

ILLINOIS REGISTER

OFFICE OF THE TREASURER

NOTICE OF PROPOSED RULES

1) Heading of the Part: Revised Uniform Unclaimed Property Act

2) Code Citation: 74 Ill. Adm. Code 760

3) Section Numbers: Proposed Actions:

760.100	New Section
760.200	New Section
760.210	New Section
760.215	New Section
760.220	New Section
760.230	New Section
760.240	New Section
760.250	New Section
760.260	New Section
760.270	New Section
760.280	New Section
760.290	New Section
760.300	New Section
760.310	New Section
760.400	New Section
760.410	New Section
760.420	New Section
760.430	New Section
760.440	New Section
760.450	New Section
760.460	New Section
760.470	New Section
760.500	New Section
760.510	New Section
760.520	New Section
760.530	New Section
760.540	New Section
760.550	New Section
760.560	New Section
760.570	New Section
760.600	New Section
760.610	New Section
760.620	New Section
760.630	New Section
760.640	New Section

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760.650	New Section
760.660	New Section
760.670	New Section
760.680	New Section
760.690	New Section
760.700	New Section
760.710	New Section
760.720	New Section
760.730	New Section
760.740	New Section
760.750	New Section
760.760	New Section
760.770	New Section
760.780	New Section
760.790	New Section
760.800	New Section
760.810	New Section
760.820	New Section
760.830	New Section
760.840	New Section
760.850	New Section
760.900	New Section
760.910	New Section
760.920	New Section
760.930	New Section
760.940	New Section
760.950	New Section
760.960	New Section
760.970	New Section
760.980	New Section
760.1000	New Section
760.1010	New Section
760.1100	New Section
760.APPENDIX A	New Section

4) Statutory Authority: Implementing and authorized by the Revised Uniform Unclaimed Property Act [765 ILCS 1026].

5) A Complete Description of the Subjects and Issues Involved: In 2017, the General Assembly adopted the Revised Uniform Unclaimed Property Act (RUUPA), which was

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based on the 2016 Uniform Law Commission (ULC) Act, and repealed the existing Uniform Disposition of Unclaimed Property Act (765 ILCS 1025), which was based on the 1954 ULC Act. These proposed rules implement the Illinois Revised Uniform Unclaimed Property Act (765 ILCS 1026) as adopted by the General Assembly through Public Acts 100-22 and 100-566.

The proposed rules include a definition section (Subpart A), which restates many of the statutory definitions, with appropriate clarification, and adds new definitions for terms that are used within the rules.

Subpart B provides clarity and guidance in determining when different types of properties are presumed abandoned and how they should be reported, including tax-deferred accounts, safe deposit boxes, stored value cards, gift cards, merchandise credits, and securities. The rules also provide details on what actions do and do not qualify as apparent owner interest sufficient to rebut a statutory presumption of abandonment.

Subpart C provides specific instructions for reporting and remitting unclaimed property to the State Treasurer, including how and when to file reports, how to report early or request an extension, and deadlines for refileing a rejected report. The due diligence process, required before filing a report, along with statutory records retention requirements are also explained in Subpart C.

Subpart D specifies the various methods that the State Treasurer will utilize in trying to locate and notify apparent owners of unclaimed property in the custody of the State, including notice by US mail, e-mail, and newspaper and website publications.

Subpart E explains the process of claiming unclaimed property from the State Treasurer, including the burden of proof required to claim property, an expedited process for claims of property of less than \$500, and the use of tax return information to locate apparent owners and return unclaimed property to them. Subpart E also explain how interest payments on certain types of properties will be calculated.

Subpart F provides guidance and protections for persons subject to unclaimed property examinations pursuant to the Act, including detailed requirements for the hiring and use of contract auditors by the State Treasurer, guidelines for the conduct of examinations, limits on the use of estimation in examinations, audit resolution agreements and a voluntary disclosure program. This subpart also provide clarity concerning which entities are to be examined by the Illinois Department of Financial and Professional Regulation instead of the State Treasurer.

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Subpart G details the State Treasurer's enforcement authority and the system of voluntary reporting under RUUPA, details the process for issuing and seeking to enforce administrative subpoenas as authorized by RUUPA, explains the State Treasurer's interpretation of when interest and penalties shall and may be imposed, provides for requesting the assistance of the Attorney General in seeking judicial enforcement of RUUPA in Illinois or another State, and explains the statute of limitations.

Public Act 100-22 provided an explicit statutory exemption from the Freedom of Information Act (FOIA) for some records and information obtained pursuant to RUUPA. Subpart H authorizes the State Treasurer's Freedom of Information Officer to deny requests for those records. In addition, the proposed rules make it clear that auditors are restricted in their use of such confidential information.

Subpart I addresses issues related to the transition to RUUPA, including explaining the look-back period, as well as waivers of interest and penalties, for certain property reported pursuant to the transition provision of RUUPA.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: Revised Uniform Unclaimed Property Act, National Conference of Commissioners on Uniform State Laws, 1995; and the National Association of State Treasurers (NAUPA) Standard Electronic File Format, <https://www.unclaimed.org/reporting/naupa-standard-electronic-file-format/>, September 2013.
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes. A variety of federal laws and regulations, as well as standards developed by independent nationally recognized associations have been incorporated and are available for public inspection at:

Office of the Treasurer
219 State House
Springfield, IL 62706

Fax: (217) 785-2777
- 10) Are there any other proposed rulemakings pending on this Part? No

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- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: The Treasurer's Office will hold a public hearing on this proposed rulemaking at the date and time listed below. Further details and the hearing agenda may be found on the Treasurer's website at: www.illinoistreasurer.gov.

Public Hearing:
Thursday, October 18, 2018
2:00 PM – 4:00 PM
Stratton Office Building, Room C-1
401 S. Spring Street
Springfield, IL 62704

Written comments on this proposed rulemaking may be submitted for a period of 45 days following publication of this Notice. Comments should be submitted to:

Sara Meek
Deputy Director of Legislative Affairs
Illinois State Treasurer
219 State House
Springfield, Illinois 62706

Telephone: 217/524-0530
FAX: 217/785-2777
E-Mail: SMEEK@illinoistreasurer.gov

The Department will consider fully all comments on this proposed rulemaking submitted during the 45-day comment period. Comments submitted by small businesses should be identified as such.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: Any small businesses, financial organizations, insurance companies, local municipalities, and non-profit entities in the State of Illinois that are obligated to hold, deliver, or pay property to a property owner will be affected by Public Act 100-022 and this subsequent rulemaking.

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- B) Reporting, bookkeeping or other procedures required for compliance: Those necessary for regulatory compliance.
 - C) Types of Professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2018

The full text of the Proposed Rules begins on the next page:

TITLE 74: PUBLIC FINANCE
CHAPTER V: TREASURER

PART 760
REVISED UNIFORM UNCLAIMED PROPERTY ACT

SUBPART A: DEFINITIONS

Section
760.100 Definitions

SUBPART B: PRESUMPTION OF ABANDONMENT

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760.210 Safe Deposit Boxes
760.215 Deposits with Financial Organizations
760.220 Stored Value Cards
760.230 Gift Cards
760.240 Payroll Cards
760.250 Merchandise Credits
760.260 Loyalty Cards
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760.280 Reporting Securities
760.290 Deceased Owner
760.300 Apparent Owner Interest
760.310 Anti-Limitations Provision

SUBPART C: REPORTING

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760.460	Due Diligence Notice by Holder
760.470	Retention of Records by Holder

SUBPART D: NOTICE TO APPARENT OWNERS BY THE ADMINISTRATOR

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760.650	Finders
760.660	Property Subject to Recovery by Another State
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760.680	Holder Reimbursement
760.690	Securities Sale and Claims

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760.770	Confidentiality Agreement
760.780	Evidence of Unpaid Debt or Undischarged Obligation
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760.800	Multistate Examinations
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760.840	Voluntary Disclosure Agreement Program
760.850	Examination of State-Regulated Financial Organizations

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760.910	Verified Report of Property
760.920	Administrative Subpoenas
760.930	Determination of Liability
760.940	Interest and Penalties
760.950	Waiver of Interest and Penalties
760.960	Judicial Enforcement
760.970	Action Involving Another State or Foreign Country
760.980	Periods of Limitation and Repose

SUBPART H: CONFIDENTIALITY

760.1000	Confidentiality
760.1010	Confidentiality of Records Obtained During Examination

SUBPART I: MISCELLANEOUS

760.1100	Transition Provisions
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760.APPENDIX A	Background Information
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AUTHORITY: Implementing and authorized by the Revised Uniform Unclaimed Property Act [765 ILCS 1026].

SOURCE: Filed November 20, 1977; emergency amendment at 3 Ill. Reg. 39, p. 225, effective September 14, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 48, p. 153, effective November 20, 1979; rules repealed, new rules adopted and codified at 8 Ill. Reg. 1464, effective

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January 18, 1984; amended at 15 Ill. Reg. 8555, effective May 24, 1991; amended at 17 Ill. Reg. 123, effective December 21, 1992; emergency amendment at 17 Ill. Reg. 6321, effective April 6, 1993; amended at 17 Ill. Reg. 9893, effective June 21, 1993; amended at 18 Ill. Reg. 18001, effective December 12, 1994; amended at 20 Ill. Reg. 8325, effective June 8, 1996; recodified from the Department of Financial Institutions (38 Ill. Adm. Code 180) to the State Treasurer, pursuant to PA 91-16, at 26 Ill. Reg. 8164; emergency amendment at 28 Ill. Reg. 13919, effective October 5, 2004, for a maximum of 150 days; emergency expired March 3, 2005; amended at 36 Ill. Reg. 12162, effective July 12, 2012; amended at 37 Ill. Reg. 5886, effective April 18, 2013; amended at 40 Ill. Reg. 16804, effective December 19, 2016; old Part repealed at 42 Ill. Reg. _____ and new Part adopted at 42 Ill. Reg. _____, effective _____.

SUBPART A: DEFINITIONS

Section 760.100 Definitions

"Act" or "Revised Act" means the Revised Uniform Unclaimed Property Act [765 ILCS 1026].

"Administrator" means the State Treasurer.

"Administrator's Agent" or "Auditor" means a person with whom the administrator contracts to conduct an examination under Article 10 of the Act on behalf of the administrator. The term includes an independent contractor of the person and each individual participating in the examination on behalf of the person or contractor.

"Apparent Owner" means a person whose name appears on the records of a holder as the owner of property held, issued or owing by the holder.

"Business Association" means a corporation, joint stock company, investment company, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, federally chartered entity, utility, sole proprietorship, or other business entity, whether or not for profit.

"Confidential Information" means information that is "personal information" under the Personal Information Protection Act [815 ILCS 530/5], "private information" under the Freedom of Information Act [5 ILCS 140/2(c-5)], or personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the

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disclosure is consented to in writing by the individual subjects of the information as provided in the Freedom of Information Act [5 ILCS 140/7(1)(c)].

"Domicile" means:

for a corporation, the state of its incorporation;

for a business association whose formation requires a filing with a state, other than a corporation, the state of its filing;

for a federally chartered entity or an investment company registered under the Investment Company Act of 1940 (15 USC 80a-1 through 80a-63), the state of its home office; and

for any other holder, the state of its principal place of business.

"DOR" means the Illinois Department of Revenue.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic Mail" or "E-mail" means a communication by electronic means that is automatically retained and stored and may be readily accessed or retrieved.

"Escheat Fee" means any charge imposed solely by virtue of property being reported as presumed abandoned.

"Financial Organization" means a bank, savings bank, foreign bank, corporate fiduciary, currency exchange, money transmitter, or credit union.

"Former Act" means the Uniform Disposition of Unclaimed Property Act [765 ILCS 1025], repealed effective January 1, 2018.

"Game-Related Digital Content" means digital content that exists only in an electronic game or electronic game platform. The term includes:

game-play currency such as a virtual wallet, even if denominated in United States currency;

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the following, if for use or redemption only within the game or platform or another electronic game or electronic game platform:

points sometimes referred to as gems, tokens, gold and similar names; and

digital codes; and

does not include an item that the issuer:

permits to be redeemed for use outside a game or platform for money or goods/services that have more than minimal value; or

otherwise monetizes for use outside a game or platform.

"Gift Card" means a record evidencing a promise made for consideration by the seller or issuer of the record that goods, services or money will be provided to the owner of the record to the value or amount shown in the record that is either:

a record:

issued on a prepaid basis primarily for personal, family or household purposes to a consumer in a specified amount;

the value of which does not expire;

that is not subject to a dormancy, inactivity or post-sale service fee;

that is redeemable upon presentation for goods or services; and

that, unless required by law, may not be redeemed for or converted into money or otherwise monetized by the issuer; or

a prepaid commercial mobile radio service, as defined in 47 CFR 20.3.

"Holder" means a person obligated to hold for the account of, or to deliver or pay to, the owner, property subject to the Act.

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"Insurance Company" means an association, corporation or fraternal or mutual-benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities or insurance, including accident, burial, casualty, credit-life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

"Loyalty Card" means a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate, or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services. The term does not include a record that may be redeemed for money or otherwise monetized by the issuer.

"Merchandise Credit" means in-store credit for returned merchandise redeemable for merchandise, goods or services upon presentation at a single merchant or an affiliated group of merchants.

"Mineral" means gas, oil, coal, oil shale, other gaseous liquid or solid hydrocarbon, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resources, and any other substance defined as a mineral by other law of this State.

"Mineral Proceeds" means an amount payable for extraction, production, or sale of minerals, or, on the abandonment of the amount, an amount that becomes payable after abandonment. The term includes an amount payable:

for the acquisition and retention of a mineral lease, including a bonus, royalty, compensatory royalty, shut-in royalty, minimum royalty, and delay rental;

for the extraction, production or sale of minerals, including a net revenue interest, royalty, overriding royalty, extraction payment, and production payment; and

under an agreement or option, including a joint-operating agreement, unit agreement, pooling agreement, and farm-out agreement.

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"Money Order" means a payment order for a specified amount of money. The term includes an express money order and a personal money order on which the remitter is the purchaser.

"Municipal Bond" means a bond or evidence of indebtedness issued by a municipality or other political subdivision of a state.

"Net Card Value" means the original purchase price or original issued value of a stored-value card, plus amounts added to the original price or value, minus amounts used and any service charge, fee, or dormancy charge permitted by law.

"Non-Freely Transferable Security" means a security that cannot be delivered to the administrator by the Depository Trust Clearing Corporation or similar custodian of securities providing post-trade clearing and settlement services to financial markets or cannot be delivered because there is no agent to effect transfer. The term includes a worthless security.

"Owner", unless the context otherwise requires, means a person that has a legal, beneficial, or equitable interest in property subject to the Act or the person's legal representative when acting on behalf of the owner. The term includes:

a depositor, for a deposit;

a beneficiary, for a trust other than a deposit in trust;

a creditor, claimant or payee, for other property; and

the lawful bearer of a record that may be used to obtain money, a reward, or a thing of value.

