

CHAPTER 11

UNCLAIMED PROPERTY

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Editor’s Note: Some may ask why a chapter on unclaimed property is included in this Guidebook to West Virginia Taxes when the unclaimed property laws do not impose a tax. This chapter is included for a number of reasons. First, nationally, billions of dollars are being held by the states, including West Virginia, under their respective unclaimed property laws for the benefit of the owners of the abandoned property. This chapter is a means of educating owners of abandoned property of their rights and the process by which they may claim the abandoned property they own. Second, the UPA imposes record keeping and reporting obligations on businesses that hold unclaimed property. Small business owners may not be aware of their duties under these laws or realize that unless they timely and accurately report to the state administrator the unclaimed property they are holding, the 10-year statute of limitations does not apply to examinations by the state administrator for compliance with those laws.¹ Third, West Virginia’s unclaimed property laws also apply to business-to-business transactions that result in unclaimed property. This is not true under the unclaimed property laws of all states, however. Fourth, West Virginia businesses that do business with out-of-state consumers and out-of-state businesses may have reporting obligations to both the West Virginia State Treasurer and to administrators of unclaimed property laws of other states, when the last known address of a customer for whom they hold unclaimed property is in another state. Fifth, a business that fails to comply with its duties and obligations under the UPA can be subject to significant penalties, which increase if the failure is willful or the reports filed were fraudulent.

¶ 1101 Introduction

Law: W. Va. Code § 36-8-1 *et seq.*

Regulations: WVCSR § 112-5-1 *et seq.*

West Virginia adopted the Uniform Unclaimed Property Act (hereinafter “the Act” or “UPA”) in 1997. It is based on The Uniform Unclaimed Property Act that was approved by the National Conference of Commissioners on Uniform State Laws in 1995.

The UPA is administered by the State Treasurer. A copy of the Act, regulations and various forms used by businesses to report unclaimed property and by owners to claim such property are available at the Treasurer’s website, <http://www.wvsto.com>.

Property subject to the UPA includes tangible personal property described in ¶ 1103, below, and fixed and certain interests in intangible personal property that are held, issued or owed in the course of a holder's business, or by a government, governmental subdivision, agency or instrumentality, and all income or increments therefrom.

¹ While the West Virginia UPA includes a 10-year statute of limitations, the unclaimed property laws of some states do not include a statute of limitations.

A “holder” or “holder of abandoned property” is a person obligated to hold for the account of, or deliver or pay to, the owner of property that is subject to the UPA. However, this definition of “holder” is broad enough so that more than one party may be deemed to be the holder. An example of where there can be multiple holders is where a business uses a third party administrator to administer its rebate program. If the rebate is not claimed, it appears that both the business and the agent may have a reporting obligation and that records of both may be examined for compliance with the UPA. See ¶ 1120, below.

In general, “owner” means a person who has a legal or equitable interest in property subject to the UPA or that person's legal representative. “Owner” includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant or payee in the case of other property.

Fixed and certain interests in intangible personal property subject to the UPA include intangible property that is referred to as or is evidenced by:

(1) Money, a check, draft, warrant for payment issued by the state of West Virginia, deposit, interest or dividend;

(2) Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;

(3) Stock or other evidence of ownership of an interest in a business association or financial organization;

(4) A bond, debenture, note or other evidence of indebtedness;

(5) Money deposited to redeem stocks, bonds, coupons or other securities or to make distributions;

(6) An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

(7) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits.

“Mineral proceeds” as used in item (2), above, means amounts payable for the extraction, production or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

(1) For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties and delay rentals;

(2) For the extraction, production or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments and production payments; and

(3) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement and farm-out agreement.

Other terms used in the UPA are defined in W. Va. Code § 36-8-1 and WVCSR § 112-5-2.

The State Treasurer is authorized to promulgate rules and regulations in accordance with the State Administrative Procedures Act, W. Va. Code § 29A-1-1 *et seq.*, to implement, administer and enforce the UPA. In 2013, the rules were amended effective May 17, 2013.

¶ 1102 Presumptions of Abandonment

Law: W. Va. Code § 36-8-2.

Regulation: WVCSR § 112-5-3.

