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Abandoned and Unclaimed Property: Legislative Update in Virginia

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Unclaimed Property: General Concepts

- A "chance possessor" of property belonging to another should remit the property to the state.

- The state holds the property as custodian on behalf of the rightful owner.

- If the rightful owner cannot be located, beneficial ownership reverts to the state. (Virginia's unclaimed property receipts are deposited into the Literary Fund.)
Unclaimed Property:
Statutory Framework

- Most states have an unclaimed property statute, usually modeled after a uniform act, with certain modifications.
  - 1954/1966 Uniform Act
  - 1981 Uniform Act
  - 1995 Uniform Act

- Virginia’s statute is modeled after the 1981 Uniform Act, but with certain revisions, including amendments recently enacted by the General Assembly.

Unclaimed Property:
Definitions

Items of “unclaimed property” include:
- Bank deposits and safety deposit box contents;
- Uncashed payroll, dividend, and refund checks; and
- Stock certificates and unredeemed interest coupons.

Also includes:
- General ledger items, such as uncashed vendor checks, credit balances, credit memos, and customer rebates; and
- Amounts due under health and welfare benefit plans.
Unclaimed Property: Definitions (continued)

A "holder" is defined as a person who is "in possession of property belonging to another."

An "owner" is defined as a "creditor, claimant, or payee ... or a person having a legal or equitable interest in property" (e.g., the "rightful owner").

How is property ownership determined? How are competing claims resolved?

Unclaimed Property: The Issues

• Application of property law.

• Application of the concept of "private escheat."
  - Limitations imposed by statute or court order are disregarded by law.

• State auditors look to:
  - Normal business practices of the holder; and
  - Circumstances surrounding each specific transaction, as evidenced in the books and records of the holder.
Unclaimed Property: The Issues (continued)

Prior statute required record retention for ten (10) years following the date the property became reportable.

- Property is reportable in the year following abandonment.
- General ledger property becomes abandoned after 5 years.
- Therefore, general ledger transactions are reportable in the 6th year following the transaction date.
- Resulted in a sixteen (16) year record retention period (5 years of dormancy + filing in 6th year + record retention for 10 additional years).

Unclaimed Property: The Issues (continued)

Prior statute provided no meaningful statute of limitations.

- In practice, audits conducted back to transaction occurring in 1979.
- If holder fails to maintain records, state of domicile permitted to employ statistical sampling to estimate presumed deficiency.
- Conflict between state’s stated objective and financial needs.
  - Statistical estimation fails to identify “rightful owner.”
  - Some states retain contingent fee auditors of motivation.
Unclaimed Property: Virginia's New Statute

- Provides an exclusion for business transactions:
  - Excludes credit balances, overpayments, credit memos, outstanding checks, and other items of intangible property resulting from the sale of goods or services to a business association.

- Provides an exclusion for promotional incentives:
  - Excludes promotional incentives, credits, gift certificates, coupons, and similar property redeemable in merchandise, in services, or through future purchases.

Unclaimed Property: Virginia's New Statute (continued)

- Limits record retention to:
  - Five (5) years if a report is filed; and
  - Ten (10) years after the transaction becomes reportable if no report is filed — i.e., sixteen (16) years after a general ledger liability arises.

- Limits the maximum audit period for general ledger property to sixteen (16) years after the transaction date.
  - This is the minimum audit period under current law.
Unclaimed Property: Virginia's New Statute (continued)

- Limits audits to:
  - Five (5) years after a report is filed if the report:
    • covers the period in which the property should have been reported;
    • includes the property; or
    • provides notice of a dispute to the Treasurer.
  - Ten (10) years after the transaction becomes reportable if:
    • no report is filed; or
    • a false or fraudulent report is filed with the intent to evade delivery of the property.