"Payroll Card" means a record that evidences a payroll-card account as defined in 12 CFR 1005 (Regulation E).

"Payroll-Card Account" is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.

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"Person" means an individual, estate, business association, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity, whether or not for profit.

"Property" means tangible property described in Section 15-201 of the Act or a fixed and certain interest in intangible property held, issued, or owed in the course of a holder's business or by a government, governmental subdivision, agency or instrumentality. The term:

includes all income from or increments to the property;

includes property referred to as or evidenced by:

money, virtual currency, interest, or a dividend, check, draft, deposit or payroll card;

a credit balance, customer's overpayment, stored-value card, security deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, mineral proceeds, or unidentified remittance;

a security except for:

a worthless security; or

a security that is subject to a lien, legal hold, or restriction evidenced on the records of the holder or imposed by operation of law, if the lien, legal hold, or restriction restricts the holder's or owner's ability to receive, transfer, sell, or otherwise negotiate the security;

a bond, debenture, note, or other evidence of indebtedness;

money deposited to redeem a security, make a distribution, or pay a dividend;

an amount due and payable under an annuity contract or insurance policy;

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an amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profitsharing, employee savings, supplemental unemployment insurance, or a similar benefit; and

any instrument on which a financial organization or business association is directly liable; and

does not include:

game related digital content;

a loyalty card; or

a gift card.

"Putative Holder" means a person believed by the administrator to be a holder, until the person pays or delivers to the administrator property subject to the Act, or the administrator or a court makes a final determination that the person is or is not a holder.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Records of the Holder" includes records maintained by a third party which has contracted with the holder.

"Security" means:

a security as defined in Article 8 of the Uniform Commercial Code [810 ILCS 5/8-102];

a security entitlement as defined in Article 8 of the Uniform Commercial Code, including a customer security account held by a registered broker-dealer, to the extent the financial assets held in the security account are not:

registered on the books of the issuer in the name of the person for which the broker-dealer holds the assets;

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payable to the order of the person; or

specifically indorsed to the person; or

an equity interest in a business association not included in the above paragraph.

"Sign" means, with present intent to authenticate or adopt a record:

to execute or adopt a tangible symbol; or

to attach to or logically associate with the record an electronic symbol, sound or process.

"State", when not limited to the State of Illinois, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. When capitalized, the term "State" means the State of Illinois.

"State Treasurer" means the duly elected Treasurer of the State of Illinois.

"Stored-Value Card" means a card, code, or other device that is:

issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded in exchange for payment; and

redeemable upon presentation at multiple unaffiliated merchants for goods or services or usable at automated teller machines;

Stored value card does not include a gift card, payroll card, loyalty card, or game related digital content.

"Utility" means a person that owns or operates for public use a plant, equipment, real property, franchise, or license for the following public services:

transmission of communications or information;

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production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam or gas; or

provision of sewage or septic services, or trash, garbage or recycling disposal.

"Virtual Currency" means a digital representation of value used as a medium of exchange, unit of account, or store of value that does not have legal tender status recognized by the United States. The term does not include:

the software or protocols governing the transfer of the digital representation of value;

game related digital content; or

a loyalty card or gift card.

"Worthless Security" means a security whose cost of liquidation and delivery to the administrator would exceed the value of the security on the date a report is due under the Act. [765 ILCS 1026/15-102]

SUBPART B: PRESUMPTION OF ABANDONMENT

Section 760.200 Tax-Deferred Accounts

- a) Sections 15-202 and 15-203 of the Act indicate when "tax deferred" accounts are presumptively abandoned. Section 15-202 prescribes the rules for tax deferred retirement accounts and Section 15-203 prescribes the rules for other tax deferred accounts. These rules for tax deferred accounts generally have longer periods of abandonment than accounts covered by Section 15-201 of the Act.
- b) A retirement account that is tax advantaged under the income tax laws of the United States will generally be considered tax deferred under the Act. A Roth IRA is considered tax deferred under the Act and the rules under Section 15-202 apply to a Roth IRA.
- c) In some cases, federal law, specifically ERISA (29 USC 1001 et seq.), may preempt the Act and prevent reporting and remitting retirement accounts or other property representing a retirement plan asset that would otherwise be reportable under the Act. Concerning ERISA preemption and unclaimed property statutes,

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see Commonwealth Edison Co. v. Vega, 174 F.3d 870 (7th Cir. 1999). Nonqualified, government and church plans are not subject to an ERISA preemption, nor are uncashed plan distribution checks issued by a qualified plan that lacks, or has failed to exercise, a forfeiture or other reversionary interest.

- d) If a holder is uncertain whether an account qualifies as tax deferred under the Act (i.e., whether the account is covered by Section 15-201 or by Sections 15-202 and 15-203), whether ERISA preempts the Act for a retirement account, or whether an account is covered by Section 15-202 or Section 15-203, the holder may specifically identify the property in a report filed with the administrator or give express notice to the administrator of a potential dispute regarding the property. Specifically identifying the property in a report or providing express notice to the administrator both ensures that the property will be covered by the limitations period of Section 15-610 of the Act and demonstrates that the holder is attempting to comply with the Act in good faith and without negligence. Specifically identifying the property in a report filed with the administrator indicating that the property is not being remitted because of ERISA preemption allows a holder to satisfy both their fiduciary obligation under ERISA, which would generally prohibit remitting the property to the administrator, and any obligation under the Act.
- e) Pursuant to Section 15-405 of the Act (property reportable and payable or deliverable absent owner demand provision) and Section 15-610(a) of the Act (anti-limitations provision) a nonqualified plan or plan not otherwise subject to preemption under ERISA is prohibited from forfeiting an account or other property.
- f) The administrator will accept missing participants' account balances reported and remitted by an ERISA plan fiduciary for a terminated defined contribution plan. See United States Department of Labor Field Assistance Bulletin No. 2014-01, available at www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins, which indicates that despite the ERISA preemption for ongoing plans a plan fiduciary may report and remit "missing participants' account balances under a state's unclaimed property statute to complete the plan termination process."

Section 760.210 Safe Deposit Boxes

- a) *Safe deposit boxes with contents that have remained unclaimed for 5 years after expiration of the lease or rental period are presumed abandoned.* [765 ILCS

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1026/15-205] Presumptively abandoned boxes shall be opened and inventoried in the presence of at least two employees of the holder who shall verify the accuracy of the inventory. The property shall then be sealed for safekeeping until delivered to the owner or the administrator.

- b) The Annual Report containing information about the contents of safe deposit boxes must be filed before November 1, for financial organizations, and before May 1, for all other business associations, in the year in which the report is due. The Annual Report is to be submitted online. If a holder provides safe deposit boxes, then the Annual Report must be completed in its entirety, verified for accuracy, and filed regardless of whether a holder has abandoned safe deposit boxes to report. A “negative report” indicating no safe deposit box contents are being reported and remitted serves as a control to assist in detecting and preventing fraud or theft.
- c) Notice to the apparent owner must be given prior to remittance to the administrator.
 - 1) *The holder of property presumed abandoned shall send to the apparent owner notice by first-class United States mail that complies with Section 15-502 of the Act in a format acceptable to the administrator not more than one year nor less than 60 days before filing the Annual Report under Section 15-401 of the Act if:*
 - A) *the holder has in its records an address for the apparent owner that the holder's records do not disclose to be invalid and is sufficient to direct the delivery of first-class United States mail to the apparent owner; and*
 - B) *the value of the property is \$50 or more.*
 - 2) *If an apparent owner has consented to receive electronic-mail delivery from the holder, the holder shall send the notice both by first-class United States mail to the apparent owner's last-known mailing address and by electronic mail, unless the holder believes that the apparent owner's electronic-mail address is invalid. [765 ILCS 1026/15-501]*
- d) *Tangible property from a safe deposit box may not be delivered to the administrator until a mutually agreed upon date that is no sooner than 60 days after filing the Annual Report. [765 ILCS 1026/15-603(b)]*

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- 1) All safe deposit box shipments shall include a full copy of the previously submitted Annual Report. The Annual Report shall list all properties included and an inventory of each property.
 - 2) Each property shall be provided in a tamper evident bag or envelope. An inventory sheet for each specific property shall be attached to or enclosed in the bag or envelope.
 - 3) When remitting multiple properties at the same time, each property shall be in a separate tamper evident bag or envelope and labeled with the name of the owner. If a single property requires the use of more than one bag/envelope, the bags/envelopes are to be numbered accordingly (i.e., 1 of 3, 2 of 3, etc.).
- e) Reimbursement of Holder
- 1) *Property removed from a safe-deposit box and delivered to the administrator under the Act is subject to the holder's right to reimbursement for the cost of opening the box and a lien or contract providing reimbursement to the holder for unpaid rent charges for the box. Upon application by the holder, and after there are sufficient cash funds available either from the contents of the box or the sale of the property, the administrator shall reimburse the holder from the proceeds.* [765 ILCS 1026/15-606]
 - 2) Holders may only be reimbursed for any costs and charges that were included in the Annual Report listing the contents of the safe deposit box whose owner owes the costs and charges to the holder.
 - 3) It is the responsibility of the holder to apply for reimbursement of costs and charges under Section 15-606 of the Act. The administrator shall make available on the administrator's website a form for holders to apply for reimbursement under Section 15-606 of the Act.
 - 4) If, after the sale of property removed from a safe deposit box and delivered to the administrator, there are not sufficient cash funds available to fully reimburse the holder for costs and charges allowed under Section 15-606 of the Act, the holder may apply to the administrator to be partially reimbursed up to the amount of cash funds available. If, however, the

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administrator pays all available cash funds to the holder under this subsection (e), the holder may not claim any additional costs and charges from the same safe deposit box.

Section 760.215 Deposits with Financial Organizations

- a) Demand, savings, or time deposits. A demand, savings, or time deposit, unless it is automatically renewable, is presumed abandoned *3 years after the later of maturity or the date of the last indication of interest in the property by the apparent owner.* [765 ILCS 1026/15-201(6)]
- b) Automatically renewable deposits.
 - 1) General rule. *A deposit that is automatically renewable is presumed abandoned 3 years after its initial date of maturity.* [765 ILCS 1026/15-201(6)]
 - 2) Anti-penalty provision. *If property in a report under Section 15-401 of the Act is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result from paying the deposit to the administrator at the time of the report, the date for payment of the property to the administrator is extended until a penalty or forfeiture no longer would result from payment, if the holder informs the administrator of the extended date.* [765 ILCS 1025/15-206(b)]
 - 3) Under the Act when a holder is required to remit a presumptively abandoned automatically renewable deposit to the administrator is dependent upon both the term of the deposit and whether there is a penalty or forfeiture of interest provision applicable to such an automatically renewable deposit.
 - 4) If it does not have a penalty or forfeiture of interest provision, then a presumptively abandoned automatically renewable deposit should be remitted to the administrator with the holder's first report after the initial term of the deposit plus three years.
 - 5) When a holder is required to remit a presumptively abandoned automatically renewable deposit with a penalty or forfeiture of interest provision depends upon the term of such deposit:

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- A) A presumptively abandoned automatically renewable deposit with a term of less than one year should be remitted to the administrator in the holder's first report after the initial term plus 3 years.

EXAMPLE: a 6-month certificate of deposit would be remitted with the holder's first report after 4 years have passed. This would be the initial 6-month term plus the 6 additional 6-month terms that comprise the 3-year period of abandonment and then the time, which should be less than a year, until the holder's next report is due under the Act.

- B) A presumptively abandoned automatically renewable deposit with a term of less than 3 years, but more than one year, should be remitted to the administrator with the holder's first report after the initial term plus 3 years plus any time needed to avoid a penalty.

EXAMPLE: a 2-year certificate of deposit would be remitted with the holder's first report after 6 years have passed. This would be the initial 2-year term plus the 3-year period of abandonment plus the final year of the third 2-year term so as to avoid the penalty (i.e. the first report after three 2-year terms).

- C) A presumptively abandoned automatically renewable deposit with a term of 3 years or more should be remitted to the administrator with the holder's first report after the end of the second term of such deposit.

EXAMPLE: a 5-year certificate of deposit would be remitted with the holder's first report after 10 years have passed. After the first 5-year term, the end of the 3-year period of abandonment falls within the second 5-year term. So, to avoid any penalty the certificate of deposit is remitted with the holder's first report after the end of the second 5-year term.

Section 760.220 Stored Value Cards

- a) Stored Value Cards
- 1) Unless otherwise exempted by the Act or this Part, the net card value of a stored value card is required to be reported and remitted under the Act as

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property that is presumed abandoned pursuant to Section 15-206 of the Act.

- 2) In determining whether property falls within the definition of stored value card under the Act, the State Treasurer will consider the federal regulations concerning gift cards and gift certificates and official staff interpretations issued by the Board of Governors of the Federal Reserve System as part of what is commonly known as "Regulation E" (12 CFR 1005) on December 27, 2011. A stored value card will, in most cases, be a "general-use prepaid card" under those federal regulations. The use of those federal regulations and interpretations by the State Treasurer is intended to harmonize definitions and concepts used by state and federal regulators to make compliance easier for affected businesses.
- 3) Property that satisfies the definition of payroll card, merchandise credit, or gift card is not a stored value card.
- 4) If a holder has reported and remitted to the administrator the net card value on a stored-value card presumed abandoned under the Act and the stored-value card does not have an expiration date, then the holder must honor the card on presentation indefinitely and may then request reimbursement from the administrator under Section 15-605 of the Act.
 - A) This provision is required for the Act to avoid preemption by federal law.
 - B) See Notice of preemption determination "Electronic Fund Transfers; Determination of Effect on State Laws (Maine and Tennessee)" (Docket No. CFPB-2012-0036) issued by the federal Bureau of Consumer Financial Protection holding that Maine's unclaimed property law was not preempted by federal law because it contained an indefinite presentation provision, but Tennessee's unclaimed property law, which did not contain an indefinite presentation provision, was preempted by federal law.

Section 760.230 Gift Cards

- a) Gift cards as defined in the Act are exempt from being reported and remitted as property that is presumed abandoned. Gift cards are excluded from the definition of property in the Act (see 765 ILCS 1026/15-102(24)(C)(iii)).

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- b) If property does not satisfy all the parts of the definition of gift card under the Act, then it does not qualify for the gift card exemption.
- c) Property that does not qualify as a gift card includes, but is not limited to, property that:
 - 1) has an expiration date;
 - 2) is subject to a dormancy, inactivity, or post-sale service fee; or,
 - 3) may be redeemed for money, including at automated teller machines.

Section 760.240 Payroll Cards

- a) Amounts held on payroll cards are presumed abandoned one year after the amount becomes payable under Section 15-201(13) of the Act.
- b) Because payroll cards are not stored value cards, this one year period of abandonment applies to payroll cards instead of the 5-year period of abandonment for stored value cards under Section 15-206 of the Act.

