



September 30, 2014

Rex Blackburn, Co-Chairman  
Michael Houghton, Co-Chairman  
Revise the Uniform Unclaimed Property Act Committee  
Uniform Law Commission  
111 N. Wabash Ave.  
Suite 1010  
Chicago, IL 60602

Dear Commissioners Houghton and Blackburn:

As it has no doubt been true for you and the Uniform Law Commission, summer passed too quickly for NAUPA. There was no cessation of matters to attend to, and the revision of the Uniform Unclaimed Property Act was just one of many projects worked on by NAUPA.

Unlike many other stakeholders, the members of NAUPA are impacted by every change to unclaimed property laws. Consequently, NAUPA has deemed it important to weigh each recommended revision and, where warranted, voice concern. This vetting process has come as a challenge to our largely volunteer organization.

Over the last several months, NAUPA has been working on, and is currently finalizing, a position paper analyzing recommendations made by the American Bar Association (ABA) to the Uniform Law Commission. NAUPA had anticipated submitting this document prior to the November meeting of the drafting committee meeting. However, given your plans to meet in October, it may be more useful for NAUPA to provide a summary statement as to areas of agreement (and disagreement) with the ABA at this time.

Attached for this purpose is a schedule which maps the positions of NAUPA vis-a-vis the recommendations made by the ABA to the Uniform Law Commission.

NAUPA has additionally been analyzing proposals concerning the abandonment of securities as previously proposed to the Uniform Law Commission by the Investment Company Institute (ICI), the Securities Transfer Association (STA), and the Unclaimed Property Professionals Organization (UPPO). NAUPA will likewise be providing the Uniform Law Commission with a position paper analyzing these recommendations. Again, for purposes of your upcoming

October session, it may be useful to note one particular area of disagreement between NAUPA and these industry groups. Whereas ICI, STA and UPPO believe that the abandonment of unclaimed securities should be premised on the owner determined to be "lost" (as evidenced by return mail), NAUPA's position that securities should be deemed unclaimed based on a lack of inactivity/contact with the owner. NAUPA will explain the basis for its position in its unclaimed securities submission to the Uniform Law Commission.

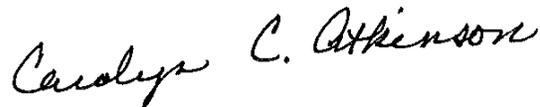
One additional matter that NAUPA feels it is important that the Uniform Law Commission understand is the states' position on life insurance. On August 13, 2014, the American Council of Life Insurers (ACLI) submitted to the Uniform Law Commission a position paper entitled "Unclaimed Property & the Death Master File: Toward a Uniform National Framework." The position paper was accompanied by a copy of the opinion issued by a Florida appellate court in *Thrivent Financial for Lutherans v. Florida Dept. of Financial Institutions*. Based on these materials, ACLI contends that a revised Uniform Unclaimed Property Act should not include a requirement for life insurers to search the Social Security Administration's Death Master File and that the proposals that NAUPA previously submitted to the Uniform Law Commission on issued related to unclaimed death benefits are in conflict with state insurance laws. NAUPA disagrees with ACLI's position, and is currently preparing a written response.

If there is desire on your part to have NAUPA's "long form" analysis on these matters for use at your October planning session, please advise NAUPA, and we will endeavor to timely conclude our work. Otherwise, we will plan to provide more detailed narratives coinciding with the November meeting.

Sincerely,



Beth Pearce  
Advisor and Vermont State Treasurer



Carolyn Atkinson  
Advisor and Deputy Treasurer, Unclaimed  
Property, West Virginia

cc: Charles A. Trost, Reporter  
Katie Robinson, Staff Liaison

SUMMARY ABSTRACT OF ABA RECOMMENDATIONS AND CORRESPONDING NAUPA POSITION

| Issue  | ABA Position  | NAUPA Position  | Comment   |
|--|---|---|---|
|  |   | <i>Positions of disagreement with ABA highlighted</i>   |   |
| 1. The "derivative rights" doctrine  | Overhaul of anti-limitations.   | Leave 1995 Act provision undisturbed.   | NAUPA has issued a position paper to the ULC on this subject.   |
| 2. The "third priority" rule   | Prohibit "third priority" claims.   | Allow such claims, as provided for in the 1995 Act.   | Third Circuit struck down a far narrower scenario than contemplated by the ABA prohibition.   |
| 3. Claims of the state of incorporation to property exempted by the state of last known address. | Prohibit such claims.   | Allow such claims, as provided for in the 1995 Act.   | Third Circuit struck down a far narrower scenario than contemplated by the ABA prohibition.   |
| 4. Business-to-business property.  | Create exemption.   | Retain as provided for by the 1995 Act.   | NAUPA has issued a position paper on this issue to the ULC.   |
| 5. Statutes of limitation on state enforcement.  | Significantly reduce the statute of limitations.  | Expand and clarify the statute of limitations.  | NAUPA has issued a position paper and draft language to the ULC on this issue.  |
| 6. Preamble  | A preamble indicating specific statutory intent (as delineated by the ABA) should be added. | The need for a preamble in lieu of a prefatory note-narrative and in any event is premature until a new act is finalized. | The scope/intent of several ABA preamble provisions is unclear to NAUPA.  |
| 7. Distinguish underlying obligation from method of payment                                      | Clarify underlying obligation is controlling.   | Clarify underlying obligation is controlling.   | NAUPA has previously provided the ULC with draft language on this issue.  |
| 8. Definitional categories   | Reduce the number of categories   | Retain as provided for in the 1995 Act  | The ABA has not specified categories for consolidation/elimination.   |
| 9. Abandonment periods   | Consider lengthening abandonment periods.   | Reduce certain abandonment periods.   | The ABA has not specified specific abandonment periods to be lengthened. NAUPA has provided the ULC with draft language on this issue. NAUPA remains open |