- Increases penalties for noncompliance:
  - Failure to file a report or deliver property -- a penalty of $100 per day up to the lesser of $10,000 or 25% of the value of the property.
  - Willful failure to report or deliver property, or the filing of a fraudulent report -- a penalty of $1,000 per day up to the lesser of $50,000 or 100% of the value of the property.
Unclaimed Property: Virginia’s New Statute (continued)

- Encourages administrative relief:
  - Extends the period for filing a petition for judicial relief from 90 days to 3 years;
  - Provides guidelines for administrative appeals;
  - Provides for regulations and the public disclosure of rulings; and
  - Provides for a suspension of collection activity until a final administrative or judicial determination is made.

Unclaimed Property: Remaining Issues

- Companies in multiple states are subject to competing and often conflicting state laws:
  - Variations in record retention periods;
  - Variations in audit periods;
  - Variations in the types of property subject to escheat; and
  - Variations in the audit methodology to identify “unclaimed property.”
Unclaimed Property: Remaining Issues (continued)

- How to ascertain when property is “abandoned,” and when property is legally “belonging to another.”

- Applicability of choice of law provisions.

- Applicability of state laws pertaining to property rights, contracts, secured and commercial transactions.

- Applicability to emerging commerce and technology.

Unclaimed Property: Judicial History

Priority of State Claims:

- Texas v. New Jersey (1965): The U.S. Supreme Court
  - Rejected the “contacts” test for purposes of establishing the priority of competing state claims, and
  - Established a simplified two-step test.

- The test:
  - Unclaimed property is first payable to the state of the owner’s last known address.
  - If no address exists, or if the state of last known address does not provide for escheat of the property, then the unclaimed property is payable to the state of corporate domicile of the holder.
Unclaimed Property: Judicial History (continued)

• Pennsylvania v. New York (1972): U.S. Supreme Court
  - Rejected Pennsylvania’s assertion that “the State of origin of the transaction” has priority where the holder fails to maintain the address of the owner, and thereby
  - Rejected the concept of statistical sampling by Pennsylvania (the non-domiciliary state).

• Delaware v. New York (1993): The U.S. Supreme Court
  - Affirmed the two-step test, and
  - Affirmed that statistical sampling is not a valid basis for determining last known address.
An Act to amend and reenact §§ 55-210.2, 55-210.2:1, 55-210.8, 55-210.8:1,
of Virginia, relating to Uniform Disposition of Unclaimed Property Act.

Be it enacted by the General Assembly of Virginia:

are amended and reenacted as follows:

§ 55-210.2. Definitions.
As used in this chapter, unless the context otherwise requires:
"Administrator" means the State Treasurer or his designee.
"Apparent owner" means the person whose name appears on the records of the holder as the
person entitled to property held, issued, or owing by the holder.
"Banking organization" means any bank, trust company, savings bank (industrial bank, land bank,
safe deposit company), or a private banker, or any other organization defined by law as a bank or
banking organization.
"Business association" means any corporation (other than a public corporation), joint-stock
company, investment company, business trust, partnership, limited liability company, cooperative, or
association for business purposes of two or more individuals whether or not for profit, including a
banking organization, financial organization, insurance company, or utility.
"Credit balance" means an item of intangible property resulting from or attributable to the sale of
goods or services, which includes, by way of illustration, an overpayment, credit memo, refund,
discount, rebate, unidentified remittance, or deposit.
"Domicile" means (i) the state of incorporation, in the case of a corporation incorporated under the
laws of a state, and (ii) the state of the principal place of business organization, in the case of a
person not incorporated an unincorporated business association formed under the laws of a state, (iii)
the state of the principal place of business, in the case of a nonnatural person not incorporated or
formed under the laws of a state, and (iv) the state of principal residency, in the case of a natural
person.
"Due diligence" shall include, but not be limited to, the mailing of a letter by first-class mail to
the last known address of the owner as indicated on the records of the holder.
"Financial organization" means any savings and loan association (cooperative bank), building and
loan association, or credit union.
"Gift certificate" means a certificate, electronic card or other medium that evidences the giving of
consideration in exchange for the right to redeem the certificate, electronic card or other medium for
goods, food, services, credit or money of an equal value.
"Holder" means a person, wherever organized or domiciled, who is (i) in possession of property
belonging to another, (ii) a trustee in case of a trust, or (iii) indebted to another on an obligation.
"Insurance company" means an association, corporation, fraternal or mutual benefit organization,
whether or not for profit, which is engaged in providing insurance coverage, including, by way of
illustration, accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health,
hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage,
surety, and wage protection insurance.
"Intangible property" includes, by way of illustration, (i) moneys, checks, drafts, deposits, interest,
dividend income; (ii) credit balances credits, customer overpayments, gift certificates, security
deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;
(iii) stocks and other intangible ownership interests in business associations; (iv) moneys deposited to
redeem stocks, bonds, coupons, and other securities, or to make distributions: (v) amounts due and payable under the terms of insurance policies: and (vi) amounts distributable from a trust or custodial fund established under a plan to provide any health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefit.

