



# What Activates the Dormancy Period?

**NAUPA**

National Association of Unclaimed Property Administrators®

Representing State Governments That Actively Find Owners While Protecting Forgotten Funds Until Claimed

A ***dormancy period*** is the period of time, also referred to as the abandonment period, during which the owner of the property does not take action on his property.

Dormancy 101 - Age from the date the property became payable or distributable

Assumptions:

- 1) Payroll Check -1 year dormancy period
- 2) Reporting Cycle July 1<sup>st</sup> to June 30<sup>th</sup>
- 3) Holder report due prior to November 1st

PAYROLL CHECKS ISSUED		ONE YEAR LATER		REPORTING TIME	
A)	9/30/09	9/30/10		10/31/11	
B)		6/30/10	6/30/11	10/31/11	
	7/1/09.....ISSUED.....	6/30/10	7/1/10.....DORMANT 1 YEAR.....	6/30/11	10/31/11

Dormancy periods can be  
found on the QRP @  
[www.unclaimed.org](http://www.unclaimed.org)

To Find:  
Compliance Resources Tab then;  
QRP States Monitoring Services then;  
Dormancy Period

## Basic Indication of Owner's Interest

- The cashing of a check.
- Deposit to or withdrawal from an account.
- The payment of a premium.
- Written communication from owner.
  
- Owner indicated interest as evidenced by a memorandum or other record on file with company(81)
- Owner interest is reflected in contemporaneous record prepared by holder(95)
- Owner-directed activity in the account, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account. (95)

## Other Indications of Owner's Interest

### State Laws or Policies may allow other types of activity

- Qualified owner activity in one account can count for inactivity in another.
- Phone contact with record made.
- Mail not returned.
- Electronic contact, on-line, ATM, etc...

## How Does the Electronic Age Fit?

- Not addressed in Uniform Acts
- Uniform Electronic Transaction Act (UETA) allows the acceptance of documents electronically. Most states have adopted this act in other areas of their state statutes.
- Results of informal NAUPA survey (2007) suggest that generally speaking most states feel comfortable accepting electronic evidence.
- Electronic Contact – What is acceptable? Is there a level of “authentication” going on? Is there unique, restricted access to account by owner?

### TYPES

- ATM – using a magnetic strip card with PIN activation
- On-line - using a secure user ID and password
- Phone communication – using an automated phone calling center to enter unique information
- Retinal / facial/ fingerprint scan – using biometric security

# Assuming that electronic contact is as good as traditional written contact, what kind of audit trail is necessary?

## Adequate data capture

- date, time, account number, activity
- time period in maintaining the electronic contact record.

## Adequacy of IT controls

- system purges electronic audit trail
- avoidance of “accidental mass updates.”

## Dormancy Triggers - Securities

### Securities

#### 95 Act

- Dividend, stock split or other distribution not claimed
- Returned mail (RPO) the second time
- Holder discontinued mailings, notifications or communications to the apparent owner

Some states require written direct owner contact or owner directed activity to increase or decrease the account.

Most states that are on the 81 Act have adopted similar wording to the 95 Act

## Dormancy Triggers – Banks and CDs

### Banks & CDs-

CD's - A deposit that is automatically renewable is deemed matured upon its initial date(first) of maturity unless consent to renew is in writing or is evidence by a memorandum on file with holder. Trigger is first date of maturity.

In general the 95 act and 81 act are similar with one BIG exception in regards to more than one financial account.

81 Act – Property is not abandoned if:

- 1) Owner “owned other property” that had qualifying activity
- 2) The financial organization communicates in writing with the owner with regard to the inactive account at the address of the active account

## Dormancy Triggers Tax Shelter Accounts

95 Act “Any property in an IRA, defined benefit plan or ...plan that is qualified for tax deferral...”

- Trigger is time period after the earliest of the date of distribution, attempted distribution or even death.
- The date of the required distribution as stated in the plan or trust agreement
- Date specified in the income tax laws of the US by which distribution must begin in order to avoid a tax penalty. Example IRAs mandatory distribution at 70.5 or death.

