



## NEW JERSEY LAW REVISION COMMISSION

### Second Draft Tentative Report Relating to Unclaimed Property

**June 11, 2018**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **September 1, 2018**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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## Introduction

The New Jersey Law Revision Commission began its examination of the law regarding unclaimed property with consideration of the Revised Uniform Unclaimed Property Act (RUUPA) which was approved by the Uniform Law Commission in 2016. In its first Tentative Report the Commission recommended enactment of RUUPA. However, the Commission recommended a number of changes from the uniform text. Most important, the Commission added provisions to include real property and to modernize the handling of unclaimed property in safe deposit boxes. The purpose of a Tentative Report is to solicit responses from persons who are knowledgeable in the area of law involved. In this case, the Commission received a detailed response from the Office of the Administrator of Unclaimed Property. That Office explained that RUUPA did not contain any substantive improvements to New Jersey law. All of the substantive changes in the recommended text of RUUPA, as opposed to earlier Uniform Laws, were already in place in the New Jersey in statutes and regulations. As a result, the Office said that there was nothing in RUUPA that would justify the effort of enactment.

However, the Office of the Administrator of Unclaimed Property found that the substantive provisions that had been added to the RUUPA by the New Jersey Law Revision Commission would be useful additions to New Jersey law.

The first such provision simplifies handling of the contents of safe deposit boxes. The current unclaimed property law provides that the bank send the actual property in the unclaimed box to the Administrator. A few banks do that, requiring the Administrator to evaluate the property and to sell it if it has value. A simpler procedure is established by a New Jersey law that allows banks to sell the contents of unclaimed safe deposit boxes. N.J.S. 17:14A-51. As a result of that statute there is no need to provide for forwarding the contents of a safe deposit box to the Unclaimed Property Administrator. In fact, most banks already use the simpler procedure as it allows them to recoup the unpaid safe deposit box charges. The change recommended by the Commission would cause all banks to use this modern procedure.

The Commission also added a section to provide for sale of abandoned real property and transfer of the proceeds to the Administrator. Neither RUUPA nor its predecessors provides a remedy for abandoned real property. That omission leaves only the old remedy of escheat, which makes the State the absolute owner of the property. The modern approach to abandoned property, which is the approach of all of the Uniform Unclaimed Property laws, is for the State to take *custody* of the property subject to the rights of a person who later demonstrates ownership. The added section applies that approach to real property.

As the result of comments by the Office of the Administrator of Unclaimed Property, and after consideration, the New Jersey Law Revision Commission has revised its recommendation and instead of recommending RUUPA, proposes amendments to current New Jersey statutes as set forth in the Appendix on the following pages.

## Appendix

### 46:30B-6 Definitions.

As used in this chapter:

\* \* \*

r. "Property" means ~~tangible property described in R.S. 46:30B-45~~ or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, government subdivision, agency, or instrumentality, and all income or increments therefrom, and includes property that is referred to as or evidenced by:

money, a check, draft, deposit, interest, or dividend;

stored value card;

credit balance, customer's overpayment, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds or unidentified remittance;

stock or other evidence of ownership of an interest in a business association or financial organization;

a bond, debenture, note, or other evidence of indebtedness;

money deposited to redeem stock, bonds, coupons, or other securities or distributions;

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~~

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;

the proceeds from the sale of the contents of unclaimed safe deposit boxes as provided by N.J.S. 17:14A-51; and

the proceeds from the sale of unclaimed real property.

### 46:30B-10 Further conditions to be satisfied to subject property to custody.

To subject property to the custody of this State as unclaimed property, one of the following conditions shall be also satisfied:

a. The last known address, as shown on the records of the holder, of the apparent owner is in this State; or

b. 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; or

c. The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

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

(2) The holder is a domiciliary or a government or governmental subdivision or agency 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; or

d. The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this State; or

e. The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this State; or

f. The transaction out of which the property arose occurred in this State, and

(1) The last known address of the apparent owner or other person entitled to the property is unknown, or

(2) The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property, and

(3) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property; or

g. The property is the proceeds of the sale of unclaimed real property located in this state.

#### **46:30B-45 Presumption of abandonment.**

Proceeds from a sale, as permitted by other law, of ~~All~~ property held in a safe deposit box or any other safekeeping repository 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,~~ which remain unclaimed by the owner for more than five years after the lease or rental period or other custodial agreement on the box or other repository has expired, are presumed abandoned.

#### **46:30B-47 Form and contents of report.**

The report shall be verified and shall include:

a. Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of \$50 or more presumed abandoned under this chapter. Dividends, interest and mineral proceeds that accrue shall not be aggregated and shall be reported separately;

b. In the case of unclaimed funds of \$50 or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

~~e. In the case of the contents of a safe deposit box or other safekeeping repository or of other tangible property, a description of the property, its estimated value and the place where it is held and may be inspected by the administrator and any amounts owing to the holder;~~

~~d. c.~~ The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under \$50 each may be reported in the aggregate;

~~e. d.~~ The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property;

~~f. e.~~ The Social Security account number or federal identification number, if available, of each person appearing to be the owner of the reported unclaimed property; and

~~g. f.~~ Other information the administrator prescribes by rule as necessary for the administration of this chapter.

#### **~~46:30B-67. Payment of safe deposit box or repository charges.~~**

~~46:30B-67. Payment of safe deposit box or repository charges. Property removed from a safe deposit box or other safekeeping repository is received by the administrator subject to the holder's right under this section to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges, which the administrator shall reimburse or pay the holder out of the proceeds remaining after deducting the administrator's selling costs.~~

#### **~~46:30B-72.1. Sale of tangible property~~**

~~Regarding the sale of tangible property, such as jewelry and works of art, the administrator shall follow the specifications for payment of safe deposit box or repository charges set forth in R.S.46:30B-67, and shall proceed with the sale as follows:~~

~~a. Thirty days prior to the public sale, notification by standardized form shall be sent to the last known address of the owner by registered or certified mail.~~

~~b. Ten days prior to the public sale, legal notice of abandoned property and intent to auction shall be advertised in a regularly published local newspaper.~~

~~c. An itemized list of auctionable items shall be prepared by the administrator, identifying each by owner, box and item number. The list shall be prepared in duplicate, the original to be given to the auctioneer, and the copy to be retained on file at the office of the administrator.~~

~~d. The holder of the unclaimed property shall receive due compensation, as specified in R.S.46:30B-67.~~

~~e. The office of the administrator shall receive compensation equal to the amount due for the cost of mailing the notice of public auction, and newspaper notices, and a sum equal to the break open charge of the safe deposit box, to be forwarded to the office of the administrator and used for activities consistent with the execution of the duties of that office.~~

~~f. Any remaining balance of funds shall be taken into the custody of the State of New Jersey pursuant to this act.~~

**[New section – perhaps N.J.S. 46:30B-61.1] Unclaimed Real Property.**

a. An action seeking a declaration that an interest in real property is presumed to be abandoned may be brought by the Attorney General, the representative of a decedent's estate that includes the property, or another person who owns an interest in the real property which is the subject of the action. The party who brings the action shall give notice to any person known to claim an interest in the real property which is the subject of the action.

b. The Court may declare that an interest in the real property which is the subject of the action is presumed abandoned if, after reasonable efforts, the owner of the interest cannot be ascertained or cannot be located. If the Court finds that the interest in the real property is presumed abandoned, it shall order the sale of the interest and forward the proceeds to the Unclaimed Property Administrator.

c. Nothing in this section shall supersede or otherwise affect the law regarding the sale of tax sale certificates.