To: Charles A. Trost, Reporter

From: Randy Hotz, President, Choice Plus LLC

Date: February 23, 2015

Re: February 2015 RUUPA Draft, Comments by Randy Hotz - Choice Plus LLC - Claimants' Representatives

Dear Mr. Trost:

Dean Bunton indicated that you had expressed a willingness to read our comments regarding the current draft. I suspect that you are inundated with input so I tried to keep my comments brief and somewhat informal. I hope you find this input valuable in shaping this version of the Act to give great focus on owners' access to information and professional support in order to achieve the primary purpose of the Act - return property to owner - with or without paying to reclaim it.

1. Section 10 (3) – Creating uniform standards for information required to be made available to the public via the internet to apprise themselves of the existence of their property will increase reunification of property to owners and is good public policy. See Position paper ULC Submisson_Claimants Representatives_merged_12-20-14.doc

2. Section 13 –CRs support Alternative B – aligns with primary intent of the Act.

3. Section 14 d – Very much like the language you proposed. The general fund language is good as long as the state does not experience a budget crisis – a $100,000 trust fund seems pointless.

4. Section 16 (b) - The word "may" should be changed to "shall". "May" implies discretion, "shall" is mandatory. The Administrator has a mandatory obligation to return property to the owner. Therefore, "shall" avoids ambiguity regarding the obligation to pay or deliver property once ownership has been established and is consistent with the use of the word shall in the remainder of this Section.

   The standard of proof must be defined and made uniform. The current language is too broad and is subject to widely varying interpretation. Uniformity is the objective of the ULC. Defining the standard of proof provides clarity and avoids ambiguity. A preponderance of evidence standard is a well-established principle of law with considerable case law defining its application and meaning.

5. Section 20 – Outstanding and fully supported – transparency, public oversight, and disclosure is the proper theme for the revised Act. I would caution fee limitations and allow Administrators' broad bargaining authority. As audits begin to move to smaller industry sectors fee caps could create economic restrictions that are not in the best interests of the public.

6. Section 25 - the 24 month contract moratorium prohibits an owner from hiring a professional to handle their claim. Prohibiting an owner from seeking professional help is not good public policy. Delete subsection (a).

   The court is the proper venue for contract disputes. The Administrator is not a party to the contract, therefore they should not been given authority to initiate an action on behalf of an owner. Proposed language: (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 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~~ the party who prevails in the action. See comments at the end of the document.

7. Section 27 – This is a complete reversal of the direction taken in Section 20. More transparency and information ensures owners can identify their property & continue to make information available to private sector service providers so that they can notify owners of existence of their property. The Act must define what is not confidential information. In re 822 F2d 182 Aronson v US Department of Housing and Urban Development illustrates that interests of the public shifts from confidentiality to public disclosure over time to ensure property is returned to owners.

   For the purpose of identifying ones property, certain information is mandatory such as name, last known address, holder, property type, and when remitted. For the purpose of determining the economic feasibility of pursuing the recovery of one's property, disclosure of the actual amount or value is essential. Making disclosure of this information mandatory supports the primary purpose of the Act. It increases the ability of owners to self assess ownership prior to making an inquiry to the Administrator, and reduces administrative burdens by eliminating inquiries from people who have the same name as the apparent owner but who are not the apparent owner

Section 25 Comments:

NAUPA representatives have made it clear in their presentations to the drafting committee that they would be severely constrained in their ability to do the job given to them were they not able to use outside auditors and pay them on a contingent fee basis. These revised rules are intended to allow greater transparency as to these issues to other State authorities and to the public.

Similarly, Section 25 constrains severely impairs an owner's ability to access contingent fee service providers to recover their property for 24 months. Owners' who desire to hire a professional for convenience or to gain access to the financial and professional resources professional's offer on a contingency fee basis, are denied access under the existing language of the Act.

An auditor is nothing more than a state sponsored fundfinder. The public should not be denied access to contingent fee service providers for 24 months. We fully support the right of an owner to have a court void or amend a contract.

Respectfully,

Randy Hotz
President

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