



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

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Unclaimed Property Act Summary

If an individual abandons an automobile on a street in almost any city in the United States, it is generally a problem of litter, of junk. Nobody is likely to want it, although abandonment provides another person with the opportunity to take it if that person wants to do so. Abandonment implies opportunity to others — an opportunity that most people don't bother about.

The law of abandoned property is an infrequently visited corner of American property law. There is some concern over abandoned real property interests, and most of the rules governing personal property are derived from real property law. An automobile is tangible personal property. There is very little concern for tangible personal property, except in statutes and ordinances pertaining to clearing away junk and trash.

But abandonment of intangible personal property raises significant public policy concerns. An example of intangible personal property is a share of stock. We cannot see, touch, taste, or hear a share of stock. It is a property right in an intangible, created-by-law entity called a corporation. What we can see and feel, if the share of stock is certificated, is the paper certificate which represents the property rights in the corporation. If the share is uncertificated, we do not even have the paper representation and must depend upon statements of issuers as evidence of ownership.

Other kinds of intangible property are bank accounts, traveler's checks, insurance proceeds, and other investment securities. To list these items of intangible property is to suggest their importance — and value. Huge amounts of money are involved.

Besides the values involved, there is another characteristic of most kinds of intangible personal property that makes abandonment rules very important. Most kinds of valuable intangible personal property interests are held in the owners' names by other entities — the holders. The assets in a bank account are not held by the owner, but by the owner's bank. Some entity other than the owner actually possesses the intangible property when and if it is abandoned by its rightful owner. That entity is in position to assume title to abandoned intangible personal property virtually by doing nothing except to continue to hold it. In fact, it is possible to surmise that a holding institution for intangible personal property can find doing nothing with its customers' property and communicating as little as possible with its customers to be "lucrative silence."

The problem of "lucrative silence" motivated the Uniform Law Commission (ULC) to promulgate the Uniform Disposition of Unclaimed Property Act in 1954. It was amended in 1966 and then was wholly revised in 1981 to become the Uniform Unclaimed Property Act (UUPA). In 1995, the Uniform Law Commission once again revised the UUPA. It updates UUPA (1981) and should greatly assist the States in dealing with the unclaimed intangible personal property problem.

UUPA (1995) and its predecessor Acts are designed to change the common law and the law of escheat pertaining to abandoned intangible personal property. A finding of abandonment of property requires some evidence of intent to relinquish title to that property, usually a period of time during which the owner shows no interest in the property, does nothing with the property, gives up possession of the property, does nothing to control other people's use of the property, pays no assessed taxes on the property, and/or generally indicates an intent to relinquish possession and control. Abandoned property is usually available to the next person who assumes possession and control.

The common law calculus is complicated by the notion of escheat. If a person dies without heirs, property ultimately devolves or escheats to the State. Many States historically treated valuable abandoned property as property devolving at death to the State. The period of time that accrues for a determination of abandonment was treated as raising a presumption of death, making the State the ultimate heir upon its probate. There are a few States which still retain vestiges of this escheat

notion.

UUPA (1995) and its predecessors essentially abolish the common law on abandoned property and significantly change the escheat notion for intangible personal property. Intangible personal property that is unclaimed (the term that succeeds abandoned) does not escheat to the State nor is it available for anyone who can assert possession and control over it, but is transferred to the State as a permanent custodian for its owners. The State keeps the property or the proceeds from its sale for its owners.

The scheme of UUPA (1995) and its predecessors is fairly simple. Its rules determine when eligible property is unclaimed. Once property may be identified as unclaimed, the holder is required to report that property to the state unclaimed property administrator. After the report is made, and notice to owners is formally attempted by the holder, the property is transferred to the unclaimed property administrator.

The administrator once again attempts notice to owners. Cash goes into the state general fund. Non-cash is held for a period of time and then sold. The administrator maintains a fund from which owners can make claims for payment. A claims procedure is provided for owners to make their claims.

Since unclaimed property administration is an interstate problem, the Uniform Acts have provided the States with authority to work with each other and to cooperate in the collection and holding of unclaimed property.