Section 760.250 Merchandise Credits

- a) Merchandise credits are exempt from being reported and remitted under the Act pursuant to Section 15-201(7) of the Act.
- b) This exemption includes, but is not limited to, a stored value card that is given as in-store credit for returned merchandise.
- c) However, the exemption for merchandise credits does not include stored value cards that:
 - 1) are redeemable at multiple, unaffiliated merchants; or
 - 2) may be redeemed for or converted into money or otherwise monetized by the issuer.

Section 760.260 Loyalty Cards

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A loyalty card as defined in the Act is not a stored value card and is exempt from being reported and remitted.

Section 760.270 Property Related to Preneed Death Care Contracts

- a) Illinois Funeral or Burial Funds Act [225 ILCS 45]
 - 1) Funds on deposit or held in trust pursuant to the Illinois Funeral or Burial Funds Act are covered under the Act pursuant to Section 15-201(9).
 - 2) Proceeds of a life insurance policy or annuity contract, even if used to fund a pre-need contract pursuant to the Illinois Funeral or Burial Funds Act, are covered under the Act pursuant to Sections 15-201(8) and 15-211.
 - 3) The relevant provisions of Section 4 of the Illinois Funeral or Burial Funds Act determine the amount to be reported and remitted as unclaimed property under the Act.
 - A) *If, after the death of the beneficiary, no funeral merchandise or services are provided or if the funeral is conducted by another provider, the seller may keep no more than 10% of the payments made under the pre-need contract or \$300, whichever sum is less. The remainder of the trust funds or insurance or annuity proceeds shall be forwarded to the legal heirs of the deceased beneficiary or as determined by probate action. [225 ILCS 45/4(c-5)]* If the legal heirs of the deceased beneficiary cannot be located and there is not an active probate action, the remainder of trust funds should be reported and remitted as unclaimed property pursuant to Section 15-201(9) of the Act and insurance or annuity proceeds should be reported and remitted pursuant to Sections 15-201(8) and 15-211 of the Act.
 - B) Refunds provided pursuant to Section 4 of the Illinois Funeral or Burial Funds Act may become unclaimed property as the debt of a business association under Section 15-201(5) of the Act.
 - 4) If a pre-need contract requires entrustment under both the Illinois Funeral or Burial Funds Act and the Illinois Pre-Need Cemetery Sales Act [815 ILCS 390] and the only item that requires entrustment under the Illinois Pre-Need Cemetery Sales Act is an outer burial container, then for the

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purposes of determining a presumption of abandonment under the Act all amounts entrusted under such pre-need contract shall be treated as though they were entrusted under the Illinois Funeral or Burial Funds Act.

- b) Illinois Pre-Need Cemetery Sales Act
 - 1) Burial rights, along with rights of interment, entombment or inurnment are all interests in real property. Interests in real property are not covered by the Act and do not become unclaimed property under the Act.
 - 2) Refunds provided pursuant to Section 18 of the Illinois Pre-Need Cemetery Sales Act [815 ILCS 390] may become unclaimed property as the debt of a business association under Section 15-201(5) of the Act.

- c) Death Master File
 - 1) The Act does not mandate holders of trust funds under the Illinois Funeral or Burial Funds Act or the Illinois Pre-Need Cemetery Sales Act to compare their records against the Social Security Administration's Death Master File.
 - 2) While the Act does not mandate holders of life insurance or annuities, including those intended to fund a pre-need contract under the Illinois Funeral or Burial Funds Act or Illinois Pre-Need Cemetery Sales Act, to compare their records against the Social Security Administration's Death Master File, holders must still comply with the provisions of the Unclaimed Life Insurance Benefits Act [215 ILCS 185].

Section 760.280 Reporting Securities

Remittance of securities. Unless otherwise provided, all securities and commodities when remitted to the State Treasurer shall:

- a) be registered as "Treasurer of the State of Illinois"; or
- b) be deposited into a new or existing securities or commodities account either in the name of "Treasurer of the State of Illinois" or in a nominee account (aka "street name" account) established by a vendor acting as a custodian for the administrator; and

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- c) include all dividends, interest, warrants, or other rights, or associated cash in a check payable to "Treasurer of the State of Illinois" unless otherwise directed by the State Treasurer.

Section 760.290 Deceased Owner

- a) *Subject to the owner interest provisions of Section 15-210 of the Act, a deceased owner cannot indicate interest in his or her property. [765 ILCS 1026/15-201]*
 - 1) Apparent owner interest shall include the activity of beneficiaries and estate executors or other persons who have a legal or equitable right to ownership or custody of the property when the apparent owner as listed in the records of the holder is deceased.
 - 2) Thus, while a deceased apparent owner can no longer indicate interest in their own property, the new owner or his/her agent(s) may indicate interest in the property and, thus, prevent abandonment.
- b) If the apparent owner as listed in the records of the holder is deceased and the abandonment period for the owner's property is greater than 2 years, then the property, *shall instead be presumed abandoned 2 years from the date of the owner's last indication of interest in the property. This provision does not apply to an amount owed by an insurance company on a life or endowment insurance policy or an annuity contract that has matured or terminated. [765 ILCS 1026/15-201]* The provision from Section 15-201 of the Act cited in this paragraph does not apply to situations involving the death of the apparent owner when the property is covered by either Section 15-202(a)(2)(B) of the Act, concerning tax-deferred retirement accounts, or Section 15-208(d) of the Act, concerning securities as in neither case is the abandonment period greater than 2 years.
- c) *A holder who fails to report, pay, or deliver property within the time prescribed by the Act shall not be required to pay interest or be subject to penalties if the failure to report, pay, or deliver the property was due to lack of knowledge of the death that established a shorter period of abandonment under the Act. [765 ILCS 1026/15-1204(c)]*
- d) The Act does not impose a new or separate duty on a holder to determine whether an apparent owner is deceased. However, the Act does not relieve a holder of any

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duty imposed by another law, whether state or federal, that may impose such a duty.

- e) Sections 15-202 and 15-208 of the Act both provide that when a holder, in the ordinary course of its business, receives notice or an indication of the death of an apparent owner, the holder shall attempt not later than 90 days after receipt of the notice or indication to confirm whether the apparent owner is deceased.
 - 1) These provisions are not intended to require a holder to independently confirm the death of the apparent owner when the holder reasonably believes that the apparent owner is deceased.
 - 2) Instead, these provisions establish a 90-day deadline for a holder to conduct any independent investigation or search to confirm the death of the apparent owner.
 - 3) EXAMPLE: if a holder learns that an apparent owner is listed on the Social Security Administration's Death Master File (DMF) and the holder is satisfied that the presumption of death from such a match is correct, then the holder does not need to independently confirm the death of the apparent owner.

Section 760.300 Apparent Owner Interest

- a) Under Section 15-210(a) of the Act *the period after which property is presumed abandoned is measured from the later of:*
 - 1) *the date the property is presumed abandoned under the Act; or*
 - 2) *the latest indication of interest by the apparent owner in the property.*
- b) Under Section 15-210(b) of the Act, *an indication of an apparent owner's interest in property includes, but is not limited to:*
 - 1) *a record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;*
 - 2) *an oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is*

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held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication;

- 3) *presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an account, underlying security, or interest in a business association;*
- 4) *activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account;*
- 5) *a deposit into or withdrawal from an account at a financial organization, except for a recurring ACH debit or credit previously authorized by the apparent owner or an automatic reinvestment of dividends or interest; and*
- 6) *subject to Section 15-210(e) of the Act, payment of a premium on an insurance policy.*

c) Owner-initiated Activity. Owner-initiated financial transactions or authenticated owner-initiated administrative activity are an indication of an apparent owner's interest in the property. A holder must maintain a record of owner-initiated activity. These include, without limitation:

- 1) trading activity in the account;
- 2) depositing funds into the account or withdrawing funds from the account;
- 3) non-automated electronic distributions;
- 4) contacting the holder to discuss any account related matters;
- 5) sending the holder paperwork or documents related to the account;
- 6) meeting with (or otherwise interacting with) a financial advisor regarding the account;
- 7) modifying the account profile;

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- 8) sending the holder correspondence regarding the account whether via mail or electronic means, including e-mail;
 - 9) submitting an account service request online;
 - 10) voting a proxy;
 - 11) setting up the account for e-delivery; and,
 - 12) accessing the account via the holder's website or other electronic means.
- d) Holder-generated Activity. Apparent owner interest is distinguishable from holder-generated activity such as, without limitation, crediting dividends, posting account fees, and mailing account statements, which does not constitute apparent owner interest.
- 1) Automatic financial or administrative transactions or activity, such as automatic payments or distributions or automatic portfolio rebalancing, shall not be considered apparent owner interest.
 - 2) Non-return of mail
 - A) Non-return of mail sent by the holder to an account owner does not constitute apparent owner interest.
 - B) RPO Standard
 - i) Despite the general rule that non-return of mail does not constitute apparent owner interest, certain types of property are considered abandoned when first-class United States mail is returned undelivered to the holder by the United State Postal Service. This is commonly referred to as an RPO standard and is used in Sections 15-202, 15-204, and 15-208 of the Act.
 - ii) When an RPO standard is used in the Act, the non-return of mail still does not constitute apparent owner interest. Instead, the presumption of abandonment is triggered by

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the return of the first-class United States mail instead of by the passage of time without apparent owner interest.

- iii) In Section 15-208 of the Act a security is presumptively abandoned on the earlier of 3 years after an RPO standard is met or 5 years from the last indication of interest by the apparent owner. The non-return of mail does not constitute apparent owner interest for the 5-year presumption under Section 15-208 of the Act.

e) Interest by a Person Other Than the Apparent Owner

- 1) *An action by an agent or other representative of an apparent owner, other than the holder acting as the apparent owner's agent, is presumed to be an action on behalf of the apparent owner. [765 ILCS 1026/15-210(c)]*
- 2) *A communication with an apparent owner by a person other than the holder or the holder's representative is not an indication of interest in the property by the apparent owner unless a record of the communication evidences the apparent owner's knowledge of a right to the property. [765 ILCS 1026/15-210(d)]*
- 3) If an apparent owner is deceased, apparent owner interest shall include, but is not limited to, activity of beneficiaries and estate executors or other persons who have a legal or equitable right to ownership or custody of the property.

f) Consolidated Statement Rule for Financial Organizations

- 1) *If the apparent owner has another property with the holder to which Section 201(6) of the Act applies, then activity directed by an apparent owner in any other accounts, including loan accounts, at a financial organization holding an inactive account of the apparent owner shall be an indication of interest in all such accounts if the apparent owner engages in one or more of the following activities:*
 - A) *the apparent owner undertakes one or more of the actions described in this Section regarding any account that appears on a consolidated statement with the inactive account;*

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- B) *the apparent owner increases or decreases the amount of funds in any other account the apparent owner has with the financial organization; or*
 - C) *the apparent owner engages in any other relationship with the financial organization, including payment of any amounts due on a loan.*
- 2) This subsection (f) *applies so long as the mailing address for the apparent owner in the financial organization's books and records is the same for both the inactive account and the active account.* [765 ILCS 1026/15-210(f)]

Section 760.310 Anti-Limitations Provision

- a) *Expiration of a period of limitation on an owner's right to receive or recover property, whether specified by contract, statute, or court order, does not prevent the property from being presumed abandoned or affect the duty of a holder under the Act to file a report or pay or deliver property to the administrator.* [765 ILCS 1026/15-610(a)]
- b) This provision of the Act is a continuation of existing Illinois law. Under the common law in Illinois, contracts could not serve as a limitation on the ability of the State to take custody of unclaimed property. (See *People ex rel. Callahan v. Marshall Field & Co.*, 83 Ill. App. 3d 811, 818, 404 N.E.2d 368, 374 (1980) citing *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541 (1948); *Screen Actors Guild, Inc. v. Cory* (1979), 91 Cal. App. 3d 111, 154 Cal. Rptr. 77; and *State v. Jefferson Lake Sulphur Co.* (1962), 36 N.J. 577, 178 A.2d 329.)

SUBPART C: REPORTING

Section 760.400 Holder Reporting Required

- a) A holder of property presumed abandoned shall report to the administrator via the internet in a format approved by the administrator, unless granted written permission by the administrator to file a paper report.
- b) A holder may contract with a third party to make the report required, but remains responsible to the administrator for the complete, accurate, and timely reporting

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of property presumed abandoned and for paying or delivering to the administrator property described in the report.

- c) The administrator will accept a report filed in the current National Association of Unclaimed Property Administrators (NAUPA) standard format found on the administrator's website: icash.illinoistreasurer.gov.

Section 760.410 Report Contents

- a) The report required by Article 4 of the Act must:
- 1) be signed by or on behalf of the holder and verified as to its completeness and accuracy;
 - 2) if filed electronically, be in a secure format approved by the administrator which protects confidential information of the apparent owner;
 - 3) describe the property;
 - 4) except for a traveler's check, money order, or similar instrument, contain the name, if known, last-known address, if known, e-mail address, if known, and Social Security number or taxpayer identification number, if known or readily ascertainable, of the apparent owner of property with a value of \$5 or more;
 - 5) for an amount held or owing under a life or endowment insurance policy, annuity contract, or other property where ownership vests in a beneficiary upon the death of the owner, contain the name and last-known address of the insured, annuitant, or other apparent owner of the policy or contract and of the beneficiary;
 - 6) for property held in or removed from a safe-deposit box, indicate the location of the property, where it may be inspected by the administrator, and any amounts owed to the holder under Section 15-606 of the Act;
 - 7) combine all dividend checks into one property for each reported account;
 - 8) contain the commencement date for determining abandonment;

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- 9) state that the holder has complied with the notice requirements of the Act; and,
 - 10) identify property that is a non-freely transferable security and explain why it is a non-freely transferable security.
- b) Holders may report property valued at less than \$5 each in the aggregate. However, the administrator may request that the holder provide information about the name, address, Social Security number or taxpayer identification number of an apparent owner of property with a value of less than \$5 when the information is necessary to verify or process a claim filed with the administrator by an apparent owner.
 - c) *If a holder has changed its name while holding property presumed abandoned or is a successor to another person that previously held the property for the apparent owner, the holder must include in the report its former name or the name of the previous holder, if any, and the known name and address of each previous holder of the property. [765 ILCS 1026/15-402(d)]*

Section 760.420 Filing Dates

- a) Financial organizations, governments, governmental entities, and insurance companies except life insurance companies must file a report before November 1 of each year that covers the 12 months preceding July 1 of that year.
- b) All other business associations must file before May 1 of each year for the immediately preceding calendar year.