"Last known address" means a description of the location of the apparent owner sufficient to identify the state of residence of the apparent owner for the purpose of the delivery of mail.

"Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust, other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his legal representative.

"Payable" means the earliest date upon which the owner of property could become entitled to the payments, possession, delivery, or distribution of such property from a holder.

"Person" means an individual, business association, government or governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

"Promotional incentive" means a coupon, rebate or other promotional device offered to induce a consumer to purchase goods, food or services and for which (i) no direct consideration is given to the consumer or (ii) the consideration given is less than the value of the goods, food or services to be received.

"State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States.

"Unclaimed property" means property for which the owner, as shown by the records of the holder of his property, has ceased, failed or neglected, within the times provided in this chapter, to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property. This definition shall be construed as excluding any act of a holder of unclaimed property not done at the express request or authorization of the owner.

"Utility" means a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

§ 55-210.2:1. Property presumed abandoned; general rule.

All tangible and intangible property, including any income or increment thereon, less any lawful charges, that is held, issued or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned, except as otherwise provided by this chapter. Property is payable or distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.


Unless otherwise provided in this chapter or by other law of this Commonwealth, intangible property is subject to the custody of this Commonwealth as unclaimed property if the conditions leading to a presumption of abandonment as described in §§ 55-210.2:1, 55-210.3:01 and 55-210.3:2 through 55-210.10:2 are satisfied, and:

1. The last known address, as shown on the records of the holder, of the apparent owner is in this Commonwealth;

2. The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this Commonwealth;

3. The records of the holder do not reflect the last known address of the apparent owner, and it is established that (i) the last known address of the person entitled to the property is in this Commonwealth or (ii) the holder is a domiciliary or a government or governmental subdivision or agency of this Commonwealth and has not previously paid the property to the Commonwealth state of the last known address of the apparent owner or other person entitled to the property;

4. The last known address, as shown on the records of the holder, of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial
taking of the property or its escheat or unclaimed property law is not applicable to the property and
the holder is a domiciliary or a government or governmental subdivision or agency of this
Commonwealth:

5. The last known address, as shown on the records of the holder, of the apparent owner is in a
foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency
of this Commonwealth:

6. (i) The transaction out of which the property arose occurred in this Commonwealth, and the last
known address of the apparent owner or other person entitled to the property is unknown, or the last
known address of the apparent owner or other person entitled to the property is in a state that does
not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed
property law is not applicable to the property, and (ii) the holder is a domiciliary of a state that does
not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed
property law is not applicable to the property.

§ 55-210.3:01. Bank deposits and funds in financial organizations.

A. Any demand, savings, or matured time deposit with a banking or financial organization,
including deposits that are automatically renewable, and any funds paid toward the purchase of shares,
a mutual investment certificate, or any other interest in a banking or financial organization is
presumed abandoned unless the owner has, within five years:

1. In the case of a deposit or ownership of shares, increased or decreased the amount of the
deposit or the number of shares owned, or presented the passbook or other similar evidence of the
deposit or ownership of shares for the crediting of interest or dividends, or negotiated a check in
payment of interest or dividends on a time deposit or ownership of shares;

2. Communicated in writing with the banking or financial organization concerning the property;

3. Otherwise indicated an interest in the property as evidenced by a memorandum or other record
on file prepared by an employee of the banking or financial organization;

