

December 16, 2014

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

Re: Draft to Revise the Uniform Unclaimed Property Act (UUPA)

Dear Ms. Robinson:

We are writing on behalf of owners of unclaimed property. As Claimants' Representatives and a former legal counsel for the Florida Department of Financial Services, Bureau of Unclaimed Property, we are in a position to provide the Committee valuable input regarding the post escheat Claimant Services industry.

An unclaimed property return rate of at least 50 % is attainable under a balanced legislative framework. Approximately, six out of ten owners will use free public resources to reclaim their property regardless of who notifies them of its existence. The others will not claim their property without professional assistance for two primary reasons 1) they do not want to deal with the claim process on their own and would rather pay someone to handle the process for them; 2) they do not have the expertise and financial resources to successfully recover their property.

The proposed revisions below are intended to provide sensible changes that align with the primary intent of the Act and provide a balanced approach to consumer protection policies that will increase the return rate of unclaimed property to owners who want to utilize private service providers for a variety of reasons as further discussed.

**PROPOSED REVISIONS OF THE UNIFORM UNCLAIMED PROPERTY ACT  
AND  
COMMENTS**

**Claimant Representative (Owner's Interest)  
1995 Uniform Law Commission Unclaimed Property Act  
To The ULC Drafting Committee  
DECEMBER 23, 2014**

**SUBMITTED BY:**

**Randy Hotz  
President  
Choice Plus LLC  
4120 Islander Way  
Anacortes, WA 98221  
Ph: 360-639-6850  
[rhotz@choiceplusllc.com](mailto:rhotz@choiceplusllc.com)  
[www.choiceplusllc.com](http://www.choiceplusllc.com)**

**Harry B. Carson  
Vice President  
Carson, Carson & Associates, P.A.  
P.O. Box 15424  
Tallahassee, FL 32317-5424  
Phone #: 850-385-9267  
E-mail address: [carsonpa@centurylink.net](mailto:carsonpa@centurylink.net)**

**Professional Claimants' Representatives Association, Inc.  
c/o Harry Carson  
6316 Duck Call Court  
Tallahassee, FL 32309**

**David Knott  
United Asset Recovery  
640 Grand Ave., Suite C  
Carlsbad, CA 92008  
Ph: 760-434-6300  
[David@UnitedAssetRecovery.com](mailto:David@UnitedAssetRecovery.com)  
[www.UnitedAssetRecovery.com](http://www.UnitedAssetRecovery.com)**

**Samuel "Dean" Bunton  
Bunton Law Firm, P.L.**

**P.O. Box 180336**  
**Tallahassee, FL. 32318**  
**Ph: 850-765-1353**  
**[BuntonLawFirmPL@Comcast.Net](mailto:BuntonLawFirmPL@Comcast.Net)**

**Issue # 23:**

**Section 2 Abandonment of Securities**

**Section 12. Public Sale of Abandoned Property**

**Question: Should administrators be allowed to sell securities? If so under what conditions?**

**Claimants' Representatives Comments:**

Individuals who purchase securities and other tradable instruments do so knowing that they are taking on risk of loss and hope for potential gain. A state that takes possession of securities and similar assets and elects to sell them in order to deposit the proceeds into the general fund for current expenditures should be required to replace the stock or its cash equivalent at the time it is claimed by the owner.

States that sell securities and similar assets without the owner's knowledge and consent that only restore to the owner the liquidated value of the asset when it was sold, are violating their fiduciary duty to protect the owner's interest in the property.

Claimants' Representatives oppose the ABA's recommendation found on page 79 of the "Reporter's Compilation of Comments 10-31-41 Final" wherein the state would only be obligated to buy back the stock for a ten-year period.

The owner assumes risk in perpetuity. If the state chooses to sell the stock for its own benefit the state should assume the risk in perpetuity. If states don't want to assume this risk, they should not be permitted to sell securities and similar assets.

**Issue # 35: MINIMUM VALUE OF REMITTED PROPERTY**

**Section 7. Report of Abandoned Property (e) (3)**

**Question: Should items under \$25 or \$50 be excluded from reporting requirements?**

**Claimants' Representatives Comments:**

Excluding any amount of money from holder reports impedes owner's ability to recover funds. The issue here is not the loss of an insignificant amount to an owner or the loss of an insignificant commission to a locator (for example on a property worth \$5.00, representing a 50-cent commission to a locator.) What is at issue is an owner's ability to succeed in recovering property. Often times, it is the information contained on small properties that hold key information and evidence that allows a claim to be approved and paid. Less information

available to owners (as in less information reported by holders) equates to less property being returned to owners (and not just small properties.)

Single asset claims make up a very small percentage of the claims that I personally file. More often, I file claims with 10, 20, 30, and on rare occasion, upwards of 100 properties.

There may be a single property in the amount of \$30,000 on a claim of multiple properties I am managing and that same claim may include a small property of \$5.00. The holder on the \$30,000 item may have provided insufficient and/or inaccurate information. However, the \$5.00 item may have been reported more completely and accurately (some times even from the same holder that turned over the larger item) and the small item ends up providing sufficient evidence that the \$30,000 item does indeed belong to the claimant. Here is a simplified example of how I have witnessed this play out in countless variations:

The \$30,000 is turned over with the following information:

**Owner:** High Rise  
**Address:** c/o ABC J smith  
**City State Zip:** Oakland, 94557  
**Amount:** \$30,000  
**Type of Property:** Security Deposit  
**Reported By:** Pacific Gas & Electric

The state denies payment of the \$30,000 item citing “Insufficient information to prove entitlement. Reported owner is High Rise. Claimant is American Building Corporation. These are not the same entity.”