Property is presumed to be abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular specie of property:

(1) Traveler's check, **fifteen years** after issuance;

(2) Money order, **seven years** after issuance;

(3) Stock or other equity interest in a business association or financial organization, including a security entitlement under article eight of the uniform commercial code, **five years** after the earlier of: (i) the date of the most recent dividend, stock split or other distribution unclaimed by the apparent owner; or (ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications or communications to the apparent owner;

(4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, **five years** after the date of the most recent interest payment unclaimed by the apparent owner;

(5) A non-interest-bearing demand, savings or time deposit, including a deposit that is automatically renewable, **five years** after the earlier of maturity or the date of the last indication by the owner of interest in the property; an interest-bearing demand, savings or time deposit including a deposit that is automatically renewable, **seven years** after the earlier of maturity or the date of the last indication by the owner of

interest in the property. A deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(6) Money or credits owed to a customer as a result of a retail business transaction, **three years** after the obligation accrued;

(7) Gift certificate, **three years** after the 31st day of December of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60% of the certificate's face value;

(8) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, **three 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 insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(9) Property distributable by a business association or financial organization in a course of dissolution, **one year** after the property becomes distributable;

(10) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, **one year** after the distribution date;

(11) Property held by a court, government, governmental subdivision, agency or instrumentality, **one year** after the property becomes distributable;

(12) Wages or other compensation for personal services, **one year** after the compensation becomes payable;

(13) Deposit or refund owed to a subscriber by a utility, **two years** after the deposit or refund becomes payable;

(14) Property in an individual retirement account, defined benefit plan or other account or plan that is qualified for tax deferral under the income tax laws of the United States, **three years** after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(15) Warrants for payment issued by the state of West Virginia which have not been presented for payment, within **six months** of the date of issuance;²

² This includes state tax refunds. Although information about tax refunds is generally confidential under W. Va. Code § 11-10-5d, a specific exception to confidentiality is provided in W. Va. Code § 11-10-5v, which requires the Tax Commissioner to disclose to the State Treasurer the name, last known address

(16) All funds held by a fiduciary, including the West Virginia Municipal Bond Commission, for the payment of a note, bond, debenture or other evidence of indebtedness, **five years** after the principal maturity date, or if such note, bond, debenture or evidence of indebtedness is called for redemption on an earlier date, then the redemption date, such premium or redemption date to also be applicable to all interest and premium, if any, attributable to such note, bond, debenture or other evidence of indebtedness; and

(17) All other property, **five years** after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

At the time an interest is presumed abandoned, any other property right accrued or accruing to the owner as a result of that interest, and not previously presumed abandoned, is also presumed to be abandoned.

Property is unclaimed if, during the applicable period set forth above, 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 the owner has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

An indication of an owner's interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease or change the amount or type of property held in the account;

(3) The making of a deposit to or withdrawal from a bank account; and

and social security number, or federal employer identification number, as applicable, of persons or businesses, including joint or combined filers, to which tax refund checks have been issued by this state, which checks have gone unclaimed or uncashed for a period of more than six months after the issuance date of the check. Additionally, if the information is included in a tax division database, the Tax Commissioner must disclose to the State Treasurer the date, check number, warrant number, transaction identification number, invoice number, and amount of any such unclaimed or uncashed refund check, and the Tax Commissioner's confirmation or denial of confirmation, as applicable, that the tax refund is currently due and payable to the payee or payees to whom the unclaimed or uncashed check was originally issued.

(4) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

Property is payable or distributable for purposes of the UPA notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

Observation: When applying the preceding presumptions and determining the state to which the abandoned property should be reported, see ¶ 1105, *infra*, the holder should keep in mind that Congress may have enacted legislation directly impacting the treatment of unclaimed property. Some examples of where federal law impacts state unclaimed property laws include, but are not limited to:

(1) 12 U.S.C. § 2501 *et seq.* (disposition of abandoned money orders and travelers checks), providing that the state of purchase, as shown in the books and records of the financial organization or business association, shall be entitled exclusively to escheat or take custody of the sum payable on such abandoned instruments;

(2) 12 U.S.C. § 24 (National Bank Act) and 12 U.S.C. § 1461 *et seq.* (Home Owners Loan Act) allowing national thrifts to issue gift cards with dormancy/service fees and expiration dates preempting state laws prohibiting dormancy/service fees and expiration dates on this type of gift card; and

(3) The Employee Retirement Income Security Act of 1974 (ERISA), although the scope of preemption is still subject to debate.

¶ 1103 Contents of safe deposit box or other safekeeping depository

Law: W. Va. Code § 36-8-3.

Regulation: WVCSR § 112-5-4.

