

**PROPOSED REGULATION OF THE
ADMINISTRATOR OF UNCLAIMED PROPERTY**

LCB File No. R162-09

May 21, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-4 and 10, NRS 120A.140; §§5 and 11, NRS 120A.140 and 120A.730; §§6-8, NRS 120A.140 and 120A.690; §§9, 12 and 13, NRS 120A.140 and 120A.560; §14, NRS 120A.140, 120A.640 and 120A.740; §15, NRS 120A.140 and 120A.500; §16, NRS 120A.140, 120A.560 and 120A.640; §17, NRS 120A.140 and 120A.570.

A REGULATION relating to unclaimed property; establishing procedures governing requests for waivers of certain penalties and interest; establishing requirements relating to the selection of persons to be audited by the Administrator of Unclaimed Property; establishing procedures for confirming the ownership of an outstanding check or a credit balance under certain circumstances; requiring a holder that believes it is not in possession of unclaimed property to file a certain report under certain circumstances; imposing certain reporting requirements on a holder of unclaimed property that consists of securities; establishing requirements concerning the verification of certain documents; revising provisions concerning the reporting of unclaimed property; requiring copies of certain agreements to be submitted to the Administrator under certain circumstances; requiring the use of an electronic funds transfer under certain circumstances; and providing other matters properly relating thereto.

Section 1. Chapter 120A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Audit” means the examination of the records of a person conducted pursuant to NRS 120A.690 to determine whether the person has complied with chapter 120A of NRS.*

Sec. 4. *“Security” means a stock, bond or mutual fund.*

Sec. 5. 1. *A holder that is liable to the Administrator for the payment of penalties or interest, or both, pursuant to NRS 120A.730 and wishes to obtain a waiver of the penalties or interest, in whole or in part, must request such a waiver from the Administrator in the manner set forth in this section.*

2. Except as otherwise provided in subsection 3, a holder must submit a written request for a waiver of penalties or interest, or both, in the form prescribed by the Administrator. The request must include, without limitation:

(a) The identification number assigned to the holder by the Administrator and the tax identification number of the holder; and

(b) A description of the facts and circumstances concerning the holder’s failure to comply with chapter 120A of NRS and, if applicable, evidence that the holder acted in good faith and without negligence.

3. A holder may request a waiver of penalties or interest, or both, using Form UP-49, Voluntary Disclosure Agreement, if:

(a) The holder has not:

(1) Previously submitted a report to the Administrator concerning unclaimed property as required by NRS 120A.560; and

(2) Been notified by the Administrator that the holder has been selected for an audit; or

(b) The Administrator determines that the holder’s special circumstances warrant the use of Form UP-49.

Sec. 6. 1. *Of the audits conducted during each audit cycle, as determined by the Administrator:*

(a) Five percent will be conducted of the records of persons randomly selected by the Administrator from a database of holders maintained by the Administrator.

(b) Ninety-five percent will be conducted of the records of persons selected by the Administrator using an objective method established by the Administrator. The method may include, without limitation, the use of:

(1) Risk factors that the Administrator has determined tend to be associated with holders who fail to comply with chapter 120A of NRS; and

(2) Weighted criteria that the Administrator has determined are useful in the selection of persons to be audited.

2. The objective method, including, without limitation, any risk factor or weighted criterion, used by the Administrator to select persons for an audit is confidential. Except as otherwise provided in NRS 239.0115, any record maintained by the Administrator concerning the objective method is confidential and is not a public record.

Sec. 7. 1. *If the Administrator identifies in the records of a holder an outstanding check or a credit balance that the holder has not included in a report filed pursuant to NRS 120A.560 and that the Administrator believes may be property presumed abandoned, the Administrator will accept as proof sufficient to rebut the presumption of abandonment written confirmation from the apparent owner of the property that complies with this section.*

2. A holder may request the apparent owner to provide written confirmation concerning an outstanding check or a credit balance identified by the Administrator pursuant to subsection 1 by sending a request to the apparent owner. The request must be in the form prescribed by the Administrator and include, without limitation:

(a) A statement that the request is submitted as part of an ongoing examination of unclaimed property which has identified a check or credit balance that may be owed to the apparent owner;

(b) The amount of the check or credit balance;

(c) A request that the apparent owner review his or her records and return the request for confirmation to the holder with the results of the apparent owner's review; and

(d) Blank spaces for the apparent owner to provide:

(1) The signature, name and title of the apparent owner or person who signs the confirmation on behalf of the apparent owner;

(2) The date on which the confirmation is signed; and

(3) The address and telephone number of the apparent owner or person who signs the confirmation on behalf of the apparent owner.

3. Except as otherwise provided in subsection 5, if the request for confirmation concerns an outstanding check, the holder and apparent owner must use Form UP-50, Outstanding Check Confirmation Letter. Using Form UP-50:

(a) The holder must provide information that identifies the check, including, without limitation:

(1) The check number;

(2) The amount of the check;

(3) The date of issuance of the check; and

(4) If applicable, the number and date of the holder's invoice.