4. Owned other property to which subdivision A 1. A 2. or A 3 is applicable if the banking or
financial organization communicated in writing with the owner with regard to the property that would
otherwise be presumed abandoned under this paragraph at the address to which communications
regarding the other property regularly are sent;

5. Had another relationship with the banking or financial organization concerning which the owner
has (i) communicated in writing with the banking or financial organization, or (ii) otherwise indicated
an interest as evidenced by a memorandum or other record on file prepared by an employee of the
banking or financial organization if the banking or financial organization communicates in writing
with the owner with regard to the property that would otherwise be abandoned under this paragraph at
the address to which communications regarding the other relationship regularly are sent; or

6. A deposit made with or purchase of shares in a banking or financial organization by a court or
by a guardian pursuant to order of a court or by any other person for the benefit of a person who was
an infant at the time of the making of such deposit or purchase of shares, which deposit or ownership
of shares is subject to withdrawal or transfer only upon the further order of such court or such
guardian or other person, shall not be subject to the provisions of this chapter until one year after
such infant attains the age of eighteen years or until one year after the death of such infant, whichever
occurs sooner. These accounts are not subject to dormant service charges.

B. Notwithstanding any other provision of this section, share accounts of a member of a state or
federally chartered credit union that is subject to or covered by life savings insurance provided by the
credit union at no additional charge to the member shall be presumed abandoned five years after the
date of the second mailing of a statement of account or other notification or communication that was
returned as undeliverable, or after the date the credit union discontinued the mailings to the member,
whichever is earlier. Funds held or owing under the life savings insurance policy are presumed
abandoned pursuant to § 55-210.4:01.

C. For purposes of this section, "property" includes any interest or dividends thereon. No banking
or financial organization may deduct any service charge or cease to accrue interest on any account,
from the date the account is declared dormant or inactive by such organization except in conformity
with cessation of interest or service charges generally assessed upon active accounts. With respect to
any property described in this section, a holder may not impose any charges due to dormancy or
inactivity which differ from those imposed on active accounts or cease to pay interest unless:

1. There is an enforceable contract between the holder and the owner of the property pursuant to which the holder may impose those charges or cease payment of interest; and

2. For property in excess of fifty dollars $100, the holder, no more than three months prior to the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease; however, such notice need not be given with respect to charges imposed or interest ceased before July 1, 1984; and

3. When the holder imposes those charges or ceases payment of interest, it does not for any reason other than to correct a documented internal error reverse or cancel those charges or retroactively credit interest with respect to such property.

D. Any automatically renewable property to which this section applies is matured upon the expiration of its initial time period. However, in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicates consent as specified in subsection A of this section, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in § 55-210.14, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result. Notwithstanding any other provision of this section to the contrary, any automatically renewable time deposit that has matured shall be presumed abandoned five years after the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable, or after the date the holder discontinued the mailings to the apparent owner, whichever is earlier. However, any automatically renewable time deposit for which no such statement or other notification or mailing is required to be sent by the banking or financial organization shall be presumed abandoned as otherwise provided in this section.

§ 55-210.8. When intangible personal property held in fiduciary capacity presumed abandoned.

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within five years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with and prepared by the fiduciary or an employee of the fiduciary.

(a) through (d) [Repealed.]

Funds in an individual retirement account, a retirement plan for self-employed individuals or a similar account or plan established pursuant to the Internal Revenue laws of the United States are not payable or distributable within the meaning of this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless such person's agreement with the business association provides otherwise. A person who is so deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

§ 55-210.8:1. Gift certificates and credit memos.

A. Except as described in subsection B, a gift certificate or a credit memo balance issued in the ordinary course of the issuer's business that has remained unclaimed by the owner for more than three five years after becoming payable or distributable is presumed abandoned.

In the case of a gift certificate or a credit memo, the amount presumed abandoned is equal to the face value of the gift certificate or credit memo, less a fee of five dollars.