Section 760.430 Early Reporting and Remittance of Property

- a) *A holder may pay or deliver property to the administrator before the property is presumed abandoned under the Act if the holder:*
 - 1) *provides the apparent owner of the property any notice required by Section 15-501 of the Act and provides the administrator evidence of the holder's compliance with any notice required by the Act;*
 - 2) *includes with the payment or delivery a report regarding the property conforming to the Act and this Section; and*

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- 3) *first obtains the administrator's written consent to accept payment or delivery of the property.*
- b) *A holder's request for the administrator's consent to pay or deliver property before the property is presumed abandoned under the Act must be in writing.*
- c) *If the administrator fails to respond to the request not later than 30 days after receipt of the request, the administrator is deemed to consent to the payment or delivery of the property and the payment or delivery is considered to have been made in good faith.*
- d) *On payment or delivery of property under this Section, the property is presumed abandoned. [765 ILCS 1026/15-608]*
- e) *A holder that pays or delivers property to the administrator pursuant to Section 15-608 of the Act in good faith and substantially complies with Sections 15-501 and 15-502 of the Act is relieved of all liability which thereafter may arise or be made in respect to the property to the extent of the value of the property so paid or delivered. [765 ILCS 15-604(a)]*

Section 760.440 Extensions

- a) A holder may request an extension for filing. The request must be in writing and must specify the proposed period of extension.
- b) The request must include a reasonable cause for an extension.
 - 1) Reasonable cause includes, without limitation, natural disaster, criminal activity related to the holder's books and records, recent changes in the form of ownership of the holder, etc.
 - 2) Providing due diligence notices to apparent owners and other holder actions required by the Act does not constitute reasonable cause.
- c) Extension requests must be received by the administrator at least 15 business days before the date the report would otherwise be due.
- d) Not later than 10 business days after the date of the request, the administrator shall respond to the request. The administrator may grant the request, deny the request, or grant an extension for a different period of time.

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- e) *If an extension is granted, the holder may pay or make a partial payment of the amount the holder estimates ultimately will be due. The payment or partial payment terminates accrual of interest on the amount paid. [765 ILCS 1026/15-403(c)]*

Section 760.450 Incomplete and Rejected Reports

If the administrator notifies a holder that a report is incomplete or incorrect, then a corrected report must be filed by the holder no later than 20 calendar days after notification by the administrator. The administrator may grant an extension in writing for good cause shown.

Section 760.460 Due Diligence Notice by Holder

- a) Sections 15-501 and 15-502 of the Act specify when and how a holder must provide notice to the apparent owner of property presumed abandoned. This notice process is a "due diligence notice" from the holder to the apparent owner. A due diligence notice is intended to provide an opportunity for an apparent owner to indicate interest in the property presumed abandoned prior to such property being reported and remitted to the administrator.
- b) Unless otherwise provided by the Act or these rules, the holder of property presumed abandoned shall send to the apparent owner a due diligence notice by first-class U.S. Mail between 60 days and one year before reporting the property (see 765 ILCS 1026/15-501(a)).
- c) A holder does not need to send notice by first-class U.S. Mail if any of the following are true:
 - 1) the property is valued at less than \$50;
 - 2) the holder does not have in its records an address for the apparent owner that is sufficient for delivery of first-class U.S. Mail;
 - 3) the holder's records indicate that the address for the apparent owner is invalid; or,
 - 4) the holder sends notice by certified U.S. Mail.

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- d) If the holder has in its records an e-mail address for an apparent owner and the apparent owner has consented to receive e-mail from the holder, then unless the holder reasonably believes the e-mail address is invalid, the holder shall send a due diligence notice by e-mail to the apparent owner in addition to any other due diligence notice required by the Act (see 765 ILCS 1026/15-501(b)).
- e) Certified Mail Due Diligence for Securities Valued at \$1,000 or More
 - 1) If the property presumed abandoned is securities valued at \$1,000 or more and the holder has in its records an address for the apparent owner that the holder's records do not disclose to be invalid and is sufficient to direct the delivery of U.S. Mail to the apparent owner, then the due diligence notice shall be sent by certified U.S. Mail (see 765 ILCS 1026/15-501(c)). If the apparent owner is a natural person, then the holder should utilize Certified Mail Restricted Delivery to direct the due diligence notice to the apparent owner or the apparent owner's authorized agent.
 - 2) If the holder sends a due diligence notice by certified mail, then the holder does not need to send a due diligence notice by first-class U.S. Mail.
 - 3) A signed return receipt in response to a notice sent by certified U.S. Mail shall constitute a record communicated by the apparent owner to the holder concerning the property or the account in which the property is held, and thus shall constitute an indication of interest by the apparent owner in the property under Section 15-210 of the Act.
- f) A holder may contract with a third party to provide the required due diligence notice to an apparent owner under the Act and these rules.
 - 1) Whether or not the holder contracts with a third party to provide required due diligence notices, the holder remains responsible for ensuring that any required due diligence notices are provided prior to the reporting and remitting of property presumed abandoned to the administrator.
 - 2) If a holder contracts with a third party to provide required due diligence notices and the due diligence notice is being sent after the date the property was presumed abandoned under the Act, then, pursuant to Section 15-1302 of the Act, neither the holder nor the third party may charge the apparent owner a fee to indicate an interest in property

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presumed abandoned or to otherwise prevent the reporting and remitting of property presumed abandoned to the administrator.

- g) Contents of Due Diligence Notice
- 1) A due diligence notice by a holder must contain a heading that reads substantially as follows: "Notice. The State of Illinois requires us to notify you that your property may be transferred to the custody of the State Treasurer if you do not contact us before (insert date that is 30 days after the date of this notice)."
 - 2) A due diligence notice by a holder must:
 - A) identify the nature and, except for property that does not have a fixed value, the value of the property that is the subject of the notice;
 - B) state that the property will be turned over to the State Treasurer;
 - C) state that after the property is turned over to the State Treasurer an apparent owner that seeks return of the property may file a claim with the State Treasurer;
 - D) state that property that is not legal tender of the United States may be sold by the State Treasurer;
 - E) provide instructions that the apparent owner must follow to prevent the holder from reporting and paying or delivering the property to the State Treasurer; and,
 - F) provide the name, address, and e-mail address or telephone number to contact the holder.
 - 3) In a due diligence notice, the holder may also list a website where apparent owners may obtain more information about how to prevent the holder from reporting and paying or delivering the property to the State Treasurer.
- h) Holder Deduction of Costs of Due Diligence Notices

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- 1) A holder that reports and remits money may deduct from total amounts remitted, the actual costs of due diligence notices.
- 2) The deduction shall consist of the cost of envelopes, postage, and stationery. No other costs may be deducted.
- 3) For purposes of holder deductions for due diligence mailings, postage includes amounts paid to the United States Postal Service for first class United States mail and certified United States mail.
- 4) A holder may be required to document or certify to the costs incurred and deducted.

Section 760.470 Retention of Records by Holder

- a) A holder is required to retain records for 10 years after the later of the date the report was filed or the last date a timely report was due to be filed.
- b) The records must contain:
 - 1) the information required to be included in the report;
 - 2) the date, place, and nature of the circumstances that gave rise to the property right;
 - 3) the amount or value of the property;
 - 4) the last address of the apparent owner, if known to the holder;
 - 5) sufficient records of items which were not reported as unclaimed, to allow examination to determine whether the holder has complied with the Act

EXAMPLE: records related to property where the holder... gave express notice to the administrator of a dispute regarding the property. [765 ILCS 1026/15-610(b)]; and
 - 6) a record of the instruments while they remain outstanding indicating the state and date of issue if the holder sells, issues, or provides to others for sale or issue in this State traveler's checks, money orders, or similar

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instruments, other than third-party bank checks, on which the holder is directly liable.

- c) If a holder fails to maintain records required by Section 15-404 of the Act, *the administrator may determine the value of property due using a reasonable method of estimation based on all information available to the administrator, including extrapolation and use of statistical sampling when appropriate and necessary, consistent with examination procedures and standards* in this Part.
- d) Both the records retention period of Section 15-404 of the Act and the statute of limitations in Section 15-610(b) of the Act are 10 years. However, the statute of limitations only applies *after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property.* [765 ILCS 1026/15-610(b)] If the statute of limitations has been tolled because the holder failed to either report property or provide express notice to the administrator and the holder fails to maintain *sufficient records of items that were not reported as unclaimed, to allow examination to determine whether the holder has complied with the Act* [765 ILCS 1026/15-404(5)], the administrator may use estimation in an examination of that holder pursuant to Section 15-1006 of the Act and this Part.

SUBPART D: NOTICE TO APPARENT OWNERS BY THE ADMINISTRATOR

Section 760.500 Notices by United States Mail

- a) The administrator shall send at least one written notice by first-class U.S. Mail to each apparent owner of unclaimed property held by the administrator and valued at \$100 or more.
- b) However, the administrator shall not send a notice under this Section by first-class U.S. Mail if the administrator reasonably believes that a mailing by first-class U.S. Mail would not be received by the apparent owner.
- c) *In the case of a security held in an account for which the apparent owner had consented to receiving e-mail from the holder, the administrator shall send notice by e-mail if the e-mail address of the apparent owner is known to the administrator, instead of by first-class U.S. Mail.* [765 ILCS 1026/15-503(b)(1)]

Section 760.510 E-Mail Notices

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- a) Whenever the administrator has an e-mail address for an apparent owner of unclaimed property held by the administrator and valued at \$100 or more and the administrator does not know that e-mail address to be invalid, the administrator shall send at least one notice to the apparent owner by e-mail if the administrator did not send a written notice by first-class U.S. Mail. (See 765 ILCS 1026/15-503(b)(2).)
- b) In addition to any notice mandated by the Act, the administrator may send an additional notice to an apparent owner to any e-mail address for the apparent owner that the administrator does not know to be invalid.
- c) When practicable, e-mail notices from the administrator shall provide a hyperlink to the website maintained by the administrator.

Section 760.520 Newspaper Notices

- a) *At least once every 6 months, the administrator shall cause to be published in at least one English language newspaper of general circulation in each county in this State a notice concerning the unclaimed property program.*
- b) *The newspaper notice shall include the following information:*
 - 1) *the total value of property received statewide by the administrator during the preceding 6-month period;*
 - 2) *the total value of claims paid by the administrator statewide during the preceding 6-month period;*
 - 3) *the address of the unclaimed property website maintained by the administrator;*
 - 4) *a telephone number and e-mail address to contact the administrator to inquire about or claim property; and*
 - 5) *a statement that computers may be available at a local public library to search for unclaimed property. [765 ILCS 1026/15-503(c)(1)]*
- c) The administrator may contract with a vendor to cause to be published the required newspaper notices. A contract concerning newspaper notices may, but is

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not required to, be part of a more comprehensive marketing services contract or specific contract.

- d) Newspaper notices may include other information at the discretion of the administrator.
- e) The administrator may cause additional notices or advertisements to be published in newspapers and print publications other than the required notices. The additional notices do not need to contain the mandatory information listed in subsection (b).

Section 760.530 Website

- a) *The administrator shall maintain a website accessible by the public and electronically searchable that contains the names reported to the administrator of apparent owners for whom property is being held by the administrator.*
- b) *The administrator does not need to list property on the unclaimed property website when:*
 - 1) *no owner name was reported;*
 - 2) *a claim has been initiated or is pending for the property;*
 - 3) *the administrator has made direct contact with the apparent owner of the property; and*
 - 4) *in other instances in which the administrator reasonably believes exclusion of the property is in the best interests of both the State and the owner of the property. [765 ILCS 1026/15-503(c)(1)]*
- c) *The administrator's unclaimed property website shall include an online claim form and instructions for filing a claim with the administrator. The administrator shall also make available a printable claim form with instructions for its use. [765 ILCS 1026/15-503(d)]*
- d) *The administrator may include on the website the names and addresses of apparent owners of property held by the administrator. [765 ILCS 1026/15-1401(d)]*

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- e) In addition to the required website, the administrator may utilize other websites, including any websites endorsed by the National Association of Unclaimed Property Administrators (NAUPA), to promote the unclaimed property program and seek to reunite owners with their unclaimed property.

Section 760.540 Tax Return Identification of Apparent Owners

The administrator will work with the Illinois Department of Revenue (DOR) to facilitate the return of unclaimed property to Illinois taxpayers through data sharing as required by the Act. This data sharing is intended to update contact information for apparent owners in the administrator's records, to allow the administrator to return some types of unclaimed property directly to apparent owners without a claim being filed, and to otherwise facilitate the return of unclaimed property in the custody of the administrator to the legal owners.

Section 760.550 Updating Apparent Owner Data

- a) The administrator may utilize publicly and commercially available databases, as well as information obtained through data sharing agreements authorized by the Act, to find and update or add information for apparent owners of property held by the administrator.
- b) The administrator may, but is not required to, update or add a mailing address or e-mail address for an apparent owner prior to sending notices required by the Act.
- c) If a required notice has already been sent by the administrator, the administrator does not need to send a new written notice merely because a mailing address or e-mail address for an apparent owner has been subsequently updated or added.

Section 760.560 Other Discretionary Means of Providing Notice

- a) Paid Advertising
 - 1) The administrator may use paid advertising to increase awareness of the unclaimed property program, provide notice to persons who may be the owners of unclaimed property in the custody of the administrator, or to otherwise facilitate the return of unclaimed property to legal owners.
 - 2) Any paid advertising shall conform to the requirements of Section 5-20 of the State Officials and Employees Ethics Act. [5 ILCS 430]

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- b) Direct Contact
 - 1) The administrator may use contact information reasonably believed to be accurate to attempt to directly contact apparent owners of property held by the administrator.
 - 2) When directly contacting an apparent owner, the administrator may reveal additional information concerning the apparent owner's property if the administrator believes the information will assist in identifying and returning property to the owner and does not disclose personal information as defined in the Personal Information Protection Act. [815 ILCS 530]
 - 3) Direct contacts include, but are not limited to, telephone calls, in-person meetings, direct electronic communications, targeted social media contacts, and similar methods of contact.
- c) Broadcast Media
 - 1) The administrator may make agreements with broadcast media outlets to use live telethons, call-in programs, and similar events of limited duration to both promote the unclaimed property program authorized by the Act and to notify owners of the existence of unclaimed property.
 - 2) These broadcasts should be considered the dissemination of news and should not be considered a public service announcement or advertisement.
- d) Contractual Vendors
 - 1) The administrator may contract with one or more vendors that provide websites, including any websites endorsed by the National Association of Unclaimed Property Administrators (NAUPA), to promote the unclaimed property program and seek to reunite owners with their unclaimed property.
 - 2) The administrator may contract with one or more vendors that provide applications to assist apparent owners in identifying and claiming property in the custody of the administrator. The vendors shall be selected by a competitive request for proposals pursuant to the Office of the Treasurer Procurement Rules [44 Ill. Adm. Code 1400]. Compensation must conform with the restrictions in Article 13 of the Act concerning

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agreements to locate property of apparent owners held by the administrator.

