

**REPORT AND RECOMMENDATIONS
RELATING TO THE LOST OR ABANDONED
PROPERTY ACT**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575**

INTRODUCTION

As part of its project to revise all of Title 2A of the New Jersey Statutes, the Commission drafted a proposed statute dealing with Distress (the right to hold a tenant's goods to satisfy a claim for rent) and Artisans Liens (the right of a person who works on goods of another to a lien on those goods for the work performed). During the drafting process questions arose about abandoned property. Research revealed that there was no statute and little case law establishing rights and obligations in regard to lost or abandoned property. As a result, the Commission decided to draft a new statute on the subject.

The primary purpose of this new statute is to establish procedures for dealing with lost or abandoned property which promote return of lost property to the owner and which protect the expectations of the finder. The statute defines lost property and abandoned property, and provides procedures and remedies which prescribe the powers and duties of finders and owners of the property, and of relevant government employees. It provides for the disposition of lost property that remains unclaimed by the owner and by the finder. The statute exempts from its application limited types of property.

Section One. Definitions

a. "Abandoned property" is property of which the owner has intentionally given up possession under circumstances evincing intent to give up ownership.

b. "Lost property" is property the possession of which has been parted with casually, involuntarily or unintentionally; or which has been mislaid, left or forgotten.

c. A "finder" is a person who acquires legal possession by exercising physical control over abandoned or lost property.

Source: New

COMMENT

The definition of abandoned property in subsection (a) is based upon the common law definition as explained in Ralph E. Boyer, Survey of the Law of Property, 680 (3d ed. 1981) (hereinafter Survey): "Abandoned property" consists of those items no longer in the possession of the former owner or bailee, and the beneficial or possessory interest of which has been intentionally relinquished, given up, or released." To determine whether "the former possessor really abandoned the property ... the kind of property, the place where left, and the circumstances of the leaving are vitally important. Abandonment involves both the fact of relinquishment and the requisite intent." [citations omitted] Aigler, Rights of Finders, 21 Mich. L.Rev. 664 (1923) in William T. Fryer, Readings in Personal Property, 368 (1938). (Hereinafter, Readings.)

The common law defines lost property as "those chattels whose possession has been parted with casually, involuntarily or unconsciously." Boyer, Survey, supra at 679. "Lost property may be defined as property which 'casually and involuntarily' passes out of the possession of the owner and the whereabouts of which he does not therefore know." Moreland, Does the Place Where a Lost Article is Found Determine the Rights of the Finder? 15 Ky.L.J. 225 (1927) in Readings, supra at 344. The first clause of subsection (b) relies on these definitions.

For the purposes of this statute, subsection (b) defines the term "lost property" to include mislaid property. In the common law, a distinction is made between "lost property" and "mislaid property." "Mislaid

property may be defined as 'property voluntarily laid down and forgotten.'" Moreland, Readings, supra at 344. "Misplaced or left property refers to those goods which have been intentionally placed somewhere and then unintentionally left or forgotten." Boyer, Survey, supra at 679.

"To intentionally place an article down and then go away, forgetting it, is not in the eyes of the law a losing of it, nor is the subsequent discovery of such an article treated as a finding of it. Such articles constitute 'mislaid goods,' which are in the custody of the proprietor of the locus in quo and not of the one who discovers them. ... The doctrine of mislaid goods is apt to be artificial, difficult to apply, and doubtful in principle. ... Moreover, since the circumstances under which the owner parted with custody of his goods is usually unknown, and the situation of the goods themselves often equivocal, it is difficult to decide whether the goods should be treated as lost or merely misplaced."

Ray A. Brown, A Treatise on the Law of Personal Property, 25-26 (1936). (Hereinafter, Treatise.)

Similar problems in determining whether a found article has been lost or forgotten involve "obvious difficulties of fact" according to Professor Aigler. "The nature of the article and its location when discovered are, of course, vitally important facts...." Aigler, Readings, supra at 370.

The proposed statute takes the practical position of combining lost and mislaid property and treating them similarly because distinguishing between them is often impossible. This approach follows that of New York's Lost and Found Property statute, which "includes lost or mislaid property" in its defined term "lost property." N.Y. Pers. Prop. Law, Sec. 251(3).

