

Note from Charlie Trost, Reporter  
Drafting Committee to Revise the Uniform Unclaimed Property Act

These suggested changes will be taken up for discussion by the Drafting Committee in the order they appear at the Oct. 9-10, 2015 meeting, to the extent the committee wishes to have further discussion, taking into consideration the time remaining after the committee has first discussed and considered the following general topics:

1. Remaining issues involving securities and security entitlements;
2. Remaining issues involving life insurance;
3. Business to business;
4. Gift Cards.

Errors or omissions in the compilation, if any, are the sole responsibility of the Reporter, and were inadvertent.

**REPORTER’S COMPILATION OF  
WRITTEN SUGGESTED CHANGES TO  
RUUPA BY OBSERVERS AND STAKEHOLDERS FOR  
OCTOBER 8-10, 2015  
MEETING OF DRAFTING COMMITTEE**

**SECTION 1. SHORT TITLE .....12**  
**SECTION 2. DEFINITIONS.....12**

- NAUPA: (1) “Address” pg. 12 line 12: DELETION - “. . . or other property; or property; or of any other person who become entitle to property through the death of the apparent owner, insured or annuitant.”

Note: This language is not contained in the most recent draft

- Holders Coalition: (3) pg.13 line 31. SUGGESTION -

**Apparent Owner** – *New*. The definition of “apparent owner” should be amended to provide that, with respect to gift cards, the apparent owner means the person who owns the gift card at the time it is presumed abandoned. Because a gift card is a bearer instrument, the person entitled to redeem the gift card is the person who possesses the gift card at the time it is presented for redemption. The purchase of a gift card is rarely the owner of the gift card, as purchasers typically purchase gift cards to give them as a gift to their donee and, further, the original donee may choose to re-gift the card to a subsequent donee (who then becomes the owner). Without this clarification, the purchaser or a previous owner of the gift card could claim property to which they have no right or ownership interest

- Holders Coalition: (3) pg. 12 line 32 – SUGGESTION/ADDITION – “. . . the person entitled to property held, issued, or owing by the holder. **With respect to gift cards, the apparent owner means the person who owns the gift card at the time it is presumed abandoned.**”
- ABA: (5) Comment pg. 14 line 24 – ADDITION– “. . . under state law. **Furthermore, limited partnerships and business trust have been in existence before 1965. The first limited partnership statute was adopted by the State of New York in 1822. The first Uniform Limited Partnership Act was promulgated by NCCUSL in 1916. The business trust originated from common law and was recognized as a legitimate business form in Massachusetts courts by 1928. Multiple states had adopted business trust statutes by 1962. So changing the Court made rule. . .**”

- ABA: (6) pg. 14 line 30 – DELETION - “. . . dormancy charge when not prohibited by **other** law.”
- ABA: (6) Comment pg. 14 line 33 – COMMENT – This definition is not used in the Act.
- NAUPA: (9) “Game related digital content” pg. 15 line 8 – DELETE ENTIRE Definition.  
IMPACT: new definition and bracketed option to exclude e this property type from scope of Act
- ABA: (9) “Game-related digital content” pg. 15 line 8 – SUGGESTION – “. . . in a video game **or** on a video game platform.”
- ABA: (9) “Game-related digital content” pg. 15 line 9 – DELETION – “. . . in a video game and on a video game platform **as a virtual item that is licensed element of a video game or game platform.** “
- NAUPA: (10) “Gift Card” pg. 15 line 20 – DELETION - **“but does not include game-related digital content or loyalty cards”**
- ABA: (10) “Gift Card” pg. 15 line 18 – DELETION – “. . . redeemed, **the obligation for which does not expire,** and which . . .”
- NAUPA: (11) “Holder” pg. 16 line 3 – DELETION – **“however, except as otherwise specifically provided in this [act], a person is not a holder with respect to property for which the person is not a debtor or for which the person has no obligation to the owner, and the person may not be required to report or remit any such property to the state.”**
- ABA: (11) “Holder” pg. 16 line 3 – SUGGESTION – The ABA wishes to modify the definition to clarify which entity is the holder if two or more entities are obligated to the owner. The ABA would recommend a test that focuses on which entity has the primary obligation to the owner under applicable debtor-creditor laws.
- NAUPA: (13) “Loyalty card” pg. 17 line 2 – DELETION – **“The term does not include a record that may be redeemed for money or may be monetized by the issuer in any other way.**
- ABA: (13) “Loyalty card” pg. 16 line 31 – ADDITION – “. . . given no **direct** monetary consideration. . .”

- ABA: (13) “Loyalty card” pg. 17 line 2 – DELETION – “. . . to obtain goods or service from the issuer at no cost to the customer or potential customer. The term does not include a record that may be redeemed for money or may otherwise be monetized.”
- Holders Coalition: (18) pg.18 line 15 – SUGGESTION –  

**Securities: Non-Freely Transferable** – *Updated*. Securities which are worthless, unpriced, or not transferable should be reported to the states as unclaimed property if the conditions for escheatment are met, but such securities should not be remitted to the states. Holders may maintain on their books and records certain securities that are non-transferable to escheat to the states. As many of these securities have no value and would otherwise result in a custodial expense to the state, this recommendation is viewed as beneficial to all stakeholders by reducing costs and related operational inefficiencies, without impacting the owners. We urge the ULC to remove the brackets from the current version’s definition of “Non-freely transferrable securities.”
- Holders Coalition: (NEW) pg.18 line 18 – SUGGESTION –  

**Securities: Restricted** – *Updated*. The Act should reflect the fact that some securities are ownership interests which are subject to restrictions that prevent the owner from legally negotiating the interests until such time as the restrictions are removed. In some instances, the restriction is imposed pursuant to federal law, and in others, the restrictions are due to contract where there is no market value unless and until the conditions for vesting have been met. We recommend that restricted securities be included as one of the types of securities which are referenced in the definition of “non-freely transferrable securities,” and that definition of “restricted securities” be included in section 2.
- ABA: (20) Comment pg. 18 line 29 – SUGGESTION – “. . . monetary amounts owed. Its issuance discharges the . . . “
- NAUPA: (22) “Property” pg.19 line 9 – ADDITION – “(i) money, electronic or virtual currency, a check, draft, deposit, interest, or dividend;”
- NAUPA: (22) “Property” pg.19 line 12 – DELETION – “but does not include game-related digital content, [and] loyalty cards, [and] [virtual currency] [and] [gift cards]

- UPPO: (22)(A)(ii) pg. 19 line 10

NOTE: The revised UUPA should reflect the fundamental principle of unclaimed property law that has become known as the “derivative rights doctrine.” This doctrine provides that, because the state takes custody of unclaimed property on behalf of the owner, the state’s right to claim unclaimed property is derived from and limited by the owner’s right to the property. As a result, the state should, as a general matter, have no greater right to the property than the owner.

- ABA: (22) “Property” pg.19 line 11 – ADDITION – “. . . security deposit, refund, credit memorandum, unpaid wage, unused **refundable** ticket. . .”
- NAUPA: (22) Comment “Property” pg.19 line 14 – DELETION – “**The preference of the Drafting Committee is to exempt them all together because including them conflicts with the “derivative rights doctrine” in the sense that the requirement that payment of the face amount in cash violates the fundamental contractual basis in which the parties understood and agreed which is once paid for the value in the card may only be redeemed in merchandise or services. Not exempting them also arguably violates federal constitutional provisions regarding taking property without due process and fair compensation and impairment of the obligations of contract. See, e.g., Service Merchandise Co., Inc. v. Adams, Treas, Davidson Co. Tennessee, Chancery Ct. (Docket # \_\_\_\_\_) (1995). The Committee realizes, however, that not all states will choose to do so. Consequently, “**
- NAUPA: (22) “Property” pg. 19 line 30 – SUGGESTION – “**(iii) securities, provided that the ownership interest has an ascertainable market value and is not a security subject to a restriction under Section 83 of the Internal Revenue Code of the United States of any other federal law which limits the owner’s ability to legally receive, transfer, sell, or otherwise negotiate the ownership interest;”**
- NAUPA: (22) “Property” pg. 20 line 27 – DELETION – “**[(B) [The term does not] include[s] property owed to a person whose last address shown on the records of the holder is in a foreign country or location outside the jurisdiction of the United States [or an army, air or fleet post office], unless the holder voluntarily remits the property to the custody of the state under Section 5(4)**

#### **Comment**

The 1995 Act allows the state of the holder’s domicile or residence to take custody of foreign addressed unclaimed property. NAUPA recommended leaving it as is. UPPO recommended that it be amended. The consensus of the committee at its last meeting before the Annual Conference was to accept UPPO’s recommendation. However, this decision was questioned from the floor and reconsideration has been requested by NAUPA. For these reasons the language has been bracketed for further discussion.