Section 760.570 Confidentiality

The administrator may include in published notices, printed publications, telecommunications, the Internet, or other media and on the website or in the database additional information concerning the apparent owner's property if the administrator believes the information will assist in identifying and returning property to the owner and does not disclose personal information as defined in the Personal Information Protection Act [815 ILCS 530]. [765 ILCS 1026/15-1401(d)]

SUBPART E: CLAIMS

Section 760.600 Claims

A person claiming to be the owner of property held under the Act by the administrator or of the proceeds from the sale of property may file a claim for the property or proceeds from the sale of property on a form prescribed by the administrator and that is available on the Administrator's website at icash.illinoistreasurer.gov. [765 ILCS 1026/15-903]

Section 760.610 Burden of Proof

- a) The administrator is the custodian for property delivered to the State under the Act and is responsible for the safekeeping of that property. Therefore, any person who files a claim for any property held by the administrator pursuant to the Act shall bear the burden of proof in establishing that person is the lawful owner of the property or has an interest in the property.
- b) The administrator will release the property to a claimant after the person establishes his or her ownership of the property or an interest in the property by a preponderance of the evidence.
- c) Notwithstanding the requirements of subsection (a) and (b), the administrator may waive those requirements if a claimant satisfies the requirements for payment or delivery of property under Section 760.620 or 760.630.

Section 760.620 Filing of Claims

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- a) Claimants may file claims with the administrator either in writing on forms prescribed by the administrator or through completion of a form on the administrator's website.
- b) Claims shall be verified or signed by the claimant under penalty of perjury.
- c) If the subject property is valued at more than \$500, the signatures of the claimants shall be notarized by a notary public or be guaranteed by an officer of a bank or financial institution with which the claimants currently do business.
- d) If the value of the subject property is less than \$500:
 - 1) a fully completed owner claim and owner indemnification form, submitted to the administrator either in writing or through completion of a form on the administrator's website, will be accepted as prima facie evidence of validity of the claim, unless the administrator has facts within his or her knowledge that would tend to rebut the claim; and
 - 2) the administrator may waive the requirement to complete a claim form and may pay or deliver property directly to a claimant if the person receiving the property is shown to be the apparent owner of the property included on a report filed pursuant to the Act, and the administrator reasonably believes the claimant is entitled to receive the property or payment.
- e) If the property being claimed is a two-party check, in addition to submitting a fully completed claim form, the claimant must:
 - 1) submit the original check;
 - 2) submit verification in the form of an affidavit from the issuing agent of the check that the claimant is the true owner of the check and the issuing agent would then pay the value of the check to the claimant if the issuing agent had not remitted the funds to the administrator;
 - 3) post a surety bond, issued by an insurance company with an A+ or A rating by A.M. Best and Company, in the amount of the check;
 - 4) submit a release of interest executed by all persons not claiming the property who were listed as apparent owners by the holder;

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- 5) submit an order from a court of competent jurisdiction indicating the claimant is the owner of the unclaimed property; or
- 6) submit an indemnification form if the administrator does not have facts within its knowledge that would tend to rebut the claim and all the following apply:
 - A) the original check is missing or has been destroyed;
 - B) the original check is older than 14 years;
 - C) incomplete information was reported by the holder and is no longer obtainable; and
 - D) the amount of the two-party check is \$500 or less.
- f) A claim will be considered complete when a claimant has provided all the information and documentation requested by the administrator as necessary to establish legal ownership and that information or documentation is entered into the unclaimed property system. Unless extended for reasonable cause, the administrator shall issue a decision no later than 90 days after a claim is complete.
- g) If a claimant is unable to provide documentation sufficient to establish ownership by a preponderance of the evidence, the claimant may request that the administrator formally deny the claim in order to allow the claimant to commence a contested case, pursuant to Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100], for review of the administrator's decision.
- h) Closing Claims
 - 1) If a claimant fails to provide information and documentation necessary to establish legal ownership of the property by a preponderance of the evidence and the claim is inactive for at least 90 days, the administrator may close the claim without issuing a final decision.
 - 2) If the claimant makes a request in writing for a final decision prior to the administrator's closing of the claim, the administrator shall issue a final decision.

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- 3) If, after a claim is closed, a claimant subsequently provides additional information or documentation concerning the same property, the administrator shall open a new claim and shall incorporate by reference all information and documentation provided for the closed claim.
- i) *Not later than one year after filing a claim, a claimant may commence a contested case pursuant to the Illinois Administrative Procedure Act to establish a claim by the preponderance of the evidence after either receiving notice of the denial from the administrator or the claim is deemed denied. [765 ILCS 1026/15-906]*

Section 760.630 Tax Return Identification of Apparent Owners

- a) *At least annually the administrator shall notify the Illinois Department of Revenue of the names of apparent owners of abandoned property.*
 - 1) *The administrator shall also provide to DOR the social security numbers of apparent owners of abandoned property, if available. [765 ILCS 1026/15-503(e)]*
 - 2) The administrator may also provide DOR with other data, such as the mailing address of the apparent owner.
 - 3) The administrator shall not provide DOR with the name of an apparent owner of unclaimed property if a claim has been filed for that property with the administrator and the claim has not been denied or closed.
 - 4) The administrator does not need to notify DOR of the names or social security numbers of apparent owners of abandoned property if he or she reasonably believes that DOR will be unable to provide information that would provide sufficient evidence to establish that the person in DOR's records is the apparent owner of unclaimed property in the custody of the administrator.
 - 5) **EXAMPLES:** the administrator does not need to notify DOR of the name of an apparent owner of unclaimed property in the custody of the administrator when:
 - A) the administrator has previously notified DOR of the name of an apparent owner, DOR was unable to match the name to any person

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in DOR's records, and the administrator reasonably believes that DOR would continue to not be able to match the name;

- B) the administrator's records contain the name of an apparent owner without an address or social security number and that name is so common as to prevent a unique match with DOR records;
 - C) the administrator has reason to believe that the apparent owner is deceased; or
 - D) even if DOR provided a current address for the apparent owner, the administrator would not be able to deliver the unclaimed property to that owner because the property is jointly owned, is an escrow account, or has other legal impediments to clear ownership of the property by a unique owner.
- b) DOR shall notify the administrator if any person matching the name of an apparent owner has filed an Illinois income tax return and shall provide the administrator with the last known address and/or additional addresses of the person as it appears in DOR records, except as prohibited by federal law.
- c) The administrator may deliver property or pay the amount owing to a person matched under this Section without the person filing a claim if the following conditions are met:
- 1) the value of each individual property that is owed the apparent owner is \$2,000 or less;
 - 2) the property is not either tangible property or securities;
 - 3) there are no legal impediments to delivering the property or paying the amount owed to a unique apparent owner;
 - 4) the last known address for the apparent owner according to DOR records is less than 12 months old; and
 - 5) the administrator has evidence sufficient to establish that the person who appears in DOR records is the owner of the property and the owner currently resides at the last known address from DOR.

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- d) If the name, address and social security number of the apparent owner in the records of the administrator and DOR match, there is a presumption that the administrator has sufficient evidence to deliver property or pay the amount owing to the apparent owner.
- e) *After receiving a match from DOR, the administrator may use additional databases to verify the identity of the person and that the person currently resides at the last known address. The administrator may utilize publicly and commercially available databases to find and update or add information for apparent owners of property held by the administrator. [765 ILCS 1026/15-503(f)]*
- f) In determining whether there is sufficient evidence to deliver property or pay the amount owing to the apparent owner, the administrator may rely upon evidence beyond the match provided by DOR.
- g) When the name of an apparent owner has an unique match with DOR records and the property owed to the apparent owner is greater than \$2,000, or is tangible property or securities, the administrator shall provide notice to the person, informing the person that he or she is the owner of abandoned property held by the State and may file a claim with the administrator for return of the property. The administrator may provide the notice by email, U.S. Mail, telephone, direct contact, or any combination of these methods.

Section 760.640 Crediting Income or Gain to Owner's Account

- a) *If property other than money is delivered to the administrator, the owner is entitled to receive from the administrator income or gain realized or accrued on the property before the property is sold. [765 ILCS 1026/15-607(a)] (See Canel v. Topinka, 212 Ill. 2d 311, 818 N.E.2d 311 (2004).)*
- b) *The administrator will pay interest on an interest-bearing demand, savings, or time deposit paid or delivered to the administrator after July 1, 2018.*
- c) *The interest shall be paid to the owner at the lesser of:*
 - 1) *The percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) as reported by the U.S. Department of Labor Bureau of Labor Statistics for all items; or*

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- 2) *The rate the property earned while in the possession of the holder and reported to the administrator.*
- d) *Interest begins to accrue when the property is delivered to the administrator and ends on the earlier of the expiration of 10 years or when payment is made to the owner. [765 ILCS 1026/15-607(c)]*
- e) Interest shall accrue monthly at the applicable rate.
- f) If the holder does not report a rate of interest earned by the property while in the possession of the holder, the administrator will not pay interest. The Act requires the administrator to pay the lower of the reported interest rate or the current CPI. If no interest is reported, the lower rate will be zero.

Section 760.650 Finders

- a) No person or company shall be entitled to a fee for discovering presumptively abandoned property until it has been in the custody of the administrator for at least 24 months. Fees for discovering property that has been in the custody of the administrator for more than 24 months shall be limited to not more than 10% of the amount collected. (See 765 ILCS 1026/15-1302.)
- b) Notwithstanding anything in this Section to the contrary, a licensed attorney may *pursue a claim for recovery of specifically identified property held by the administrator or to contest the administrator's denial of a claim for recovery of the property* provided he or she has an attorney-client relationship with the apparent owner. [765 ILCS 1026/15-1302(f)]
- c) For claims in which a finder is assisting an apparent owner, the following shall be submitted to the administrator:
 - 1) a signed, dated and notarized copy of the contract between the finder and the apparent owner that satisfies the requirements of the Act, specifies the obligations of the parties, and establishes the fee arrangement between the finder and claimant; and
 - 2) if the finder charges a contingent fee, a copy of the active private detective license issued by the Illinois Department of Financial and Professional Regulation to the finder.

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Section 760.660 Property Subject to Recovery by Another State

- a) If the administrator is aware that property held under the Act is subject to a superior claim of another state, the administrator shall either report and deliver the property to the other state or return the property to the holder for delivery to the other state.
- b) A claim by another state to recover property under this Section must be presented in a form prescribed by the administrator, unless the administrator waives presentation of the form.
- c) The administrator shall decide a claim under this Section not later than 90 days after it is presented.
- d) To the extent permitted under the law of the other state, the administrator may require another state to agree to indemnify the administrator and the State of Illinois and its agents, officers and employees against any liability on a claim to the property.

Section 760.670 Debt Collection Agencies

- a) A debt collection agency shall initiate its own claims for unclaimed property in the custody of the administrator. The administrator will not initiate claims for debt collection agencies.
- b) Debt collection agencies shall submit citations to discover assets to the administrator at least 30 days in advance of the return date.
- c) Unclaimed property held by the administrator for a debtor will be held pursuant to a citation to discover assets for up to 90 days.
- d) Claims submitted by debt collection agencies will be closed after 90 days without the submission of a valid turnover order from a court of competent jurisdiction.
- e) Claims submitted by debt collection agencies will be paid after receipt of a valid turnover order from a court of competent jurisdiction.

Section 760.680 Holder Reimbursement

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- a) *A holder that remits money to the administrator may file a claim for reimbursement from the administrator of the amount paid if the holder:*
 - 1) *paid the money to the administrator in error; or*
 - 2) *after paying the money to the administrator, paid money to a person the holder reasonably believed to be the legal owner.*

- b) If a claim for reimbursement is made for a payment made on a negotiable instrument, the holder must submit proof that payment was made to a person the holder reasonably believed to be the legal owner of the property. The holder may claim reimbursement even if the payment was made to a person whose claim was made after expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order.

- c) If a holder is reimbursed by the administrator, the holder may also recover any income or gain that would have been paid by the administrator to the owner on an owner claim provided the holder paid the earned income or gain to the owner.

- d) A holder that delivers property other than money to the administrator may file a claim for return of the property from the administrator if:
 - 1) the holder delivered the property to the administrator in error; or
 - 2) the apparent owner has claimed the property from the holder.

- e) If a claim for return of property is made, the holder shall include with the claim evidence sufficient to establish that the apparent owner has claimed the property from the holder or that the property was delivered by the holder to the administrator in error.

- f) The administrator may make a determination that an affidavit submitted by a holder is evidence sufficient to establish that the holder is entitled to reimbursement or to recover property under this Section.

- g) A holder is not required to pay a fee or other charge for reimbursement or return of property.

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- h) The administrator shall allow or deny a holder's claim not later than 90 days after the claim is complete and give the holder notice in a record of the decision. The administrator may grant an extension for reasonable cause.
- i) A claim will be considered complete when a holder has provided all the information and documentation requested by the administrator as necessary to establish legal ownership and that information or documentation is entered into the administrator's unclaimed property system.
- j) If a holder fails to provide all the information and documentation requested by the administrator as necessary to establish legal ownership of the property and the claim is inactive for at least 90 days, the administrator may close the claim without issuing a final decision. However, if the claimant makes a request in writing for a final decision prior to the administrator's closing of the claim, the administrator shall issue a final decision.
- k) The holder may initiate a proceeding under Article 10 of the Illinois Administrative Procedure Act for review of the administrator's decision on the earlier of 30 days following receipt of the notice of the administrator's decision or 120 days following the filing of a claim.

Section 760.690 Securities Sale and Claims

- a) Sale of Securities
 - 1) The administrator may not sell a security prior to attempting to provide notice as provided for in Section 15-503 of the Act.
 - 2) Unless the administrator reasonably determines it would be in the best interests of the owner for the sale to occur sooner, the administrator may not sell or otherwise liquidate a security until 3 years after the administrator receives the security.
 - A) Instances in which it would be in the best interest of the owner for a sale of securities to occur prior to the expiration of the 3-year period include, without limitation: responding to a tender offer; a bankruptcy filing; a business liquidation; and instances in which fees will significantly deplete the value.