Property held in a safe deposit box or other safekeeping depository in this State in the ordinary course of the holder's business, and proceeds resulting from the sale of the property permitted by other law, are presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

At least two employees of the holder must open and inventory the contents of a safe deposit box. The holder of the box must then seal the property in storage boxes or envelopes for safekeeping and attach a copy of the inventory to each container.

The State Treasurer is required to offer for public sale property recovered from safe deposit boxes.

When there is a valid lien or a contract between the holder and owner, the State Treasurer may reimburse the holder for the cost of opening the safe deposit box, unpaid rent, and storage charges. The Treasurer reimburses the holder from the proceeds of the sale of the contents of the safe deposit box, after deducting the expense incurred in selling the property. The amount of reimbursement to the holder may not exceed the amount remaining after deduction of the expenses. No other charges are deductible unless otherwise authorized by law or expressly provided by lawful contract with the owner of the box.

¶ 1104 Rules for taking custody of unclaimed property

Law: W. Va. Code § 36-8-4.

Except as otherwise provided in the UPA or by other law of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this State;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

(i) The last known address of the person entitled to the property is in this State; or

(ii) 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;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this State or is a government or governmental subdivision, agency or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is 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;

(6) The transaction out of which the property arose occurred in this State, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) The property is a traveler's check or money order purchased in this State, or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property, or do not show the state in which the instrument was purchased.

¶ 1105 Dormancy charge

Law: W. Va. Code § 36-8-5.

Regulation: WVCSR § 112-5-5.

A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if 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 reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

When dormancy charges are deducted, the holder must report the value or amount of each item of property prior to deduction of the dormancy charges and the amount of the dormancy charges in the remittance report filed with the administrator. (WVCSR § 112-5-5.)

¶ 1106 Burden of proof as to property evidenced by record of check or draft

Law: W. Va. Code § 36-8-6.

Regulation: WVCSR § 112-5-6.

A record of the issuance of a check, draft or similar instrument is *prima facie* evidence of an obligation. In claiming property from a holder who is also the issuer, the State Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge and want of consideration are affirmative defenses that must be established by the holder.

¶ 1107 Report of abandoned property

Law: W. Va. Code § 36-8-7.

Regulation: WVCSR § 112-5-6.

Annual report required. -- A holder of property that is presumed to be abandoned must make an annual report to the State Treasurer concerning the property. This report must be filed **before** November 1st each year covering the period July 1 of the

preceding calendar year through June 30 of the calendar year during which the report must be filed.³ The report must be verified for accuracy and include the following information:

(1) The name and social security or federal employer identification number, if known, and best address, which includes, but is not limited to, e-mail and computer codes, and date of birth, if known, of each person appearing from the records of the holder to be the apparent owner of any property presumed abandoned under the Act with an aggregate value of \$50 or more;

(2) In the case of unclaimed funds of life insurance companies due beneficiaries from a life or endowment insurance policy or annuity held by life insurance companies, the full name, date of birth and date of death of an insured or annuitant and the full name and address of each beneficiary, if known, according to the life insurance company's records;

(3) In the case of the contents of a safe deposit box or other safekeeping depository or in the case of other personal property, a description of the property and any identifying or safekeeping box number for each item of property;

(4) An itemized breakdown of each safe deposit box opening charge, unpaid rent and storage charges for which the holder requests reimbursement;

(5) The date of the owner's last indication of interest in the property according to the records of the holder; and

(6) In the case of an interest-bearing demand, savings or time deposit, the annual interest rate at the time the property was paid to the administrator.

Holder due diligence required. -- Performance of due diligence is a first class mailing to owners as required by W. Va. Code §36-8-7(e). A holder is required to make a due diligence mailing to owners whose property, prior to deducting allowable dormancy charges, has an aggregate value of \$50 or more, or is included in a safe deposit box. However, if the holder has in its records an address for the apparent owner that its records disclose as inaccurate or if the claim is barred by the statute of limitations, the holder is not required to make the due diligence mailing. The due diligence letter must contain:

(1) The steps required by the owner to claim the property;

(2) The steps required by the owner to have the holder reactivate the account and continue to maintain the property for the owner;

³ Exception: a life insurance company is required to file its report each year by May 1st covering the preceding calendar year. (WVCSR § 112-5-6.1.)

(3) A statement that if the owner does not take the steps set forth either in paragraph (1) or (2), above, the property will be remitted to the State;

(4) A statement that the State is only a custodian for property presumed abandoned and remitted to the State, and that the owner or his or her heirs do not lose their rights to the property and may file a claim for the property with the State;

(5) A date, not less than fifteen business days prior to the date the holder will remit the property to the State, by which the owner must contact the holder; and

(6) The name, address, and telephone number of the person to contact at the holder.