- ABA: (22) [(B) “Property” pg.20 line 29 – DELETION – “. . . the United states [or an army, air or fleet post office], **unless the holder voluntarily remits the property to the custody of the state under Section 5(4).**”

- UPPO: (22) [(B) “Property” pg.21 line 1

Summary:

UPPO supports the November 2014 vote of the Drafting Committee that ERISA-protected assets should be exempt from unclaimed property reporting requirements. Exemption is consistent with the U.S. Department of Labor advisory opinions and various lower-federal courts’ decisions, that ERISA preempts the state unclaimed property laws. Including specific ERISA exemption language in the RUUPA will provide clarity, simplify compliance challenges, and protect unsophisticated owners from unwarranted escheatment that mat result in loss of value.

Proposed Language:

(22)[(B) “Property” pg. 21 line 1 – ADDITION – “. . .property to the custody of the state under Section 5(4). **The term does not include ERISA plans.**”

- UPPO: (NEW) “Sufficient records” pg. 21 line 24 – ADDITION – **“Sufficient records” means at least 80 percent of the record(s) necessary to identify dormant unclaimed property reportable pursuant to Section 7 of this Act. The determination of sufficient records shall not be made solely as a percentage of the total overall records to be examined, but also on the materiality level of value of the records and may also be made by type of reportable property.**

- Holders Coalition: (22) Comment pg.21 line 2 – SUGGESTION –

**Foreign Addressed Property – Pending.** The 1995 *Uniform Unclaimed Property Act* should be revised to provide that no state may require the reporting and remittance of Foreign Addressed Property, based on the Supremacy Clause, the Due Process Clause and the Foreign Commerce Clause of the U.S. Constitution.

- NAUPA: (25) “Security” pg. 21 line 36 – SUGGESTION – **“‘Security’ means (a) a share, participation, debt obligation, or similar interest issued by a corporation, business trust, joint stock company, or similar entity; (b) a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws; (c) an interest in a unit investment trust that is so registered; (d) a face-amount certificate issued by a face-amount certificate company that is so registered; or (e) an interest in a partnership or limited liability company that is dealt in or traded on securities exchanges or in securities markets. For purposes of**

this Act, a "security" additionally includes securities and other financial assets maintained in a securities account, but does not include physical securities held in a safe deposit box or other safekeeping repository.”

- UUPQ: (25) “Security” pg. 21 line 36 – SUGGESTION – “‘Security’ means an instrument, whether certificated or uncertificated, that represents an ownership position or rights to ownership in a corporation, trust, plan, or other legal entity, any customer security account held by a broker-dealer, and any interest in an investment company under the investment Company Act of 1940.”
- NAUPA: (26) “Stored-value card” pg. 22 line 25 – DELETION – “The term does not include loyalty cards or game-related digital content.”
- ABA: (26) “Store-value card” pg. 22 line 21 – DELETION – “. . . by the seller or issuer of the record that goods, service, or money . . .”
- ABA: (26) “Store-value card” pg. 22 line 25 – DELETION – “. . . addition consideration, and includes [gift cards and ] payroll cards. The term . . .”
- ABA: (26) “Store-value card” pg. 22 line 25 – ADDITION– “. . . The term does not include gift cards, loyalty cards or game-related digital content.”
- NAUPA: (31) “Virtual currency” pg.23 line 18 – DELETION – “(31) “Virtual currency” means electronically stored and denominated value such as Bitcoin and similar payment media which are not measured or denominated in United States currency or currency convertible into United States dollars, and which may be used to trade for or purchase or exchange for things of value, including United States currency or currency convertible into United States currency.

### **Comment**

The Drafting Committee is concerned that exempting “virtual currency” from the definition of property subject to this act may leave a wide loophole. But this means of denominating exchangeable value is of relatively recent origin, and it is not clear that administrators want to or have been successful in capturing this value as unclaimed property. . . . Since it is possible for a United States citizen to hold value in a Bitcoin account in a foreign country, gaining nexus or practical access to that value is at best problematic for administrators. Accordingly, the Drafting Committee has elected to define and exempt virtual currency in this draft until such time as a parallel drafting committee on Regulation of Virtual Currency has considered the issue in more depth and can provide guidance to our drafting committee on whether to include or exclude it from this act.”

### SECTION 3. PRESUMPTIONS OF ABANDONMENT..... 22

- NAUPA: (a)(3) Pg. 24 line 25 - DELETION “(a)(3) any security, other than a debt obligation, three years after the date of a second consecutive first class mailing to the owner was returned as undelivered by the United Postal Service, unless a subsequent first class mailing to the owner was not returned as undeliverable;

#### **Comment**

A comment from the floor suggests that not all post offices return undelivered mail marked “undeliverable” and therefore this indicia may not always be reliable. Some alternative method could be considered. (4) a state or municipal bond or the debt of a business association, nonprofit organization, or financial organization, [other than a bearer bond or an original issue discount bond,] three years after the date of when the bond matured or was called;

#### **Comment**

This change puts state and municipal bonds on the same footing as corporate bonds, and includes bonds issued by non-profits such as churches and schools”

- NAUPA: (a)(3) pg. 24 line 25 – SUGGESTION – “(3) any security
    - (i) for owners receiving communications from the holder via First-Class Mail, three years after the date of a mailing to the owner was returned as undeliverable by the Post Office; provided, however, that if such mailing is re-sent within one month to the owner, three years from the date the re-sent mailing is returned as undeliverable. If any future First-Class mailing is made to the owner and is not returned as undeliverable, a new period of abandonment commences and relates back to the date any subsequent First-Class mailing is returned as undeliverable;
    - (ii) for owners not receiving communications from the holder via First-Class Mail, in accordance with section 8(h), four [five] years after the date of owner’s last indication of interest.
- [(4) OMIT.]

- NAUPA: (a)(5) pg. 25 line 13 – SUGGESTION – Change from “five years” to “three years.”
- NAUPA: (a)(5) pg. 25 line 13 – ADDITION – “. . . after the [earlier of] maturity or the date of the last indication by the owner of interest in the property. Amount remaining in a payroll card, one year after the last indication of interest in the property by the owner.”
- ABA: (a)(6) pg.25 line 17 – DELETION – “(6) money or credits owed to a . . .”



- ABA: (a)(7) pg.25 line 19 – SUGGESTION – “(7) a stored-value card, [and a gift card] . . .” ABA recommends “other than” to “and”
- ABA: (a)(7)(C) pg.25 line 24 – ADDITION – “The amount abandoned by the owner is the **face** value remaining at the time it is presumed abandoned; [except for gift cards with respect to which the amount abandoned is [60%] of the **face** value remaining at the time it is presumed abandoned];”
- NAUPA: (a)(8) pg. 26 line 6 – SUGGESTION – Change (8) and (9) to  
“(8) balance of a gift card, including virtual gift card and other form of gift instrument, three years following the latter of the date of sale or the owner’s last use of the card.  
“(9) A holder who has paid money to the administrator pursuant to this Act may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. In the case of a gift card or other gift instrument including a virtual gift card balance that has been transferred to the administrator, the holder shall be required to honor the gift card upon presentment by the owner. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under Section 19(a).”

- UPPO: (a)(8) pg.26 line 6

Summary:

UPPO submits a purported “match” of owner information with the Social Security Death Master File should not be equated with “actual proof of death” sufficient to trigger the running of a dormancy period. The traditional standard of “actual proof of the death of the insured or annuitant”, as stated in Section 7 of the 1981 Uniform Unclaimed Property Act, is appropriate in terms of this regulatory framework. The period of abandonment should only be triggered when the proceeds of the policy are indeed due and payable as prescribed by law and the policy terms.

- NAUPA: (a)(11) pg. 26 line 15 – ADDITION – “. . . instrumentality, **including municipal bond interest an unredeemed principal under the administration of a paying agent or indenture trustee** one year after the property comes distributable;”
- NAUPA: (a)(12) pg.26 line 18 – DELETION – “. . . compensation becomes payable, **except amounts paid to or for the benefit of an employee and held in a payroll card;**”

- NAUPA: (a)(14)(A)-(B) pg.26 line 26 – SUGGESSTION – Delete entire section and replace with . . .

“(14) Property in an individual retirement account, defined contribution plan, or other retirement account or plan that is qualified for tax deferral under the Internal Revenue Code of the United States,

“(1) for owners receiving communications from the holder via First-Class Mail, three years following the date which distribution of all or part of the property would then be mandatory; provided, however, at the conclusion of the three year period, the current whereabouts of the owner are unknown as evidenced by communications from the Post Office having been returned as undeliverable;

“(2) (h) In lieu of the requirements set forth in subsection (e), and with respect to an apparent owner of an individual retirement account, defined contribution plan, or other retirement account or plan who does not receive communications from the holder via First-Class Mail shall, the holder shall send a communication electronically that complies with Section 10 within three years after the date which distribution of all or part of the property would then be mandatory. If the holder receives notification that the electronic communication was not received, or if the owner does not respond to the electronic communication, the holder shall send the owner by certified U.S. Mail, return receipt requested a written notice which complies with Section 10(a). In the absence of the owner responding to the holder’s communications or otherwise indicating an interest in the property, the property shall be presumed abandoned in accordance with Section 3(a)(3)(14)(2).

“(1) For purposes of this section, a returned receipt signed by the apparent owner represents an indication of interest in the property.