The \$5.00 is turned over with the following information:

**Owner:** American Building Corporation – High-Rise Division  
**Address:** 12445 Main Street  
**City State Zip:** Oakland, CA 94557  
**Amount:** \$5.00  
**Type of Property:** Accounts Payable Refund  
**Reported By:** Equipment Lease Corporation

In the first report, the holder erroneously reports the division name (High-Rise) in the Owner Field. Next, the correct name is reported in abbreviated fashion (not uncommon but, incomplete none-the-less) in the address field. The zip codes match. The \$5.00 property helps to substantiate that American Building Corporation is the proper claimant on the \$30,000 item

because they did indeed have, and proved ownership of, a division called “High-Rise Division” and did indeed reside at 12445 Main Street, in Oakland, CA 94557. In addition, the claimant may be able to prove that J. Smith was a former employee. While the state may argue that there is no proof that American Building Corporation is the same entity as “ABC”, small properties such as the \$5.00 item, go a long way towards providing additional information and evidence that weighs strongly in favor of the claimant.

To exclude the \$5.00 item in the example above would essentially deprive the owner of valuable evidence needed to recover the \$30,000 item. In addition, if this were a tightly held corporation and a husband and wife were the sole shareholders and the company was dissolved 10 or 15 years ago, there is almost no chance they are going to have records to prove their relationship with Pacific Gas & Electric or Equipment Lease Corporation (such as states often demand). Other proof will have to be relied upon.

Excluding dollar amounts as a means of reducing burdens on holders is harmful to owners.

As a final note, a large claim I recovered for a client in recent years was made up of a large number of smaller items, all for the exact same dollar amount, all from the same holder, all payable to the same owner. Because none of the properties alone was worth a large sum, they had slipped under the radar screen of other locators because most locators sort by dollar amount and pursue the highest value properties. In this case, since the items were only valuable in the aggregate, they were passed over. However, to the end owner, the aggregate sum was significant.

There will be occasions when dozens of items that may fall just short of the cut off (\$23 on a \$25 cut-off or \$48 on a \$50 cut-off, for example) are payable to one owner similar to the example above. For example: a stock or bond generating dividends or interest over and over again. We sometimes see these items reported one at a time, and not in the aggregate. Forty items worth \$23 each to the same owner totals \$920.

If a holder is not obligated to report properties under a certain threshold, how does this effect a large number of items that when totaled, exceeds the threshold, sometimes by a significant amount? Is holder burden a sufficient reason to withhold \$920 from reporting because it is broken into 40 units of \$23?

Items under \$25 or \$50 should not be excluded from reporting requirements because it ultimately deprives some owners in amounts that are **far in excess of the \$25 or \$50 items excluded**.

## **ISSUE #35 CONTINUED: FRACTIONAL SHARES**

### **Question: Should holder's be allowed to exclude fractional shares from remittance to administrators?**

#### **Claimants' Representatives Comments:**

The disposition of fractional shares should be determined based on the value of the fractional shares. Share values vary considerably. For instance, Berkshire Hathaway closed recently at **\$224,800** per share. One-quarter of a share of Berkshire would be worth **\$56,200** at current valuations. Applying the Fractional remittance exclusion policy to this stock could result in a significant loss to an owner.

In addition, a recent search for stocks priced over \$100 returned 360 results. Many companies have stock that trade in the hundreds of dollars per share. Excluding fractional shares from reporting would be harmful to owners of these stocks. The fractional share rule should be based on value alone and, that value should be consistent with the minimum value of reportable property in general (Issue #35.)

Some of the above comments may also apply to Issue # 37 (Aggregate Reporting-More detailed for Amounts Less than \$50).

## **Issue # 39: NOTICE BY NEWSPAPER PUBLICATION-EXPANSION**

### **Section 9 Notice and Publication of Lists of Abandoned Property**

### **Question: Should Notice and Publication of Lists of Abandoned Property be expanded to include publication through internet and other popular public notification forums in addition to print notices in newspapers?**

#### **Claimants' Representatives Comments:**

It is well known that newspaper subscription rates have been on steady decline during the last decade while at the same time, internet connectivity has been on the rise. The revised Act should reflect this dramatic change and advance in technology by requiring electronic Notice via a publically available searchable database that is maintained by the state. Many states have found it important to require specific formats of "electronic" reporting by holders. Requiring electronic notice that also meets specific technology standards is important to owners seeking to locate their property.

The searchable database should have technological capabilities sufficient to return reliable results using basic search criteria. Outsourcing of a state search platform to an outside vendor

should only be permitted when defined standards and criteria are met and monitored on an ongoing basis. Quality control of this process matters. Outsourcing without accountability leads to lower rates of return and fewer owners locating and recovering their property.

10 states have outsourced their website search platform to “MissingMoney.com” operated by Unclaimed Property Clearinghouse (a unit of Xerox) as a cost saving measure. The search capabilities on MissingMoney.com are in need of improvement when compared to state sites with more reliable search platforms. Just like there are contracts and criteria for outsourcing audits, there should be defined criteria, oversight, and quality control with outsourcing the search platform.

Because the technology on the MissingMoney.com platform lags, it does not produce good or reliable search results and it fails to return a significant percentage of properties that would otherwise be discovered on a website with modernized technology.

For those that are less familiar with using the MissingMoney.com website, clicking on some of the states on the MissingMoney.com map of the United States on the home page, takes you directly to a State-maintained website. In those cases, the MissingMoney.com website simply acts as a link to help consumers locate their state unclaimed property website. This is a helpful feature on MissingMoney.com. If you click on a state and it takes you to a MissingMoney.com maintained search feature, this is a state that has outsourced its searchable data to MissingMoney.com.

For an example of the extreme difference in the quality of search results obtained on a state maintained website versus MissingMoney.com, try the following search:

Go to MissingMoney.com. Click on the state of Ohio in the map of the United States. This will bring you to the MissingMoney.com maintained search feature for the state of Ohio (not a state of Ohio-maintained platform.) Enter the search term “American Car” in the last name field. The MissingMoney platform cannot return more than two hundred search results and, the last page of search results (176-200) has not even returned “American C” as of yet. It has only made it as far as “American Assoc”, even though the search term was “American Car.” One problem is that the search is inaccurate because it should not be returning “American” followed by the letter “A” at all. The search term was “American Car.” “American C” is still a couple hundred search results away but you cannot get there. If you select the “exact” search feature, it returns no results. This means that if you are trying to locate properties for “American Car”, unless you enter the exact format as entered by the holder (of which there are dozens of variations and errors) you will not find the property. Even entering the term exactly does not guarantee successful results. This also means a person searching would have to try every possible search

configuration and still never obtain a hit. How many people in the public would know to try endless variations on the search term or name?

