



Unclaimed Funds

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New York State
Office of the State Comptroller
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Section

1

Executive Summary

The New York State Comptroller is the State's custodian of abandoned property and oversees the effort to return this property to its rightful owners. As the custodian of abandoned property, the Comptroller's main responsibility is to act on behalf of the property owners by protecting their property and their rights to it. From State fiscal Year (SFY) 2002-03 through SFY 2004-05, over \$400 million has been returned to New York State citizens.

A search for abandoned property in New York State can be conducted by going to the Comptroller's website at www.osc.state.ny.us. During SFY 2004-05, over 197,000 accounts were processed, resulting in approximately \$135.5 million in cash being returned to owners of unclaimed property. A majority of claims are initiated after abandoned accounts are identified online (62 percent). The Comptroller's Communications Center also receives approximately 100,000 calls annually and is always available during business hours to help assist owners through the claims process. In addition, the Comptroller publishes a *Handbook for Reporters of Unclaimed Funds* to help ensure compliance with the law on the part of holders of abandoned property. This effort further protects the public by publicizing the requirements that companies and institutions must follow in turning abandoned property over to the State for the Comptroller to hold until it is claimed by a rightful owner.

The Comptroller conducts a comprehensive outreach program to promote citizen awareness of the abandoned property program. Outreach Events provide an opportunity for people to search the unclaimed funds database to see if they are owed money and claim it if they are. Booths are set up at venues open to the public that allow

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individuals to conduct electronic searches on-site for abandoned property under their name. Since Comptroller Hevesi took office, the number of outreach events has steadily increased from 42 in 2003 to 99 in 2005. With this increase, the number of claims for funds at these events has nearly doubled from 10,848 in 2003 to 20,260 in 2005. Outreach events are held in every region of the State throughout the year.

Each year the Comptroller's Office staff operates a booth at the State Fair which generates a significant number of searches and claims. At the 2005 State Fair, 30,957 searches were conducted by the public generating a record 4,450 abandoned property claims that individuals turned over to the Comptroller's Office for review.

Comptroller Hevesi has implemented procedures that have reduced the average claims processing timeframe from more than six months in 2002 to fewer than three months in 2005. The Small Claim Pilot Project has expedited the processing of small value, low-risk claims even further, reducing this response time from ten months to one week. For low-value claims, a faster process is available through the Claim by Phone program, which has eliminated the need to submit paper documents and now provides a near immediate claim approval. However, more complicated claims can take longer and are handled on a case-by-case basis.

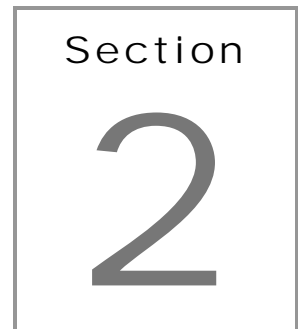
Furthermore, an intensified effort to monitor holder compliance has resulted in the recovery of \$291 million from Abandoned Property audits and \$7 million through the Holder Education and Voluntary Compliance initiatives since the beginning of 2003. These initiatives promote proper accounting and due diligence from New York businesses holding dormant accounts.

As the sole fiduciary of all abandoned property—cash and securities—the Comptroller acts to protect the rights of owners while their property is in his custody. As such, the Comptroller will honor any valid claim for the return of abandoned securities or funds submitted by owners or their heirs regardless of how much time has passed. Since claimants face no statute of limitations for the return of abandoned securities or funds, the Comptroller must ensure that enough money and securities are available to give back to owners who file a legitimate claim.

Until the property is returned to the owners, it is transferred to the General Fund to be used for the good of all citizens of New York State.

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The Comptroller must strike a balance between safeguarding funds to be returned to the owners, and at the same time, controlling the amount used for General Fund relief. This is especially relevant today, as the Comptroller has improved the turn-around time for claims processing, which has resulted in more claims being paid during the year. At the same time, the State has continued to request more abandoned property funds be turned over to the State's General Fund. The Comptroller's fiduciary role to claimants helps ensure that abandoned securities and funds are first and foremost available for the return to owners before they are made available to the State.



Background

The laws that govern abandoned property in the United States are based on the early period of English common law. The concept of escheat, which was originally defined as the transfer of property back to the sovereign power in the event that a person died without legal heirs, came to America as part of this common law heritage.¹ When the United States gained its independence, the “sovereign” became each state’s representative government, rather than the British King. Over time the meaning of escheat expanded to include property of many kinds, both personal and real, and is used to refer to the process of turning abandoned money and securities over to New York State.²

The early laws of New York concerning abandoned property were comprised of a patchwork of provisions located in different sections of law. For example, references to the escheatment of money held in bank accounts were in the Banking Law, while abandoned State monies were governed by the State Finance Law. In addition, the original abandoned property laws referred to unclaimed property on stage coaches, canal boats and ships that ran aground on Long Island, as well as to provisions for the immediate sale of perishable goods. By the middle of the twentieth century, it was clear that these laws were outdated and in need of revision.

