

Lynden Lyman on

The High Amount of Unclaimed Property and States' Responsibilities: Why Is There So Much Unclaimed Property, Anyway?

Cite as: Lyman, Lynden. "The High Amount of Unclaimed Property and States' Responsibilities: Why Is There So Much Unclaimed Property, Anyway?." LexisNexis® Expert Commentary, *(Insert date you accessed the document online)*.

"States hold billions in unclaimed assets." This undisputed fact is alternatively viewed by the media as either something of a novelty ("feel good" stories about the treasure trove awaiting reclaim by the general public) or as an example of government malfeasance ("spotlight" articles calling attention to the state's failure to "find" numerous celebrities owed unclaimed assets). Both approaches undoubtedly sell newspapers, yet rarely is either storyline helpful in answering the important public policy question of why so much unclaimed property finds its way into state coffers (and, thereafter, whether states are doing enough to get the assets back to the owners).

The purpose of this commentary—both for this month and next—is to explore these two questions. First, let's give consideration to where all of the unclaimed property that ends up with the state originates from.

"The states get the leftovers." Virtually all unclaimed property is tied to commercial transactions where a debtor or obligor—or, "holder"—cannot complete payment to a creditor or payee—or "owner." The transaction can arise in the context of a vendor, customer, employee, shareholder or other relationship, but the important point is that the state receives delivery of the asset only after the holder cannot deliver the property to the owner.

There are, in virtually all states, statutory requirements that holders attempt to locate and pay owners prior to transferring their unclaimed assets to the state. And it makes sense that holders would be required to initially undertake this search, since holders, and not the state, possess the preponderance of account information, including how, where, when, and why an account or obligation came into existence. Details about prior addresses, next of kin, telephone numbers, and detailed account histories are items of data that only the holder would possess.

The mandatory holder search statutes typically take the form of the modest requirement to conduct "due diligence" mailings, consisting of a written notice alerting the owner of the existence, nature, and value of the asset, together with instructions describing steps to reclaim the asset so as to prevent its delivery to the state as unclaimed property. No-

TOTAL SOLUTIONS

[Legal](#) [Academic](#) [Risk & Information Analytics](#) [Corporate & Professional](#) [Government](#)



Lynden Lyman on

The High Amount of Unclaimed Property and States' Responsibilities: Why Is There So Much Unclaimed Property, Anyway?

tices are typically required to be mailed three to six months prior to the filing of the report. In theory (as well as practice), when due diligence mailings are properly performed, the vast majority of non-lost owners (most states suspend the due diligence requirement for bad address accounts) will receive notice and reactivate their accounts.

States rarely receive any credit for the due diligence mailing requirement, and the very significant impact that it has on reducing the number and value of unclaimed accounts. True, it is the holder, and not the state, that performs the mailings, handles the responses, and reissues payment or reactivates the account. Still, if due diligence statutes had never been enacted, would holders go to the trouble of making these “last notice” mailings? Or should due diligence statutes be recognized as important consumer protection legislation?

It needs to be noted that due diligence notices are designed as the minimum, as opposed to the optimal owner outreach to be undertaken by holders. Indeed, due diligence requirements don't even come into play until long after an asset has become dormant. Holders are free (and encouraged by the states) to undertake earlier and more expansive searches than the statutorily-required due diligence. It is beyond question that the sooner efforts are made to contact an owner when an asset or account becomes inactive (or an uncashed check has been issued), the more likely the owner will reclaim the property. However, except in a very narrow set of cases, most holders do not go to extraordinary lengths to contact owners of unclaimed property, and it is reasonable to conclude that many holders would not even undertake due diligence mailings, if not otherwise required by law.

One would think that it is “good business” to reunite a customer with a lost asset, but not all unclaimed property involves customers, nor is it always economically sound to expend resources to do so. The owner may be a vendor or other traditional creditor. Where the money is owed to a customer, the account may have been closed, or is of nominal value. The holder may benefit from earnings on unclaimed balances. In any event, finding owners, communicating with them about their property, validating entitlement and issuing payment, takes time and money. The potential for claims fraud and issues of legal succession require care and attention. For many holders, the matter of reuniting owners who seemingly don't even care about their property results in an expense that the holder would prefer to minimize, or avoid altogether.