Now go back to MissingMoney.com and click on the state of Texas. Search for assets for “American Car” and compare the results. Assets are located for “American Car Care”, American Car Locators”, “American Car Parts” etc. 82 hits in all (as of 12/17/14).

Now return to MissingMoney.com and click on the state of Indiana and search “American Car.” Note that the site picks up all assets with the term “American Car” for example, “All American Car”, All American Carpet”, etc.

Both of these websites (Texas and Indiana), along with Florida, California, New York, and other state maintained sites are examples of websites with good search capabilities and platforms that should be modeled at least in part.

Colorado is an example of a state maintained website that needs improvements. Try the following:

Enter the search term “American Car” in the “business name” search field. Next, enter the code provided in the lower field. The search result returns “NO MATCH FOUND”.

Now, enter the word “American” in the business name search field. Next, enter the code provided. This should return a message advising you that more than 250 records have been located. Click on the “Display Results” button below. Proceed to page (17) and you will find “American Car”. For whatever reason, the database does not locate this property when searching the exact term. However, the item shows up in a broader search using just the word “American.” This is problematic for owners. The search technology on Colorado’s website significantly impedes the return of money to owners. When searching the exact name, it does not locate a property that is listed and actually exists in their database under the exact term searched.

In approximately 2005/2006, the state of Ohio maintained its own searchable website. Some time thereafter, they discontinued the state-maintained website and outsourced their publically available electronic search capabilities to the MissingMoney.com website. Search capabilities were severely hampered on the missingmoney.com site as compared to the previously maintained state site. The problems encountered on the MissingMoney.com site back then, are unchanged to this day and can be summarized as poor search capabilities and results. The websites that are owned and administered by states (independent from MissingMoney.com) in many cases deliver much better results as the examples above demonstrate.



To summarize, notice requirements should include a publically available searchable database maintained by the state. Additionally, searchable databases should be sufficiently advanced to render reliable and accurate results. If search platforms are going to be outsourced, there should be defined criteria to ensure reliable search results.

### **Minimum Reported Information Fields for State or Outsourced Websites:**

**Indiana** returns the following fields of information in the search results:

Property ID #  
Owner Name  
Address  
City  
Reporting Company  
Property Type  
Total Cash Value

After selecting the target property (clicking in the box to the left and then selecting “View Details” at the bottom of the screen) **Texas** returns the following fields of information in the search results:

Reported Property Owner/Business Name  
Last known address  
City  
Zip  
Reporting Institution  
Year Reported  
Amount Reported

Combining the fields of information from these two states above would be a good minimum requirement for fields of information on search results:

1. *Name of owner(s)*
2. *Last known address of owner(s)*
3. *Property type or description*
4. *Property cash value or quantity*
5. *Owner’s relation to property (using NAUPA relationship codes or equivalent)*
6. *Last contact date with owner reported by holder*
7. *Escheatment date*
8. *Holder name and contact*
9. *Property ID Number*

## **Issue # 46: STATE TREASURY MANAGEMENT OF FUNDS**

### **Section 13. Deposit of Funds**

**Question: Should State Treasurer's be required to maintain a balance in a Trust Fund specifically for paying approved unclaimed property claims and be required to maintain a balance in said fund proportionate to their payment history over a given period or more simply, proportionate to their annual unclaimed property receipts?**

**Claimants' Representatives Comments below also applicable to Issue #40: Provisions to incentivize Administrators to Return Property.**

During the November meeting, a committee member mentioned that they were not aware of any situations in which a state actually did not or could not pay a claim due to lack of a sufficiently funded "Trust Fund" for unclaimed property distributions.

Please find attached exhibit "A", a Notice from the state of California, Unclaimed Property Division, dated February 2, 2009 advising that *"due to the state's current cash shortage crisis, the State Controller has been forced to delay payments for 30 days, effective February 1, 2009. The Controller has stated that he may be forced to postpone payments for an additional 30 days if the Legislature does not act on the Budget by late February."*

Following this announcement, claimants received IOU's on approved claims instead of payment. This is an example of how quickly a Trust Fund turns into no payment. Other examples of how quickly "Trust Funds" turn into no payment would be the following numbers of bank failures in the United States: 25 in 2008, 140 in 2009, 157 in 2010, 92 in 2011, 51 in 2012, 24 in 2013 and 17 thus far in 2014. While the FDIC (or NCUSIF in the case of credit unions) steps in to pay depositors (up to a certain amount) there is no denying that things don't always go as planned when it comes to the management of other peoples' money. For those people that had account balances exceeding the FDIC or NCUSIF insured limits, those deposits remain at risk of total loss.

Additionally, committee members have witnessed huge corporate failures such as Lehman Brothers (\$691 billion), Enron (\$65 billion), WorldCom (\$103 billion) and Washington Mutual Bank (\$327 billion) as well as large municipal bankruptcies such as Detroit Michigan (\$18 billion), Jefferson County, Alabama (\$4 billion), Orange County, California (\$2 billion), Stockton, California (\$1 billion) and San Bernardino, California (\$500 million.)

It is clear that lack of a meaningfully funded Unclaimed Property Trust Fund (proportionate to California's individual claim payment needs) was **the direct cause of California's inability to**

**pay claims.** The letter from the state of California demonstrates that it is not safe to assume that unclaimed property “Trust Funds” are immune from crisis. Other state administrators are also under financial pressure, which may impact the claim approval process at some point in the future as they too struggle with budgetary priorities.

Given the fact that many economists believe that high Federal and State debt and fiscal deficits still pose a significant threat to financial stability, requiring a reasonable allocation out of unclaimed property receipts to maintain a real “trust fund” that exists for the sole purpose of paying approved claims makes good policy. After all, requiring a state such as California to maintain a Trust Fund of \$100,000 (current requirement) from which to pay claims is a mere 0.016566771 percent (not even a 20<sup>th</sup> of one percent) of California’s 2013 Unclaimed Property Receipts. \$100,000 would not even cover a single day of approved claims.