When report deemed filed. -- The State Treasurer does not consider a report to be received and filed until it is received in a complete, accurate, and correct form by the State Treasurer's Unclaimed Property Division in Charleston, West Virginia, along with any required remittance.

(1) The State Treasurer may return any incomplete or inaccurate report or remittance to the holder of the abandoned property for correction.

(2) If the State Treasurer returns a report or remittance to a holder because it is incomplete or inaccurate, the holder must submit a corrected report or remittance to the State Treasurer within twenty (20) calendar days after the administrator's return of the original report or remittance is returned to the holder of the abandoned property.

(3) Records of a holder failing to submit a corrected, accurate and complete report or remittance within the time set forth in paragraph (2), above are subject to examination.

(4) The State Treasurer may assess interest and penalties against a holder failing to file a report and remittance on or before the November 1st due date.⁴

Method of filing report. -- A holder of abandoned property is required to file the report in (1) an electronic format prescribed or provided by the State Treasurer, or (2) any other form authorized by the State Treasurer.

Discovery of unreported property. -- A holder of abandoned property discovering unreported property that should have been reported must file a report with the State Treasurer immediately upon discovery of the omission. The holder must identify the unreported property as being reported late and explain the reason for the omission.

Extension of time to file report or remit property. -- A holder desiring an extension of time in which to file a report or remit abandoned property must file a request for an

⁴ Except that in the case of life insurance companies, the report and remittance must be filed on or before May 1 each year.

extension of time with the State Treasurer at least thirty (30) calendar days prior to the due date of the report or remittance. A request for an extension is required even if the report will be zero.

(1) The request for extension must be physically received in the offices of the State Treasurer at least 30 days prior to the due date of the report or remittance. Timely mailing is not timely filing of the extension request.

(2) The legislative rule for the UPA does not explain how the 30 day rule applies when the last day to file the request for extension of time falls on a Saturday, Sunday or legal holiday in this State. W. Va. Code § 2-2-2. The rule is similarly silent when October 31st falls on a Saturday or Sunday in this State.⁵

(3) A request by a holder for an extension of time to report or remit must explain the facts and circumstances the filer believes constitute reasonable cause for delaying the filing of the report or remittance. Reasonable cause includes, but is not limited to, a natural disaster, criminal activity related to the holder's books and records, or a recent change in the form of ownership of the holder through merger, acquisition or reorganization. Reasonable cause does not include the failure of a holder to perform the due diligence required by WVCSR § 112-5-6.2.

(4) The State Treasurer's office responds to each request for extension within twenty (20) days after receipt of the request.

(5) Unless otherwise authorized by the State Treasurer, the holder of abandoned property must submit a payment of 80% of the estimated amount due with the annual report upon receipt of the extension of time.

(6) The State Treasurer's Office may grant the holder of abandoned property an extension of not less than thirty (30) days and no more than ninety (90) days from the date the report and/or remittance are due.

¶ 1108 Payment or delivery of abandoned property

Law: W. Va. Code § 36-8-8.

Regulation: WVCSR § 112-5-7.

Except for property held in a safe deposit box or other safekeeping depository, upon filing the report discussed in ¶ 1107, *supra*, the holder of the property presumed to be abandoned must pay, deliver or cause to be paid or delivered to the State Treasurer the property described in the report as unclaimed. However, if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Property held in a safe deposit box or other safekeeping depository may not be delivered to the State Treasurer until 120 days after filing the report described in ¶ 1107, above.

⁵ Or when April 30th falls on a Saturday or Sunday.

If the property reported to the State Treasurer is a security or security entitlement under article eight of the Uniform Commercial Code, see W. Va. Code § 46-8-1 *et seq.*, the State Treasurer 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 eight of the Uniform Commercial Code.

“Security” is defined in WVCSR § 112-5-2.8. and means any (a) stock; (b) treasury stock; (c) bond; (d) mutual fund; (e) debenture; (f) evidence of indebtedness; (g) certificate of interest or participation in any profit-sharing agreement or arrangement; (h) collateral-trust certificate; (i) preorganization certificate or subscription; (j) transferable share; (k) investment contract; (l) investment fund share; (m) face amount certificate; (n) voting-trust certificate; (o) certificate of deposit; (p) put, call, straddle, option or privilege entered into on a national securities exchange; (q) certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing; or (r) interest or instrument commonly known as a security and any other interest which is a security under state or federal securities laws.