81 Act – Intangible personal property held in fiduciary capacity

- Trigger is time period in which it becomes payable or distributable
- Unless the owner does 1 of the 4 below
  - A) Increases or decreases the principal
  - B) Accepts payment of principal or income,
  - C) Communicates concerning the property, or
  - D) Indicates an interest in writing

## Dormancy Triggers HSA accounts

### **Health Savings Accounts (HSA) (This is not a “cafeteria plan or flexible spending accounts”)**

- Earn interest, belong to the employee and leaves with the employee when they terminate employment
- There are no mandatory provisions for distribution
- If a surviving spouse is designated as the account beneficiary upon the death of the owner then the account can continue to be treated as a HSA for the qualified medical expenses of the living spouse.
- Otherwise, if any other beneficiary, the account ceases to be a HSA and the proceeds are subject to taxes.
- 95 Act - Treat as miscellaneous intangibles
- 81 Act - Intangible personal property held in fiduciary capacity

## Dormancy Triggers 529 Accounts (Prepaid Tuition and College Savings)

### Is it unclaimed property to begin with???

Must examine the individual state laws and contracts of the state holding the 529 account to analyze.

Could be:

1. A straight escheat to the state
2. A straight escheat directly back to the trust/plan
3. Considered unclaimed property
4. A difference between prepaid tuition and college savings plans within state

If considered unclaimed property Dormancy Triggers are dependant upon the state law and contracts.

- Age in which use of the account needs to start
- 95 Act - “Any property in an IRA, defined benefit plan or .....plan that is qualified for tax deferral ”
- 81 Act - Intangible personal property held in fiduciary capacity

# When does the 5 year clock start ticking?????

under the law

- ✓ There has been **no \*activity** on a checking or savings account for 5 years but the holder has **NOT** received returned mail for a statement.
- **Not Ticking-** *If there is no evidence the owner is not receiving statements the clock does not start ticking.*
- ✓ There has been no owner activity and the holder is receiving returned mail.
- **Ticking-** *The 5 year clock begins when the 1<sup>st</sup> statement is returned.*

*\*KS defines **Activity** as an increase, decrease or change the amount or type of property held in the account.*

# When does the clock start ticking?????

- ✓ There is **activity** on a checking or savings account but the holder IS receiving returned statements.
- **Not Ticking-** *Since the activity indicates owner-directed interest the clock does not start ticking. **However**, be careful of “automatic pilot” arrangements. It could be possible that the owner has abandoned the property and the arrangement looks like activity.*

## Example:

Owner has 1000 shares of ABC stock and has the dividends wired to a bank account every time one is issued. What if the owner has forgotten about the shares and the bank account? OR has passed away?

To ABC the dividends are paid out and to the bank they are receiving deposits.

You sometimes have to look at the quality of what you are counting as activity. If it becomes questionable whether its real activity or no activity the answer is:

DUE DILIGENCE.

When does the lock start ticking?????

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- ✓ A holder receives a phone call from an individual asking about a specific bank account and has the bank account ID number. However, the caller is either not asked for specific identification to make sure they are the owner OR they cannot answer the authentication questions. The bank records contact on the account. Would that count as activity to rebut the presumption of abandonment?
  
- **Ticking-** *No, the bank did not confirm the caller as the owner of the account.*
  
- ✓ State statutes requires notification in writing through the USPS but an email is sent to the owner, does that qualify as notification?
  
- **Ticking-** No, electronic notification cannot take the place of the US Mail.

Kansas defines “communication in writing” and “correspondence” to indicate “email or other electronic communications.” KS do not require notification in writing through the USPS.

# When does the lock start ticking?????

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- ✓ An owner fails to cash or did not receive a dividend payment issued 01/15/11 but all dividend payments issued after 01/15/11 have been cashed. What about the actual shares?
  - **Ticking-** *The 01/15/11 dividend payment is reportable 5 years (in KS) after the issue date of the payment.*
  - The actual stock shares are reportable 5 years after the most recent payment was not cashed. So, if it was a 1 time event the dividend check was not cashed, the stock would NOT be considered unclaimed if the owner cashed more recent payments.
- ✓ Holder reports royalty payment after it reaches the 5 year dormancy. What happens to future payments? Does the holder have to wait 5 years to report each payment?
  - **Ticking-** Royalty payments are considered interest and at the time that an interest is presumed abandoned, future recurring amounts are also considered abandoned.

When does the clock start ticking?????  
Under law

- ✓ Holder issues a 2<sup>nd</sup> check for a payment to the owner.  
Would the clock start ticking when the original payment or when the 2<sup>nd</sup> payment reaches dormancy?
- Ticking-When the original payment reaches dormancy.

**Any questions? Many Questions?**

**If in doubt, make a call or email the state.**