We cannot reasonably assume that administrators and legislators in states that are under extreme budgetary pressure are not influenced to some degree in the claim review/approval process.

The letter from California confirms, at least in California, that payment of unclaimed property claims takes a back seat to “education, debt service, and other payments” which have first claim to the general fund in times of financial difficulty.

It would therefore make good sense to require states to allocate a reasonable percentage of unclaimed property receipts to ensure proper management of the program, even during periods of extreme budget crisis. Additionally, a meaningfully funded Trust Fund removes bias from administrator’s who are under pressure to delay or deny claims as a means of prioritizing the payment of other government programs.

### **What is a reasonable percentage for states to set aside for payment of approved claims?**

A good place to start is with the figures (attached herewith “UPA Performance Report.pdf”) recently compiled by Mr. Randy Hotz and his staff at Choice Plus, LLC (an observer and contributor to these proceedings as well as a claimant’s representative.) As recently submitted to the ULC by Mr. Bunton (observer to these proceedings) a survey of all states, utilizing public records and FOIA requests, compiled revenue and payout rates for participant states. The data shows an average return rate of 32%. Therefore, 30% of reported property on an annual basis seems a reasonable amount to set aside. This would ensure that no administrator is under pressure to delay payment or approval of legitimate claims. It automatically instills integrity into the system, restores credibility where credibility has been lost, and maintains an average Trust Fund equal to one year of distributions which is sufficient to get a state through times of financial stress.

Claimants’ representatives support the use of unclaimed funds for public benefit while the funds remain unclaimed. With the understanding that this secondary purpose of the Act does not create

a conflict with the primary purpose of the Act. A well-funded Trust Account increases “consumer protection” by insuring the availability of funds to pay claim in a timely manner.

It should also be noted that under the proposed 30% funding requirement, states would still have authority to spend the balance (70% less program administration costs which are relatively minimal.) 70% is a significant percentage and sum.

Minimum capital requirements for banks exist to ensure payment to depositors. Even so, there have been considerable numbers of bank failures in recent years. Requiring states to maintain a percentage of annual receipts serves the same purpose. It ensures owners can receive the deposits that have been made by holders on their behalf without unnecessary delay and battle.

The comments above may also be applicable to **Issue #40, Provisions to Incentivize Administrators to Return Property**. While the proposal above is not an incentive to return property, it helps diminish or remove the incentive to retain property.

## **SECTION 14. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY**

### **Present language in Section 14 (a) of the 1995 Act:**

(a) After property has been paid or delivered to the administrator under this [Act],  
another State may recover the property if:

### **Question: Should the Act prohibit another state from recovering unclaimed property when the owner has a pending claim with the current administrator?**

**Claimants Representative Proposed an additional provision to Section 14 (a) that would prohibit the current administrator holding property from transferring it to another state when the owner has a claim pending with the current administrator.**

(a) After property has been paid or delivered to the administrator under this [Act],  
another State may recover the property if:

*1. No claim is pending by an owner.*

### **Claimants’ Representatives Comments Regarding Proposed Change to Section 14**

Choice Plus LLC filed a claim on behalf of a Lichtenstein entity. As part of the claim records submitted by Choice Plus LLC proof was provided which established that the last known reported address, AUSTRQSSE 15 PO BOX 154 VADLE, FL 94900, was not a Florida address.

The accounts were remitted to the State of Florida after ACS conducted an audit of the books and records of DEVON ENERGY CORP/OCEAN ENERGY INC. The State of Florida claimed that it did not have jurisdiction to determine the claim. The State of Florida returned the funds to the remitter even though it had not reclaimed the property. Choice Plus was able to recover the property for its client after file a civil action and at great legal expense.

The Act should prevent creating unnecessary burdens on owners and place the interests of the owner before that of the state of proper priority.

## **SECTION 15. FILING CLAIM WITH ADMINISTRATOR; HANDLING OF CLAIMS BY ADMINISTRATOR**

### **Present language in Section 15 (a) of the 1995 Act:**

(a) A person, excluding another State, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant

**Question: Should the Act define the evidentiary standard to be applied by the administrator in determination of the merits of the owners claim?**

### **Claimants Representative Proposed additional provision to Section 15 (a)**

(a) A person, excluding another State, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant. *The claimant bears the burden of proving their entitlement. Administrator shall apply the preponderance of evidence standard when determining the merits of a claim.*

### **Claimants' Representatives Comments Regarding Proposed Change to Section 15**

Many states do not define the evidentiary standard the administrator must comply with. This omission leaves the claimant at the mercy of the administrator's discretion. Ambiguity of this nature is at the core of what a model Act seeks to remedy by creating uniform standards.

## **SECTION 16. ACTION TO ESTABLISH CLAIM**

### **Present language in Section 16 of the 1995 Act:**

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the [appropriate] court, naming the [administrator] as a defendant. [If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney's fees.]

**Question: Should the Act impose mandatory attorney's fee on the administrator if they do not prevail and a discretionary attorney's fee on the claimant if they do not prevail?**

### **Claimants Representative Proposed additional provision to Section 16**

### **Claimants' Representative Proposed additional provision to Section 16**

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the [appropriate] court, naming the [administrator] as a defendant. [If the aggrieved person establishes the claim in an action against the administrator, the court may must award the claimant reasonable attorney's fees. If the claimant does not prevail, the court may award the administrator reasonable attorney's fees.]

### **Claimants' Representatives Comments Regarding Proposed Change to subsection 16**

The administrator has access to attorneys that specialize in unclaimed property law who are paid by taxpayers. Claimants' do not possess this advantage. Therefore, the Act should attempt to correct this imbalance by placing a mandatory attorney's fee burden upon the administrator and a discretionary attorney's fee burden upon the claimant. The Act should deter overreaching by the administrators and encourage the accountability of regulators.

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

Claimants' Representatives propose that the title of Section 25 should be changed to "Agreements to Recover Property". This title more accurately represents the nature of the service. Most claimants' representatives are rarely engaged to "locate" property. More typically, they are engaged to recover it.