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- B) If the administrator sells a security prior to the expiration of the 3-year period, the administrator shall document in a record the reasons for the sale.
- 3) Unless otherwise provided in the Act or this Part, the administrator may sell a security at any time after 3 years after the administrator receives the security.
 - A) *The administrator may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale.*
 - B) *The administrator may sell a security not listed on an established exchange by any commercially reasonable method. [765 ILCS 1026/15-702(b)]*
- 4) Securities will not be sold when a claim has been filed with the administrator by an apparent owner for those securities.
 - A) However, the apparent owner may direct the administrator to dispose of the securities by sale and remit the net proceeds to the apparent owner.
 - B) Upon denial of a claim, the administrator may dispose of the securities as provided in the Act and this Part.
 - C) The administrator may also dispose of the securities as provided in the Act and this Part if, after being requested by the administrator, the apparent owner fails to provide necessary and sufficient information to allow the administrator to transfer the securities within 30 days after the administrator's request.
- b) *Recovery of Securities or Value by Owner*
 - 1) *If the administrator sells a security before the expiration of 3 years after delivery of the security to the administrator, an apparent owner that files a valid claim under the Act for the security before the 3-year period expires is entitled, at the option of the owner, to receive:*
 - A) *replacement of the security;*

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- B) *the market value of the security at the time the claim is filed, plus dividends, interest, and other increments on the security up to the time the claim is paid; or*
 - C) *the net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security was sold. [765 ILCS 1026/15-703(a)]*
- 2) *Replacement of the security or calculation of market value under subsection (b)(1) must take into account a stock split, reverse stock split, stock dividend, or similar corporate action. [765 ILCS 1026/15-703(b)]*
 - 3) *A person that makes a valid claim under the Act for a security after expiration of 3 years after delivery of the security to the administrator is entitled to receive:*
 - A) *the security the holder delivered to the administrator, if it is in the custody of the administrator, plus dividends, interest, and other increments on the security up to the time the administrator delivers the security to the person; or*
 - B) *the net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security was sold. [765 ILCS 1026/15-703(c)]*

SUBPART F: EXAMINATIONS

Section 760.700 Authority

Pursuant to the Act the administrator may, at reasonable times and on reasonable notice, *examine the records of any person to determine whether the person has complied with the Act even if the person believes it is not in possession of any property that must be reported, paid, or delivered under the Act. [765 ILCS 1026/15-1002(1)]*

Section 760.710 Purpose

- a) The goal of an unclaimed property examination shall be to determine whether a person is in compliance with the Act. Unclaimed property is reported to the State of Illinois pursuant to the Act and the federal common law as established by the

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U.S. Supreme Court (Texas v. New Jersey, 379 U.S. 674 (1965); Pennsylvania v. New York, 407 U.S. 206 (1972); and Delaware v. New York, 507 U.S.490 (1993)).

- b) The administrator's goal in every examination is to be predictable, fair and consistent while determining the historical compliance of the person being examined, and to encourage and facilitate that person's ongoing and future compliance with the Act.

Section 760.720 Contract Auditors

- a) *The administrator may contract with a person to conduct unclaimed property examinations to determine compliance with the Act. Such a contract shall be awarded pursuant to a request for proposals issued in compliance with the Office of the Treasurer Procurement Rules (44 Ill. Adm. Code 1400). [765 ILCS 1026/15-1009(a)]*
- b) *A contract to conduct an examination may provide for compensation of the person based on a fixed fee, hourly fee, or contingent fee. [765 ILCS 1026/15-1009(b)(1)]*
 - 1) *A contingent fee arrangement may not provide for a payment that exceeds 15% of the amount or value of property paid or delivered as a result of the examination. [765 ILCS 1026/15-1009(b)(2)]*
 - 2) *As authorized in the State Officers and Employees Money Disposition Act [30 ILCS 230/2(a)(3.5)], the administrator may permit the deduction of fees from property recovered during an unclaimed property examination prior to depositing funds received under the Act into the Unclaimed Property Trust Fund. [765 ILCS 1026/15-1009(b)(3)]*
- c) *A contract with a person to conduct an examination is a public record under the Freedom of Information Act. [765 ILCS 1026/15-1009(c)]*
- d) An auditor shall collectively possess sufficient training and experience to adequately perform unclaimed property examinations.
- e) An auditor shall not engage in any unclaimed property examination to determine compliance with the Act without written authorization from the administrator.

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- f) An auditor shall report in writing to the administrator at least monthly on the status of all unclaimed property examinations the auditor has been authorized to perform by the administrator.

Section 760.730 Holder Advocates

- a) A person subject to examination may retain third party advocates to assist them in the examination process.
- b) The retention of an advocate is no basis to delay the commencement of the examination and the administrator will not delay the examination so that the advocate may conduct a review or its own audit of the books and records of the person subject to examination in advance of the administrator's examination.
- c) The administrator will, to the extent practicable, cooperate with the person subject to examination and its advocate and keep both apprised of records requests, interviews, and the progress of the audit in general.

Section 760.740 Notice of Examination

- a) All unclaimed property examinations begin with an official notice of examination letter.
- b) A notice letter shall notify the person subject to examination that:
 - 1) its books and records (including those belonging to subsidiary and related entities or maintained by a third party that has contracted with the person) are subject to examination;
 - 2) identify the assigned auditor; and
 - 3) include auditor contact information.
- c) A notice letter may either be sent directly to the person subject to examination by the administrator or to the auditor assigned to the examination for delivery to the person subject to examination.

Section 760.750 Entrance Conference

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- a) Once an examination is assigned and written notice of an examination is provided to the person subject to examination, an entrance conference will be scheduled with the auditor and representatives of the person subject to examination. A representative of the administrator may, but is not required, to participate in an entrance conference. If the person subject to examination refuses to schedule an entrance conference with the auditor, the auditor will inform the administrator of such refusal.

- b) During the entrance conference the auditor shall to the extent practicable:
 - 1) identify of the types of property that will be subject to the examination and the time period covered by the examination;
 - 2) discuss an examination work plan, a tentative schedule, and any potential scoping issues;
 - 3) provide contact information for both the auditor and the administrator;
 - 4) if a draft has not been presented prior to the entrance conference, provide the person subject to examination a draft confidentiality agreement;
 - 5) notify the person subject to examination of his or her ability to request an informal conference with the administrator pursuant to Section 15-1008 of the Act;
 - 6) advise the person subject to examination that the administrator and not the auditor makes determinations concerning that person's liability under the Act and that interpretations of the Act are made by the administrator;
 - 7) request records and materials necessary to proceed with the next steps of the examination;
 - 8) explain the requirement to provide a due diligence notice to the apparent owner of property presumed abandoned; and
 - 9) explain that, unless otherwise agreed to in writing by the administrator, the person subject to examination shall remit to the auditor any unclaimed property identified during the examination that is owed to the State of Illinois.

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Section 760.760 Examination Guidelines

- a) The auditor and the person subject to examination shall act in good faith to conduct the examination under the terms and within the time frame established in the entrance conference.
- b) During the examination, the auditor may make subsequent requests, to the person subject to examination, for additional books and records required to complete the examination.
 - 1) The auditor shall submit record requests to the person subject to examination in writing or, if the request is made verbally, shall follow up with written documentation of the request.
 - 2) Record requests shall have reasonable deadlines in order to move the examination forward and avoid unnecessary delays.
 - 3) The auditor shall provide a reasonable timeframe for the person subject to examination to respond to the request based on the type and extent of the information requested and other relevant facts and circumstances.
 - 4) The auditor shall provide confirmation of receipt with reasonable projected response times to submissions received from the person subject to examination.
- c) The examination shall not be limited to a review of work papers, compilations, or record summaries prepared by the person subject to examination or an advocate, but shall include access to the original books and records deemed by the administrator to be necessary to ascertain compliance with the Act.
- d) The auditor shall properly document the examination and make the working papers gathered during the unclaimed property examination available for review by the administrator. The working papers shall include planning information and all related calculations, statistical analyses, and summarizations.

Section 760.770 Confidentiality Agreement

- a) A person subject to examination may require, *as a condition of disclosure of the records of the person to be examined, that the administrator, if the administrator*

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is performing the examination, *or the administrator's agent execute and deliver to the person to be examined a confidentiality agreement that:*

- 1) *is in a form that is reasonably satisfactory to the administrator; and*
 - 2) *requires the person having access to the records to comply with the provisions of Article 14 of the Act (Confidentiality and Security of Information) applicable to the person. [765 ILCS 1026/15-1402]*
- b) If the person subject to examination and the auditor are unable to enter into a confidentiality agreement within 60 calendar days from the date an agreement reasonably satisfactory to the administrator was first presented to the person subject to the examination by the auditor or the administrator, the examination may commence without a confidentiality agreement in place and the parties shall rely on the confidentiality provisions of Article 14 of the Act.

Section 760.780 Evidence of Unpaid Debt or Undischarged Obligation

- a) *A record of a person subject to examination showing an unpaid debt or undischarged obligation is prima facie evidence of the debt or obligation. [765 ILCS 1026/15-1005(a)]*
- b) *A person subject to examination may establish by a preponderance of the evidence that there is no unpaid debt or undischarged obligation for a debt or obligation or that the debt or obligation was not, or no longer is, a fixed and certain obligation of the person subject to examination. [765 ILCS 1026/15-1005(b)] Thus, the prima facie evidence may be rebutted by the person subject to examination.*
- c) *A person subject to examination may overcome prima facie evidence by establishing by a preponderance of the evidence that a check, draft, or similar instrument was:*
 - 1) *issued as an unaccepted offer in settlement of an unliquidated amount;*
 - 2) *issued but later was replaced with another instrument because the earlier instrument was lost or contained an error that was corrected;*
 - 3) *issued to a party affiliated with the issuer;*

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- 4) *paid, satisfied, or discharged;*
- 5) *issued in error;*
- 6) *issued without consideration;*
- 7) *issued but there was a failure of consideration;*
- 8) *voided not later than 90 days after issuance for a valid business reason set forth in a contemporaneous record;*
 - A) for purposes of this provision "valid business reason" does not include a policy of voiding outstanding checks, drafts, or similar instruments after a specified number of days;
 - B) a policy of automatically voiding would be tantamount to a private escheat law in violation of longstanding public policy in Illinois (see *People ex rel. Callahan v. Marshall Field & Co.*, 83 Ill. App. 3d 811, 818, 404 N.E.2d 368, 374 (1980));
 - C) this defense merely indicates that when a check, draft, or similar instrument is voided quickly, for a valid business reason (i.e., not as a private escheat law), and the reason is indicated in a contemporaneous record, there is sufficient evidence to overcome the prima facie evidence of the existence of a debt or obligation; or
- 9) *issued but not delivered to the third-party payee for a sufficient reason recorded within a reasonable time after issuance. [765 ILCS 1026/15-1005(c)]*
- d) *In asserting a defense under this Section, and subject to the records retention requirements of the Act, a putative holder may present evidence of a course of dealing between the putative holder and the apparent owner. [765 ILCS 1026/15-1005(d)]*

Section 760.790 Estimation

- a) *If a person subject to examination does not retain the records required by the Act, the administrator may determine the value of property due using a reasonable method of estimation based on all information available to the administrator,*

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including extrapolation and use of statistical sampling when appropriate and necessary.

- b) *A payment made based on estimation under this Section is a penalty for failure to maintain the records required by the Act and does not relieve a person from an obligation to report and deliver property to a state in which the holder is domiciled. [765 ILCS 1026/15-1006]*
- c) Unless agreed to by a person subject to examination, estimation should be used only when there has been a violation of Section 15-404 of the Act. The ability of the administrator to use estimation is intended as a deterrent to the intentional or negligent destruction of records that would be used in an unclaimed property examination to identify unclaimed property.
- d) An auditor may not use estimation in an examination unless:
 - 1) the person subject to examination agrees in writing to the use of estimation as part of an audit resolution agreement; or
 - 2) the administrator approves in writing the use of estimation in the examination.
- e) Estimation by the administrator should reasonably approximate the amount of unclaimed property that should have been reported to Illinois if all reports had been filed and records had been maintained as required by the Act. Thus, estimation should attempt to determine the amount of unclaimed property that should have been reported to Illinois under Sections 15-301, 15-302, and 15-303 (addressed property) and 15-304 (unaddressed property when the holder is domiciled in Illinois).
- f) Prior to approving the use of estimation in an examination, the administrator shall:
 - 1) notify the person subject to examination, in writing, that the administrator is considering the use of estimation because of a failure to maintain the records required by Section 15-404 of the Act;
 - 2) after considering any evidence submitted by the auditor and the person subject to examination, make a written determination that the person

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subject to examination has failed to maintain the records required by Section 15-404 of the Act;

- 3) provide an opportunity for the person subject to examination to submit written objections, including, but not limited to:
 - A) submitting evidence that the person subject to examination has maintained sufficient records to perform the examination for some or all of the years during the time period covered by the examination; or
 - B) proposing an estimation methodology;
- 4) notify in writing the person subject to examination of:
 - A) the estimation methodology to be used; and
 - B) for which years during the time period covered by the examination estimation will be used.

Section 760.800 Multistate Examinations

- a) The administrator may agree to participate in an examination of a person for compliance with unclaimed property laws of multiple states, including the Act, when a single auditor performs an examination for more than one state.
- b) Multistate examinations are intended to be more efficient and effective for both the person being examined and the states that have authorized the examination. Having a single auditor conducting an unclaimed property examination reduces the occurrence of a person being simultaneously subject to multiple unclaimed property examinations by multiple auditors representing multiple states.
- c) Because different states participating in a multistate examination will have different rules for examinations, there may be conflicts between the statutory or regulatory requirements for how the auditor should conduct the examination. When practicable, the auditor should comply with the requirements of this Section when conducting a multistate examination. However, if there is a conflict between the requirements of this Section and the requirements of one or more other states, the auditor may vary from the requirements of this Section so long as the auditor:

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- 1) follows any requirements imposed by the Act, including but not limited to confidentiality requirements;
 - 2) uses the Act with regards to any property for which the State of Illinois has the superior claim pursuant to the federal common law established in the U.S. Supreme Court cases listed in Section 760.810(a); and
 - 3) complies with the goal to be predictable, fair and consistent while determining the historical compliance of the person being examined, and to encourage and facilitate that person's ongoing and future compliance with the Act.
- d) A person subject to examination retains the ability to request an informal conference with the administrator pursuant to Section 15-1008 of the Act.

Section 760.810 Bankruptcy

If, at any time before or during the course of an examination, the person subject to examination files for bankruptcy, that person shall give notice of the filing to the auditor. The auditor shall, within 7 calendar days after receiving notice or the discovery of the event, notify the administrator of the bankruptcy filing. If the administrator so elects, the auditor shall assist the administrator to ensure that a proper proof of claim is timely filed in the bankruptcy action.

Section 760.820 Audit Resolution Agreements

- a) Pursuant to the administrator's authority to conduct an examination, the administrator possesses the authority to resolve an examination via negotiation and settlement with the person subject to examination. This provides flexibility to both the person subject to examination and the administrator to resolve issues that could require formal appeal or litigation. These settlements are often referred to as audit resolution agreements.
- b) The administrator may not agree in a settlement to provide indemnification beyond that provided in Section 15-604 of the Act.
- c) Pursuant to Section 15-1206(1) of the Act, the administrator may agree to reduce or waive interest and penalties as part of a settlement.
- d) A mutually-agreed upon settlement resolves a specific examination and does not create any precedent on specific legal issues.

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Section 760.830 Report to Holder

At the conclusion of an examination, unless waived in writing by the person being examined, the administrator shall provide to the person whose records were examined a report that specifies:

- a) *the work performed;*
- b) *the property types reviewed;*
- c) *the methodology of any estimation technique, extrapolation, or statistical sampling used in conducting the examination;*
- d) *each calculation showing the value of property determined to be due; and*
- e) *the findings of the person conducting the examination.* [765 ILCS 1026/15-1007]

Section 760.840 Voluntary Disclosure Agreement Program

- a) Pursuant to the authority of the administrator under Section 15-1206 of the Act to waive, in whole or in part, interest and penalties, the administrator may establish a voluntary disclosure agreement (VDA) program for persons who are not in compliance with the Act.
- b) Under a VDA program, the administrator will agree to waive, in whole or in part, interest and penalties for a person who voluntarily reports and remits to the administrator property that should have been previously reported, paid or delivered to the administrator pursuant to the Act. The VDA program includes, but is not limited to, property that is reportable pursuant to the transition provisions of Section 15-1503 of the Act. Thus, property reportable under the Act or the previous Uniform Disposition of Unclaimed Property Act may be eligible to be voluntarily reported and remitted under the VDA program.
- c) A person who has been sent an official notice of examination letter may not participate in the VDA program.
- d) Participation in the administrator's VDA program does not waive or otherwise limit the administrator's authority to order and conduct an unclaimed property examination pursuant to Section 15-1002 of the Act.

