Recorder Trost
Item 2 of 5: Burden of Proof

December 5, 2014

Mr. Ethan Millar
Partner
Alston & Bird LLP
333 S. Hope Street, 16th Floor
Los Angeles, CA 90071

RE: ULC Submission – Burden of Proof

Dear Ethan:

On behalf of the Unclaimed Property Professionals Organization (UPPO), please accept the following in support of the American Bar Association's (ABA) submission to the Uniform Law Commission (ULC) regarding the issues surrounding "burden of proof". UPPO respectfully submits the following for the ABA's consideration to append to its submission:

> *The burden of proof is extremely important in any legal proceeding, including unclaimed property audits. The "burden of proof" – which technically refers to which party has the obligation of convincing the trier of fact of the truth of a disputed fact – is often conflated with the "burden of production of evidence" – which refers to a party's obligation to come forward with evidence that supports a claim.*
>
> *The proposed language would expand the existing language of UUPA 1995 Section 6 to clarify this distinction and the significance of each term with respect to unclaimed property audits in particular. The proposed revised section would also expressly refute an important point that is often wrongly used against holders in unclaimed property audits: that the mere recordation on the holder's books of an accrual for an estimated or contingent liability (which is often required by generally accepted accounting principles although the amount of such potential or contingent liability is not liquidated, fixed and certain) or the mere recordation of a credit on the holder's books, is not sufficient, in and of itself, to satisfy the state's obligation to establish a prima facie case that a fixed and certain obligation exists or to shift to the holder the burden of establishing that such entries do not represent abandoned property. Finally, the proposed revised section would affirm that, if the administrator seeks to use estimation to establish a holder's liability, the administrator has the affirmative burden to establish that the proposed method of estimation is reasonably crafted to result in an appropriate estimation of the amount actually owed by the holder.*

We would welcome any questions or further discussion on this matter. Please feel free to contact me or UPPO's President Debbie Zumoff with the ABA's reply to our request.

Respectfully,

Toni J. Nuernberg, CAE, CBA, CGA
Executive Director