#### **Present language in Section 25 (a) of the 1995 Act:**

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the administrator. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

**Question:**

**Should moratoriums that prohibit an owner from engaging the services of a locator, finder, or claimants' representative to purchase, locate, recover, assist with the recovery, or assist with perfecting of a claim for property be removed?**

**Proposed Language Modifying Section 25, (a):**

*An Agreement by an owner, the primary purpose of which is to convey, locate, recover, assist with the recovery, or assist with perfecting of a claim for property that is presumed abandoned is enforceable following the date the property is paid or delivered to the administrator.*

**Claimants' Representatives Comments Regarding Proposed Change to subsection 25 (a):**

The Revised Act should eliminate contract moratoriums. Owners should not be prohibited from freely entering into agreements for the purpose locating, conveying, delivering, recovering, or documenting entitlement to unclaimed property claims. The Act should avoid imposing impediments that limit an owner's right to seek immediate professional assistance to regain possession of their property.

Contract moratoriums benefit the state holding the unclaimed property by delaying submission of claims from (1) owners who will not receive notice from the state, (2) from owners who do not have the time, skill, or financial resources required to regain possession of their property, (3) and from owners who wish to engage professional services to assist them for convenience or personal reasons.

Data recently obtained from state unclaimed property administrators' shows that the net return rate to owners is a mere 32% over the past decade. There is evidence that this return rate is overstated due to the omission of assets deemed "*uncollectable*" and by the omission of the present estimated value of un-liquidated securities and mutual funds from reported revenue by some administrators. The data also indicates that states that do not impose long contract moratoriums have much higher return rates and return more money to more owners in less time. The public interest is not served by imposing moratoriums that cause property to remain in government possession longer than is necessary. Longer hold periods by states allow the trail to the owner to grow colder increasing the difficulty to reunite the owner with his or her property.

The State of Florida has a forty-five day contract moratorium and is considering supporting legislation to repeal the moratorium altogether in order to reduce claim processing time and to return property to owners quicker. Contract moratoriums create an administrative burden on states. The burden relates to circumstances where multiple accounts are claimed under a single recovery contract. This requires the administrator to check the date of remittance date for each account to determine if the contract is in compliance. NAUPA has repeatedly represented to the ULC that administrators are understaffed and underfunded as a result of limited appropriations. During the November 2014 NAUPA and individual state administrators made this point clear in

order to make their case for the use of contingency fee auditors. Therefore, the Act should avoid laws that increase administrative costs, burdens, and delay reuniting property with its owners.

The primary purpose of the Act is to return as much unclaimed property to owners as quickly as possible. Immediate access to locators, heir finders, claimants' representatives, and attorneys will help more owners regain possession of their property sooner. The Florida Act provides evidence that contract moratoriums are not good public policy and can be harmful to the interests of owners.

---

**Present language in Section 25 of the 1995 Act:**

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the apparent owner, and states the value of the property before and after the fee or other compensation has been deducted.

**Question:**

**Should the language of this subsection be amended to address full disclosure and non-disclosure agreements?**

Claimants' Representatives endorse full-disclosure requirements for contracts that do not restrict fees. We also support fee caps of 20% for agreements that do not disclose the nature and location of the property.

Claimants' Representatives support regulation that would require the administrator to pay the owner and Claimants' Representative separately.

**Proposed Language Modifying Section 25, subsection (b):**

(b) An agreement by an owner, the primary purpose of which is to *purchase*, locate, deliver, recover, or assist in the recovery of property is enforceable only if the agreement is in *type written 10 point font text or larger, clearly discloses the nature of the property, the name, address, telephone number, and website address of the administrator, includes a statement informing the owner that they may claim the property for free from the administrator and that they should seek the advice of an attorney, should they have questions regarding the provisions of the agreement*, and the services to be rendered, is signed by the owner *or their legally authorized representative*, and states the value of the property before and after the fee *or discount in the case of a purchase, in dollars*, if applicable, or other compensation or consideration has been deducted *and states the percent of property the owner is paying in compensation, or as a discount, in the case of a purchase*.



Compensation or discount shall be limited to 20%, for agreements that do not disclose the nature of the property, the name, address, telephone number, and website address of the administrator, and that do not include a statement informing the owner that they may claim the property for free from the administrator and that they have the right to seek the advice of an attorney, should they have questions regarding the provisions of the agreement. The administrator shall issue payment to the owner and the claimants' representative separately, except in the case of a purchase agreement.

#### **Claimants' Representatives Comments Regarding for Proposed Change to subsection (b):**

The proposal to expand the language of subsection (b) is to add additional disclosure requirements for agreements that do not restrict fees and; to address agreements subject to a fee cap. 14 states allow for agreements that do not impose fee caps. Fee caps impose arbitrary contract limitations that harm owners who need or want access to financial and professional resources in order to establish their entitlement. Probate, bankruptcy, civil litigation, complex genealogy, reinstatement of inactive entities, correcting remitter errors and omissions, foreign and domestic record location and retrieval, and translations require payment of significant costs that must be paid in advance to establish entitlement. These costs often exceed fee cap limitations. Full disclosure contract provisions put owners in a position to strike a fair bargain given their unique circumstances. Flexibility will result in higher return rates which serves the public interest and the primary purpose of the Act more effectively than rigid and punitive restrictions.

#### Justification for omitting the term "apparent owner"

An "apparent owner" as defined in the definitions of the Act, may have no right to obtain property held by the administrator. Removal of the term "apparent" before the term "owner" eliminates an ambiguity in this section of the current Act. Owners, as defined in the Act, may recover property from the administrator.

#### Justification for paying owners and locators, finders, and claimants' representatives separately:

Most states will not pay the locator, finder, or claimants' representative the share assigned to them. This is inconsistent with the method of payment to contingent fee auditors, the definition of owner under the Act, and raises constitutional questions regarding the property rights of assignors and assignees.

States support the bifurcation of payment under contingent fee auditor agreements. Holders pay contingent fee auditors the percent states assign to them off of the top, and remit the balance is to the state.