B. The following property is exempt from the provisions of this chapter and shall not be assessed by the administrator as unclaimed property: (i) credit balances payable to a business association, (ii) outstanding checks resulting from or attributable to the sale of goods or services to a business association, (iii) promotional incentives, and (iv) credits, gift certificates, coupons, layaways, and
similar items, provided such credits, gift certificates, coupons, layaways, and similar items are re redeemable in merchandise, in services, or through future purchases.

§ 55-210.9. When intangible property held for owner by public agency presumed abandoned.
All intangible property held for the owner by any government or governmental subdivision or agency, public corporation, or public authority that has remained unclaimed by the owner for more than one year after it became payable or distributable is presumed abandoned.

§ 55-210.9:1. Property held by courts.
All intangible property held for the owner by any state or federal court that has remained unclaimed by the owner for more than one year after it became payable or distributable is presumed abandoned.

§ 55-210.9:2. Responsibilities of general receiver and clerk.
The general receiver, if one has been appointed, and the clerk of each circuit court shall be responsible for identifying moneys held by them in their respective accounts which have remained unclaimed by the owner for more than one year after such moneys became payable or distributable and for petitioning the court to remit such money to the State Treasurer. There shall be no obligation to report or remit funds deposited as compensation and damages in condemnation proceedings pursuant to § 25-46.24 prior to a final court order or pursuant to § 33.1-120.

A. All employee benefit trust distributions and any income or other increment thereon are abandoned to this Commonwealth under the provisions of this chapter if the owner has not, within ten years after it becomes payable or distributable, accepted such distribution, corresponded in writing concerning such distribution, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary of the trust or custodial fund or administrator of the plan under which such trust or fund is established.

B. An employee benefit trust distribution and any income or other increment thereon shall not be presumed abandoned to this Commonwealth under the provisions of this chapter if, at the time such distribution shall become payable to a participant in an employee benefit plan, such plan contains a provision for forfeiture or expressly authorizes the trustee to declare a forfeiture of a distribution to a beneficiary thereof who cannot be found after a period of time specified in such plan, and the trust or fund established under the plan has not terminated prior to the date on which such distribution would become forfeitable in accordance with such provision.

§ 55-210.11. When certain property not presumed abandoned in this Commonwealth.
If specific property which is subject to the provisions of §§ 55-210.2:1, 55-210.3:01, 55-210.4:01, 55-210.6, 55-210.6:1, 55-210.7, 55-210.8, 55-210.10:1, and 55-210.10:2 is held for or owed or distributable payable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this Commonwealth and subject to this chapter if:
(a) It may be claimed as abandoned or escheated under the laws of such other state; and
(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable payable to an owner whose last known address is within this Commonwealth by a holder who is subject to the jurisdiction of this Commonwealth.

§ 55-210.12. Report and remittance to be made by holder of funds or property presumed abandoned; holder to exercise due diligence to locate owner.
A. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report and remit to the administrator with respect to the property as hereinafter provided.
B. The report shall be verified and shall include:
1. The name and social security or federal identification number, if known, and last known address, including ZIP code, if any, of each person appearing from the records of the holder to be the owner of any property of the value of fifty dollars $50 or more presumed abandoned under this chapter;
2. In case of unclaimed funds of insurance corporations, the full name of the insured or annuitant and any beneficiary, if known, and the last known address according to the insurance corporation's
3. In the case of the contents of a safe deposit box or other safekeeping repository or in the case
of other tangible property, a description of the property and the place where it is held and may be
inspected by the administrator, and any amounts owing to the holder.

4. The nature and identifying number, if any, or description of the property and the amount
appearing from the records to be due, except that items of value under fifty dollars $100 each may be
reported in aggregate:

5. The date when the property became payable, demandable, or returnable, and the date of the last
transaction with the owner with respect to the property; and

6. Other information which the administrator prescribes by rule as reasonably necessary for the
administration of this chapter.

C. If the person holding property presumed abandoned is a successor to other persons who
previously held the property for the owner, or if the holder has changed his name while holding the
property, he shall file with his report all prior known names and addresses of each holder of the
property.