The definition of a finder in subsection (c) is also based on common law definitions. In the common law, "[f]inding takes place when one who is not the owner of a chattel takes possession of it on the ground that it has been lost by its owner, not knowing at the time who is owner, nor having reasonable grounds to believe that he can be found." Theodore W. Dwight, Commentaries on The Law of Persons and Personal Property, 472-473 (1894). [Hereinafter Commentaries.] "To become a finder in the eye of the law, it is not only necessary that one discover the whereabouts of the goods in question, but that he take them into his possession. There must be a union of a physical control over the goods in question, and of an intent to assume dominion over them." Brown, Treatise, supra at 22. "A finder is one who acquires legal possession, that is, one who exercises the prerequisite physical control and appropriate intent, over chattels or goods that have been lost, misplaced, abandoned, or hidden so as to be classified as treasuretrove." Boyer, Survey, supra at 679.

The statute does not confer ownership upon a "finder" who steals goods. Under the common law, "[a] thief has no title in the stolen goods ..." and "cannot pass a better title than that which he has." Boyer, Survey, supra at 712. If a thief loses or abandons stolen property, the property still belongs to its owner.

Section Two. Abandoned Property

A finder of abandoned property may assume ownership of it.

Source: New

COMMENT

"In the case of abandoned property, the finder is preferred even as against the owner who, by hypothesis, has abandoned the goods." American common law is unambiguous concerning abandoned property, which "is deemed to have been returned, so to speak, to the common mass and to belong to the one who first assumes possession, ... and the former owner can assert no claims thereto." [citations omitted] Aigler, Readings, supra at 367-368.

This provision does not supersede statutes regulating abandoned and unclaimed motor vehicles (39:10A-1 through -20) or abandoned vessels (12:7C-7 through -20). See Comment following Section 5, Exceptions.

Section Three. Duty of Finder

A finder of lost property shall make reasonable efforts to return the property to its owner. Reasonable efforts to return the property depend on the nature of the property, the circumstances in which it is found and the obtainable information concerning its owner. Reasonable efforts may include:

- a. attempts to notify the owner of the lost property, or the owner of the premises where found,
- b. delivery to the owner or person in charge of the premises where the property was found, or
- c. delivery to the local police, or to a lost-and-found facility for the premises where the property was found.

Source: New

COMMENT

The proposed statute requires a finder to make reasonable efforts to return the property to its owner. This requirement is consistent with the criminal law; 2C:20-6 makes it an offense to treat lost property as one's own if the identity of the owner is known. The statute realistically focuses on the reasonableness of the finder's efforts to return the property to its owner. What a reasonable effort is will depend in each instance on the nature of the property, how, where and when it was found, and what can be learned of its ownership. Note that a deliverer becomes a "finder" as defined in Section One, subsection (c), by acquiring "legal possession by exercising physical control over abandoned or lost property" and bears a degree of responsibility in the return of that property. For example, if property is deposited with the police, they must hold it according to the terms of the Act. The Commission favors this practical approach which avoids burdensome specifications of property valuation, filing of affidavits, advertising found property, and time limitations for depositing property, found in other states' statutes.

The statutes of other states vary widely in their provisions. Many require particular actions of the finder of property with more than a specified value. California's Lost and Unclaimed Property statute requires that any person who finds and takes possession of any money, goods, etc., "shall within a reasonable time, inform the owner, if known, and make restitution without compensation..." Cal. Civ. Code, Sec. 2080. "If the owner is unknown or has not claimed the property, the person saving or finding the property, shall if the property is of the value of one hundred dollars (\$100) or more, within a reasonable time turn the property over to the police department of the city..." Cal. Civ. Code, Sec. 2080.1(a). Illinois' Estrays and Lost Property statute requires a person who finds any lost goods, money, etc., to inform the owner, if known, and return the lost goods. If the owner is unknown and the property found is valued above \$100., the finder must file an affidavit in the county circuit court describing the goods within five days after finding the property. When the goods are under \$100. in value and the owner is unknown, the finder shall advertise the goods at the court house. Ill. Ann. Stat. 765, Sec. 1020/27. New York's Personal Property Law requires that a person who finds lost property of the value of \$20. or more who knows that it is lost or found property, either return it to the owner or report the finding or acquisition of possession and deposit the property in a police station, within ten days of finding or acquiring possession. N.Y. Pers. Prop. Law, Sec. 252.