If the holder of property reported to the State Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to W. Va. Code § 46-8-408, but an indemnity bond is not required.

An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with W. Va. Code § 36-8-8 is not liable to the apparent owner and must be indemnified against claims of any person as provided in W. Va. Code § 36-8-10. See ¶ 1110, below.

¶ 1109 Notice and publication of lists of abandoned property

Law: W. Va. Code § 36-8-9.

Regulation: WVCSR § 112-5-8.

The State Treasurer is required to publish a notice not later than November 13th each calendar year of abandoned property paid or delivered to the Treasurer during the preceding calendar year. This notice must be published in a newspaper of general circulation in the county of this State in which the property is located and the last known address of any person named in the notice. If a holder does not report an address for the apparent owner, or the address is outside this State, the notice must be published in the county in which the holder has its principal place of business within this State or another county that the Treasurer reasonably selects. The advertisement must be in a form that, in the judgment of the Treasurer, is likely to attract the attention of the apparent owner of the unclaimed property. The notice must contain:

(1) The name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(2) The last known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the State Treasurer; and

(4) A statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon written request filed with the State Treasurer.

The State Treasurer is not required to advertise the name and address or location of an owner of property having a total value less than \$50 or information concerning a traveler's check, money order or similar instrument.

¶ 1110 Custody by State Treasurer; recovery by holder; defense of holder

Law: W. Va. Code § 36-8-10.

Regulation: WVCSR § 112-5-9.

Payment or delivery is made in "good faith" to the State Treasurer if:

(1) Payment or delivery was made in a reasonable attempt to comply with the UPA;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned. However, no fiduciary may be deemed to be in breach of a fiduciary obligation for purposes of W. Va. Code § 36-8-10 by virtue of paying or delivering property to the State Treasurer prior to the expiration of the period for holding unclaimed or abandoned property contained in the instrument under which such fiduciary is acting; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

Upon payment or delivery of property to the State Treasurer, the Treasurer assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the State Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.

A holder who has paid money to the State Treasurer pursuant to the UPA may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the State Treasurer must 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 W. Va. Code § 36-8-19(a), see ¶ 1119, below.

A holder who has delivered property other than money to the State Treasurer pursuant to the UPA may reclaim the property if it is still in the possession of the State Treasurer, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder. The State Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover the property.

If a holder pays or delivers property to the State Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the State Treasurer, upon written notice of the claim, must defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the State Treasurer.

Property removed from a safe deposit box or other safekeeping depository is received by the State Treasurer subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The State Treasurer must reimburse the holder out of the proceeds remaining after deducting the expense incurred by the Treasurer in selling the property.

¶ 1111 Crediting of dividends, interest and increments to owner's account

Law: W. Va. Code § 36-8-11.

If property other than money is delivered under the UPA to the State Treasurer, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money subject to the following rules:

(1) If the property was an interest bearing demand, savings or time deposit, including a deposit that is automatically renewable, the State Treasurer must pay interest at a rate of 4% per year or any lesser rate the property earned at the time the property was delivered to the Treasurer.

(2) If the property is any property other than an interest bearing demand, savings or time deposit, the State Treasurer must pay the owner 4% per year on the market value of the property at the time it was delivered to the Treasurer or any lesser annualized rate of income or gain the property earned from the time the property was delivered to the Treasurer to the time the owner established a claim to the property.

(3) In no event may the State Treasurer be required to pay the owner any income or gain realized or accruing on the property after the third anniversary of the delivery of the property to the Treasurer.

Nothing in W. Va. Code § 36-8-11 may be construed to entitle an owner to interest on property which did not realize or accrue income or gain at the time it was delivered to the State Treasurer.

¶ 1112 Public sale of abandoned property

Law: W. Va. Code § 36-8-12.

Within three years after the receipt of abandoned property, the State Treasurer must sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property, except as otherwise provided in W. Va. Code § 36-8-12. The State Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale of abandoned property must be preceded by a single publication of notice of the sale, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the State Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under the UPA before the end of the three-year period is entitled to the proceeds of the sale of the securities less any deduction for expenses of sale. A person making a claim under the UPA after the expiration of the three-year period is entitled to receive the securities delivered to the State Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the State Treasurer, except in a case of intentional misconduct or malfeasance by the State Treasurer.

A purchaser of property at a sale conducted by the State Treasurer pursuant to the UPA takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The State Treasurer is required to execute all documents necessary to complete the transfer of ownership.