D. The report and remittance shall be filed before November 1 of each year as of June 30 next
preceding, but the report and remittance of insurance corporations shall be filed before May 1 of each
year as of December 31 next preceding. When property is evidenced by certificate of ownership as set
forth in § 55-210.6:1, the holder shall deliver to the State Treasurer a duplicate of any such certificate
registered in the name "Treasurer of Virginia" or the Treasurer's designated nominee at the time of
report and remittance. The administrator may postpone the reporting and remittance date upon written
request by any person required to file a report.

E. If the holder of property presumed abandoned under this chapter knows the whereabouts of the
owner, the holder shall, before filing the annual report, communicate with the owner and take
necessary steps to prevent abandonment from being presumed. All holders shall exercise due
diligence, as defined in § 55-210.2, at least sixty days before the submission of the report to ascertain the whereabouts of the owner if (i) the holder has in its records
an address for the apparent owner which the holder's records do not disclose to be inaccurate and (ii)
the property has a value of fifty dollars $100 or more.

F. Verification, if made by a partnership, shall be executed by a partner; if made by an
unincorporated association or private corporation, by an officer; and if made by a public corporation,
by its chief fiscal officer.

G. The initial report and remittance filed under this chapter shall include all items of property that
would have been presumed abandoned if this chapter had been in effect during the ten-year period
preceding January 1, 1961.


A. The State Treasurer shall cause to be published notice of the report filed under subsection D of
§ 55-210.12 once each year in an English language newspaper of general circulation in the area in
which is located the last known address of any person to be named in the notice. If no address is
listed or if the address is outside of the Commonwealth, the notice shall be published in the area in
which the holder of the abandoned property has his principal place of business.

B. The published notice shall be entitled "Commonwealth of Virginia Unclaimed Property List"
and shall contain:

1. The names in alphabetical order and account numbers of persons listed in the report and entitled
to notice within the area as hereinbefore specified.

2. A statement that information concerning the amount or description of the property and the name
and address of the holder may be obtained by any persons possessing an interest in the property by
addressing an inquiry to the State Treasurer.

C. The administrator is not required to publish in such notice any item of less than fifty dollars
$100 unless he deems such publication to be in the public interest.

§ 55-210.17. Periods of limitation.

A. The expiration of any period of time specified by statute or court order, during which an action
or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of
property, shall not prevent the money or property from being presumed abandoned property, nor affect
any duty to file a report required by this chapter or to pay or deliver abandoned property to the State Treasurer.

B. Except as provided in subsection C of this section, an action or proceeding shall not be maintained by the administrator to enforce this chapter more than five years after the earlier of (i) the date on which the holder identified the property on a report filed with the administrator, (ii) the date on which the holder first filed a report with the administrator wherein the holder should have but failed to report the property, or (iii) the date on which the holder filed a report with the administrator giving reasonable notice to the administrator of a dispute regarding the property.

C. An action or proceeding shall not be maintained by the administrator to enforce this chapter with respect to any property more than ten years following the date on which such property first became reportable if the holder (i) filed a materially false or fraudulent report with the intent to evade delivery of property otherwise subject to this chapter or (ii) failed to file a report with the administrator.

§ 55-210.21. Consideration of and hearing on claim by State Treasurer; payment; interest.

A. The State Treasurer shall consider any claim for property held by the State Treasurer pursuant to the provisions of this chapter that is filed under this chapter and may hold a hearing and receive evidence concerning such claim. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

B. If the claim is allowed, the State Treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

C. The State Treasurer shall add interest at the rate of five percent or such lesser rate as the property earned while in the possession of the holder, compounded annually, to the amount of any claim paid to the owner, if the property claimed was interest-bearing to the owner while in the possession of the holder. Such interest shall begin to accumulate on the date the property is delivered to the State Treasurer and shall cease on the date on which payment is made to the owner. No interest shall be payable for any period prior to July 1, 1981.