The definition of "Owner" under the Act, includes assignees, and a person with a legal or equitable interest. An agreement under Section 25 can convey property rights of the owner/claimant, to the locator, finder, or claimants' representative. The owner and locator, finder, or claimants' representative become co-claimant under the agreement. Once an

administrator determines a claim is valid, the contingent interest of the locator, finder, or claimants' representative becomes absolute (is no longer contingent). The administrator has a duty to pay owners. That duty applies equally to the interest owned by the locator, finder, or claimants' representative.

The right of an owner to convey their property and the right of an assignee to collect it are basic constitutionally protected rights. Termination or diminishment of these rights does not serve any legitimate public purpose.

---

**Present language in Section 25 (d) of the 1995 Act:**

(d) An agreement covered by this section which provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.

**Question:**

**Should subsection (d) be revised to omit the administrator's authority to unilaterally maintain a legal action on behalf of the owner?**

Claimants' Representatives believe so.

**Proposed Language Modifying Section 25, subsection (d):**

(d) An agreement covered by this section which provides for compensation that *has been deemed* unconscionable *by a court* is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator who *has obtained the express written consent of the owner*, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to *the prevailing party* in the action

**Claimants' Representatives Comments Regarding for Recommended Change in language for subsection (d):**

Claimants' Representatives oppose granting unilateral authority to an administrator to maintain an action under subsection (d). The administrator should not have that authority to maintain an action on behalf of an owner without the express written consent of the owner.

---

## **Proposal to create a new subsection (f) under Section 25**

### **Question:**

**Should a new subsection be added that would require states to disclose specific unclaimed property account information to the public, locators, finders, and claimants' representatives to if doing so would increase the probability that more property will be returned to owners?**

### **Proposed Language Section 25, creating new subsection (f):**

*(f) There is a substantial public interest in the disclosure of the unclaimed property account information to the public, locators, finders, and claimants' representatives to increase the likelihood that property will be reunited with its owner. Therefore, administrators shall make available to the public, locators, finders, and claimants' representatives the following unclaimed property account information:*

- 10. Name of owner(s)*
- 11. Last known address of owner(s)*
- 12. Property type or description*
- 13. Property cash value or quantity*
- 14. Owner's relation to property (using NAUPA relationship codes or equivalent)*
- 15. Last contact date with owner reported by holder*
- 16. Escheatment date*
- 17. Holder name and contact*
- 18. Property ID Number*

**Claimants' Representatives Comments Regarding Recommended Addition of subsection (f) under Section 25 authorizing the public, locators, finders, and claimants' representatives to access unclaimed property account information from administrators to further the primary intent of the Act.**

The U.S. Appeals Court has ruled that the balance between confidentiality and disclosure of confidential account information shifts increasingly in favor of disclosure with the passage of time. Holders and pre-escheat locators make significant efforts to locate owners prior to escheat. The tools and technologies available to holders to locate owners prior to escheat have vastly improved. By the time property escheats to administrators many of the accounts that remain belong to owners who the administrator is not going to be able to locate. There is no doubt that disclosure of account information to the Claimant Services industry increases the chance that the property will be reunited with its owner. The court further determined that the overriding priority is returning property to owners, not "who" returns it or whether or not a fee is paid.

In re: Aronson v. U.S. Dept. of Housing and Urban Development, et al., 822 F2d 182, the U.S. Appeals Court stated "it cannot be gainsaid (*contradicted or denied*) that there is a strong public

interest (*to withhold account information*) when disclosure (*of account information*) would lead to the distribution of refunds that would otherwise have little chance of reaching their rightful owners.”

And “This interest is not simply that in the achievement of justice in a particular case, but in the revelation and consequent correction of an inability of HUD to disburse funds to their rightful owners.” Id at.

And “This interest is not simply that in the achievement of justice in a particular case, but in the revelation and consequent correction of an inability of HUD to disburse funds to their rightful owners.”

In a recent unclaimed property case U.S. Federal District Judge William Shubb wrote “If the purpose of the law is, as the controller has reportedly said, to reunite owners with their lost or forgotten property, its ultimate goal should be to generate little or no revenue at all for the state.”

Withholding account information runs counter to respected judicial opinion and just public policy.

---

#### **Proposal to create a new subsection (g) under Section 25**

##### **Question:**

**Should a new subsection (g) be added to Section 25 to establish registration requirements for locators, finders, and claimants’ representatives?**

Claimants’ Representatives believe so.

##### **Recommended Additional Subsection (g) to be added to Section 25:**

*(g) Locators, Finders, and Claimants’ Representatives who seek to interact with a single administrator on behalf of an owner or holder must register with the administrator on a form prescribed by the administrator. Locators, Finders, and Claimants’ Representatives who seek to interact with multiple administrators on behalf of an owner or holder may register with NAUPA on a form prescribed by NAUPA. Registration information shall include, but not be limited to, a registrant’s previous business experience and whether the registrant has a previous criminal record.*

**Posting of Bond.** All approved registrants’ must post a performance bond of not less than \$100,000 to insure the administrator against any fraudulent claims that may arise as a result of a registrant's representation of an owner or holder.

**Claimants’ Representatives Comments Regarding Addition to Section 25 to establish uniform registration requirements for Locators, Finders, and Claimants’ Representatives:**

The objective of the Uniform Law Commission is to draft and promote uniform laws that increase consistency for the benefit of public, states, and industry. A uniform standard of registering the post escheat claim services industry will reduce confusion and promote balanced standards of skill, experiences, conduct, and accountability.

---

**Conclusion:**

Claimants' Representative would encourage all involved in this drafting process to create balanced regulations that support a healthy professional business environment for owners and for post escheat claim service providers. The proposals above will increase transparency and the rate of return of property to owners. A healthy stable working relationship with administrators, which respects the mutual benefits of public and private resources and cooperation, is good public policy that will benefit owners.