For some holders, the cost/benefit tradeoff of endeavoring to reunite owners with their unclaimed property makes sense—or, is mandated by other regulatory authorities. Is-

TOTAL SOLUTIONS

[Legal](#) [Academic](#) [Risk & Information Analytics](#) [Corporate & Professional](#) [Government](#)



LexisNexis® Expert Commentaries

Lynden Lyman on

**The High Amount of Unclaimed Property and States' Responsibilities:
Why Is There So Much Unclaimed Property, Anyway?**

holders of securities successfully locate very significant numbers of lost shareholders, because seven years ago the Securities and Exchange Commission mandated that transfer agents search credit bureau and other national databases to find updated addresses for lost individuals. Other holders are motivated to find lost owners because they believe they may be a source of continued or future business. Still other holders do a good job of looking early and often for lost owners, simply because they believe that it is the right thing to do.

Should state legislatures require that holders do more to track down owners of unclaimed assets, that the search be undertaken sooner, and that their actions be more aggressive? It is unclear if the holder community would support such a move, but we will soon be able to find out the answer. [California Assembly Bill 2221](#), which was introduced in late February with the support of the State Controller (who oversees the state's unclaimed property program), will require that no fewer than three written communications be sent to the owner of potentially reportable property: "between one and 1 ½ years after the date of last activity by, or communication with, the owner; between 3 and 3 ½ years after that date; and between 6 and 12 months before the property becomes reportable to the Controller." The bill also provides the opportunity for "the holder to provide additional notices regarding escheat."

Will holders embrace the concept of additional responsibility for preventing property from becoming unclaimed? One potential incentive within the bill is the lengthening of abandonment periods on most types of unclaimed property, from three years to five years. But even with this carrot, it is uncertain whether holders will be accepting of the stick.

Regardless of the legislative outcome in California, to fully appreciate "how unclaimed property works," it is essential to understand that holders have the primary responsibility to find the owners of unclaimed property, and only where the holder is unsuccessful is the property transferred to the state.

Next Month. Assessing the effectiveness of the state in reuniting owners with unclaimed assets.

About the Author. Lynden Lyman is the managing director of the [ACS Unclaimed Property Clearinghouse](#) in Boston, serving as chief executive of the

TOTAL SOLUTIONS

[Legal](#) [Academic](#) [Risk & Information Analytics](#) [Corporate & Professional](#) [Government](#)



LexisNexis® Expert Commentaries

Lynden Lyman on

**The High Amount of Unclaimed Property and States' Responsibilities:
Why Is There So Much Unclaimed Property, Anyway?**

Clearinghouse since 1999. Lynden is a licensed attorney with 20 years experience in unclaimed property law, administration and auditing. Formerly, as an assistant attorney general with the state of Iowa, Lynden participated in state-initiated audits of banks, insurance companies, utilities, and publicly traded companies. From 1986 to 1993, he was associate special counsel/consultant for the Clearinghouse. In this capacity, he coordinated and participated in the examination of records, preparation of reports, and the reporting and collection of property from more than 12,000 different companies. Additionally, Lynden worked with more than 30 states in the drafting and adoption of unclaimed property statutes and regulations. From 1993 to 1998, during which time the Clearinghouse operated as a unit of State Street Bank, Lynden held various management positions, culminating in senior vice president and division executive. As contributing editor of the five-volume legal treatise [Unclaimed Property Law and Reporting Forms](#) (published by Lexis/ Matthew Bender) over the last 16 years, Lynden has reviewed and annotated every state unclaimed property law.

Expert Commentary is the title of this LexisNexis® publication. All information provided in this publication is provided for educational purposes only and use of the term "Expert Commentary" is not intended to describe or designate the author's qualifications as a lawyer or in a subspecialty of the law. For legal advice applicable to the facts of your particular situation, you should obtain the services of a qualified attorney licensed to practice law in your state.

TOTAL SOLUTIONS

[Legal](#) [Academic](#) [Risk & Information](#) [Analytics](#) [Corporate & Professional](#) [Government](#)