



Changes Important to Holders of Unclaimed Property

Recent changes to Pennsylvania's Unclaimed Property Act impact several aspects of unclaimed property reporting, including a reduced dormancy period, newly added and expanded definitions of key terms related to unclaimed property, and an expansion of audit and enforcement provisions (including penalties).

► *Abandoned and unclaimed property state of repose (or dormancy) changes from five (5) to three (3) years.* Under the previous version of the Act, property was presumed abandoned or unclaimed if the owner had not taken specific action regarding his or her property within the previous five (5) years.

Effective immediately, the Act changes that time period to three (3) years for most property types, including the following:

- Savings or time deposits in a financial institution or shares in a savings association or savings and loan or building and loan association. 72 P.S. § 1301.3(1).
- Outstanding checks or drafts. 72 P.S. § 1301.3(3).
- Contents removed from a safe deposit box or other safekeeping repository. 72 P.S. § 1301.3(4).
- Moneys due from an insurer under an annuity contract, life insurance policy, or any other contract of insurance. 72 P.S. § 1301.4.
- Utility advances, tolls, deposits, or collateral security. 72 P.S. § 1301.5.
- Gift certificates or gift cards (if no redemption period is specified). 72 P.S. § 1301.6(1).
- Stock certificates or rights to participate in a business association. 72 P.S. § 1301.6(2).
- Dividends, profits, distributions, payments, or distributive shares of principal owed by business associations. 72 P.S. § 1301.6(3).
- Principal or interest due on business associations' bonds or debentures. 72 P.S. § 1301.6(4).
- Property held in fiduciary capacity for the benefit of another. 72 P.S. § 1301.8.
- Property, including restitution, held for owners by courts, public corporations, public authorities, or instrumentalities of the U.S., states, or political subdivisions. 72 P.S. § 1301.9.

► *Roth IRAs and similar tax advantaged accounts provision is added.*

A new provision related to an individual retirement account, retirement plan for self-employed individuals, or similar account that is not subject to a mandatory distribution requirement is presumed abandoned and unclaimed three (3) years after the owner is age 70½ or 3 years after he or she has indicated an interest in the property or other property held by the holder. 72 P.S. § 1301.8(2).

► *"Indicated an interest in property" is defined.*

The phrase "indicated an interest in property" is a newly defined term. The importance of this new phrase is to identify the conduct, on the part of an owner, that would stop or toll the three (3) year dormancy

period, which would otherwise cause the property to be deemed abandoned and thus subject to the custodial care of Treasury. The term is defined as follows:

“Indicated an interest in property” shall mean any contact, communication or transaction, related to property, from the owner, or involving some affirmative action by the owner, which is documented in a contemporaneous record prepared by or on behalf of the holder or in the possession of the holder, including:

- (i) a written contact, communication or transaction;
- (ii) a secure or password-protected electronic contact, communication or transaction;
- (iii) a verbal contact, communication or transaction, in which the holder takes reasonable action to verify the identity of the owner; or
- (iv) a contact, communication or transaction, which is evidenced by other criteria provided by the State Treasurer. 72 P.S. § 1301.1.

Accordingly, the Treasurer has the authority to establish criteria that would be considered sufficient evidence that an owner has “indicated an interest” in his or her property, and therefore “reset the clock” on the dormancy period for such property. Though the introduction of this concept is not new, it does provide clear standards pertaining to owner contact when determining the application of the “dormancy period” for certain property, as follows:

- A check or other such instrument that remains outstanding for more than three years (a travelers check for fifteen years, a money order for seven years) now is not presumed abandoned and unclaimed if there has been an “indication of interest” by the remitter, payee, or person entitled to enforce the instrument in the previous three (3) years. 72 P.S. § 1301.3(3)(ii).
- A stock certificate or right to participate in a business association is not now presumed abandoned and unclaimed if there has been an “indication of interest” in it by the owner in the previous three (3) years. 72 P.S. § 1301.6(2).
- A dividend, profit, distribution, payment or distributive share of principal owed by a business association is not now presumed abandoned and unclaimed if there has been an “indication of interest” in it by the owner in the previous three (3) years. 72 P.S. § 1301.6(3).
- Principal or interest due on business associations’ bonds or debentures are not now presumed abandoned and unclaimed if there has been an indication of interest in such principal or interest by the owner in the previous three (3) years. 72 P.S. § 1301.6(4).
- Property held in a fiduciary capacity for the benefit of another is not now presumed abandoned and unclaimed if there has been an “indication of interest” by the owner in it or other of the owner’s property held by the holder in the previous three (3) years. 72 P.S. § 1301.8(1).

► *“Holder” is defined.*

The definition of “holder” has been refined to specifically include a person obligated to hold property for another and includes the “agent or legal representative of a holder.” This represents an important expansion of the definition of holder, particularly as it pertains to transfer agents. 72 P.S. § 1301.1

► *Audit and Enforcement provisions are amended.*

- Effective immediately, Section 1301.23 of DAUPA was amended by the Act and (1) provides for

Treasury to examine the records of agents of holders, including transfer agents (72 P.S. §§ 1301.23(b) and (c)); (2) provides that Treasury's selection of the auditor may not be questioned by the holder (72 P.S. § 1301.23(b); and (3) specifically provides that audit work papers are confidential. 72 P.S. § 1301.23(d)

- If an audit/examination reveals reportable property, Treasury may assess the cost of an audit against the holder at a rate of \$200 a day for each auditor. 72 P.S. § 1301.23(e).
- In the event that a holder does not maintain adequate records and the available records are insufficient to permit report preparation, Treasury may reasonably estimate the amount due in unclaimed property. 72 P.S. § 1301.23(f).
- Effective immediately, Section 1301.24 was added to authorize Treasury to impose a penalty of up to \$1,000 per day against holders who fail, without proper cause, to report and deliver unclaimed property. The penalty begins the day after the report should have been filed and continues thereafter. The penalty may be waived in full or in part for good cause. 72 P.S. § 1301.24(c).