“(c)(new subsection) property in a college savings plan or prepaid plan established under section 529 of the Internal Revenue Code of the United States, five years after (i) the return of mail as undeliverable for owners who receive communications from the holder by United States mail, or (ii) the date of last activity for owners who do not receive communications from the holder by United States mail; provided that at the conclusion of five years the beneficiary has reached the age of 26 years or if the age of the beneficiary is unknown, the account has been opened for 26 years or it has been 26 years since the account owner has changed the beneficiary.

“(d) Section 2(a)(14): ...For any other asset that is qualified for tax deferral under the income tax laws of the United States and does not have a mandatory date of distribution or is not otherwise expressly covered by this [Act], \_\_\_\_\_ years after (i) the return of mail as undeliverable for owners who receive communications from the holder by United States mail, or (ii) the owner’s last indication of interest in the property for owners who do not receive communications by United States mail;

“(16) if the holder has imposed a charge against property for reason of owner inactivity or the failure of the owner to claim the property within a specified period of time, and the abandonment period for the property as specified in this section is greater than two years, the property shall instead be presumed abandoned two years from the date of the owner’s last indication of interest in the property.

“(17) if the holder has reason to believe that the owner is deceased, and the abandonment period for the owner’s property as specified in this section is greater than two years, the property shall instead be presumed abandoned two years from the date of the owner’s last indication of interest in the property ; provided, that if the property is an individual retirement account, defined contribution plan, or other retirement account or plan under Section 2(a)(14), the property shall be instead be deemed abandoned one year following the date which distribution of all or part of the property would then be mandatory.

### Comment

“The drafting Committee Decided that the standard for presumption of abandonment for tax deferred accounts or similar plans should be permutations of the standard proposed by the ABA, with some modifications suggested by NAUPA. **Forced terminations (e.g., a parson is moved out of a plan because they terminate employment and don’t have a sufficient balance)”**

- UPPO: (a)(14)(A) and (B) pg. 26 line 26 – SUGGESTION –
  - (A) Property in an individual retirement account or any retirement health saving account, three years after
    - (i) The date the owner has attained the age of 70.5, if determinable by the holder, or two years after the date the holder has received proof of death of the owner in the form of a claimant’s presentation of a certified death certificate, but only if the death of the owner results in a mandatory distribution under the Internal Revenue Code; and
    - (ii) The date of a second consecutive first class mailing to the owner was returned thereafter as undeliverable by the U.S. Post Office (unless a subsequent first class mailing to the owner was not returned as undeliverable); provided, however, that this section shall not be construed to require the holder to solicit such a death certificate or otherwise attempt to confirm whether the owner is deceased.
  - (B) Property in any other such account or plan, three years after
    - (i) thirty (30) years have elapsed from the date the account was opened; and
    - (ii) the date that a second consecutive first class mailing to the owner was returned thereafter as undeliverable by the U.S. Post Office (unless a subsequent first class (unless a subsequent first class mailing to the owner was not returned as undeliverable)

- NAUPA: (a)(15) pg.27 line 25 – SUGGESTION – Change from “five years” to “**three years**”
- NAUPA: (c) pg.28 line 4 – ADDITION – “**Where there is an ambiguity or conflict under this section as to the applicable period giving rise to a presumption of abandonment, the nature of the underlying obligation, regardless of the form of payment of account, shall take precedence and dictate the corresponding abandonment period.**”
- UPPO: (c) pg.28 line 4 – SUGGESTION – Delete Section 3. Presumptions of Abandonment Alternative A (c) and adopt Alternative B (c) in the RUUPA by removing the brackets
- NAUPA: ALTERNATIVE A pg. 28 line 4 – NAUPA is in support of deleting the original.
- NAUPA: ALTERNATIVE B pg. 28 line 8  
NOTE: NAUPA does not support a business to business exemption in the text of the ACT, even in brackets. However, NAUPA may be able to support a recognition in the comments that a minority of states have enacted exemptions in one form or another, for transactions between businesses.
- ABA: ALTERNATIVE B pg. 28 line 8  
NOTE: ABA prefers this alternative for any B2B exemption.
- NAUPA: [(e)] (4)-(5) pg. 29 line 13 – SUGGESTION –  
“**(4) an account balance or similar owner-initiated account inquiry, including an account inquiry made electronically where the owner has contemporaneously authenticated his or her identity.**  
(5) making a deposit or withdrawal from an account in which the property is held, **but does not include the automatic reinvestment of dividends or interest. [DELETE BRACKETED PORTION]**”
- NAUPA: [(e)] (7) pg. 30 line 2 – DELETION– **entire (7)**

- Holders Coalition: (g) Comment pg. 30 line 28 – SUGGESTION –

**Derivative Rights Doctrine** – *Updated*. The revised Act should reflect the fundamental principle of unclaimed property law that has become known as the “derivative rights doctrine.” This doctrine provides that, because the state takes custody of unclaimed property on behalf of the owner, the state’s right to claim unclaimed property is derived from and limited by the owner’s right to the property. As a result, the state should, as a general matter, have no greater right to the property than the owner.

- UPPO: [(e)] (5) pg.29 line 17 – SUGGESTION – Remove Brackets “. . . including automatic deposits or withdrawals previously authorized by the owner and any automatic reinvestment of dividends or interest.”
- NAUPA: (f) pg.30 line 13 – ADDITION – “(f) Actions that do not constitute an owner’s indication of interest include ACH transfers, automated postings to accounts, computer system conversion, the non-return of mail (except as otherwise explicitly provided in the Act), and other actions that are not owner initiated or do not require a direct owner response.”
- NAUPA: (g) pg.30 line 23 NAUPA’s position is that removal of this provision would be detrimental to the interests of consumers and the states and is contrary to both the 1995 UUPA and 1981 UUPA, as well as Supreme Court precedent

- UPPO: (g) pg. line 23

NOTE: The revised UUPA should reflect the fundamental principle of unclaimed property law that has become known as the “derivative rights doctrine.” This doctrine provides that, because the state takes custody of unclaimed property on behalf of the owner, the state’s right to claim unclaimed property is derived from and limited by the owner’s right to the property. As a result, the state should, as a general matter, have no greater right to the property than the owner.

- NAUPA: (g) Comment pg.30 line 28 – DELETION – “This provision was in brackets until the arguments made by holder concerning the derivative rights doctrine were presented at the annual conference.”

- Holders Coalition: pg. 28 line 25 – SUGGESTION - **Business-to-Business Exemption** – *Pending*. Business-to-business transactions should be exempted from unclaimed property reporting requirements, as businesses are in the best position to determine whether another business holds their property. The Act should be amended to include the business-to-business exemption language advanced by the American Bar Association. This language is clear and does not employ the vague “ongoing business relationship” test contained in the Drafting Committee’s draft business-to-business exemption.

- NAUPA: (h) & (h)(1) pg.31 line 3 – SUGGESTIONS –

“(h) amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated:

“(i), two years after the obligation to pay arose, or in the case of a policy or annuity payable upon proof of death, three years after the date of death of the insured; or

“(ii) one year after the date the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based in the case of a policy or annuity payable upon death where the insurer does not know whether the insured is deceased as of the time the limiting age is reached;”

- UPPO: (h) pg. 31 line 3

Summary:

UPPO submits a purported “match” of owner information with the Social Security Death Master File should not be equated with “actual proof of death” sufficient to trigger the running of a dormancy period. The traditional standard of “actual proof of the death of the insured or annuitant”, as stated in Section 7 of the 1981 Uniform Unclaimed Property Act, is appropriate in terms of this regulatory framework. The period of abandonment should only be triggered when the proceeds of the policy are indeed due and payable as prescribed by law and the policy terms.

- Holders Coalition: (h)(5) Comment pg.34 line 14 – SUGGESTION –

**Proof of Death** – *Pending*. A Social Security Death Master File (DMF) match is insufficient to constitute “proof of death” for making an insurance policy (or other intangible property) “due and payable” and insufficient to trigger dormancy periods toward escheatment of property. “Proof of death” is defined by state law and/or the courts of the states to be an evidentiary standard sufficient to prove that the event actually occurred. Modification of the Act to include DMF Matching as proof of death will create conflicts with existing insurance laws and the standards for proof of death that have been established over decades within each individual state.

- ACLI: (h) pg. 34 SUGGESTION –

The ACLI renews its concerns about acknowledging Death Master File requirements in the revised model act. ACLI members do not shirk utilization of the federal database. The ACLI made clear in 2012 that its members will support new requirements for life insurer administration of unclaimed policy benefits and dormant retained asset accounts based upon reasonable and consistent standards which are triggered when the name and other sufficient identifying information of a person insured under a policy or owning a retained asset account appear in the Death Master File. To such end 17 states have enacted modern insurance laws addressing insurance company administration of unclaimed life insurance benefits since 2012. Relevant insurance legislation is pending in another three states.

The ACLI is determined to defend traditionally-respected principles related to unclaimed property law. Since 1954 these principles have been premised on the proposition that the substantive law of insurance precedes and informs the administration of unclaimed life insurance benefits pursuant to the unclaimed property laws. Acknowledging the Death Master File in unclaimed property laws will confront insurance companies in each of 50 states with two different laws with two different regulators each authorized to require DMF use. It will make impossible the achievement of the fundamental goal of the Commission itself, i.e., *to accomplish uniform laws*.

