BURR ALERT

Finders Keepers? What Should Happen to Abandoned Bank Accounts.

By Mallory Reehl and Jay Price January 2020

"Rule Number 1: Never lose money. Rule Number 2: Never forget Rule Number 1." – Warren Buffet.

While we all like to think that we have a handle on our finances, sometimes that is not the case. This is evidenced by abandoned or unclaimed bank accounts. Often accounts are "lost" by the rightful owners after a death and administration of an estate, a name change due to divorce or marriage, or a failure to notify a bank of a change of address. As each state has its own statutes governing the handling and reporting of abandoned property, it is important for a financial institution to understand its legal obligations and minimize its exposure to liability in dealing with such accounts. For institutions operating in different states, this also requires a determination of which state's laws may apply.

In any state, a financial institution should have systems in place to identify accounts that are abandoned due to inactivity. An account becomes abandoned if there has been no owner-generated activity (e.g., no withdrawals, deposits, cashed checks or customer-initiated communications) for a period of time typically referred to as a "dormancy period." While it varies by state statute, dormancy periods generally range from three to five years. Before an account is deemed abandoned, the institution generally must make a good-faith effort to notify the owner. Typically, written notice is sent to the owner's last known address unless state law requires another method of notification (such as publication in a local newspaper). The notice to the customer explains the actions required to claim the account and the timeframe in which such actions must be taken.

Once it is established that an account legally constitutes abandoned property, the funds will escheat, meaning that the institution will transfer the deposit balance to the state or specific state agency (as prescribed by statute), which then becomes the legal custodian of the funds until the rightful owner (perhaps an heir) claims the same. Such a transfer to the state or state agency will require the institution to prepare and submit reports required by the state. Each state has an abandoned or unclaimed property program, which is usually administered by the state treasurer or similar officer or agency. As part of such program, most states maintain websites allowing individuals and businesses to search for unclaimed property in their name and explaining the process for filing a claim on property with the state. The National Association of Unclaimed Property Administrators (NAUPA), a network of the National Association of State Treasurers, website at www.unclaimed.org provides contact information for each state's unclaimed property program.

Statutes in several states provide for state audits of financial institutions for compliance with abandoned property statutes. A failure to comply, uncovered by an audit or otherwise, can result in statutory penalties, including potential liability for the payment of interest on the value of the subject property. In particularly egregious cases, criminal charges could be possible. Some states have programs for voluntary disclosure of violations of abandoned property statutes. Such programs afford an opportunity to achieve compliance and avoid statutory penalties. While this article has focused on deposit accounts, financial institutions should be aware that the abandoned property statutes are not limited to cash deposits and include property such as securities and contents of safe deposit boxes. To avoid negative consequences of non-compliance, financial institutions should institute policies, procedures and controls to effectively identify, handle and report potentially escheatable property under applicable law. Potentially abandoned property should never be treated as income or assets of the institution.

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