(b) The apparent owner must confirm that he or she has reviewed his or her records and indicate whether:

(1) The check is not owed to the apparent owner;

(2) The check was owed to the apparent owner and has been cashed; or

(3) The check is owed to the apparent owner and the holder should reissue the check to the apparent owner because:

(I) The check was received by the apparent owner and not cashed; or

(II) The check was not received by the apparent owner.

↳ If the apparent owner returns the confirmation requesting the reissuance of a check, the holder must provide evidence to the Administrator that the holder has reissued the check.

(c) The holder and apparent owner must provide any other information required by the Administrator.

4. Except as otherwise provided in subsection 5, if the request for written confirmation concerns a credit balance, the holder and apparent owner must use Form UP-51, Credit Balance Confirmation Letter. Using Form UP-51:

(a) The holder must provide information that identifies the credit balance, including, without limitation, the date of each transaction that contributes to the credit balance.

(b) The apparent owner must confirm that he or she has reviewed his or her records and indicate whether:

(1) The credit balance is owed to the apparent owner;

(2) The credit balance is not owed to the apparent owner;

(3) The apparent owner has been unable to determine whether the credit balance is owed to him or her; or

(4) The credit balance was owed to the apparent owner, but has been settled through a settlement agreement with the holder. The apparent owner must include the date of the settlement.

(c) The holder and apparent owner must provide any other information required by the Administrator.

5. A holder and an apparent owner are not required to comply with subsection 3 or 4, as applicable, if the holder and apparent owner:

(a) Are business entities; and

(b) Have engaged in at least one business transaction with each other in the 24-month period immediately preceding the date on which the holder requests the written confirmation from the apparent owner.

6. As used in this section, “check” includes a draft or similar instrument as described in NRS 120A.550. The term does not include a traveler’s check, money order or similar instrument.

Sec. 8. 1. *A holder that is incorporated or located in this State or that conducts business in this State and determines that it is not in possession of property that must be reported, paid or delivered under chapter 120A of NRS shall file a report with the Administrator certifying that the holder has no unclaimed property to report.*

2. The report must be:

(a) In the form prescribed by the Administrator;

(b) Verified; and

(c) Except as otherwise provided in this section, filed with the Administrator before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a

report with respect to an insurance company must be filed before May 1 of each year for the calendar year next preceding.

3. Before the date for filing the report, the holder may request the Administrator to extend the time for filing the report. The Administrator may grant the extension for good cause.

Sec. 9. *A holder of unclaimed property that consists of a security shall, in addition to complying with NAC 120A.020:*

1. File with the report of unclaimed property a summary that includes the name, identification number and, if applicable, the total number of shares of each security included in the report.

2. If the holder has sold the security, include the security in the report of unclaimed property with the notation that the security has been sold.

3. If the security is undeliverable, include the security in the report of unclaimed property with the notation that the security is undeliverable.

4. Identify certificated securities separately from uncertificated securities in Form UP-2, Report of Unclaimed Property Detail.

5. If the security is a certificated security and the name of the issuer or the number of shares stated on the certificate delivered to the Administrator is different than the name or number of shares stated on a certificate previously issued to the owner of the security, include in the report of unclaimed property the name of the issuer and the number of shares stated on the previous certificate.

6. If the security has a market value of zero, omit the security from the report of unclaimed property. A security that is omitted from a report of unclaimed property pursuant to

this subsection must be included in a subsequent report of unclaimed property that is filed at a time that the security has a market value greater than zero.

Sec. 10. 1. *If a person files a report, form or other document that, pursuant to this chapter or chapter 120A of NRS, is required to be verified, the verification must be provided by:*

(a) A natural person acting in his or her personal capacity;

(b) The proprietor of a sole proprietorship;

(c) A partner of a partnership; or

(d) An officer, a director or the chief fiscal officer of a business association, financial organization, estate, trust, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

2. If a person alters or corrects a report, form or other document after it is verified, the alteration or correction must be initialed and dated by the person who provided the verification.

Sec. 11. *The Administrator interprets the phrase “fails to report,” as used in NRS 120A.730, to include, without limitation, the filing of a report that is:*

1. Incomplete; or

2. Does not comply with the reporting requirements of this chapter and chapter 120A of NRS.

Sec. 12. NAC 120A.020 is hereby amended to read as follows:

120A.020 1. A *holder that is required to make a report to the Administrator pursuant to NRS 120A.560 shall file* form UP-1, Report of Unclaimed Property, including a completed

verification . ~~[pursuant to NRS 120A.250,]~~ *Except as otherwise provided in this section, the report* may be filed:

- (a) Using form UP-1;
- (b) Using a computer printout that contains the same information as requested on form UP-1;

or

- (c) Electronically using the NAUPA standard electronic file format for holders.