Section Four. Disposition of Lost Property

a. A person may claim lost property only after making reasonable efforts to return the property to its owner.

b. If the owner of the lost property does not reclaim it within 120 days of the commencement of reasonable efforts to return it:

(1) the owner of the premises where the property was found may claim title to buried or hidden lost property or to lost property which a trespasser found;

(2) the finder of the property may claim title to lost property in other cases.

c. If the owner of the premises or finder does not claim the lost property, and an action is not pending to determine rights to the property:

(1) marketable property shall be sold by the clerk of the municipality in which it is located and the proceeds, less costs of sale, shall be deposited with the administrator of the Uniform Unclaimed Property Act (46:30B-1 to -109) in the Unclaimed Personal Property Trust Fund (46:30B-74);

(2) non-marketable property may be treated as abandoned.

Source: New

COMMENT

In most cases, if the owner does not reclaim found property, subsection (b)(2) assigns title to the finder. The finder's claim to the property is normally the best. However, subsection (b)(1) assigns the title to found property to the owner of the place where the property was found if the found property was "buried or hidden or was found by a trespasser." These restrictions discourage one person from searching or in any way violating another's land in order to discover hidden articles. Similarly, the proposal incorporates the principle that a trespasser should not profit from illegal presence on another's land or premises by acquiring title to property found there. Granting title to the owner of the premises also follows the common law reasoning that a person who has lost or mislaid property may return to the site where the property was lost, and has a better chance of regaining the property if the owner, rather than a finder, retains the right to the property.

The Commission proposal, in subsection (a), requires as a prerequisite to acquiring rights to the property that the finder make reasonable efforts to return the owner's property.

The balance of rights of the finder and the owner of the premises established by subsections (b)(1) and (b)(2) follows the common law generally, but it is simplified, and rejects some of its fine distinctions. The basic right of the finder is well established in common law:

"[T]he ancient common law of England regulating the rights of finders of lost or abandoned articles is based on the law of possession.

Under the common law, the finder of lost articles was entitled to them as against the whole world except the rightful owner, and lost articles meant not only those which the owner had casually and involuntarily parted with the possession of, but also those which he had abandoned. Armory v. Delanirie, 1 Stra. 504; Bl. Comm. 1, 295 and 296."

Price, Lost Money, 35 N.J.L.J. 362, 363-364 (1912).

However, the common law doctrines determining whether the finder or the owner of the place where the property was found may claim the property are complicated. The common law distinguishes between lost and mislaid property and considers the nature of the premises where the property is found:

"The place of finding may be material as tending to show whether the goods were really lost or mislaid, or left by the owner under circumstances which would lead him to return for them. There may be competing claims between the owner of property, such as land or a building upon which the goods are claimed to be found, and one who may casually pick them up or lay hold of them. The correct view in such a case is, that if the goods were lost as distinguished from being deposited, the casual finder, having first obtained possession, would have the better right."

Dwight, Commentaries, supra at 473-474.

Professor Aigler states in detail the principle:

"that where a person has possession of house or land, with a manifest intention to exercise control over it, and the things which may be upon or in it, then, if something is found on the land, whether by an employee of the owner or by a stranger, the presumption is that the possession of that thing is in the owner of the locus in quo.... If the premises on which the lost property is are open to the public, the whole basis for ascribing possession to the land possessor -- the purpose to exclude--is missing and the result should be the opposite.' [citations omitted]"

Aigler, Readings, supra at 378.

A number of states have adopted lost property statutes. These statutes tend to vary further from the common law than does the Commission proposal and they introduce impractically complicated procedural requirements:

In California if the property is under \$250. in value, and no owner proves a right to it in 90 days, title vests in the finder unless the finder is an employee of a public agency. If the value is \$250. or more and no one proves ownership in 90 days, the police shall publish a notice of the property. If seven days later no one proves ownership, the finder, upon paying the cost of publication, shall obtain title to the property (unless the property was found in the course of employment by an employee of a public agency in which case the property shall be sold at public auction.) Cal.Civ. Code, Sec. 2080(3).

In Illinois, when property does not exceed \$100 in value, the finder must advertise at the court house and if the owner does not claim the lost property within six months, the court enters an order giving ownership to the finder. If the value exceeds \$100, the county clerk publishes notice for three successive weeks in a newspaper. If the owner does not claim the property and pay finder's charges and expenses within one year after the advertisement, the finder is given ownership by court order. Ill. AnnStat. 765, Sec. 1020/28.