For these reasons, the ACLI demurs to the need to acknowledge the Death Master File in the draft revision of the *Uniform Unclaimed Property Act*. The ACLI continues to evaluate the framework for opportunities to agree to revisions acceptable to all interested parties.

#### **SECTION 4. CONTENTS OF SAFE DEPOSIT BOX OR OTHER SAFEKEEPING.....35**

- ABA: The ABA believes this provision should not be expanded from that in the 1995 Act, and thus should only apply to safe deposit boxes held by financial institutions. Even in that case, though, we would recommend changes to the notice and liquidation provisions to satisfy due process and the takings clause.

#### **SECTION 5. RULES FOR TAKING CUSTODY.....35**

- ABA: (1)-(3) pg. 35 line 23 – SUGGESTION –  
“(1) the last known address of the apparent owner of the property, as shown on the records of the holder, is in this state; the records of the holder do not reflect the last known address of the apparent owner, but

“(2) the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property, and is not obligated to pay or deliver the property to that state; provided, however, that if the state of domicile of the holder has changed, the holder’s state of domicile shall be the state where the holder was domiciled at the time property deemed abandoned;”

- ABA: (4) pg. 36 line 15-18 – DELETION – DELETE ENTIRE PROVISION
- NAUPA: [(4)] pg. 36 line 17 – DELETION – “. . . that does not provide custodial taking of the property, and **the holder, at its option, voluntarily remits property for which. . .**”
- NAUPA: (5) pg.37 line 2 – DELETION – “. . . agency, or instrumentality of this state, **property that is specifically exempt from custodial taking under the laws of the state of the last known address of the apparent owner, if applicable, or if not, the state of domicile of the holder, if applicable, is not subject to the custody of any state;**”
- ABA: (5) pg. 36 line 26 – DELETION – “. . . is in a state that does not provide for the custodial taking of unclaimed property, **[or in a foreign country]** and the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state; provided, that property that is **not subject to** custodial taking under the laws . . .”
- NAUPA: (5) Comment pg. 37 line 7 – SUGGESTION – “**This revision recognizes a third-priority rule. The Court in *Texas v. New Jersey*, 379 U.S. 674 (1965) established the priority between the state of residence of the owner and the domicile of the holder, but did not address the situation where neither state provides for custodial taking. Providing a third priority rule avoids the situation of a holder getting a windfall where neither the first nor the second priority state is entitled to take custody of the property. While one circuit has concluded that no state may establish a priority rule outside of Texas, the issue remains unsettled. See *American Express, etc. v. Sidamon-Eristoff*. “**
- ABA: (5) Comment pg. 37 line 5 – NOTE – The third-priority rule is in the section below this comment, not the section above the comment.
- ABA: (6) pg. 37 line 24 – SUGGESTION – “. . . unless the property is **not subject to** custodial taking under the laws **of either the state of the owner’s last known address or the state of the holder’s domicile;** or



- NAUPA: (8) pg. 37 line 8 – SUGGESTION – CHANGE CURRENT SECTION TO:

“(8) the owner of property has died and the property is subject to claim by a designated beneficiary and an address of the beneficiary is not known to the holder, or it is not definite or certain from the records of the holder who is entitled to the property, it is presumed that the last known address of the beneficiary entitled to the property is the same as the last known address of the owner as reflected or indicated in the records of the holder.

Comment

“This provision was added at the suggestion of NAUPA to provide that when proceeds of life insurance or an annuity or other property are payable to a beneficiary, and the records of the holder do not indicate the address of the owner, the holder will presume that the state of residence of the owner is the same as that of the original owner. This presumption will make it more likely that the owner will receive notice of the abandoned property.”

## SECTION 6. DORMANCY CHARGE ..... 38

- NAUPA pg.38 line 21 – ADDITION – “The amount of the deduction is limited to an amount that is not unconscionable, in consideration of the marginal transactional costs incurred by the holder in its maintenance of the owner’s property, and the services received by the owner.”
- ABA: pg.38 line 19 – DELETION – “. . . specified time is there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge; which is not regularly reverses or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.”
- ABA: pg. 38 line 19 – ADDITION – “. . . specified time if the charge is valid under the laws applicable to the contract between the holder and the owner.”
- Holders Coalition: Pg.38 line 17 – SUGGESTION –  
**Dormancy Triggers – Pending.** The 1995 *Uniform Unclaimed Property Act* should be revised to reflect that all securities-related dormancy periods will commence with a triggering event of two pieces of returned first class mail on the account. Additionally, tax deferred accounts should be not be considered abandoned until the owner of the property reaches age 70.5 or 30 years have elapsed from the date the account was opened, depending on the type of account.

**SECTION 7. BURDEN OF PROOF AS TO UNPAID DEBTS OR UNDISCHARGED OBLIGATIONS EVIDENCED BY RECORDS OF A HOLDER..... 38**

- NAUPA: (a) pg.38 line 25 – DELETION – Delete entire (a)
- ABA: (a) pg.38 line 25 – SUGGESTION – Change “including an” to “evidenced by an”
- ABA: (c) pg. 38 line 6 – SUGGESTION – “. . . with respect to the property referenced in subparagraph (b) or otherwise show that such property . . . “
- ABA: (c)(2) pg.38 line 12 – SUGGESTION – “(2) but later replaced because the original check was lost or contained errors that were corrected;”
- ABA: (c)(6) pg.38 line 17 – ADDITION – “(6) but was paid, . . .”
- ABA: (c)(7)-(8) pg. 38 line 18 – SUGGESTION –  
“ (7) but was issued in error; or  
“ (8) but there was a lack of consideration or failure of consideration.”
- Holder’s Coalition:

**Burden of Proof** – *Updated*. The ULC should amend the Burden of Proof requirement of § 6 of the revised Act to follow the U.S. Supreme Court’s ruling in *Delaware v. New York*, so that state’s burden of proof matches that of the creditor in the creditor-debtor relationship. When a state takes custody of unclaimed property, it does so on behalf of the owner of the property and for the purpose of returning the property to the owner. If a state has a lesser burden than the owner, then the unclaimed property laws will result in the escheatment of property that would not have been required to be paid to the purported creditor if a direct claim were made. State unclaimed property laws were not intended to enlarge creditors’ rights in this manner

**SECTION 8. CONTENTS OF REPORT OF ABANDONED PROPERTY..... 41**

- UPPO: (a) and (b) pg. 41 line 16 – SUGGESTION –

Summary:

While we believe this is an inadvertent oversight by the Drafting Committee, it would be impossible to exclude Non-Public Personal Information (NPPI) from unclaimed property reports as social security and account number detail is required and essential to the return of such property to the rightful owners. UPPO encourages a revision that would allow NPPI in unclaimed property reports so long as all report transmissions are electronic and secure or encrypted (or at the very least password protected), and paper reports are eliminated.

Proposed language:

(a) A holder of property presumed abandoned shall make a report in a record to the administrator concerning the property by a means and in an electronic, encrypted or password protected format approved by the administrator. The format must be designed to protect the confidentiality of the owner's information contained in the report, to the extent it is required to be protected under Section 27. No holder shall be required to submit a paper report to the administrator.

(b) The report under subsection (a) must be signed by the holder under the penalties of perjury or verified by the holder as to its completeness and accuracy. The administrator may accept an electronic signature or waive verification. The report may include any sensitive NPPI of the owner or the owner's property and must contain:

(1) a description of the property;

(2) except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property with a value of \$50 or more;

...

(7) a statement that the holder has complied with the owner notification requirements of subsection (e) of this section, and of Section 10;

- NAUPA (b) pg. 41 line 30 – DELETION – “The report may not otherwise include any sensitive nonpublic personal information of the owner or the owner's property, but must contain.”

- NAUPA: (b)(3) pg.42 line 9 – ADDITION – “(3) an aggregated amount of items valued less than \$50 each; provided that owner detail may be included for each property at the holder's discretion”

- NAUPA: (f) pg.43 line 15 – DELETION – “. . . send the notice earlier and as often . . .”

- ABA: (f) (1)-(3) pg. 43 line 14-20 –

NOTE: This language suggests that if these three conditions are not met, the holder cannot send out earlier notices. However, holders should be permitted to send out earlier notices even if any of these conditions are not met. The original purpose of these conditions was to present situations in which holders were not required to send out notices at all. However, those conditions are the inverse of what is written here.

- NAUPA: (h) pg. 44 line 6 – DELETION –

“... communications from the holder by United States Mail, the holder of securities shall perform the following due diligence with respect to the securities:

“(1) For any apparent owner of a security who does not otherwise receive communications from the holder. . . .”

- NAUPA: (h) pg.44 line 8 – ADDITION – “And with respect to an apparent owner of a security who does not receive”

NOTE: This language has been changed in the most recent revision

- NAUPA: (h) pg.44 line 9 & 13 – SUGGESTION – line 5 change “United States” to “**First-Class.**” Line 9 change “first class United States” to “**First-Class.**”

- ABA: (h)(1) pg. 44 line 9 – RECOMMENDATION – “. . . the holder shall send a communications electronically that complies with Section 10 . . .”

