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The RUUPA – Two Years Later

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Since it's been two years since the Revised Uniform Unclaimed Property Act of 2016 (RUUPA) was passed by the Uniform Law Commission (ULC), I thought it might be interesting to take a look at how the RUUPA is impacting new legislation. Many hours of negotiations and compromises went into the drafting of the RUUPA. In this article, we'll examine two areas of interest to security holders: liquidation and presumption of abandonment.

<u>Liquidation of Securities</u>

Section 702 (a) of the RUUPA specifically states that the administrator may not sell or otherwise liquidate a security until three years after the administrator receives the security and gives the apparent owner notice. The notice requirements are included in another section of the Act.

Section 703(a) states that "if the administrator sells a security before the expiration of six years after delivery of the security to the administrator, an apparent owner that files a valid claim under this [act] of ownership of the security before the six-year period expires is entitled, at the option of the administrator, to receive: (1) replacement of the security; or (2) 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". In other words, any owner claiming securities within six years of the security being transferred to the state will be made whole.

While not perfect, these sections added important new consumer protections to the RUUPA. They were part of a compromise that was reached between industry and the states. As part of the compromise, industry agreed to the lower dormancy period of three years and additional outreach requirements and the states agreed to the liquidation and make whole provisions along with RPO provisions that are discussed later in this article. So how many states have adopted these sections as drafted? The answer, unfortunately, is none.

Delaware was the first state to enact a law that included some sections of the RUUPA; however sections 702 and 703 were not adopted as drafted. Delaware law provides that the State Escheator may "……sell the security on any established stock exchange or by such other means as the State Escheator deems advisable as soon as the State Escheator deems practicable after the delivery".

Delaware law does provide some owner protection but for a much shorter period of time than the six years included in the RUUPA. Specifically, if the claim is made within 18 months from the date notice was mailed by the State Escheator to the rightful owner, the owner is entitled to the replacement of the security or the market value of the security at the time the claim is filed, at the option of the State Escheator.

Utah included the protections in section 702 of the RUUPA so the administrator is prohibited from selling securities until three years after the administrator receives the security and gives the apparent owner notice. However, the state did not include the protections in section 703. Conversely, 67-4a-703(1) of Utah law states that the administrator may not be held liable for any loss or gain in the value that the financial instrument would have obtained had the financial instrument been held instead of being sold.

Illinois law also includes the protections of section 702 along with one exception. Under 765 ILCS 1026/15-702, the administrator can liquidate the shares within three years, if the administrator "determines it would be in the best interests of the owner". Section 765 ILCS 1026/15-703 only protects the owner if the owner files a claim within three years and the state liquidated the shares prior to the three year period.

Tennessee law states that the treasurer shall sell or otherwise liquidate a security no sooner than eight (8) months, but no later than one (1) year, after receiving the security and giving the apparent owner notice. There is currently no language similar to section 703 of the RUUPA.

Kentucky law is similar in that it includes the protections of section 702 and the protections in section 703 only apply if the owner files a claim within three years and the state has liquidated the shares prior to the three year period.

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Summary of Legislation that has been Passed

State	Period Securities Held	Notice required?	Make Owner Whole?
Delaware	18 months	yes	18 months
Utah	3 years	yes	N/A
Illinois	3 years*	yes	3 years
Tennessee	8 months**	yes	N/A
Kentucky	3 years	yes	3 years

*Unless the administrator determines selling the security is in the best interest of the owner.

** The administrator must liquidate no later than 1 year after receiving the security and giving the apparent owner notice.

While it appears that the RUUPA has influenced the protections offered by these states, it's interesting to note that none of the states have passed both sections in their entirety.

Is there anything on the horizon? Currently the jurisdiction that is actively introducing RUUPA inspired legislation is the District of Columbia (DC). The proposed legislation by DC is as follows:

Sec. 702. Disposal of securities.

(a) The Administrator may not sell or otherwise liquidate a security until 60 days after the Administrator receives the security and gives the apparent owner notice under section 503 that the Administrator holds the security.

Sec. 703. Recovery of securities or value by owner.

(a) If the Administrator sells a security before the expiration of 60 days after delivery of the security to the Administrator, an apparent owner that files a valid claim under this act of ownership of the security before the 60-day period expires is entitled, at the option of the Administrator, to receive:

(1) replacement of the security; or

(2) 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.

<u>Presumption of Abandonment</u>

Another section of the RUUPA that bears review is Section 208 (When security presumed abandoned) which requires undeliverable first class mail. In part, Section 208 reads:

(a) Subject to Section 210, a security is presumed abandoned three years after:

(1) the date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States Postal Service; or

(2) if the second communication is made later than 30 days after the first communication is returned, the date the first communication is returned undelivered to the holder by the United States Postal Service.

Similar RPO provisions were added to the presumption of abandonment requirements for tax-deferred retirement accounts (Section 202) and custodial accounts for minors (Section 204).

The RPO provisions are a protection for passive owners; those investors that are in a buy and hold mode. It's often difficult to get them to open their mail and respond to outreach. This language is included in the revised laws of Utah, Tennessee and Kentucky. Delaware, however simply states that a security is deemed abandoned three years after the last indication of interest in the property.

Illinois has a very unique requirement for securities which uses a hybrid of returned by post office (RPO) and an owner interest standard. The dormancy period is the earlier of three years after RPO or five years of owner inactivity. Illinois also added a deceased owner rule which provides that a deceased owner cannot show interest in their property and that (except for life insurance) the period of abandonment is generally shortened to two years.

It should also be noted that Pennsylvania, although not a RUUPA state, recently amended their law to require a "lost" standard in addition to the absence of contact. A holder has been deemed to have lost contact with the owner when the date a second consecutive communication sent by the holder by first class United States mail to the owner is returned to the holder undelivered by the United States Postal Service; or if the second communication is made later than thirty days after the first communication is returned, the date the first communication is returned undelivered to the holder by the United States Postal Service.

If it seems like there has been more activity around the RUUPA it is because there has been. A version of the RUUPA has been introduced in Colorado, Maine, Minnesota, Nebraska, Vermont and Washington. None of the legislation passed in these states but bills could be reintroduced in future sessions. Many interested parties, including the STA Unclaimed Property Committee, will continue to monitor the application of the RUUPA and attempt to influence laws before they are passed. ■