Any person aggrieved by an act or decision of the State Treasurer as with respect to whose a claim for property held by the State Treasurer has failed to act within ninety days after the filing of the claim, pursuant to the provisions of this chapter may commence an action in the circuit or corporation court of the county or city wherein the property claimed is situated to establish his claim. The proceeding shall be brought within 90 days three years after the decision of the State Treasurer, or within 180 days three years from the filing of the claim if the State Treasurer fails to act.

§ 55-210.24. Requests for verified reports and examinations of records.

A. Except as otherwise provided in this chapter, the administrator may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.

B. Except as otherwise provided in this chapter, the administrator may at reasonable times and upon reasonable notice examine the records of any person to determine whether the person has complied with the provisions of this chapter. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this chapter. The administrator may examine all necessary records to determine the amount, if any, of property that would have been reportable or deliverable under this chapter for the ten years prior to the fiscal year end preceding the opening of the examination; provided, however, for any holder that has not previously filed any report under this chapter, the administrator may examine property presumed abandoned for report year 1985 and subsequent years.

C. If a holder fails to maintain the records required by § 55-210.24:1 and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the holder shall be required to report and pay such amounts as may reasonably be estimated from any available records.

D. The Treasurer may contract with a person who is not an employee of the Commonwealth to perform an audit or examination under this article; provided, however, with respect to any holder that is domiciled in the Commonwealth or that maintains its principal place of business in the
1 Commonwealth, no such contract shall (i) be on a contingency fee basis or (ii) permit statistical
2 estimation without the consent of the holder.
4 A. Every financial institution, banking organization and every business association with annual
5 sales of at least ten million dollars and all other holders holder required to file a report under
6 § 55-210.12. shall retain all books, records and documents necessary to establish the accuracy and
7 compliance of such report for five years after the report is filed pursuant to subsection B of
8 § 55-210.12. If no report is filed, the holder shall retain such books, records and documents for ten
9 years after the property becomes reportable, except to the extent that shorter time is provided in
10 accordance with the Virginia Public Records Act (§ 42.1-76 et seq.), or in subsection B of this section
11 or by rule of the administrator. As to any property for which it has obtained the last known address
12 of the owner, the holder shall maintain a record of the name and last known address of the owner for
13 the same ten-year retention period.
14 B. Any business association that sells in this Commonwealth its travelers checks, money orders, or
15 other similar written instruments, other than third-party bank checks on which the business association
16 is directly liable, or that provides such instruments to others for sale in this Commonwealth, shall
17 maintain a record of those instruments while they remain outstanding, indicating the state and date of
18 issue for three years after the date the property is reportable.
19 § 55-210.25. Enforcement of chapter.
20 The administrator may bring an action in a court of competent jurisdiction to enforce this chapter.
21 The administrator shall commence enforcement for compliance with the provisions of this chapter
22 within seven years, unless the holder has failed to file a report required under § 55-210.12 the period
23 specified in § 55-210.17. The holder may waive in writing the protection of this section.
24 § 55-210.26:1. Interest and penalties.
25 A. Any person who fails to pay or deliver property within the time prescribed by this chapter shall
26 be required to pay to the administrator interest at the same annual rate as is applicable to delinquent
27 taxes under § 58.1-1812 on the property or value thereof from the date the property should have been
28 paid or delivered. Such interest rate shall vary with the rate specified in § 58.1-1812.
29 B. Any person who does not exercise due diligence as defined in § 55-210.2 shall pay a civil
30 penalty not to exceed five fifty dollars for each account upon which due diligence was not performed.
31 C. Any person who refuses after written demand by the administrator to render any report and
32 remittance in accordance with this chapter within thirty days after such demand shall pay a civil
33 penalty equal to the lesser. Except as otherwise provided in subsection D, a holder who (i) fails to
34 report, pay or deliver property within the time prescribed by this chapter, (ii) files a false report, or
35 (iii) fails to perform other duties imposed by this chapter without good cause, shall pay to the
36 administrator, in addition to interest as provided in subsection A, a civil penalty of $100 for each day
37 the report and remittance, payment or delivery is withheld or an amount equal to the duty is not
38 performed, up to a maximum of the lesser of $10,000 or twenty-five percent of the value of the
39 property which that should have been paid or delivered but was not reported.
40 D. Any person A holder who refuses to perform any other duty as required under this chapter
41 within thirty days from the date of written demand by the administrator shall pay a civil penalty equal
42 to $100 for each day (i) willfully fails to report, pay or deliver property within the time prescribed
43 by this chapter, (ii) willfully fails to perform other duties imposed by this chapter without good cause,
44 or (iii) makes a fraudulent report to the administrator shall pay to the administrator, in addition to
45 interest as provided in subsection A, a civil penalty of $1,000 for each day the report, payment or
46 delivery is withheld or the duty is not performed, up to a maximum of the lesser of $50,000 or 100
47 percent of the value of the property that should have been but was not reported.
48 E. The State Treasurer administrator for good cause may waive all or a part of the interest and
49 penalties for good cause, in whole or in part, interest under subsection A and penalties under
50 subsections B, C, and D. All civil penalties shall be payable to the State Treasurer.
51 § 55-210.27. Determinations; appeal procedures; rules and regulations of State Treasurer.
52 A. The State Treasurer may make necessary rules and regulations to carry out the provisions of
53 this chapter.
54 B. If the State Treasurer ascertains that any person has failed to pay or deliver abandoned
property in accordance with the provisions of this chapter, he shall issue a written notice to such
person demanding remittance of the property and payment of any penalties and interest prescribed by
law. Every such notice shall be accompanied by a detailed explanation of the holder's right to secure
an administrative or judicial review. The abandoned property, together with penalties and interest, if
any, shall be remitted to the State Treasurer within ninety days from the date notice is received by the
holder unless the holder requests (i) an administrative review in accordance with regulations
promulgated pursuant to subsection C or (ii) a judicial review in accordance with § 55-210.22.