2. A form UP-2, Report of Unclaimed Property Details, must accompany each report filed pursuant to subsection 1 and , *except as otherwise provided in this section,* may be filed:

- (a) Using form UP-2;
- (b) Using a computer printout that contains the same information as requested on form UP-2;

or

(c) Electronically using the NAUPA standard electronic file format for holders. *If any property included in the report filed pursuant to this paragraph consists of a security, the holder shall complete and file Form UP-2 as described in paragraph (a) in addition to the electronic filing.*

3. ~~[In addition to the provisions of NRS 120A.250, the Administrator may require a]~~ A person reporting ~~[15]~~ *11* or more items of property ~~[to]~~ *shall* file the report electronically using the NAUPA standard electronic file format for holders.

4. *The total amount of each kind of property reported on Form UP-1 must be equal to the sum of the amounts of that kind of property reported on the associated Form UP-2.*

5. As used in this section, “NAUPA” means the National Association of Unclaimed Property Administrators.

Sec. 13. NAC 120A.050 is hereby amended to read as follows:

120A.050 ~~[1.—In exercising the due diligence required by NRS 120A.260 to locate owners and prevent abandonment of their property from being presumed, each holder]~~ *A holder that is required, pursuant to NRS 120A.560, to send written notice to an apparent owner* shall mail ~~[a form]~~ *the notice* to the *apparent* owner's last known address in the holder's records. The ~~[form]~~ *notice* must include:

~~[(a) Owner's]~~

1. The apparent owner's name;

~~[(b) Owner's]~~

2. The apparent owner's last known address;

~~[(e)]~~ *3.* The type of account or other property;

~~[(d)]~~ *4.* If an account, ~~[the]~~ *a partial account* number ~~[-~~

~~—(e) Amount;]~~ *or other information sufficient to identify the account;*

5. The amount; and

~~[(f)]~~ *6.* A statement that the property will be turned over to the State for custody ~~[-~~

~~—2.—If the form is returned to the holder as undelivered, the holder shall then make an examination of the telephone directory in the city or area of the owner's last known address to locate a current address. If such a current address is found, the holder shall communicate with the person at the new address, verify that he is the owner, and either make a memorandum in the holder's record of the owner's desire or send the form to the new address.]~~ *if the apparent owner does not claim the property within the period set forth in the notice.*

Sec. 14. NAC 120A.060 is hereby amended to read as follows:

120A.060 1. Any person claiming or interested in any property delivered to the State must file form UP-5, Claim for Property Presumed Abandoned. Specific documents and supporting information, as determined for each case by the Administrator, must be filed with form UP-5.

2. ~~[In addition to the provisions of NRS 120A.390,]~~ *If* the Administrator ~~[may deny]~~ *denies* a claim *for any reason, including, without limitation,* that *the claim* remains incomplete for 90 days after it is filed ~~[-A person]~~, *the claimant* may file a new claim at any time using form UP-5.

3. If a person claiming property delivered to the State is a party to an agreement with another person, including, without limitation, an attorney, the primary purpose of which is to locate, deliver, recover or assist in the recovery of the property, the Administrator will require the claimant to submit a copy of the agreement. If the claimant fails to submit the copy of the agreement, the Administrator will deny the claim. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Administrator's denial of a claim.

Sec. 15. NAC 120A.090 is hereby amended to read as follows:

120A.090 1. If a demand, savings or matured time deposit or other certificate of deposit which is automatically renewable is held or owing by a banking or financial organization or by a business association, the owner thereof shall be deemed to have indicated an interest in the property or otherwise indicated his consent to the renewal of his account for the purposes of *subsection 3 of* NRS ~~[120A.160]~~ *120A.500* if an employee of the organization or association:

(a) Prepares and sends or causes to be prepared and sent to the owner by first-class mail:

(1) A notice of maturity no later than 10 days before the date of renewal and the notice is not returned unclaimed or undelivered; or

(2) An annual statement of account which includes the amount of the deposit held or owing by the organization or association and the statement is not returned unclaimed or undelivered; and

(b) Files in the records of the organization or association an affidavit stating that the notice or statement was mailed pursuant to paragraph (a).

2. If such a notice of maturity or statement of account is returned unclaimed or undelivered, the banking or financial organization or business association shall, upon its return, exercise due diligence to locate the owner of the property. If the owner cannot be located, the property will then be presumed abandoned ~~for~~ 3 years after the date of maturity or date of renewal as stated in the returned notice or statement.

Sec. 16. NAC 120A.100 is hereby amended to read as follows:

120A.100 1. A person filing a claim pursuant to NRS ~~120A.380~~ 120A.640 must include his social security number ~~on the form~~ in the manner prescribed by the Administrator for each claim.

2. In addition to the information required by NRS ~~120A.250~~ 120A.560, a holder shall include in a report to the Administrator the social security number, if known, of each person appearing from the records of the holder to be the owner of the money or other property described in the report.

Sec. 17. NAC 120A.110 is hereby amended to read as follows:

120A.110 1. Unless specifically authorized by the Administrator, a holder shall pay or deliver abandoned property to the Administrator in a form other than cash.

2. In lieu of a check, ~~the Administrator may require~~ a holder ~~to pay or deliver abandoned property with a value~~ that makes a payment of money to the Administrator of \$10,000 or more

~~[to the Administrator electronically.]~~ shall make the payment by means of an electronic transfer of money as required pursuant to NRS 353.1467.