¶ 1113 Deposit of funds

Law: W. Va. Code § 36-8-13.

The State Treasurer must record the name and last known address of each person appearing from the holder's reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to

each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

The State Treasurer is required to deposit all funds received pursuant to the UPA in the Unclaimed Property Fund, including the proceeds from the sale of abandoned property. In addition to paying claims of unclaimed property duly allowed, the State Treasurer may deduct the following expenses from the Unclaimed Property Fund:

- (1) Expenses of the sale of abandoned property;
- (2) Expenses incurred in returning the property to owners, including without limitation the costs of mailing and publication to locate owners;
- (3) Reasonable service charge; and
- (4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.

The State Treasurer may invest the Unclaimed Property Trust Fund with the West Virginia Board of Treasury Investments. All earnings accrue to the Fund and are available for expenditure in accordance with the UPA. After deducting the expenses specified above and maintaining a sum of money from which to pay claims duly allowed, the State Treasurer must transfer the remaining moneys in the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

On or before December 15th each year, the State Treasurer must transfer the sum of \$1 million from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund, until the actuary certifies there are sufficient funds to pay out all contracts. After transferring this money, the State Treasurer is required to annually transfer moneys remaining in the Unclaimed Property Trust Fund to the State's General Revenue Fund.

¶ 1114 Claim of another state to recover property

Law: W. Va. Code § 36-8-4.

Regulation: WVCSR § 112-5-10.

After property has been paid or delivered under the UPA to the State Treasurer, another state may recover the property from the Treasurer if:

- (1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this State under W. Va. Code § 36-8-4(6) and under the laws of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order or similar instrument that was purchased in the other state and delivered into the custody of this State under W. Va. Code § 36-8-4(7) and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the State Treasurer, who must decide the claim within 90 days after it is presented. The State Treasurer must allow the claim when he or she determines that the other state is entitled to the abandoned property.

Before recovering property, the other state must agree in writing to indemnify this State and its officers and employees against any liability on a claim to the property.

¶ 1115 Filing claim with State Treasurer; handling of claims by Treasurer

Law: W. Va. Code § 36-8-15.

Regulation: WVCSR § 112-5-10.

After abandoned property has been paid or delivered to the State Treasurer under W. Va. Code § 36-8-8, another state may recover any property subject to W. Va. Code § 36-8-4.

A person, excluding another state, claiming property paid or delivered to the State Treasurer may file a claim on a form prescribed and provided by the Treasurer. In addition to the information required by the form, the claimant must:

(1) Provide a photo copy or documentation of his or her driver's license, or other acceptable form of identification approved by the State Treasurer;

(2) Complete an affidavit or an electronic verification prescribed by the State Treasurer on all claims of \$1,000 or more;

(3) Provide the original certificates in the case of securities. If original certificates are not available, the holder shall complete and file an affidavit or lost instrument bond in the form prescribed by the State Treasurer;

(4) Complete a claim form electronically; and

(5) Provide any other evidence the State Treasurer may require in order to allow claim.

Within 90 days after a claim is filed, the State Treasurer must allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer must inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the State Treasurer, or institute a civil action as provided in ¶ 1116, below.

Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the State Treasurer to the claimant.

¶ 1116 Action to establish claim

Law: W. Va. Code § 36-8-16.

A person aggrieved by a decision of the State Treasurer, or whose claim has not been acted upon within 90 days after its filing, may institute a civil action to establish the claim in the circuit court of Kanawha County, naming the State Treasurer as a defendant. The UPA does not provide for administrative review before filing suit. However, if the aggrieved person establishes the claim in an action against the Treasurer, the court may award the claimant reasonable attorney's fees.

¶ 1117 Election to take payment or delivery

Law: W. Va. Code § 36-8-17.

The State Treasurer may decline to receive property reported under the UPA when the State Treasurer considers the property to have a value less than the expenses of notice and sale. See ¶ 1109 and ¶ 1112, *supra*.

A holder of property, with the written consent of the State Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the State Treasurer and is not presumed abandoned until it otherwise would be presumed abandoned under the UPA. See ¶ 1102, *supra*.

¶ 1118 Destruction or disposition of property having no substantial commercial value; immunity from liability

Law: W. Va. Code § 36-8-18.

Regulation: WVCSR § 112-5-11.

If the State Treasurer determines after investigation that property delivered under the UPA or under the Unclaimed Stolen Property Act, W. Va. Code § 36-8A-1 *et seq.*, has no substantial commercial value, the State Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer or against the holder for or on account of an act of the State Treasurer under W. Va. Code § 36-8-18, except for intentional misconduct or malfeasance.