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Section 760.850 Examination of State-Regulated Financial Organizations

- a) Purpose of Section 15-1002.1 of the Act
 - 1) Section 15-1002.1 of the Act establishes a system in which the Illinois Department of Financial and Professional Regulation (DFPR) will include unclaimed property compliance as part of the regular audits or examinations performed on State-regulated financial organizations. Because DFPR will perform regular examinations of these entities, the administrator will not perform unclaimed property examinations of these State-regulated financial organizations pursuant to Section 15-1002 of the Act.
 - 2) State-regulated financial organizations whose operations are either entirely or almost entirely within the State of Illinois shall be regularly examined by DFPR for compliance with unclaimed property laws. This should both ensure compliance with the Act and generally subject these State-regulated financial organizations to only one set of unclaimed property examinations.
 - 3) Section 15-1002.1 of the Act is not, however, intended to restrict the ability of the administrator to examine national banks, national credit unions, and other financial organizations that operate in multiple states. For financial organizations that operate in multiple states or are created pursuant to a national law, the administrator should either participate in multi-state examinations to determine compliance with the Act and similar unclaimed property laws of other states or otherwise perform an unclaimed property examination pursuant to Section 15-1002 of the Act.
- b) The administrator may perform an unclaimed property examination of a financial organization for which DFPR is the primary prudential regulator when either:
 - 1) the administrator consults with DFPR and DFPR has not examined the State-regulated financial organization for compliance with the Act within the past 5 years; or
 - 2) DFPR waives, in writing, the restrictions of Section 15-1002.1 and permits the administrator to examine a financial organization or group of financial organizations for compliance with the Act.

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- c) Primary Prudential Regulator. For purposes of the Act, DFPR is the primary prudential regulator for entities:
- 1) for which it performs regular regulatory examinations that include unclaimed property compliance at least once every 5 years;
 - 2) that operate primarily or exclusively in Illinois; and
 - 3) that are created pursuant to one of the following Acts: Illinois Banking Act [205 ILCS 5], Savings Bank Act [205 ILCS 205], Pawnbroker Regulation Act [205 ILCS 510], Corporate Fiduciary Act [205 ILCS 620], Residential Mortgage License Act of 1987 [205 ILCS 635], Illinois Credit Union Act [205 ILCS 305], Currency Exchange Act [205 ILCS 405], Transmitters of Money Act [205 ILCS 657], Sales Finance Agency Act [205 ILCS 660], Debt Management Service Act [205 ILCS 665], Consumer Installment Loan Act [205 ILCS 670], Title Insurance Act [215 ILCS 155], Debt Settlement Consumer Protection Act [225 ILCS 429], Safety Deposit License Act [240 ILCS 5], Payday Loan Reform Act [815 ILCS 122], Foreign Banking Office Act [205 ILCS 645], and Foreign Bank Representative Office Act [205 ILCS 650].
- d) Related Entities Not Covered by Section 15-1002.1
- 1) Nothing in this Section is intended to restrict the ability of the administrator to perform an unclaimed property examination pursuant to Section 15-1002 of the Act when DFPR is not the primary prudential regulator. Thus, if a financial organization has DFPR as a primary prudential regulator under this Section, but a separate entity related to that financial organization does not have DFPR as a primary prudential regulator, the administrator may perform an unclaimed property examination of that entity pursuant to Section 15-1002 of the Act even if the administrator would defer to DFPR's unclaimed property examination of the financial organization pursuant to Section 15-1002.1.
 - 2) **EXAMPLE:** if an investment company is related to a state bank chartered by DFPR, the administrator would be able to perform an unclaimed property examination of the investment company even if the administrator would defer to DFPR's examination of the state-chartered bank.

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- e) Disputes Over Application. If there is a dispute over whether an entity is covered by Section 15-1002.1 of the Act, the administrator and DFPR should consult to resolve the dispute using the framework established by Section 15-1002.1 of the Act and subsection (a) of this Section.
- f) Training. When requested by DFPR, the administrator shall provide or otherwise make available appropriate training to employees or representatives of DFPR regarding the examination for compliance with the Act. DFPR shall be responsible for all expenses incurred for the training of DFPR employees or representatives.

SUBPART G: ENFORCEMENT

Section 760.900 Purpose of Enforcement

- a) State unclaimed property laws are based on a theory of truthful self-reporting by the holders of unclaimed property. Enforcement actions by the administrator are intended to both bring holders subject to enforcement actions into compliance with the Act and to encourage voluntary compliance by other holders. The expectation is that a holder who has been the subject of an enforcement action by the administrator will voluntarily comply with the Act in the future. And, further, a program of enforcement by the administrator will encourage holders to voluntarily comply with the Act in order to avoid being subject to enforcement actions.
- b) Unclaimed property examinations are an essential aspect of unclaimed property compliance. However, if a holder is reporting correctly under the Act, there should be no determination of liability by the administrator. (For rules concerning unclaimed property examinations, see Subpart F.)

Section 760.910 Verified Report of Property

- a) *If a person does not file a report required by Section 15-401 of the Act or the administrator believes that a person may have filed an inaccurate, incomplete, or false report, the administrator may require the person to file a verified report in a form prescribed by the administrator.*
- b) *The verified report must:*
 - 1) *state whether the person is holding property reportable under the Act;*

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- 2) *describe property not previously reported or about which the administrator has inquired;*
 - 3) *specifically identify property about which there is a dispute whether it is reportable under the Act; and*
 - 4) *state the amount or value of the property.* [765 ILCS 1026/15-1001]
- c) A verified report must otherwise comply with the requirements of Section 15-402 of the Act and Section 760.410 of this Part.

Section 760.920 Administrative Subpoenas

- a) *The administrator may at reasonable times and on reasonable notice issue an administrative subpoena requiring the person or agent of that person to make records available for examination pursuant to the Act.* [765 ILCS 1026/15-1002(2)]
- b) Prior to issuance, administrative subpoenas shall be reviewed and approved by the administrator's General Counsel or by another employee of the administrator who is an attorney licensed to practice law in Illinois designated by the General Counsel.
- c) The administrator may request that the Attorney General bring an action seeking judicial enforcement of a subpoena issued pursuant to the Act on behalf of the administrator.
- d) If a person to whom the administrator issues an administrative subpoena brings an action seeking a judicial order to quash, limit, or otherwise prevent enforcement of the administrative subpoena, then the administrator shall request that the Attorney General represent the administrator in that action.
- e) The administrator may request that the Attorney General appoint a Special Assistant Attorney General to represent the administrator in any action to enforce or defend an administrative subpoena issued pursuant to the Act.

Section 760.930 Determination of Liability

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- a) *If the administrator determines from an examination conducted under Section 15-1002 of the Act that a putative holder failed or refused to pay or deliver to the administrator property that is reportable under the Act, the administrator shall issue a determination of the putative holder's liability to pay or deliver and give notice in a record to the putative holder of the determination. [765 ILCS 1026/15-1011]*
- b) The administrator may give notice of any interest and civil penalties at the same time that notice of a determination of liability is given.

Section 760.940 Interest and Penalties

- a) *Interest on Unreported Property. A holder that fails to report, pay or deliver property within the time prescribed by the Act shall pay to the administrator interest at a rate of 1% per month on the property or value of the property from the date the property should have been reported, paid or delivered to the administrator until the date reported, paid or delivered. [765 ILCS 1026/15-1204(a)] Thus, unless waived by the administrator pursuant to Section 15-1206, payment of interest on unreported reportable property is mandatory under the Act.*
- b) *Civil Penalty for Failure to Act in Timely Manner. The administrator may require a holder that fails to report, pay, or deliver property within the time prescribed by the Act to pay to the administrator, in addition to interest, a civil penalty of \$200 for each day the duty is not performed, up to a cumulative maximum amount of \$5,000. [765 ILCS 1026/15-1204(b)] Thus, unless the administrator determines that the holder acted in good faith and without negligence pursuant to Section 15-1206(b) of the Act, payment of a penalty for failure to act in a timely manner is a discretionary enforcement action by the administrator.*
- c) *Civil Penalty for Willful Failure to Perform a Duty Under the Act. If a holder willfully fails to perform a duty imposed on the holder under the Act, the administrator may require the holder to pay the administrator, in addition to interest, a civil penalty of \$1,000 for each day the obligation is evaded or the duty is not performed, up to a cumulative maximum amount of \$25,000, plus 25% of the amount or value of property that should have been but was not reported, paid or delivered as a result of the evasion or failure to perform. [765 ILCS 1026/15-1205(a)]*
- d) *Civil Penalty for Filing a Fraudulent Report. If a holder makes a fraudulent report under the Act, the administrator may require the holder to pay to the*

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administrator, in addition to interest, a civil penalty of \$1,000 for each day from the date the report was made until corrected, up to a cumulative maximum of \$25,000, plus 25% of the amount or value of any property that should have been reported but was not included in the report or was underreported. [765 ILCS 1026/15-1205(b)]

Section 760.950 Waiver of Interest and Penalties

- a) *The administrator may waive, in whole or in part, interest under Section 15-1204(a) of the Act and penalties under Section 15-1204(b) [765 ILCS 1026/15-1206(1)].*
 - 1) This authority does not provide for waiver of penalties imposed for willful failure or filing a fraudulent report. However, the imposition of penalties under Section 15-1205 is not mandatory.
 - 2) The administrator may agree to reduce or waive interest and penalties as part of an audit resolution agreement (see Section 760.820).
 - 3) Unless the holder willfully failed to report, pay or deliver property within the time prescribed by the Act, the administrator will waive the payment of interest of less than 3 months.
- b) *The administrator shall waive a penalty under Section 15-1204(b) of the Act if the administrator determines that the holder acted in good faith and without negligence. [765 ILCS 1026/15-1206(2)]*
 - 1) Good faith is intended to apply to situations in which the holder has attempted to comply with the Act.
 - 2) If the holder has failed to file a report, there is a presumption that the holder did not act in good faith and without negligence as the holder has not attempted to comply with the Act.
- c) *A holder who fails to report, pay or deliver property within the time prescribed by the Act shall not be required to pay interest, or be subject to penalties, if the failure to report, pay or deliver the property was due to the lack of knowledge of the death that established the period of abandonment under the Act. [765 ILCS 1026/15-1204(c)]*

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Section 760.960 Judicial Enforcement

- a) *The administrator may commence an action in the Circuit Court of Sangamon County or Cook County, federal court, or an appropriate court of another state to enforce a final determination of liability and secure payment or delivery of past due, unpaid, or undelivered property.*
- b) *An action to enforce a final determination of liability must be brought not later than 5 years after the determination becomes final. [765 ILCS 1026/15-1201(a)]*
- c) *If no court in Illinois has jurisdiction over the defendant, the administrator may commence an action in any court having jurisdiction over the defendant. [765 ILCS 1026/15-1201(b)]*
- d) *The administrator may request that the Attorney General appoint a Special Assistant Attorney General to represent the administrator in any action to enforce a final determination of liability.*

Section 760.970 Action Involving Another State or Foreign Country

- a) *The administrator may join another state or foreign country to examine and seek enforcement of the Act against a putative holder. [765 ILCS 1026/15-1203(a)]*
- b) *On request of another state or foreign country, the Attorney General may commence an action on behalf of the other state or country to enforce, in Illinois, the law of the other state or country against a putative holder subject to a claim by the other state or country. [765 ILCS 1026/15-1203(b)]*
- c) *The administrator may request the official authorized to enforce the unclaimed property law of another state or foreign country to commence an action to recover property in the other state or country on behalf of the administrator. Illinois may pay the costs, including reasonable attorney's fees and expenses, incurred by the other state or foreign country in an action under this subsection. [765 ILCS 1026/15-1203(c)]*
- d) *The administrator may pursue an action on behalf of Illinois to recover property subject to the Act but delivered to the custody of another state if the administrator believes the property is subject to the custody of the administrator. [765 ILCS 1026/15-1203(d)]*

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- e) *At the request of the administrator, the Attorney General may commence an action to recover property on behalf of the administrator in Illinois, another state, or a foreign country. With the written consent of the Attorney General, the administrator may retain an attorney in Illinois, another state, or a foreign country as a special assistant attorney general to recover property on behalf of the administrator in Illinois, another state, or a foreign country and may agree to pay attorney's fees based in whole or in part on a fixed fee, hourly fee, or percentage of the amounts or value of property recovered in the action. [765 ILCS 1026/15-1203(e)]*
- f) In all actions commenced pursuant to Section 15-1203 of the Act, unless otherwise given permission in writing by the Attorney General, the administrator shall be represented by the Attorney General or a special assistant attorney general appointed by the Attorney General.
- g) *Expenses incurred by Illinois in an action under Section 15-1203 of the Act may be paid from property received under the Act or the net proceeds of the property. Expenses paid to recover property may not be deducted from the amount that is subject to a claim under the Act by the owner. [765 ILCS 1026/15-1203(f)]*

Section 760.980 Periods of Limitation and Repose

- a) *An action or proceeding may not be maintained by the administrator to enforce the Act in regard to the reporting, delivery or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. [765 ILCS 1026/15-610(b)]*
- b) The 10-year period of limitation is tolled:
 - 1) if the holder did not specifically identify the property in a report filed with the administrator or provide other express notice to the administrator; or
 - 2) *by the filing of a report that is fraudulent. [765 ILCS 1026/15-610(b)]*
- c) Notwithstanding the tolling of the 10-year period of limitation because of a failure of a holder to specifically identify property in a report filed with the administrator or provide other express notice to the administrator, the administrator will not maintain an action in regard to the reporting, delivery or payment of property

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more than 10 years after that property should have been reported and remitted to the administrator if all of the following apply:

- 1) the holder has filed reports with the administrator for the past 10 years;
- 2) the holder agrees in writing to file all reports required by the Act, including providing express notice to the administrator of any future disputes concerning the reporting of property;
- 3) the total amount of property, excluding any interest or penalties that the administrator could impose under the Act, is less than \$2,500 or is otherwise de minimis as reasonably determined by the administrator; and
- 4) *the administrator determines that the holder acted in good faith and without negligence.* [765 ILCS 1026/15-1206(2)]

AGENCY NOTE: The language of Section 15-610(b) of the Act comes from Section 19(b) of the 1995 Uniform Unclaimed Property Act promulgated by the Uniform Law Commission (www.uniformlaws.org). The official comments to the 1995 Uniform Unclaimed Property Act note that this provision parallels the Internal Revenue Code (26 USC 6501(c)). The official comments further note that as "the Unclaimed Property Act is based on a theory of truthful self-reporting, a holder which conceals property, willfully or otherwise, cannot expect the protection of the stated limitations period".