NOTE: ABA recommends that Section 10 not be referenced here, and any requirement to be included in the pre-due diligence notice to security-holders be specified in this section rather than Section 10.

- NAUPA: (h) pg.44 line 16 – ADDITION – “. . . unless the owner otherwise indicates an interest in the security after the electronic communication.

“10 (a) provided however, if the value of the property exceeds \$1,000, the written notice shall be sent via certified U.S. mail, return receipt requested. In the Absence of the owner responding to the holder’s communications or otherwise indicated an interest in the property, the property shall be presumed abandoned in accordance with Section 3(a)(3)(ii)

“(1) For purposes of this section, a returned receipt signed by the apparent owners represents an indication of interest in the property”

- NAUPA: (h)(2)-(h)(2)(B) pg.44 line 16 – DELETION –

“(2) For any apparent owner of a security who receives communications from the holder by United States mail (or by first class United States Mail if returned as undeliverable) and the value of the property is \$50 or more, the holder shall:

(A) send by first class United States Mail to the apparent owner a written notice that complies with Section 10(a) not later than two years after the date the second consecutive first class mailing was returned to the holder as undeliverable;

(B) send by first class United States Mail to the apparent owner a written notice that complies with Section 10(a) not later than 90 days before filing the report. There is no limit as to the number of notices that a holder may send to an apparent owner.”

- UPPO: (f)(g)(h) & 10(b) – SUGGESTION – SEE SECTION 10(a) – Notice to Owner

**SECTION 9. PAYMENT OR DELIVERY OF ABANDONED PROPERTY..... 45**

- UPPO: (d) pg. 45 line 23 – SUGGESTION - (d) If the property reported to the administrator is a security or security entitlement under [Article 8 of the Uniform Commercial Code], the administrator is **an appropriate person** to make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with [Article 8 of the Uniform Commercial Code] **and Section 13(f) of this Act.**
- NAUPA: (h) pg.46 line 20 – ADDITION – “. . . report required pursuant to Section 8. **The holder shall conduct an annual review of prior reporting of worthless securities to determine whether any such securities subsequently attained market value thus, have become reportable no** later than 10 days following a determination by the administrator or the holder that the security is freely transferable or is no longer worthless, the security must be delivered to the administrator.”

**SECTION 10. NOTICE TO OWNER..... 47**

- NAUPA: (a) pg.47 line 17 – ADDITION – “. . . may be required. **A holder may not require or solicit owners to pay a fee to recover their property from the holder.**”

- UPPO: (a)(b) pg.47 line 4 – SUGGESTION –  
NEW Section 10(a) – Notice to Owner

(1) ~~Except as otherwise provided in this section,~~ The holder of property presumed abandoned, or that may become abandoned, shall send notice to the apparent owner, ~~in a record that complies with Section 10(a)~~ in a format acceptable to the administrator, by first class United States Mail to the apparent owner, ~~not more than 120 days nor less than~~ not less than 60 days before filing the report if:

- (1) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;
- (2) the claim of the apparent owner is not barred by a statute of limitations;
- (3) the value of the property is \$50 or more; and,
- (4) the property does not consist of non-freely transferable securities.

The holder may also send the notice earlier and as often as it chooses to do so, stating that the holder is in possession of property subject to this [act]. The holder may attempt to obtain better addresses for owners for whom the holder's records disclose an address which does not appear to be accurate.

(2) The notice shall contain a heading that reads as follows: "THE STATE OF [ ] REQUIRES US TO NOTIFY YOU THAT YOUR PROPERTY MAY BE TRANSFERRED TO THE STATE IF YOU DO NOT CONTACT US BEFORE [insert date which is thirty (30) days from the date of the letter]," or substantially similar language.

(3) The notice shall specify the date that the property will be turned over to the state, and explain the necessity of filing a claim for the return of the property following receipt by the state; identify the nature and amount, except for securities or assets with fluctuating value, of the property that is the subject of the notice; and that property that is not cash may be liquidated by the state; and provide instructions that the apparent owner must follow to prevent the property from being reported and turned over to the state.

(4) Notwithstanding the foregoing, if the owner has previously consented to electronic delivery of information from the holder, the notice under this section may be sent by electronic delivery in lieu of first class United States Mail if the holder does not have reason to believe that the owner's electronic mail address is not valid. If the holder sends the required notice to the owner electronically and receives information indicating that the owner's electronic address is not valid, the holder shall send the required notice by first class United States Mail to the owner's last known mailing address. ~~A holder is not required to send any notice required by this section to any address that the holder has reason to believe is not a valid address for the owner.~~

(5) For any apparent owner of a security who does not otherwise receive communications from the holder by United States Mail, the holder shall send a communication electronically ~~that complies with Section 10(a)~~ within two years after the owner's last indication of interest in the property. If the holder receives notification that the electronic communication was not received, or if the owner does not respond to the electronic communication, the holder shall send the owner by first class United States Mail a notice ~~which complies with Section 10(a)~~, unless the owner otherwise indicates an interest in the security after the electronic communication.

(6) The holder of securities shall perform the following owner notification with respect to ~~such~~ property presumed abandoned, or that may later become abandoned:

For any apparent owner of a security who receives communications from the holder by United States Mail, if two consecutive first class mailings to the apparent owner were returned to the holder as undeliverable by the United States Post Office (unless a subsequent first class mailing to the owner was not returned as undeliverable), the value of the property is \$50 or more, and the property is presumed abandoned, the holder shall comply with the requirements set forth above in Sections 10(a)(1) through (4).

~~(A) send by first class United States Mail to the apparent owner a written notice that complies with Section 10(a) within two years after the date the second consecutive first class mailing was returned to the holder as undeliverable;~~

- (7) The holder of property presumed abandoned shall file with the report an affidavit or verification under the penalties of perjury that the holder has complied with the requirements of section 10(a)

Section 10(b)(1), proposed revision:

(1) The sending of a written notice by first class United States Mail to apparent owners of unclaimed property presumed abandoned and held by the state, and ~~in the case of property in the form of securities held in electronic form~~ by electronic notice if the electronic address of the apparent owner is known to the administrator and has been advised that the apparent owner has consented to receive electronic notification in lieu of notification by mail.

- ABA: (e)(1)-(3) pg. 48 line 13 – SUGGESTION –
  - “(1) Within six (6) months after the property has been reported to the state, the state shall
    - “(a) send a written notice by first class United States Mail to each apparent owners of the property at each address of the apparent owner know to the state; and
    - “(b) send to each apparent owner a notice to the electronic address of the apparent owner is known to the administrator.
  - “(2) No later than three (3) months prior to any liquidation of the property of the apparent owner buy the state shall
    - “(a) send a second written notice by first class United States Mail to each apparent owner of the property at each address of the apparent owner know to the state; and

“(b) send to each apparent owner a second notice to the electronic address of the apparent owner if know to the administrator.

“(3) The state shall publish notice, every . . .”

NOTE: This would change the (e)(2) to (e)(3) and create a new (e)(2).

- ABA: (e)(3)-(5) pg. 49 line 9 – SUGGESTION –

“(4) The state shall maintain an Internet website or database . . .

“(5) The state shall conduct a reasonable search of public records available to it to try to determine the current address of the apparent owner. Such search shall include, but shall not be limited to, a search of the U.S. Postal Service’s National Change of Address database, the State Vital Statistics database, and state and local real estate and tax records. In the event that any such search reveals another address for the apparent owner, the state shall send any notices required to be made pursuant to this Section to such address.”

NOTE: This would change the original (e)(3) to (e)(4) and would create (e)(5)

## SECTION 11. CUSTODY BY STATE; RECOVERY BY HOLDER; DEFENSE OF HOLDER..... 50

- NAUPA: (a) pg.50 line 24 – DELETION – “. . . the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability arising thereafter with respect to the property. If the holder’s records contain an address for the apparent owner which the holder’s records do not disclose to be inaccurate, and the holder has made reasonable efforts to notify the owner by mail or in substantial compliance with Section 10, the holder is relieved of all liability arising thereafter with respect to the property to the extent of the amount of money or value of property so paid or delivered.”
- NAUPA: (a) pg.50 line 24 – ADDITION – “. . . the state assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or may be made in respect to the property.”



- NAUPA: (b)(C) pg. 51 line 8 - ADDITION – “(C) there is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice; **and**  
(iv) the holder has acted in accordance with the owner notification requirements of Section 10”
- NAUPA: (c) pg.51 line 23 – DELETION –  
“ . . . property, and may claim reimbursement from the administrator, **or may deduct the amount of the payment from its next subsequent unclaimed property due to be paid to the state, if:**  
    “(1) the deduction is supported by proof of payment; and  
    “(2) proof that the person to whom the payment was made was the owner entitled to the payment previously made to the administrator.”

