Should the Uniform Unclaimed Property Act be revised?

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An Overview of the ULC

- The Uniform Law Commission, now 121 years old, is one of the oldest state organizations designed to promote uniformity of laws among the states. The ULC improves the law by providing states with non-partisan, carefully considered, and well-drafted legislation.

- The ULC is comprised of Commissioners from the 50 states and three U.S. territories. All Commissioners are licensed attorneys and receive no salary or compensation for their work with the ULC.

- The ULC has drafted hundreds of uniform laws on numerous subjects and in various fields, including the Uniform Unclaimed Property Act (UUPA).
A Brief History of the Uniform Unclaimed Property Act

• The ULC has led in the area of unclaimed property law since the original act was drafted in 1954, the Uniform Disposition of Unclaimed Property Act, which was later revised in 1966.

• The ULC followed with the Uniform Unclaimed Property Act (UUPA) in 1981 and a revision in 1995.

• Most states have adopted one or more version of the uniform act on unclaimed property.
UUPA Enactment Statistics

- 16 states* -1981 Act (29 orig).
- 8 states* - unique legislation.
- 11 states*-mixed.

*States may also include the US Territories: District of Columbia, Puerto Rico and the U.S. Virgin Islands
Proposal to Revise the UUPA

• It has been 18 years since the last revision of the UUPA and there have been several changes in this area of law within that time.

• In 2009 through to 2011, various parties and organizations asked the ULC’s Scope and Program Committee to consider revising the 1995 UUPA. The ULC decided not to proceed with revisions to the UUPA, in part due to NAUPA’s concerns as to the appropriateness of a revision in 2011.

• In 2012 NAUPA reconsiders the issue of a UUPA revision and indicates support for a revision at the 2013 ULC mid-year meeting. The ULC Executive Committee appointed a Study Committee to determine if a revision of the UUPA is appropriate at this time.
Timeline of NAUPA’s Involvement

2009 to 2011
ULC receives proposals to revise

2012 ABA examines development of a model act

NAUPA endorses ULC proceeding with a revision

ULC determines not to proceed with a revision

ULC reexamines the timelines of a revision
The UUPA Stakeholder Meeting

• The UUPA Study Committee is actively seeking feedback from all interested parties to determine whether to move forward with a revision of the UUPA.

• The UUPA Study Committee recently hosted a UUPA Stakeholders Meeting on April 24th in Washington, D.C. The meeting was well attended by over 40 in-person attendees and several teleconference participants, including several NAUPA members.

• During the Stakeholder’s Meeting, participants discussed many issues for the UUPA Study Committee to consider.
Why should states get involved?

- Things have changed in the past 18 years.

- Working through multiple issues provides states an opportunity to take a position.
Why should states get involved?

• 442 bills enacted since 2003, an average of 40 per year.

• A new or revised Uniform Act will have influence on future legislation.
Everyone wants clarification

• Issues raised by states
• Issues raised by holders
Issues

• Definitions/Exemptions
• Contract rights
• Reporting
• Examinations
• States’ authority
• Claims
• Administrative
Definitions/Exemptions

- Domicile for non-corporation
  - Limited liability companies
  - Statutory trusts
  - Others
- Record-for retention
- Holder-Merger, acquisition
- Can a holder delegate its duties?
  - Third Party Administrators
  - Issuance of products by and through financial institutions
Definitions/Exemptions (continued)

• Rebates
• Loyalty and reward programs
• Gift card, stored value cards, electronic benefit and payroll cards.
• Last known address: computer codes and zip codes
  ▪ Current practice among the states
  ▪ Requirements (if any) of the Federal Common Law
Definitions/Exemptions (continued)

- “B to B” exemptions
- Class action distributions
- College tuition savings plans
- Exempt nontransferable securities
- Tangible property—denying if cost to store and sell exceeds value.
Even more definitions/exemptions

- Electronic reporting and verification.
- Reference federal requirements for various property types…
  - Federal securities laws
  - Federal banking laws
  - CARD act of 2009
Contract rights:

• Limits of derivative rights doctrine
• Issues: Consideration, presenting document, statutes of limitation.
• Non-cash property status.
Contract rights continued

• Dormancy charges
• Address private escheat/anti-limitations provisions
Reporting issues

• Dormancy – difference among states and by category of property
• Aggregates – state variations
• Electronic reporting
• Examinations
• Pre-dormancy remittance and reporting
• Record retention requirements
• Statutes of limitations/statutes of repose
Dormancy issues

• Electronic owner contact – developments in the securities, insurance and other industries

• Pre-escheat due diligence – more and earlier?

• Broader definition of due diligence.
Dormancy triggers clarification

- Underlying obligation governs property type, not the delivery method, *i.e.*, payroll or benefits stored value cards
- Mutual funds and stock.
  - Owner contact
  - Dividend reinvestment
Specific dormancy triggers

- CDs
- Tax deferred accounts
- Unclaimed life insurance and other beneficiary property
Aggregate limits-options

• Require owner detail
• Don’t report until the total value exceeds a dollar threshold.
• Provide option to report monthly or quarterly
Examinations:

- Third party audits.
- Records in electronic format.
- Administrative appeals, owner or holder refunds.
- Parameters for estimation.
- Records retention, audit look back
- Sufficiency of remediation offered by holders
States’ authority:

• Cost basis for securities.
• 1099 reporting requirements.
• Allow electronic recordkeeping for states.
• Reciprocal reporting.
States’ authority

• Sell property electronically.
• States cooperate to locate property or to pay claims without a formal agreement.
States’ notice to owners

- Publication of notice in form determined by the admin.
- Possible options
Claims issues:

- Estates.
- Liability issues.
- Offset delinquent debts owed to agencies.
- Claimant for safe deposit boxes.
Administrative provisions

• Future amendments to act
• Apply act to pre-abandoned property, if due diligence done.
• Penalties for holder or claimant fraud, falsification of documents
The ULC’s Next Step

- The UUPA Study Committee, after considering and synthesizing all the feedback received from various groups, will make a recommendation to the ULC Scope and Program Committee as to whether to move forward with a revision of the UUPA.

- A decision will be made during the 2013 ULC Annual Meeting by ULC leadership as to whether to move forward with a revision of the UUPA and appoint a drafting committee.

- NAUPA representatives plan to attend the ULC’s Annual Meeting and will have a front row seat to the process ahead.