New York's statute provides for police custody of found property. When property is found in a place other than a public street or highway, the police must notify the person in charge of the premises where the property was found. The police may sell at public auction any property "when the expenses reasonably incurred in dealing with it ... amount to more than one-half the amount reasonably estimated as the net sum likely to be realized by sale at public auction." Lost property and the proceeds of sale are kept in police custody for between three months and three years depending on the value unless delivered earlier to the owner. Three months before the expiration of the applicable period, police give notice to the owner if known, to all persons claiming the property, and to the finder, that: 1) if the owner does not claim the property and there is no action pending to determine rights to the property, the property will be delivered to the finder, and 2) if neither the owner nor finder takes delivery, it will be sold at public auction and proceeds of the sale become public property N.Y. Pers. Prop. Law, Sec. 253.

New York's statute deals with several exceptions: 1) if the finder takes lost property while a trespasser, the person in possession of the premises has the rights of the finder; 2) if the finder is an employee under a duty to

deliver lost property to his employer, the employer has the rights of the finder; 3) if lost property or an instrument deposited with the police was discovered upon enclosed safe deposit premises of a safe deposit company or safe deposit department of a bank, the police shall return it to the company or to the bank after six months. N.Y. Pers. Prop. Law, Sec. 256.

Subsection (c) of the Commission proposal separates into two categories, property which has not been claimed by the finder or by the owner of the premises where found. Marketable property is to be sold and the proceeds deposited with the State's Uniform Unclaimed Property Act's Administrator. Non-marketable property, the used umbrellas, sweaters, etc. which fill lost and found facilities, may be dealt with as abandoned goods. The Commission's use of "marketable" and "non-marketable" obviates the need for specific dollar amounts which other states' statutes employ. The proposal avoids the complicated procedures of the statutes adopted in other states.

Section Five. Exceptions

a. This act does not apply to property:

(1) subject to the Uniform Unclaimed Property Act (46:30B-1 to -109);

(2) the acquisition or ownership of which requires a license, or property the ownership of which can be transferred only by document of title.

b. This act does not supersede statutes regulating abandoned and unclaimed motor vehicles (39:10A-1 to -20) or abandoned vessels (12:7C-7 to -20).

c. This act shall not excuse from liability persons who illegally dispose of property.

Source: New

COMMENT

This section exempts certain property from the lost and abandoned property rules established by this act. Subsection (a) specifically excludes property subject to the Unclaimed Property Act. The "Uniform Unclaimed Property Act (1981)," 46:30B-1 through -109 replaced the State's former escheat law. The Uniform Act applies to "intangible property" and to property held in "a safe deposit box or any other safekeeping repository in this State." The Uniform Act effectively deals with the applicable property, which is predominantly of high value; the Commission's proposal does not interfere with the Uniform Act.

Subsection (a) further excludes property that cannot be acquired or owned without a license or property the ownership of which is transferred by document of title rather than possession. The provisions of Section 4 that give ownership to a finder of property are inconsistent with the policies underlying licensing and title statutes. See, e.g. 2C:58-1 through -16 as to firearm licensing and 39:10-1 et seq., Motor Vehicle Certificate of Ownership Law. Subsection (b) makes it clear that the Commission proposal is not superseding specific statutes that deal with particular kinds of property that are subject to certificate of title regulation.

Subsection (c) concerns diverse types of property the disposal of which is either prohibited or regulated by statute. The Commission proposal, through this subsection, indicates clearly that a person cannot cast off responsibility imposed by other statutes. Examples of statutes which disallow disposal of specified property include: solid materials thrown or deposited in [named] bodies of water, 12:4-10; solid waste, 13:1E-9.3(a); medical waste, 13:1E-48.20(g),(h),(i); used mercuric oxide batteries, 13:1E-99.68(a); used nickel-cadmium rechargeable batteries, 13:1E-99.69(a); used lead acid battery, 13:1E-200; automotive or marine lead acid battery, 13:1E-204; embargoed device suspected of being a radiation hazard, 26:2D-11.1; low-level waste, 32:31-9(b); sewage into certain waters and anything injurious to sewerage system, 40:14A-28(a),(b); and hazardous substances, 58:10-23.11(c).

Several statutes prohibit littering, either generally or in specific places. Examples include: 13:1E-99.3(a) ("A person who throws, drops, discards or otherwise places any litter of any nature upon public or private property other than in a litter receptacle commits a petty disorderly persons offense."); 13:18A-24(c) ("No person shall throw, drop, discard or otherwise place any litter upon any land or water within the pinelands area."); and 23:7-9. ("With respect to or on property under the control of the Division of Fish, Game and Wildlife, no person may: ... b. litter, dump, or discard refuse of any kind; or"). The Commission proposal applies to property included in these statutes.