



MEMORANDUM

TO: Drafting Committee to Revise the Uniform Unclaimed Property Act, Uniform Law Commission

FROM: Uniform Unclaimed Property Act Revision Committee, National Association of Unclaimed Property Administrators

RE: Life insurance Recommendations

DATE: May 9, 2014

Background: The following is a brief explanation of proposed revisions to the 1995 Uniform Unclaimed Property Act addressing issues related to unclaimed insurance benefits:

1. NAUPA recommends adding language to Section 2(a)(8) to clarify that the dormancy period for benefits that mature upon death begins to run on the date of death of the insured. This revision explicitly states that, for such policies, it is the death of the insured that gives rise to the payment obligation. Any other contractual requirements that must be satisfied by a beneficiary before an insurance company is required to *settle* a claim do not alter the fact that it is the death that gives rise to “the obligation to pay.” This revision is also consistent with: (i) the Supreme Court’s holding in *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541, 546 (1948), stating that “[w]hen the state undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the state to comply with conditions that may be quite proper as between the contracting parties”; (ii) Section 2(e) of the 1995 Act, stating that property is payable or distributable notwithstanding the owner’s failure to present any documentation necessary to receive payment; and (iii) authorities recognizing that dormancy periods are set based on a determination of the amount of time by which an owner can be expected to come forward to claim his or her rightful property, and not a period of time during which the holder should be allowed to retain unclaimed property.

Additionally, these revisions foreclose interpretations advocated by some holders that would limit the obligation to escheat unclaimed death benefits prior to the limiting age to only those situations where an insurer has received a claim and proof of death from a beneficiary. This would make the unclaimed property laws only apply in the virtually non-existent circumstance where a beneficiary was aware of the policy, made a claim with the insurance company and provided all necessary documentation and yet somehow the benefit was not paid. This would negate the central purpose of the unclaimed property laws, which is to have the states take custody of property that the owners are not aware belongs to them and, therefore, has not been claimed from the holder.

2. NAUPA recommends adding language to Section 2(a)(8) to clarify that the limiting age should only be used to calculate the dormancy period for death benefits as a fall-back option when the insurer does not know if the insured is deceased. In all other instances, the date of death once known should be used to calculate the dormancy period. This clarification recognizes that the limiting age should only be used when it is necessary for the insurer to essentially *presume* that an insured is deceased (as opposed to when it knows that the insured is deceased), and ensures that unclaimed proceeds are not allowed to go unescheated for many years or decades after the insurer has knowledge that the insured is dead, at which point the beneficiary is likely to also be deceased.

3. NAUPA recommends reducing the dormancy period for matured/terminated policies from three years to two years and provide for a separate one-year dormancy period for policies that are escheated based on the limiting age. This revision is based on our understanding that the Committee is interested in considering appropriate reductions of the dormancy period, and the fact that in those circumstances where benefits have not been paid as of the limiting age, it is likely that the proceeds already have been unclaimed for an extended period of time and it is highly unlikely that the owner will come forward to claim the property.

4. NAUPA recommends adding language to Section 2(e) to incorporate examples of the type of documentation, including a death certificate, that are not required to have been presented to the holder by the owner in order for property to be considered payable under the Act. The language added is taken directly from the comment to Section 2(e) of the 1995 Uniform Unclaimed Property Act, which has been disregarded by some holders of unclaimed property. Adding this language is intended to minimize the possibility that any technical requirements that an owner must satisfy to receive payment will be interpreted to apply to the states and relied on by a holder as a reason to avoid reporting unclaimed property.

5. NAUPA recommends revisions and a new subsection to Section 24 to exempt a holder from being subject to payment of interest and penalties under the unclaimed property laws for failing to escheat unclaimed death benefits within the time period required under Section 2(a)(8)(i) (as that section is proposed to be revised) if the reason for such failure is due to the insurer's lack of knowledge of the insured's death. These proposed revisions recognize that there can be times where an insurer first learns of the death of an insured a

number of years after the death took place and after the dormancy period already has expired. Under such circumstances, although the death benefits should be reported as unclaimed property in the next reporting cycle, the insurer should not have to pay any interest or penalties, as the insurer lacked the information necessary to have reported the property earlier.

6. NAUPA recommends adding a new section calling for insurers to perform periodic checks of their records against the United States Social Security Administration's Death Master File (the "DMF") and a definition of DMF. We have made these proposed additions based on our understanding that the Committee is interested in incorporating into the unclaimed property laws a DMF search requirement similar to the one adopted by the National Conference of Insurance Legislators. Although we believe that an affirmative DMF search requirement is in the best interests of consumers and owners of unclaimed property, this is an area where there is extensive on-going regulatory and statutory activity. Therefore, we have initially proposed a streamlined requirement that is intended to avoid conflicting with other statutes or agreements that may be in place. We believe that a streamlined approach is also consistent with the overall structure of the 1995 Act.