BENCHMARK RETURN RATE	50%					
Name	YEARS INCLUDED IN REV. & PAYMENT REPORT	TOTAL REVENUE	TOTAL CLAIMED	BALANCE	Return%	Return Shortfall
ALABAMA	1996 - 2014	\$762,002,712.06	\$261,526,489.89	\$500,476,222.17	34.32%	\$119,474,866.14
ALASKA	1987 - 2013	\$122,185,522.94	\$44,387,834.75	\$77,797,688.19	36.33%	\$16,704,926.72
ARIZONA	1972 - 2013	\$1,398,433,140.00	\$357,603,379.00	\$1,040,829,761.00	25.57%	\$341,613,191.00
ARKANSAS	1989 - 2014	\$48,783,917.01	\$2,788,741.38	\$45,995,175.63	5.72%	\$21,603,217.13
	2003 - 2013 2014 CASH REPORT CONFLICTS WITH 2012 REPORT. 2012 REPORT HAS \$211,020,536.00 MORE REVENUE THAN 2014 REPORT. REVENUE IN THIS REPORT ADJUSTED UP BY \$211,020,536.00 UNTIL CA EXPLAINS DIFFERENCE. REPORT INCLUDES CASH RECEIPTS ONLY - SECURITIES NOT INCLUDED	\$5,150,799,625.00	\$2,439,700,782.00	\$2,711,098,843.00	47.37%	\$135,699,030.50
CALIFORNIA	DID NOT PROVIDE DATA					
COLORADO	1999 - 2013	\$1,422,664,125.00	\$473,745,238.00	\$948,918,887.00	33.30%	\$237,586,824.50
CONNECTICUT	1984 - 2013	\$5,623,100,000.00	\$227,000,000.00	\$5,396,100,000.00	4.04%	\$2,584,550,000.00
DELAWARE	1961 - 2014	\$4,761,675,033.00	\$2,260,291,902.00	\$2,501,383,131.00	47.47%	\$120,545,614.50
FLORIDA	1990 - 2013 INCLUDES PRE 1990 AGGREGATE AMOUNTS	\$1,485,275,322.97	\$210,695,255.59	\$1,274,580,067.38	14.19%	\$531,942,405.90
GEORGIA	1986 - 2013 INCLUDES PRE 1986 AGGREGATE AMOUNTS	\$288,235,583.00	\$74,805,484.00	\$213,430,099.00	25.95%	\$69,312,307.50
HAWAII	1976 - 2012	\$165,126,515.00	\$66,778,578.00	\$98,347,937.00	40.44%	\$15,784,679.50
IDAHO	2003 - 2013 DATA PRIOR TO 2003 UNAVAILABLE	\$2,058,997,062.34	\$945,977,420.00	\$1,113,019,642.34	45.94%	\$83,521,111.17
ILLINOIS	2000 - 2012 DATA PRIOR TO 2000 UNAVAILABLE	\$799,900,000.00	\$392,400,000.00	\$407,500,000.00	49.06%	\$7,550,000.00
INDIANA	1983 - 2013 REPORT INCLUDES CASH RECEIPTS ONLY - SECURITIES NOT INCLUDED	\$339,733,845.18	\$160,749,209.64	\$178,984,635.54	47.32%	\$9,117,712.95
IOWA	1979 - 2014 NEED TO ASK ABOUT SECURITIES	\$406,533,803.98	\$169,336,405.98	\$237,197,398.00	41.65%	\$33,930,496.01
KANSAS	1944 - 2013	\$578,175,181.23	\$151,218,468.68	\$426,956,712.55	26.15%	\$137,869,121.94
KENTUCKY	1973 - 2013	\$876,559,980.29	\$301,070,038.47	\$575,489,941.82	34.35%	\$137,209,951.68
LOUISIANA	2004 - 2013 NEED TO ASK ABOUT SECURITIES	\$674,534,138.91	\$330,012,931.71	\$344,521,207.20	48.92%	\$7,254,137.75
MAINE	1991 - 2013	\$1,866,076,146.33	\$583,112,824.91	\$1,282,963,321.42	31.25%	\$349,925,248.26
MARYLAND	1969 - 2014 INCLUDES REVENUE FROM 1950-1968 REPORT INCLUDES CASH RECEIPTS ONLY - SECURITIES NOT INCLUDED	\$3,197,095,832.64	\$1,075,037,349.71	\$2,122,058,482.93	33.63%	\$523,510,566.61
MASSACHUSETTS	1996-2013 NEED TO ASK ABOUT SECURITIES	\$2,179,100,000.00	\$754,700,000.00	\$1,424,400,000.00	34.63%	\$334,850,000.00
MICHIGAN	1996 - 2014	\$953,751,588.20	\$310,249,986.53	\$643,501,601.67	32.53%	\$166,625,807.57
MINNESOTA	1991 - 2013 NEED TO ASK ABOUT SECURITIES	\$281,179,494.45	\$102,659,455.11	\$178,520,039.34	36.51%	\$37,930,292.12
MISSISSIPPI	1985 - 2013	\$1,122,924,164.00	\$381,701,863.00	\$741,222,301.00	33.99%	\$179,760,219.00
MISSOURI	1964 - 2014	\$117,283,431.85	\$40,965,522.02	\$76,317,909.83	34.93%	\$17,676,193.91
MONTANA	1976 - 2013 NEED TO ASK INCLUDES CASH RECEIPTS ONLY - SECURITIES NOT INCLUDED - SECURITIES LIQUIDATED ON REQUEST OF CLAIMANT INCLUDED IN PAYMENT AMOUNT - FYs 2005, 2007 & 2008 PAID MORE THAN COLLECTED	\$248,739,414.61	\$157,909,637.49	\$90,829,777.12	63.48%	-\$33,539,930.19
NEBRASKA	1985 - APRIL 2014	\$833,253,573.98	\$261,093,929.75	\$572,159,644.23	31.33%	\$155,532,857.24
NEVADA						