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|   |  |  | to reviewing empirical data supporting lengthening abandonment periods.  |
| 10. Electronic "contact"                                    | Treat electronic contact as owner contact.   | Treat actual electronic communications as contact.   | NAUPA does not agree with the ABA that "automatic deposits or withdrawals" should constitute contact. NAUPA has previously provided the ULC with draft language on this issue. |
| 11. Conditions precedent to owner claims                    | Make binding on the state.   | Expand/clarify 1995 Uniform Act provision.   | This issue and draft language is addressed in NAUPA's position paper to the ULC on "derivative rights."  |
| 12. ERISA   | Affirmatively provide that ERISA preempts state unclaimed property laws.   | No ERISA exemption, consistent with the 1995 Uniform Act Commissioners' Comment.           |  |
| 13. De minimis amounts                                      | Permit holders to retain (not report) amounts below the aggregate.   | Treat de minimis amounts as provided for in the 1995 Act (reported and remitted to states) |  |
| 14. Property held in safekeeping                            | Limit to financial institutions.   | Retain as provided for in the 1995 Act.  | NAUPA is interested in learning the ABA rationale for reduced scope.   |
| 15. Definition of last known address                        | Review and potentially narrow definition.  | Review and revise as necessary.  | NAUPA has previously provided draft language to the ULC on this issue.   |
| 16. Aggregate reporting                                     | Mandate the reporting of all owner names and addresses (assumed holder retains amounts under aggregate per issue 13) | Allow holder discretion in reporting owner names and addresses below the aggregate.        |  |
| 17. Due diligence (owner notification by holder)            | Permit prior to the running of the abandonment period.   | Permit prior to the running of the abandonment period.                                     | NAUPA has previously provided the ULC with draft language.   |
| 18. Forfeitures and penalties of a consequence of reporting | Allow an extension of time to report so as to avoid the owner incurring.   | In principal allow, but a narrower approach required.                                      | NAUPA is concerned that forfeitures and penalties would be instituted to avoid reporting.  |

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| 19. Internet database of reported owners                       | Mandate state creation and maintenance.   | Mandate state creation and maintenance.  | NAUPA has previously provided the ULC with draft language.                    |
| 20. Newspaper publication of owner names                       | Mandate publication.  | Publication permitted but discretionary.   | NAUPA has previously provided the ULC with draft language.                    |
| 21. Indemnification  | Reduce requirements for eligibility.  | Expand requirement to include performance of due diligence, and retain 1995 Act provisions.                              | NAUPA has previously provided the ULC with draft language.                    |
| 22. Holder claims for reimbursement                            | Allow for offset against amounts reportable to the state.   | Not allow for holder offset without state approval.  |   |
| 23. Indemnification against claims of foreign governments      | Expand scope of indemnification to include.   | Expand scope of indemnification to include (provided that eligibility for Indemnification is not relaxed; see Issue 21). |   |
| 24. Payment of interest by state                               | Make mandatory, at rate paid by holder.   | Payment of interest at state discretion; rate at state discretion.   | NAUPA has previously provided the ULC with draft language.                    |
| 25. Rules for taking custody                                   | Modify to conform to prohibition of "third priority" rule.  | Retain as provided for in the 1995 Act.  |   |
| 26. Recovery of property reported under mistake of law or fact | Permit  | Already permitted; if considered necessary, no objection (provided substantiation)                                       |   |
| Attorneys' fees and costs                                      | Expand; allow for holders and claimants to be awarded when either prevails in a dispute with the state. | Retain as provided for in the 1995 Act.  |   |
| 28. Interest-bearing property                                  | Allow state to disclaim (and leave custody with holder)   | Acceptable; however NAUPA believes payment of interest on state claims should be discretionary (see Issue 24).           |   |
| 29. Negative reports   | Limit applicability to holders subject to state's jurisdiction under Supreme Court "priority rules."    | Retain as provided for in the 1995 Act.  | NAUPA is unclear as to the jurisdictional standard being promoted by the ABA. |

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| 30. Holder assessment of audit costs         | Eliminate.  | Retain as provided for in the 1995 Act.   |   |
| 31. Attorney's fees assessed against holders | Limit to situations where the holder acted with fraud or willful misconduct.                                      | Retain as provided for in the 1995 Act.   | NAUPA does not concur that the states have greater leverage than holders in legal actions.  |
| 32. Late reporting interest                  | Change the rate to a floating rate and not a fixed rate.  | Agreeable to changing the rate that reflects the income the state would have received if in possession of the property. |   |
| 33. Penalty calculations                     | Clarify that penalties are to be calculated for a holder's non-compliance and not for each act of non-compliance. | Retain as provided for in the 1995 Act but agreeable to limiting penalties as a function of the unreported property.    |   |
| 34. Waiver of interest and penalties         | Make mandatory where a holder acted in good faith.  | Retain as provided for in the 1995 Act.   | If interest is to be modified to be compensatory as opposed to punitive (see Issue 32), there will be limited scenarios for the waiver of interest. |
| 35. Retroactivity                            | Prohibit reachback for periods prior to the adoption of a new Act.  | Retain as provided for in in the 1995 Act.  | The <i>N.J. Retail Merchs. Ass'n</i> case is limited to situations where the state includes a property type not previously subject to reporting.    |