¶ 1119 Periods of limitation

Law: W. Va. Code § 36-8-19.

Regulation: WVCSR § 112-5-12.

The expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the State Treasurer as required by the UPA.

An action or proceeding may not be maintained by the State Treasurer to enforce the UPA in regard to the reporting, delivery or payment of property more than 10 years after the holder specifically identified the property in a report filed with the State Treasurer or gave express notice to the State Treasurer of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

¶ 1120 Requests for reports and examination of records

Law: W. Va. Code § 36-8-20.

Regulation: WVCSR § 112-5-13.

The State Treasurer, or his or her designated agent, may require a person who has not filed a report, or a person who the State Treasurer believes has filed an inaccurate, incomplete or false report, to file a verified report in a form specified by the State Treasurer. The report must state whether the person is holding property reportable under the UPA, describe property not previously reported or as to which the State Treasurer has made inquiry, and specifically identify and state the amounts of property that may be in issue.

The State Treasurer, or his or her designated agent, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the UPA. The State Treasurer may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid or delivered under the UPA. The State Treasurer may contract with any other person to conduct the examination on behalf of the State Treasurer. However, this authority may not be construed to grant the State Treasurer the right to examine the records of a national banking association to an extent greater than permitted by applicable federal law, nor may the records of any bank chartered or incorporated under the laws of any state to be subject to examination to an extent greater than the

examination permitted of the records of a national banking association under applicable federal law.

The State Treasurer, or his or her agent, at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the State Treasurer, or his or her agent, has given the notice required by W. Va. Code § 36-8-20(b) to both the business association or organization and the agent at least 10 days before the examination. The Treasurer may waive this 10-day notice requirement, if the Treasurer determines that the existence of records may be in jeopardy by use of the advanced notice provision. (WVCSR § 112-5-13.1.)

The State Treasurer may require a holder of abandoned property to report and pay unclaimed property that the administrator reasonably estimates is due based upon the examination of the records or by any other reasonable method of estimation. (WVCSR § 112-5-13.2.)

Documents and working papers obtained or compiled by the State Treasurer, or his or her agents, employees or designated representatives, in the course of conducting an examination are confidential and are not public records. However, the documents and papers may be:

(1) Used by the State Treasurer or the Treasurer's attorney in the course of an action to collect unclaimed property or otherwise enforce the UPA;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government or any other governmental subdivision, agency or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subdivision, if the other state is bound to keep the documents and papers confidential.

If an examination of the records of a person results in the disclosure of property reportable under the UPA, the State Treasurer may assess the cost of the examination against the holder at the rate of \$200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination may be assessed only against the business association or financial organization.

If a holder does not maintain the records required by W. Va. Code § 36-8-21 and the records of the holder available for the periods subject to the UPA are insufficient to permit the preparation of a report, the State Treasurer may require the holder to report and pay to the State Treasurer the amount the Treasurer reasonably estimates, on the

basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

Observation: Neither the UPA nor regulations promulgated by the State Treasurer address whether statistical sampling or other estimation techniques may be used in an examination of the holder's compliance with the UPA when the holder has sufficient records for the period subject to examination. An argument can be made that when sufficient records exist, statistical sampling and other estimation techniques may not be used to determine the accuracy of the reports filed.

¶ 1121 Retention of records

Law: W. Va. Code § 36-8-21.

In general, a holder required to file a report under the UPA must maintain records containing the information required to be included in the report for 10 years after the report is filed, unless a shorter period is provided by regulation of the State Treasurer.

Exception: A business association or financial organization that sells, issues or provides to others for sale or issue in this state, traveler's checks, money orders or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, must maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

¶ 1122 Enforcement

Law: W. Va. Code § 36-8-22.

The State Treasurer may maintain an action in this or another state to enforce the UPA. The court may award reasonable attorney fees to the prevailing party.

¶ 1123 Interstate agreements and cooperation; joint and reciprocal actions with other states

Law: W. Va. Code § 36-18-23.

The State Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in W. Va. Code § 36-8-20. The State Treasurer may by regulation require the reporting of information needed to enable compliance with an interstate agreement and prescribe the form of the report.

The State Treasurer may join with another state to seek enforcement of the UPA against any person who is or may be holding property reportable under the UPA.