C. The State Treasurer shall promulgate regulations pursuant to which any person (i) asserting
ownership of property remitted to the Commonwealth under this chapter, (ii) required to pay or
deliver abandoned property pursuant to this chapter, or (iii) otherwise aggrieved by a decision of the
administrator, may file an application for administrative appeal and correction of the administrator's
determination.

D. On receipt of the application as provided in regulations promulgated pursuant to subsection C,
or if regulations promulgated thereunder are not in effect, on receipt of an application requesting an
administrative review by the State Treasurer, the administrator shall suspend collection activity until a
final determination is issued by the State Treasurer, unless the administrator determines that
collection would be jeopardized by delay. Interest shall continue to accrue in accordance with the
provisions of § 55-210.26:1, but no further penalty shall be imposed while collection activity is
suspended. The term "jeopardized by delay" means a finding that the applicant intends to undertake a
wrongful act with the intent to prejudice, or to render ineffectual, future proceedings to enforce this
chapter.

E. If the State Treasurer is satisfied, by evidence submitted or otherwise, that there has been an
erroneous or improper demand for the remittance of property, the State Treasurer shall order that the
applicant be exonerated from the remittance of so much as is erroneously or improperly demanded, if
not already collected, and, if collected, that it be returned or refunded to the applicant. The State
Treasurer shall refrain from collecting a contested charge until he has made a final determination
under this section unless he determines that collection may be jeopardized by delay. The term
"jeopardized by delay" shall have the meaning set forth in subsection D.

F. Except as otherwise provided in regulations promulgated pursuant to subsection C, the State
Treasurer shall issue a written determination to the applicant within ninety days of receipt of an
application for correction, unless the applicant and the administrator are notified that a longer period
will be required. All determinations of the State Treasurer shall include a written finding of fact and
supporting law, and all such determinations shall be publicly reported.

G. Following a determination by the State Treasurer, either the applicant or the administrator may
apply (i) in the case of a claim for property by a purported owner, to the appropriate circuit court
pursuant to § 55-210.22 and (ii) in the case of a dispute between a holder and the State Treasurer, to
the Circuit Court for the City of Richmond, within the time period established in § 55-210.22.