UUPA (1995) retains the basic scheme. What does it update? The first issue it addresses is the jurisdiction issue. Holders and owners may be in different States (which is the principal justification for a Uniform Act on this subject). The basic rule as of UUPA (1981) is that the owner's State is the State entitled to custody over unclaimed property. If that State cannot be ascertained, the holder's State is entitled to custody. These rules respond to constitutional decisions prior to 1981.

UUPA (1995) does not change the basic rule, but provides specific rules to meet the test of *Delaware v. New York*, 113 S.Ct. 1550, decided in 1993. That case dealt with interests in investment securities for which no owner's address could be ascertained. The question it decided was whether the State that was the domicile of the issuing corporation, or the State which was the intermediary's (broker's, transfer agent's, depository's) domicile was entitled to the property. The U.S. Supreme Court decided that the intermediary's domicile prevails. UUPA (1995) meets the test of this case as UUPA (1981) did and could not.

Abandonment of property is a concept of time — the time during which the owner shows no interest in the property, takes no action to maintain its possession and control, and refrains from communicating with a holder - in the case of intangible personal property. The original Uniform Act provided a basic time of seven years for the evidence of abandonment to accrue, but had an array of time periods for different property. Travelers checks required fifteen years (and continues to do so in UUPA 1995) before abandonment occurs. Unclaimed proceeds from the dissolution of a business entity became abandoned within two years.

In 1981, the basic period of time was reduced from seven to five years. Specific property continued to be treated separately, and some of the specific abandonment periods were reduced. There were new items of intangible property added like unclaimed wages, which were presumed abandoned after only one year.

UUPA (1995) retains the basic five years, but revises some of the periods for specific property. For example, an unclaimed stock dividend will be presumed abandoned after five years rather than seven years under UUPA (1981). The time for gift certificates and retail credits or refunds is reduced from five years to three years. Proceeds on insurance policies are considered abandoned after three years rather than five or two years. IRA and similar tax-deferred retirement plan distributions go from five to three years. For these specific assets, lack of activity and communications on behalf of owners for these shortened periods of time clearly can raise a presumption of abandonment. Also, the shorter time periods prevent losses of assets that might otherwise be dissipated without the supervision of the State.

UUPA (1995) more clearly specifies what constitutes unclaimed property. The general rule is: "Property is unclaimed if, for the applicable period of time set forth in subsection (a) (of Section 2), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property."

None of the earlier Uniform Acts attempts to state a general rule. Note the language referring to communication by other means than writing. The earlier Uniform Acts tended to put strict reliance upon the written records of holders, which would put in doubt computer communications and records as sufficient to indicate communications or interest shown by an owner, but also allowed rather rigid formalistic determinations about the fact of abandonment. UUPA (1995) erases these deficiencies in the former Uniform Acts.

UUPA (1995) states a general rule with respect to dormancy charges for all types of unclaimed property. Dormancy charges are charges imposed by holders for inactivity with respect to any property held. An example would be a specific charge for not depositing or withdrawing money from a bank account. The rule is that no dormancy charges can be levied against assets held unless there is a specific, enforceable contract between owner and holder for assessing such charges. "The amount of the deduction is limited to an amount that is not unconscionable."

The earlier Uniform Acts did not apply this kind of rule generally to all kinds of unclaimed property. The rule was applied only to traveler's checks, money orders, checks and drafts, and deposit accounts. In addition, there was no limitation on amount in the earlier Uniform Acts.

UUPA (1995) limits heir finder agreements. No person can enter agreements to charge a fee for finding unclaimed property less than two years from the time specific property is transferred to the unclaimed property administrator. There are specific disclosure requirements for such an agreement, when permitted, to make it enforceable, and agreed upon compensation may not be "unconscionable." Nothing like these provisions appears in the earlier Uniform Acts.

There is a kind of tangible personal property that is subject to the Uniform Acts. This kind of tangible property is that contained in safe deposit boxes or accounts. UUPA (1995) continues to include such tangible personal property within its scope.

There are other clarifications and adjustments to the provisions in the prior Uniform Acts in UUPA (1995). This summary attempts only to describe some of the principal differences. Although UUPA (1995) changes no fundamental principle of modern unclaimed property law, it updates, modernizes and substantially improves this law over its predecessors. It should be adopted in every State in the United States.