Name	YEARS INCLUDED IN REV. & PAYMENT REPORT	TOTAL REVENUE	TOTAL CLAIMED	BALANCE	Return%	Return Shortfall
NEW HAMPSHIRE	1967 - 2013 NEED TO ASK ABOUT SECURITIES	\$208,144,317.00	\$76,555,574.00	\$131,588,743.00	36.78%	\$27,516,584.50
NEW JERSEY	2013 ONLY	\$238,000,000.00	\$109,000,000.00	\$129,000,000.00	45.80%	\$10,000,000.00
NEW MEXICO	1998 - 2014	\$281,026,510.61	\$69,464,657.08	\$211,561,853.53	24.72%	\$71,048,598.23
NEW YORK	1987 - 2013	\$12,214,104,385.36	\$3,605,349,077.22	\$8,608,755,308.14	29.52%	\$2,501,703,115.46
NORTH CAROLINA	1977 - 2013	\$1,743,001,552.00	\$487,611,556.00	\$1,255,389,996.00	27.98%	\$383,889,220.00
NORTH DAKOTA	1976 - 2013	\$78,845,944.77	\$27,475,015.87	\$51,370,928.90	34.85%	\$11,947,956.52
OHIO	1976 - 2014	\$2,793,433,824.35	\$938,974,832.98	\$1,854,458,991.37	33.61%	\$457,742,079.20
OKLAHOMA	2001 - 2013	\$535,853,057.53	\$185,084,293.84	\$350,768,763.69	34.54%	\$82,842,234.93
OREGON	1990 - 2013	\$620,866,128.00	\$193,645,103.00	\$427,221,025.00	31.19%	\$116,787,961.00
PENNSYLVANIA	1900 - 2013	\$3,285,164,915.00	\$1,057,998,694.00	\$2,227,166,221.00	32.21%	\$584,583,763.50
RHODE ISLAND	1901 - 2013	\$372,668,769.27	\$118,603,222.27	\$254,065,547.00	31.83%	\$67,731,162.37
SOUTH CAROLINA	1971 - 2013	\$545,582,916.00	\$146,944,683.00	\$398,638,233.00	26.93%	\$125,846,775.00
SOUTH DAKOTA	1960 - 2013	\$271,769,955.44	\$43,497,597.59	\$228,272,357.85	16.01%	\$92,387,380.13
TENNESSEE	2000 - 2013	\$777,783,437.00	\$286,449,708.00	\$491,333,729.00	36.83%	\$102,442,010.50
TEXAS	1996 - 2014 INCLUDES PRE 1996 AGGREGATE AMOUNTS	\$5,916,619,188.21	\$2,030,792,192.43	\$3,885,826,995.78	34.32%	\$927,517,401.68
UTAH	1993 - 2013	\$422,745,395.00	\$143,877,205.00	\$278,868,190.00	34.03%	\$67,495,492.50
VERMONT	2002 - 2013 NEED TO ASK ABOUT SECURITIES	\$104,900,000.00	\$48,300,000.00	\$56,600,000.00	46.04%	\$4,150,000.00
VIRGINIA	1962 - 2013	\$1,813,522,375.31	\$477,195,497.94	\$1,336,326,877.37	26.31%	\$429,565,689.72
WASHINGTON	1956 - 2013	\$1,595,821,994.00	\$590,533,745.00	\$1,005,288,249.00	37.00%	\$207,377,252.00
WASHINGTON, DC	2009 - 2013	\$204,772,138.36	\$46,331,079.75	\$158,441,058.61	22.63%	\$56,054,989.43
WEST VIRGINIA	DID NOT PROVIDE DATA			\$0.00	UNK	\$0.00
WISCONSIN	1970 - 2012 NEED TO ASK ABOUT SECURITIES	\$587,973,115.00	\$270,270,357.00	\$317,702,758.00	45.97%	\$23,716,200.50
WYOMING	1964 - 2014 REPORT INCLUDES CASH RECEIPTS ONLY - SECURITIES NOT INCLUDED	\$117,283,463.85	\$40,965,522.02	\$76,317,941.83	34.93%	\$17,676,209.91
TOTALS		\$72,492,002,536.03	\$23,532,438,341.60	\$48,959,564,194.43	32.46%	\$12,713,562,926.42
			F57 & F58 REPRESENT THE DIFFERENCES BETWEEN WEBSITE DATA AND AMOUNT REPORTED			
		NEW YORK WEBSITE REPORTS \$12B		\$3,391,244,692		
		CALIFORNIA WEBSITE REPORTS \$6.1B		\$3,388,901,157		
			TOTAL UNCLAIMED	\$55,739,710,043.43		



JOHN CHIANG  
California State Controller  
UNCLAIMED PROPERTY DIVISION

February 2, 2009

NOTICE TO HEIRFINDERS

RE: DELAY OF CLAIM PAYMENTS DUE TO STATE CASH SHORTAGE CRISIS

We regret to inform you that we are temporarily unable to process cash payments for claims. Due to the state's current cash shortage crisis, the State Controller has been forced to delay payments for 30 days, effective February 1, 2009. The Controller has stated that he may be forced to postpone the payments for an additional 30 days if the Legislature does not act on the Budget by late February. **If the claim involves securities or safe deposit box contents, which have not been yet sold as required by law, the return of shares or contents will not be delayed due to the cash crisis.**

The Controller has taken this action with great reluctance, but is required to preserve the state's cash for education, debt service and other payments that are deemed by the State Constitution, federal law or court rulings as having first claim to available state general funds. We will be continuing to process all claims and expect to resume payments as soon as the Controller determines there is cash available. You may continue to check the status of your clients' claims on our website at <https://scoweb.sco.ca.gov/UCP/ClaimStatusSearch.aspx>. We will be sending out a letter to all claimants, for claims that are ready for payment but delayed due to this crisis.

We apologize for any inconvenience this may cause and appreciate your patience and understanding. We will continue to update our website concerning the status of delaying claim payments and recommend that you visit the website at [www.claimit.ca.gov](http://www.claimit.ca.gov). If you have any questions or concerns, please call (800) 992-4647.

Unclaimed Property Division  
P.O. Box 942850, Sacramento, CA 94250-5873  
10600 White Rock Road, Rancho Cordova, CA 95670  
(800) 992-4647 (Nationwide) or (916) 323-2827 (Outside of US)