At the request of another state, the State Treasurer's attorney may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws

of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

The State Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the State Treasurer. The Treasurer may retain any other attorney to commence an action in this State on behalf of the State Treasurer. This State must pay all expenses, including attorney's fees, incurred in maintaining the action. With the State Treasurer's approval, the expenses and attorney's fees may be paid from money received under the UPA. The State Treasurer may agree to pay expenses and attorney's fees based, in whole or in part, on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees so paid may not be deducted from the amount that is subject to the claim by the owner under the UPA.

¶ 1124 Interest and penalties

Law: W. Va. Code § 36-8-24.

A holder who fails to report, pay or deliver property within the time prescribed by the UPA must pay to the State Treasurer interest at the annual rate of 12% on the value of the property, from the date the property should have been reported, paid or delivered to the date the property is reported, paid or delivered to the State Treasurer.

In general, a holder who fails to report, pay or deliver property within the time prescribed by the UPA, or fails to perform other duties imposed by the UPA, must pay to the State Treasurer, in addition to 12% interest as provided in the preceding paragraph, a civil penalty of \$200 for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum penalty of \$5,000.

Exception for willful failure. A holder who willfully fails to report, pay or deliver property within the time prescribed by the UPA, or who willfully fails to perform other duties imposed by the UPA, must pay to the State Treasurer, in addition to 12% interest, a civil penalty of \$1,000 for each day the report, payment or delivery is withheld, or the duty is not performed, up to a maximum penalty of \$20,000, plus 25% of the value of any property that should have been but was not reported.

Exception for fraudulent report. A holder who makes a fraudulent report must pay to the State Treasurer, in addition to 12% interest, a civil penalty of \$1,000 for each day from the date a report under the UPA was due, up to a maximum penalty of \$25,000, plus 25% of the value of any property that should have been but was not reported.

The State Treasurer for good cause shown may waive, in whole or in part, the 12% interest and civil penalties. The Treasurer must waive the civil penalties if the holder acted in good faith and without negligence. Neither the UPA nor the State Treasurer's regulations provide guidance on what constitutes, or does not constitute, good cause, good faith or negligence.

¶ 1125 Records of abandoned property

Law: W. Va. Code § 36-8-25.

Records of abandoned property kept by the State Treasurer are available for inspection and copying only by an owner of such property as to the particular property he or she owns, or by his or her personal representative, next of kin, attorney at law or such person entitled to inherit from the owner conducting a legal audit thereof. These records are exempt from disclosure under the State Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.*

¶ 1126 Foreign transactions

Law: W. Va. Code § 36-8-26.

The UPA does not apply to property held, due and owing in a foreign country and arising out of a foreign transaction.

¶ 1127 Uniformity of application and construction

Law: W. Va. Code § 36-8-29.

The UPA is to be applied and construed to effectuate its general purpose to make uniform the law with respect to unclaimed property among states enacting it.

¶ 1128 Electronic filing; forms

Electronic reporting is required of all unclaimed property business holders. However, the State Treasurer may waive the electronic filing requirements and allow paper reporting if the holder demonstrates that a hardship would result if required to file electronically.

To qualify for the waiver, a written request containing the following information must be submitted:

1. The name, federal tax identification number and mailing address of the holder
2. The report year for which the waiver is requested
3. A detailed statement which lists:
 - i. Why the holder cannot submit electronically
 - ii. The steps the holder is staking to meet the electronic filing requirements
 - iii. The hardship that would result, including incremental costs that are above and beyond the costs to file on paper
 - iv. A statement as to what steps the holder will take to assure the ability to file electronically for the next reporting period
 - v. The statement (signed by a legal representative of the holder): "Under penalties of perjury, I declare that the information contained in this waiver request is true, correct and complete to the best of my knowledge and belief."

The waiver request must be filed by Apr. 15 for life insurance companies and by Oct. 15 for all other holders.

The written waiver request is mailed to:

West Virginia State Treasurer's Office
Unclaimed Property Division (Waiver Request)
322 70th St. SE
Charleston, WV 25304

The following forms are available at the State Treasurer's website:

<http://www.wvtreasury.com/Unclaimed-Property/Reporting-Forms>

Instruction Booklet
Business Detail (UP-8-7)
Inventory Guidelines for Banks
General Account Detail (UP-8-8)
Estate Administrator Detail (UP-8-7 Estates)
Estate Account Detail (UP-8-8 Estates)
Securities & Related Cash Account Detail (UP-8-9)
Safe Deposit Box Inventory (UP-8-10)
Holder Claim and Affidavit for Recovery of Property
Holder Reporting Extension Form

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