## SECTION 12. CREDITING OF DIVIDENDS, INTEREST, AND INCREMENTS TO OWNER’S ACCOUNT ..... 53

## SECTION 13. PUBLIC SALE OF ABANDONED PROPERTY ..... 53

- ABA: (a) pg. 53 line 17 – SUGGESTION – “(a) Except as otherwise provided in this section, **no earlier than three years** after . . .”
- ABA: (d) pg.54 line 2 – SUGGESTION – “(d) The administrator **shall not** offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale **or is the property has no substantial commercial value**. In that case, the administrator **shall either retain the property in perpetuity for the owner or return it to the holder for safekeeping.**”
- ABA: (e) pg. 54 line 5 – DELETION – DELETE ENTIRE (e) PROVISION
- ABA: (h) pg. 54 line 22 – ADDITION – “. . . delivery to the administrator **or while a claim is pending**, a person making . . .”
- ABA: (i) pg.55 line 9 – SUGGESTION – “(i) **The administrator may not sell or otherwise liquidate any property for which a claim is currently pending.**”
- ABA: (j) pg. 55 line 18 – ADDITION – “. . . claiming through or under with of them, **unless the purchaser knows or should have known that the property was escheated in a manner that may violate applicable laws.** The administrator . . .”
- ABA: (k) pg.55 line 21 – DELETION – DELETE ENTIRE (k) PROVISION

## SECTION 14. DEPOSIT OF FUNDS..... 56

- NAUPA: (d) pg.57 line 12 – DELETION – “. . . and payment of a claim may not be avoided by the state on an assertion of sovereign immunity.”
- NAUPA: (d) Comment pg. 57 line 16 – DELETION – “. . . custodian under this act for the benefit of the owner is not property of the state and payment of a claim may not be avoided by a claim of sovereign immunity.”
- ABA: (d) pg.57 line 10 – SUGGESTION – “Any funds or other property received by the administrator and held by the state as unclaimed property under this [act] are custodial funds or property held for the benefit of owners, are not funds or property that belong . . .”

## SECTION 15. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY ..... 57

- ABA: (c) pg. 58 line 3 – COMMENT – This needs to be revised to be consistent with any revision to Section 5

## SECTION 16. FILING CLAIM WITH ADMINISTRATOR; HANDLING OF CLAIMS BY ADMINISTRATOR; ACTION TO ESTABLISH CLAIM. ....60

- ABA: (a) pg.60 line 13 – SUGGESTION – “. . . delivered to the administrator may file a claim for the property. A person that paid or delivered property to the administrator may also file a claim for the property if the property was not required to be paid or delivered to the administrator under the Act or other applicable law. The claim must be on . . .”
- ABA: (c) pg. 60 line 22 – SUGGESTION –  
“(c) The administrator shall pay or deliver property to a claimant if the administrator has been given proof sufficient to establish to the satisfaction of the administrator that the claimant is  
“(1) the rightful owner of the property or  
“(2) the person that paid or deliver the property to the administrator and the property was not required to be paid or delivered to the administrator under the Act or other applicable law.”
- ABA: (h) pg. 62 line 14 – SUGGESTION – “. . . within [90 days] after filing, may at any time maintain an original action to establish the claim in federal or state court, naming the [administrator] as a defendant. [On final determination of a suit brought under this subsection the court may award the claimant reasonable attorney’s fees and expenses of litigation.”

- ABA: (i) pg.62 line 18 – ADDITION – “(i) A person may also bring an action in federal or state court against the state or the administrator at any time for violations of the [Act], the U.S. Constitution, or other laws.”

## SECTION 17. ELECTION TO TAKE PAYMENT OR DELIVERY..... 62

- NAUPA: (a) pg.62 line 24 – ADDITION – “. . . property that is not yet presumed abandoned as long as the property does not accrue interest, is not a security and is not tax-advantaged asset, and is not tangible property.”

NOTE: Original language has changed in the most recent draft

- Holders Coalition: (b) & (c) pg. 62 line 27 – SUGGESTION –

**Early Reporting – Updated.** The Act should permit holders to remit property (other than securities, interest bearing, or fluctuating value property) prior to the abandonment period upon disclosure to the administrator, and provide indemnification to the holder when the holder so remits. To effect this, the June 2015 draft in § 17 (b), should be revised to exclude from early reporting those types of property that fluctuate in value. Further, the June 2015 draft in § 17 (c) should be revised to include a statement that, upon the holder’s delivery of property under § 17 (b), the holder is relieved of and held harmless by the State from liability for any existing or future claim or claims with respect to the property reported earlier.

- NAUPA: [(c) pg.63 line 12 – DELETION - The following property may not be reported and delivered to the administrator under subsection (b):

[(i) tangible property entitlements that are due or deliverable to the owner by the holder in a form other than money; and

(ii) tangible property taken from a safe deposit box under Section 3.]

- UPPO: (b) pg. 63 line 3. – ADDITION – “. . . future claim to the property. Upon delivering the property, the holder shall immediately and thereafter be relieved of and held harmless by the State from any and all liabilities for any claim or claims which exist at the time with reference to the property or which may thereafter be made or may come into existence on account of or in respect to any such property reported early.”
- UPPO: (c) pg. 63 line 17 – ADDITION – “Property that is not fixed and certain but is instead subject to value fluctuation shall not be reported under this section.”

**SECTION 18. DESTRUCTION OR DISPOSITION OF PROPERTY HAVING NO  
SUBSTANTIAL COMMERCIAL VALUE; IMMUNITY FROM LIABILITY..... 63**

- ABA: The ABA would DELETE this entire section and Section 19 would become Section 18.

**SECTION 19. PERIODS OF LIMITATION AND REPOSE..... 64**

- UPPO: (a) pg.64 line 7  
NOTE: The revised UUPA should reflect the fundamental principle of unclaimed property law that has become known as the “derivative rights doctrine.” This doctrine provides that, because the state takes custody of unclaimed property on behalf of the owner, the state’s right to claim unclaimed property is derived from and limited by the owner’s right to the property. As a result, the state should, as a general matter, have no greater right to the property than the owner.
- ABA: (a) pg. 64 line 8 – DELETION – “. . . limitation on the owner’s right to receive or recover property, whether specified by **contract**, statute . . .”
- NAUPA: (a) pg. 64 line 9 – DELETION – “statute, or court order, **[precludes]** does not preclude the property from being . . .”
- NAUPA: (a) Comment pg.64 line 12 – DELETION – DELETE ENTIRE COMMENT
- Holders Coalition: (b) pg. 64 line 21 – SUGGESTION –  
**Statute of Limitations** – *Pending*. The statute of limitations provision in § 19(b) of the Act should be revised to provide greater certainty and protection to holders of unclaimed property. Specifically, the American Bar Association’s recommendation should be adopted, including a three-year statute for filed reports (with seven years for fraud or failure to file a report). Also critically, there should be no requirement to specifically identify property in a report filed with the administrator for the statute of limitations to apply.
- ABA: (b) pg. 64 line 23 – SUGGESTION – “. . . **holder filed a report with the administrator, unless the report is fraudulent**. The parties may agree in a record . . .”
- NAUPA: (c) pg.65 line 1 –ADDITION – “. . . after the first date the duty arose. **Any action or proceeding maintained by the administrator under this section may include property that first became reportable during the relevant time period as well as any property reflected on the holder’s books and records as being held for or owed to an owner at any point during the relevant time period.**”

- ABA: (c) pg. 65 line 1 – ADDITION – “. . . after the first date the duty arose. **The parties may agree in a record to extend the limitation in this subsection.**”

**SECTION 20. REQUESTS FOR REPORTS; EXAMINATION OF RECORDS;  
LIMITATIONS ON USE OF INFORMATION AND DOCUMENTS OBTAINED  
BY THE ADMINISTRATOR ..... 65**

- ABA: (a) pg.65 line 12 – ADDITION – “. . . the administrator **reasonably** believes . . .”
- Holder Coalition: 67 line 19 – SUGGESTION –  
**Contingency Fee Audits** – *Updated*. The ULC should prohibit the use of contingency fee arrangements between states and private auditors in contracts to conduct unclaimed property audits. With regard to other auditing and examination arrangements and contracts, standards to increase transparency, oversight and accountability should be legislated to improve all such arrangements and contracts.
- NAUPA: (d)(4) pg.67 line 25 – SUGGESTION – Change “. . . fair market value of the securities as of the date they are turned over to the administrator. . .” to “. . . **date of receipt by the examiner.** . . .”
- NAUPA: (e) pg.68 line 18 – DELETION – “. . . provided by private contractors. **[and has been approved by the state Comptroller or other appropriate official].**
- NAUPA: (h) pg. 69 line 7 – DELETION – **[(5) The administrator’s determinations under paragraphs (2) and (3) must be reviewed by and concurred in by the state [Comptroller] before the contract may be awarded.]**
- UPPO: (i) pg. 72 line 4 – SUGGESTION –

(i) Documents and working papers obtained or compiled by the administrator, or the administrator’s agents, employees, designated representatives or contractors, in the course of conducting an examination are subject to the confidentiality provisions of Section 27, and are not public records. However, the documents and papers may be:

(1) used by the administrator in the course of an action to collect unclaimed property or to otherwise enforce this [act];

(2) used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, ~~[a foreign country or subordinate governmental unit of a foreign country]~~ or any other governmental subdivision, agency, or instrumentality if the other governmental entity is legally bound to maintain the confidentiality of information obtained from persons examined in a manner equivalent to the provisions of Section 27 of this [act];

(3) disclosed to the administrator of another state for that state's use in circumstances equivalent to those described in this subdivision, if but only if each of the following conditions are met:

- (i) the other state is itself already conducting an examination of the same holder (evidence of which shall be the holder's acknowledgement of receipt of an audit notice from the other state that is to receive the disclosed documents and papers)
- (ii) information sharing agreement has been executed by the two states that has been publicly disclosed and that specifically contemplates the sharing of the type of documents and papers at issue,
- (iii) the holder is given at least 30 days' prior notice of the intended disclosure of its information so that the holder may contest the disclosure (or the manner or scope of disclosure) at its election, and
- (iv) the other state is legally bound to maintain the confidentiality of information obtained in a manner equivalent to the provision of Section 27 of this [act]; or

(4) produced pursuant to subpoena or court order.