SUBPART H: CONFIDENTIALITY

Section 760.1000 Confidentiality

- a) *Information provided in reports filed pursuant to the Act and the database required by Section 15-503 of the Act are specifically exempt from disclosure under the Freedom of Information Act.* [765 ILCS 1026/15-1401(b)] The Freedom of Information Officer for the administrator may deny requests for records containing such information as *information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.* [5 ILCS 140/7(1)(a)]
- b) Under the Act "*private information*" as defined in the *Freedom of Information Act* and "*personal information*" as defined in the *Personal Information Protection Act*

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continues to be confidential when disclosed or delivered under the Act to the administrator or administrator's agent. [765 ILCS 1026/15-1401(a)]

- 1) Private Information. The Freedom of Information Officer for the administrator may deny requests for records containing private information as *information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law; or unless disclosure is specifically required by a different State or federal law or a court order.* [5 ILCS 140/7(1)(a) and (b)]
- 2) Personal Information. Personal information as defined in the Personal Information Protection Act is either private information or personal information *the disclosure of which would constitute a clearly unwarranted invasion of personal privacy* as defined in Section 2(c-5) and 7(1)(c) of the Freedom of Information Act and the Freedom of Information Officer for the administrator may deny requests for records containing personal information as *information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law; or unless disclosure is specifically required by a different State or federal law or a court order.* [5 ILCS 140/7(1)(a) and (b)]

Section 760.1010 Confidentiality of Records Obtained During Examination

- a) *Records obtained and records, including work papers, compiled by the administrator or the administrator's agent in the course of conducting an examination:*
 - 1) *are exempt from disclosure under the Freedom of Information Act;*
 - 2) *may be used by the administrator in an action to collect property or otherwise enforce the Act;*
 - 3) *may be used in a joint examination conducted with another state, the United States, a foreign country or subordinate unit of a foreign country, or any other governmental entity if the governmental entity conducting the examination is legally bound to maintain the confidentiality and security of information obtained from a person subject to examination in a manner substantially equivalent to Article 14 of the Act;*

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- 4) *may be disclosed, on request, to the person that administers the unclaimed property law of another state for that state's use in circumstances equivalent to circumstances described in Article 10 of the Act, if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to Article 14 of the Act;*
 - 5) *must be produced by the administrator under an administrative or judicial subpoena or administrative or court order; and*
 - 6) *must be produced by the administrator on request of the person subject to the examination in an administrative or judicial proceeding relating to the property. [765 ILCS 1026/15-1004]*
- b) Auditors shall not disclose confidential information obtained during an unclaimed property examination to any person other than the administrator or the administrator's designee and, in the case of a multistate examination, to authorized representatives of a state participating in the examination.
 - c) Auditors shall not use confidential information obtained from the person subject to an examination for any purpose other than for purposes of the examination. Auditors shall take reasonable steps to ensure that the confidential information provided by the person subject to an examination is securely maintained.
 - d) Auditors must comply with any applicable federal and State laws and regulations pertaining to unauthorized disclosures of confidential information, including the Personal Information Protection Act.

SUBPART I: MISCELLANEOUS

Section 760.1100 Transition Provisions

- a) *An initial report filed under the Revised Act for property that was not required to be reported before the effective date of the Revised Act, but that is required to be reported under the Revised Act, must include all items of property that would have been presumed abandoned during the 5-year period preceding the effective date of the Revised Act as if the Revised Act had been in effect during that period. [765 ILCS 1026/15-1503(a)]*

AGENCY NOTE: A version of the transitional provision described in Section 15-1500(a) of the Act has been included in every uniform unclaimed property act promulgated by the ULC. (765

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ILCS 15-1500(a)) While the Act has a five-year look back period, the ULC version of RUUPA has a ten-year look back period. This five-year period is identical to the requirement in the Prior Act that the State Treasurer “issue a Notice of Deficiency to a holder or direct the commencement of an examination of a holder with respect to a report required under [the Prior Act] within 5 years after the report is filed.” See the former 765 ILCS 1025/23.5(a). The Prior Act when it was adopted in 1961 had a transitional provision that applied its provisions to any property for which the presumption of abandonment prescribed by the Prior Act occurred on or after August 17, 1946. Thus, the look back period in the Prior Act was 15 years. See the former 765 ILCS 1025/17.

- 1) Property Covered by the Transition Provision
 - A) As part of its report filed in calendar year 2018, a holder must report all property that would have been reported in 2013 through 2017 as if the Revised Act had been in effect on January 1, 2013.
 - B) Property that was excluded in 2013 through 2017 under the Former Act (Uniform Disposition of Unclaimed Property Act [765 ILCS 1025]), but that is not excluded under the Revised Act, must be reported in 2018. EXAMPLE: property that was excluded from being reported and remitted pursuant to provisions of Section 2a(b) of the Former Act during 2013 through 2017 should be reported in 2018.
 - C) Which property should be reported under this transitional provision is determined by looking at the applicable period of abandonment in the Revised Act. EXAMPLE: Section 15-201(5) provides that the debt of a business association is reportable 3 years after the obligation to pay arises. So, a debt owed to another business association that arose in 2010 would have been reportable in 2013 and, therefore, would be reportable in the initial report filed in 2018.
- 2) Owner Interest
 - A) The requirement to report property that was previously excluded from being reported under the Former Act is still subject to the indication of apparent owner interest in property provisions of Section 15-210 of the Revised Act.

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- B) The period of abandonment for property covered by subsection (a) is measured from the later of:
 - i) the date the property would have been presumed abandoned if the Revised Act had been in effect; or
 - ii) the date of the latest indication of interest by the apparent owner in the property.

- 3) Due Diligence Notice Required. A holder reporting property pursuant to subsection (a) is still required to provide notice to an apparent owner of that property pursuant to the applicable provisions of Section 15-501 of the Revised Act.

- 4) Interest and Penalties
 - A) If a holder reports property pursuant to subsection (a) in 2018, that property is considered to have been reported at the time prescribed by the Revised Act. As such, the administrator may not impose any interest or penalties under Section 15-1204 of the Revised Act on property reported in 2018 in compliance with subsection (a).
 - B) If a holder fails to report property in 2018 that should have been reported under subsection (a), but reports that property in 2019, the administrator shall waive any interest or penalties under Section 15-1204 of the Revised Act if the administrator determines that the holder acted in good faith and without negligence.

- 5) Insufficient Holder Records. The following provisions apply to a holder that has insufficient records to accurately report property that should be reported in 2018 pursuant to subsection (a).
 - A) The holder:
 - i) shall report all property for which it has adequate records to file a report under Section 15-401 of the Revised Act; and
 - ii) may enter into a written agreement with the administrator to report and remit an estimate of any property that would have been reportable to Illinois for which the holder does

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not have adequate records to file a report under Section 15-401 of the Revised Act.

- B) If the holder is domiciled outside of Illinois, any estimate of property that would have been reportable to Illinois will be an estimate of property for which the last-known address of the apparent owner would have been in Illinois.
 - C) If the holder is domiciled in Illinois, any estimate of property that would have been reportable to Illinois will be an estimate both of property for which the last-known address of the apparent owner would have been in Illinois and of property that would have been reportable to Illinois under Section 15-304 of the Revised Act.
- 6) If property exempted under the Former Act but not excluded under the Revised Act has been paid to another state, the holder is not required to pay again. In this case, the holder should provide notice to the administrator, so that the administrator can make a determination whether to attempt to reclaim that property from the state first taking possession. To provide such notice the holder may, but is not required to, provide the administrator with a copy of the report or relevant portions of the report filed with the other state to which such property was reported and remitted. Providing notice to the administrator under this provision is a form of “express notice” as provided in Section 15-610(b) of the Act.
- b) *The Act does not relieve a holder of a duty that arose before the effective date of the Revised Act to report, pay or deliver property. Subject to Section 15-610(b) of the Act, a holder that did not comply with the law governing unclaimed property before the effective date of the Act is subject to applicable provisions for enforcement and penalties in effect before the effective date of the Revised Act.*
[765 ILCS 1026/15-1503(b)]
- 1) Holders are still required to report and remit any property that was reportable under the Former Act prior to January 1, 2018, the effective date of the Revised Act.
 - A) Property that would not be reportable under the Revised Act, that should have been reported under the Former Act prior to January 1, 2018 will generally still be reportable to the administrator.

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- B) EXAMPLE: property that should have been reported under the Former Act on November 1, 2017 because it had been presumed abandoned in the 12 months preceding July 1, 2017, but for whatever reason was not reported and remitted to the administrator by January 1, 2018, would still need to be reported and remitted to the administrator.
 - C) The statute of limitations in Section 15-610 of the Revised Act, including the tolling provisions in Section 610(b), still applies to the ability of the administrator to bring an enforcement action against a holder.
- 2) Unclaimed property examinations that were initiated before January 1, 2018, but are still ongoing on or after January 1, 2018, will be based on the presumptions of abandonment from the appropriate Act given the circumstances surrounding the property.
- A) Property that would be reportable under the Revised Act will generally be reportable under that Act.
 - B) Property that would not be reportable under the Revised Act, but should have been reported under the Former Act prior to January 1, 2018 will generally still be reportable to the administrator.
 - C) When the standard for determining a presumption of abandonment under the Revised Act is materially different from under the Former Act, and it is in the best interests of the owner for the new standard to apply, the Revised Act shall apply. EXAMPLE: a tax-advantaged nonretirement account that would have been presumed abandoned after 5 years of inactivity under the Former Act, but would not be presumed abandoned until 3 years after the date by which distribution of the property must begin to avoid a tax penalty under the Revised Act, would be a case in which the new standard would be applied.
 - D) The administrator and the holder may agree in writing how to resolve issues in which both unclaimed property Acts may reasonably be interpreted as applying to property that is the subject of the unclaimed property examination. Under Section 15-608(b)

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of the Revised Act, the administrator has the authority to accept property early and to waive or reduce interest and penalties.

- E) Generally, an examination will toll the statute of limitations in Section 15-610 of the Revised Act unless the holder specifically identified the property in a report filed with the administrator or gave other express notice to the administrator prior to the initiation of the examination, because a person subject to an unclaimed property examination generally does not file reports directly with the administrator during that examination.

Section 760. APPENDIX A Background Information

- a) Section 15-1501 of the Act provides that when applying and construing the Act “consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.” (765 ILCS 15-1501). Given the provisions of Section 15-1501, this Agency Note is intended to provide background that will be useful to persons attempting to interpret the Act.
- b) Every state has enacted legislation requiring that holders of presumptively abandoned or unclaimed property report and deliver that property to the state. A majority of states have adopted some form of one of the uniform acts promulgated by the Uniform Law Commission (ULC). The problem of "lucrative silence" by holders motivated the ULC to draft and promulgate the original Uniform Disposition of Unclaimed Property Act (UDUPA) in 1954. Illinois passed its version of UDUPA in 1961. Illinois' current law is based on the ULC's Revised Uniform Unclaimed Property Act (RUUPA) that was approved and recommended for enactment in all states in 2016.
- c) Various courts have attempted to lay out the purposes of state unclaimed property laws. The Minnesota Supreme Court summarized the four main purposes as:
- 1) to protect the interests of the owners of unclaimed property;
 - 2) to relieve holders of the annoyance, expense and liability of keeping unclaimed property;
 - 3) to preclude multiple liability; and

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- 4) to give the adopting state use of considerable sums of money that otherwise is a windfall to holders. (State by Lord v. First National Bank, 313 N.W.2d 390, 393 (Minn. 1981))
- d) Illinois' Appellate Court noted that Illinois' unclaimed property Act "protects the rights of unknown owners and gives the benefit of the use of the unclaimed property, most of which experience shows will never be claimed, to the State rather than the holders." (People ex rel. Fahner v. Chicago Transit Authority, 127 Ill. App. 3d 405, 408, 468 N.E.2d 1316, 1318 (1st Dist. 1984) citing People ex rel. Callahan v. Marshall Field & Co. (1980), 83 Ill. App. 3d 811, 404 N.E.2d 368; and Douglas Aircraft Co. v. Cranston (1962), 58 Cal. 2d 462, 374 P.2d 819)
- e) State unclaimed property Acts prevent the unjust enrichment by holders of property to which they are not legally entitled and establish a process through which unclaimed property may be reunited with its rightful owner. These statutes essentially abolish the common law on abandoned property and remove the escheatment by the state of intangible personal property. The state no longer becomes the legal owner of unclaimed intangible personal property. Instead, it is transferred to a state unclaimed property administrator, typically the State Treasurer, who serves as a perpetual custodian of the unclaimed property.
- f) The Uniform Unclaimed Property System
 - 1) The uniform unclaimed property Acts, including Illinois' Act, set up a system for dealing with unclaimed intangible property as well as tangible unclaimed property recovered from safe deposit boxes. Each state's Act establishes rules to determine when different types of property are presumed abandoned. After property is presumptively abandoned, the holder of the property is almost always required to attempt to contact the owner of unclaimed property in writing. This is called a due diligence notice. If the owner does not claim the property from the holder, then the holder is required to report and remit that property to the state unclaimed property administrator as part of an annual unclaimed property report.
 - 2) The administrator once again attempts to contact owners. Historically, this was done through newspaper advertisements; now, however, in addition to print advertising, states maintain searchable online databases, work with other government agencies to update contact information for owners, send direct mail to apparent owners, and perform other types of in-person

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outreach and media advertising to attempt to reunite owners, or their heirs, with their unclaimed property.

- 3) Cash remitted to the administrator is deposited into a state fund. Non-cash property is held for a period of time and then sold if the owner has not been located, with the proceeds being deposited into the same state fund. Owners can claim their property from the administrator using online or paper claim forms and, when necessary, by supplying supporting documentation to prove that they are the rightful owner. There is no deadline for an owner to reclaim his or her property from the administrator.
- g) The U.S. Supreme Court has established federal common law rules to determine which state is entitled to unclaimed property. The cases of *Texas v. New Jersey*, 379 U.S. 674 (1965), *Pennsylvania v. New York*, 407 U.S. 206 (1972), and *Delaware v. New York*, 507 U.S. 490 (1993) have established the framework to determine which state has priority in claiming unclaimed property.
- h) The Act is not identical to the version of RUUPA promulgated by the ULC. The ULC version, including the official comments, is available at www.uniformlaws.org. While the General Assembly chose to adopt great portions of the version of RUUPA promulgated by the ULC, certain provisions from the Prior Act were retained, language from prior versions of the uniform act were used in places, and sometimes provisions were modified or entirely rewritten. However, the Act, Illinois' version of RUUPA, contains all of the elements of modern unclaimed property law discussed in this background.