

*Lynden Lyman Esq. on***The 1995 Uniform Disposition of Unclaimed Property Act:
How "Uniform" Has State Enactment Been?**

2008 Emerging Issues 2727

In April 2008, the U. S. Virgin Islands became the fourteenth jurisdiction to adopt the 1995 Uniform Disposition of Unclaimed Property Act (a fifteenth jurisdiction, Hawaii, followed less than a month later). The enactment is particularly noteworthy because the territory adopted the 1995 Uniform Act (the "Uniform Act") exactly as written—something that the preceding adopters were unable to do.

Just how "uniform" has the states' adoption of the Uniform Act been? An analysis and comparison of the treatment of 30 key provisions indicates that a majority of the states have modified a majority of provisions. On the surface, this suggests that the resulting enactments are far from uniform. However, a closer review is warranted.

The Uniform Act is the work product of the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). In order to "promote uniformity in the law among the states," NCCUSL encourages state legislatures to adopt uniform legislation "exactly as written." This differs from a model act, which is merely a "guideline," and which NCCUSL intends for states to "borrow from or adapt to suit their individual needs and conditions." As with prior uniform unclaimed property acts (including the 1954, 1966 and 1981 enactments), the Uniform Act was crafted with the input of not only uniform law commissioners, but with unclaimed property holders and state unclaimed property officials as well (the original draft of the act was based in part by a model act drafted by a committee of the National Association of Unclaimed Property Administrators, or NAUPA). With such broad participation, one would have hoped that consensus could have been achieved and the final version been acceptable to all parties. Indeed, where a state's uniform law commissioners have been actively involved in promoting the adoption of the Uniform Act in that state's legislature, the Uniform Act has tended to remain intact to a higher degree (Attorney Tom Bolt, Chairman of the Virgin Islands Uniform Law Commission, was a major driver in the territory's adoption of the Uniform Act).

A review of the Uniform Act and the versions actually enacted by the various states does fortunately indicate that most of the modifications take the form of "tweaking" rather than significant, organic changes. The review also indicates that substantive changes were made at the request of one or more holder trade groups or industries, with most of the

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procedural changes promoted by state unclaimed property offices to mirror their preferred means of administering the unclaimed property program.

The most obvious substantive change made by many state legislatures in the adoption of the Uniform Act is the exclusion of certain types of property. The Arizona enactment exempts (among other property types) gift certificates; Nevada (perhaps not surprisingly) exempts gaming chips; North Carolina exempts various types of "business-to-business" transactions; and numerous states exempt property held by cooperative associations. In more than a few states adopting the Uniform Act, accounts where mailings have not been returned by the post office as undeliverable are exempt from classification as abandoned. Clearly, these changes to the uniform language were fostered by holders, and not by states. In only a very limited number of cases has a state adopting the Uniform Act broadened or even clarified the definition of abandoned property (Maine, for instance, provided specific standards for determining the abandonment of a prearranged funeral or burial plan; in that there is frequently ambiguity in handling these types of unclaimed assets, Maine actually improved on the Uniform Act).

States altered the language of the Uniform Act in terms of how property is handled, once that property is in the custody of the state. For instance, state standards and practices for the advertising of unclaimed property owners vary greatly, even among the adopters of the Uniform Act. Similarly, these states calculate and pay interest (if at all) in many different ways on property in the state's possession. There are 10 variations among the 15 states adopting the Uniform Act as to how unclaimed securities and safe deposit box contents are liquidated, and there are also statutory differences in how tangible property with no commercial value is to be disposed of. States also approach the processing and approval of claims in ways different than those outlined in the Uniform Act.

There are several areas where states and various constituencies have consistently battled over Uniform Act language. One is interest and penalties for late reporting or other compliance infractions. In over half the states, holders fought and successfully achieved a reduction in the scope or application of the Uniform Act's punitive measures. Another contested area is that of "heir finders," or professional locators, which charge owners a fee for reuniting them with their property. The heir finder industry, wrapped in the flag of free enterprise, has lobbied for less restrictive regulation than reflected by the Uniform Act. The states, citing a need for greater consumer protection, have sought even greater limitations on heir finders. The result, as one might expect, is mixed; in some cases, the state has prevailed and in some cases the private sector has.

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Yet as identifiable (and interesting) as these variations (and outright deviations) from the Uniform Act may be, the fact of the matter is that the states' adoption of the critical substance of the act has been, surprisingly, very uniform. Abandonment periods, if not identical across the board, are much more uniform than they have ever been before. Reporting periods have been compressed so that currently, all of the states other than Vermont that have adopted the Uniform Act are using the June 30 cut-off/November 1 reporting dates (December 31/May 1 for life insurance companies). Definitions of what constitutes abandoned property among the states adopting the Uniform Act are not identical, but can be considered very consistent. In short, the most important considerations to holders and reporters of unclaimed property have been simplified and standardized by the Uniform Act. There is much more that the states adopting the Uniform Act have in common, than they differ on.

Perhaps outside of the Virgin Islands, the Uniform Act cannot be all things to all people. The compromises and accommodations made in other adopting jurisdictions notwithstanding, there is ongoing talk of the "need" for a fifth iteration of the Uniform Disposition of Unclaimed Property Act. States would like to see better definition of unclaimed property (electronic commerce, college savings plans, retirement assets, etc.) and achieve greater flexibility in the administration of their unclaimed property programs; holders, or more accurately certain groups of holders and their advocates, would prefer to expand exemptions (gift cards, business-to-business, tax advantaged assets, etc.). For its part, NCCUSL is reportedly pleased with the status quo and would like to see more states adopt the Uniform Act. Based upon the uniformity that has in fact been achieved on a very broad scale now by 15 of the states and other reporting jurisdictions, it very well may be the best course to follow-through on what appears to be working. In fact, a number of additional states are currently taking steps to pre-file the Uniform Act for introduction during their 2009 legislative sessions.

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

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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 LexisNexis / Matthew Bender) over the last 16 years, Lynden has reviewed and annotated every state unclaimed property law.

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