- ABA (j)(1) pg.72 line 8 – SUGGESTION –

(j) (1) The administrator shall issue rules regarding examination procedures and standards to include rules regarding procedures and standards for the use of estimations and statistical sampling in conducting an examination under this [act].

(A) No examinations shall be conducted until the rules required by paragraph (1) of this subsection (j) are duly promulgated under the Administrative Procedures Act.

(B) Statistical sampling, as authorized by the duly promulgated rules required by paragraph (1) of this subsection (j) shall be conducted in accordance with generally accepted statistical sampling methodologies.

(2) All examinations performed by the administrator or his or her duly authorized agents must be performed in accordance with generally accepted examination practices and standards applicable to unclaimed property examinations as set forth in the rules provided in paragraph one of this subsection.

Note: This language is not contained in the most recent draft

- ABA: (l)(2) pg. 73 line 2 – COMMENT – A state and holder cannot simply agree to use estimation in any circumstance, as doing so would deprive the owner of his or her property, which is the express purpose of state unclaimed property laws. Estimation should generally be permissible only if the holder fails to maintain the records required by the Act. There may be exceptions to this general rule in extraordinary circumstances, but there should not be a general rule that the holder can elect to use estimation.

NOTE: Provision (l)(2) is not contained in the most recent draft.

- ABA: (m) pg. 73 line 5 – DELETION – DELETE ENTIRE (m) PROVISION
- NAUPA: (n) pg.74 line 1 – ADDITION – “. . . promulgated under subsection (j). **The administrator may require the holder to report and pay the administrator the amount the administrator or agents or contractors reasonably estimates.**”

## **SECTION 21. RETENTION OF RECORDS BY HOLDERS..... 75**

- UPPO: (a)(1) pg. 75 line 14 – SUGGESTION – “The records shall include:  
(1) The date **[and nature of]** the transaction that, **place and nature of the circumstances which gave rise to the property right.**”
- NAUPA: (a)(4) pg. 75 line 23 – ADDITION – “**(4) the holder shall additionally maintain sufficient records of items which were not reported as unclaimed to allow examination to determine whether the holder has complied with the Act.**”
- ABA: (a)(1) pg.75 line 15 – SUGGESTION –  
“(1) the date **the property was created and the date of last contact by the owner with respect to the property;**  
“(2) the **amount of the property;** and  
“(3) the last known address of the owner, if known to the holder.”

## **SECTION 22. DETERMINATION OF LIABILITY FOR UNREPORTED REPORTABLE PROPERTY; [ADMINISTRATIVE AND] JUDICIAL ENFORCEMENT. .... 75**

- ABA: (f) pg.79 line 22 – RECOMMENDATION – The ABA would recommend that this instead work like a taxpayers’ bill of rights act – each party should bear its own costs unless the state has acted unreasonably, in which case the holder can recover its fees. Holders should not be discouraged from challenging state findings (particularly contingent fee findings) for fear of having to also pay the state’s legal fees.
- ABA: ALTERNATIVE B pg. 80 line 5 – COMMENT – There should be an express exception here for exhaustion of administrative remedies – holders should be permitted to go straight to court and skip the administrative proceeding. If the record is going to be de novo, then an administrative hearing should not be made a mandatory ticket to court review.

- UPPO:

Summary:

UPPO recommends that an independent elective administrative appeals process should be expressly included in the RUUPA as an alternative to costly and burdensome litigation. Allowing each state the option to adopt an administrative appeals process does not foster uniformity and is tantamount to maintaining the status quo which is not in the best interest of the states or holders. The state administrative procedures act is not the appropriate venue to address unclaimed property disputes because these laws often defer substantially to agency discretion (which, in the unclaimed property arena, is often themselves heavily reliant upon outsourced, contingent-fee auditors). Holders have a right to an independent arbiter to whom they can present their issues. Alternatives A (conference with administrator) and B (State Administrative Procedures Act) do not adequately address holders' concerns about a fair and impartial review. UPPO also recommends that Alternative A, which is another potential avenue to avoid costly and burdensome litigation, be incorporated into RUUPA as another elective dispute resolution avenue available to holders rather than being presented as an alternative for adoption by the states. A holder's right to request and obtain a meeting with an administrator in an attempt to resolve issues should be a standard option available in all states.

Proposed language:

UPPO has updated its December 22, 2014 proposed Administrative Appeals submission to the ULC to reflect the current draft of the RUUPA and to include other refinements; however, the core principals remain the same – elective process, independent arbiter, de novo review of the arbiter's decision, no pay to play and award of attorney fees to the prevailing party. For ease of reference please refer to [Appendix A](#).

### **Appendix A**

(Note, the below proposed language will require renumbering of RUUPA Sections 22(c) (9) and (10) to

(20) and (21) respectively.)

(c)(9) may elect to pursue an Elective Administrative Appeal as set forth in this Section without waiver of any right to later pursue a judicial or administrative appeal.

(10) Elective Administrative Appeal by Putative Holder.

a) Within 90 days from the date of a putative holder's receipt of the written examination report issued by the state administrator pursuant to Section 20(j)(3) of this Act, a putative holder may file a written appeal with the Administrator's Office.

b) If the putative holder files neither a written appeal pursuant to this section within 90 days nor elects to pursue its judicial or administrative appeal rights in accordance with [STATE's administrative procedures act] the putative holder will be presumed to have



agreed to the final examination report.

(11) The written appeal must contain the following information:

- a) The names of all parties involved in the audit at issue;
- b) The specific findings the putative holder is protesting including any amounts in question, property types, and the years audited. The putative holder is presumed to have agreed to any findings not contested;
- c) A clear and concise description of each error that the putative holder is alleging the Administrator's Office made in its findings;
- d) The argument and legal authority upon which each assignment of error is made; provided, that the applicant shall not be bound or restricted in any hearing to the arguments and legal authorities contained and cited in said appeal;
- e) The relief requested; and
- f) Whether or not the putative holder is requesting a hearing.

(12) Within 10 calendar days from the Administrator's acknowledgement of his or her receipt of the written appeal, the putative holder must pay the undisputed amount of the audit findings to the Administrator.

(13) Hearing.

- a) If the putative holder files a written appeal, a designated hearing officer shall be selected by the process described in paragraph (16).
- b) If requested by the putative holder, the designated hearing examiner shall schedule a hearing, to be conducted within 30 calendar days from the date of the notice of his or her selection. The Administrator, designated hearing examiner and the putative holder shall agree upon a date(s)  
for the hearing which are within the 30 calendar day period.
- c) The designated hearing examiner shall issue a Notice of Hearing, notifying the Administrator and putative holder of the date, time, and place of the hearing.
- d) The Notice of Hearing shall notify the Administrator and the putative holder that:
- i) The Administrator and putative holder may present witnesses and documents at the hearing.

- ii) Failure by the putative holder or its representative to appear for the scheduled hearing without good cause shall be treated as a withdrawal of the Request for Hearing, and the designated hearing examiner will make a final determination based upon the record.
  - iii) The designated hearing examiner may reschedule a hearing upon determining that good cause exists.
  - e) The designated hearing examiner shall have the discretion to allow the Administrator or the putative holder to provide additional information subsequent to the hearing and will supplement the record accordingly.
- (14) Final Determination. Within 60 calendar days, after the hearing is held and the record is complete, the designated hearing examiner will issue a written decision (the Final Determination) to the Administrator and putative holder. The Final Determination will include findings of fact and conclusions of law.
- (15) Record. The designated hearing examiner shall prepare an official record of the appeal that includes, but is not limited to, a transcript of all testimony and all papers, motions, documents, evidence and records reviewed in the appeal process, and a statement of matters officially noted.
- (16) Designated Hearing Examiner Selection: The designated hearing examiner shall be a former member of the judiciary or a licensed attorney who is qualified by experience or training to serve and shall not be any current employee of the Administrator or the state or agent of the Administrator or the state. The designated hearing examiner will be mutually selected by the parties through the following process:
- a) Within 45 calendar days after the request for an Elective Administrative Appeal by the Putative holder, each party shall provide to the other a list of no more than 5 people who are qualified to be a designated hearing examiner.
  - b) Within 5 calendar days from receipt of the list, the parties may, without cause, remove 2 names from the list provided to them by the other party.
  - c) Within 5 calendar days from communicating the removal of names, the parties shall agree to a random selection process for choosing the designated hearing examiner from the remaining names and shall select the designated hearing officer in accordance with such process.
  - d) The Administrator shall notify the hearing officer of his or her selection within 5 calendar days from the selection.
  - e) The designated hearing examiner may award reasonable attorney's fees and the costs of the designated hearing examiner to the prevailing party; except that the state may be

awarded fees only where it is the prevailing party and the putative holder acted with fraud or willful misconduct.

(17) Judicial or Administrative Review.

- a) Any party adversely affected by the designated hearing examiner's decision is entitled to judicial or administrative review and may pursue such review by filing notice within 45 calendar days from the date that the designated hearing examiner's final determination is received by that party, in accordance with [STATE's laws or administrative procedures act].
- b) The standard of review shall be de novo and shall be limited to issues raised during the appeal. (18) Decisions of the designated hearing examiner shall not be considered as precedent.
- (19) A putative holder's decision to forego the Elective Administrative Appeal shall not constitute a failure to exhaust administrative remedies, nor shall a putative holder's decision to request Elective Administrative Appeal preclude the putative holder from commencing a proceeding with other administrative or judicial remedies with respect to any issue not resolved.

Holder's Coalition: END OF COMMENT pg. 81 line 5 – SUGGESTION - **Administrative Appeals Process - Updated**. An elective administrative appeals process should be expressly set forth in the Act. The process should provide for an independent, efficient and fair review of the state administrator's determination of unclaimed property liability, coupled with a defined interim audit conference process. The process should not be correlated with state administrative appeals procedures, as these laws often defer substantially to agency discretion. Such reliance on agency discretion is unwarranted in the unclaimed property arena because the administrators often rely upon and delegate excessive authority to contingent-fee auditors. Further, the process should not involve burdensome and costly trial-like procedures, which are inappropriate after lengthy audits have occurred. Traditional state administrative appeals procedures also fail to impose a stay of collection and enforcement during potentially lengthy proceedings. Judicial or administrative review of the elective administrative appeal decision should be *de novo* and limited to issues raised during the appeal. The following is example of recommended model act text:

Judicial or Administrative Review.

- a) Any party adversely affected by the designated hearing examiner's decision is entitled to judicial or administrative review and may pursue such review by filing notice within 45 calendar days from the date that the designated hearing examiner's final determination is received by that party, in accordance with [STATE's laws or administrative procedures act].

b) The standard of review shall be de novo and shall be limited to issues raised during the appeal.

**SECTION 23. INTERSTATE AGREEMENTS AND COOPERATION; JOINT AND RECIPROCAL ACTIONS WITH OTHER STATES. .... 81**

- UPPO: NOTE: Comment to Section 23 should be revised to ensure consistency with Section 26 as revised.

- UPPO: (a) pg. 81 line 8 – SUGGESTION –

The administrator may exchange information with another state ~~[or foreign jurisdiction]~~ relating to abandoned property or its possible existence, and the administrator may in a record authorize another state ~~[or foreign jurisdiction]~~, or a person acting on behalf of another state ~~[or foreign jurisdiction]~~, to examine its records as authorized in Section 20, ~~provided that the other state either has statutory confidentiality requirements comparable to those in Section 27 or agrees in a record to be bound by this state's confidentiality requirements~~ but only if each of the following conditions are met:

(1) an information sharing agreement has been executed by the two states that has been publicly disclosed and that specifically contemplates the sharing of the type of information at issue;

(2) the holder is given at least 30 days' prior notice of the intended disclosure of its information so that the holder may contest the disclosure (or the manner or scope of disclosure) at its election,

(3) the disclosure occurs prior to the commencement of an examination by the other state (if an examination has been commenced by the other state, then Section 20 governs the permissibility of information sharing); and

(4) the other state has statutory confidentiality requirements comparable to those in Section 27 or agrees in a record that is disclosed to the holder at least 30 days in advance of the sharing of information to be bound by this state's confidentiality requirements .

**SECTION 24. INTEREST AND PENALTIES. .... 83**

- ABA (a) pg. 83 line 8 – COMMENT– Any interest provision should be reciprocal for holders and states. So for example, if a holder remits property to the state and later recovers that property, the holder should be entitled to the same interest as the state would be entitled if the holder remitted the property late. This is consistent with tax laws.

- ABA: (b) pg. 83 line 18 – ADDITION – “. . . provided in subsection (a), a civil penalty of **up to \$[200]** for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a cumulative maximum amount of \$[5,000] **for all such failure within any calendar year.**”
- ABA (c) pg. 83 line 20 – DELETION – “(c) A holder who **enters into a contract or other arrangement for the purpose of evading its obligations under this [act] or who** willfully fails to . . .”
- ABA (c) pg. 83 line 25 – ADDITION – “. . . not performed, up to a cumulative maximum of \$[25,000] **for all such failures within any calendar year,** plus twenty-five . . .”
- ABA (e) pg. 84 line 6 – ADDITION – “. . . subsection (a) and] penalties under subsections (b) and (c), and shall waive penalties **[and interest]** if it is determined . . .”

## **SECTION 25. AGREEMENT TO LOCATE PROPERTY ..... 84**

- NAUPA: (a) pg.84 line 12 – SUGGESTION – Change “. . . was paid or delivered to the administrator. . .” to “. . . was **deemed unclaimed.** . . .”
- ABA (a) pg. 84 line 12 – COMMENT – The ABA disagrees with a 24 month period. Owners should be entitled to make a decision whether they want to take their own time to search for and claim their property or pay someone else to do it for them, provided there is full disclosure as set forth in subsection b.
- ABA: (b)(1)-(4) pg. 84 line 24 – SUGGESTION –  
“(1) is in a record which clearly sets forth the nature of the property, **if known to the other person,** and the services to be rendered;  
“(2) is signed by the apparent owner;  
“(3) **states the amount of the fee or the basis on which it will be computed if not a fixed fee; and**  
“(4) states the amount or value of the property, **if known to the other person,** estimated to be recovered both before and after the fee or other compensation have been deducted.”
- ABA: (d) pg. 85 line 9 – COMMENT – Need to define the term “unconscionable”
- ABA: (d) pg. 85 line 10 – SUGGESTION– “. . . she has agreed to pay compensation that is unconscionable, **the owner** may maintain an action . . .”

**[SECTION 26. FOREIGN TRANSACTIONS.] ..... 86**

- NAUPA: (a) pg. 86 line 3 – DELETION – “. . . property held, due, and owing to a person whose last known address is in a foreign country or to property arising out . . .”
- NAUPA: (b) pg.86 line 9 – DELETION – “ If the property has been voluntarily turned over to this state by the holder pursuant to Section 4(5), the administrator . . .”
- ABA: (a) pg. 86 line 5 – DELETION– “. . . of a foreign transaction where the property is held in a foreign country or location outside the United States, if the foreign country, or a subordinate governmental unit of the foreign country, has laws which entitle it to take and hold unclaimed property of its citizens and residents which are comparable to the laws of this state.”
- UPPO: (a)-(b) pg.86 line 3 – SUGGESTION –  
(a) Except as provided in subsection (b), this [act] does not apply to property held, due, and owing to a person whose last known address is in a foreign country or to property arising out of a foreign transaction, ~~if the foreign country, or a subordinate governmental unit of the foreign country, has laws which entitle it to take and hold unclaimed property of its citizens and residents which are comparable to the laws of this state.~~  
  
(b) Property defined in subsection (a) above may be voluntarily turned over to this state, but only under the following circumstances:  
  
(i) the holder is in the process of liquidating its business, or  
  
(ii) other circumstances render the holder’s continued maintenance of the property infeasible, in the view of the holder, such that escheatment would serve the interests of preserving the property for eventual owner claims. If the property has been voluntarily turned over to this state by the holder pursuant to Section 5(4), the administrator in whose custody the property has been placed may deliver the property to the foreign country or subordinate government unit of the foreign country on receipt of a record from the other country or unit requesting its payment or delivery.

**SECTION 27. CONFIDENTIALITY OF INFORMATION..... 86**

- ABA: (a) pg. 86 line 23 – DELETION– DELETE ENTIRE (a) PROVISION
- NAUPA (g) pg. 88 line 23 – ADDITION – “(g) Except as otherwise provided in this Act a holder is not required . . .”

**SECTION 28. TRANSITIONAL PROVISIONS..... 89**

**SECTION 29.**

**RULES.....89**

**SECTION 30. UNIFORMITY OF APPLICATION AND CONSTRUCTION..... 89**

**SECTION 31. SEVERABILITY..... 89**

**SECTION 32. EFFECTIVE DATE..... 90**

**SECTION 33. REPEALS; CONFORMING  
AMENDMENTS.....90**