¹ “Tenure in Law: Feudal Tenure and Its Evolution.” Infoplease. 2005. *The Columbia Electronic Encyclopedia*. 2005. Aug. 22, 2005 <www.infoplease.com/ce6/society/A0861492.html>; Greek, Cecil. “Forfeiture in England and Colonial America.” <www.fsu.edu/~crimdo/forfeiture.html>. Although the original concept was French in origin, escheat was subsequently expanded in England to include the forfeiture of property for failing to perform one’s duty.

² Escheat was originally embodied in the Constitution of 1894, Article I, Section 10 and later codified in Abandoned Property Law in 1943. In 1963, the constitutional provision was repealed.

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In 1943, the laws that governed abandoned property in the State were consolidated into the Abandoned Property Law.³ Several changes occurred with this consolidation that protected the public, as well as improved the ability of the State to manage, track and identify the large amount of abandoned property it holds.

- The State was required to advertise the existence of unclaimed properties to the public. The Comptroller met this requirement through outreach at public events, as well as by advertising in the local newspapers and the *New York Legislative Record and Index*.
- Time limits on a citizen's right to file a claim were eliminated. As a result, owners of abandoned property and their heirs never lose the ability to regain their property.
- Money escheated to the State was turned over to the Abandoned Property Fund, which was in turn transferred to the Post-War Reconstruction Fund, established in 1942 with \$750,000 set aside to meet the demands of any outstanding claims.⁴

At the same time, the many separate funds that existed were consolidated and placed under the supervision of the State Comptroller. Although many of the dormancy timeframes were further reduced in subsequent years, the 1943 provisions required that:

- Unclaimed corporate dividends would be turned over to the State after 15 years,
- Unclaimed bank deposits would be turned over to the State after 15 years, instead of 22 years,
- Life insurance funds unclaimed by non-residents after seven years would be governed by the same provisions that apply to life insurance funds unclaimed by residents of the State,
- Unclaimed tax assessment refunds owed by municipal or district corporations would be turned over to the State after five years,
- Unclaimed wages would be turned over to the State after one year,

³ Chapter 697 of the Laws of 1943.

⁴ Section 95(2) of the State Finance Law provided for the transfer of property to the Post War Reconstruction Fund, effective 1944.

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- Unclaimed money transmitted abroad would be turned over to the State after 90 days, and
- Domestic fraternal benefit societies would be regarded as domestic life insurance companies, subject to all provisions relating to unclaimed insurance funds.⁵

Also in 1943, the list of properties covered by the State's new Abandoned Property Law was extended to include:

- Surplus money remaining after the sale of unclaimed personal property that was seized after 30 days in order to satisfy a hotel-keeper or other liens, and
- Stolen or embezzled property that was seized, but remained unclaimed by the rightful owner after six months.

New York State's Abandoned Property Law is largely preserved as it was consolidated in 1943. Under the law, the Comptroller is the sole fiduciary for all abandoned property—cash and securities, and acts to protect the owners' rights while their property is in his custody.

The Comptroller's Role Regarding Unclaimed Funds

Although much of the 1943 Abandoned Property Law is preserved, a significant change was made in 1960 when the Post-War Reconstruction Fund was eliminated. Any monies or funds not needed to pay claims are transferred from the abandoned property fund, for which the Comptroller acts as custodian, to the State's General Fund.

In addition, reducing the time allowed before property is considered abandoned has helped to protect the public. The time reductions have enabled the State to advertise the abandoned property at an earlier date.

The Comptroller continues to be the State's custodian of abandoned property (excluding real estate).⁶ Today, most searches for abandoned

⁵ "Draw Bills Taking Unclaimed Monies." *The New York Times*. February 28, 1943. *Historical Newspapers*. ProQuest; *New York Legislative Record and Index*. 1943: 241-243.

⁶ The county is the custodian for abandoned real estate.

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property are done via an electronic database, maintained by the Comptroller's Office of Unclaimed Funds. This is much faster and more efficient than searching through nearly a million pages of paper records, as was done before the process was automated. Although the Office of Unclaimed Funds advertises the existence of abandoned property primarily through electronic means, the Comptroller also uses public events, the State Register, radio, TV and newspapers to reach a wider audience.

The Office of the State Comptroller handles approximately 100,000 calls concerning abandoned property annually through its Communications Center. The Communications Center is open Monday through Friday, 7 a.m. to 5 p.m., and can be reached at 1-800-221-9311 or 518-270-2200.

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Unclaimed Funds in New York Today

The Comptroller is the sole fiduciary of all abandoned securities. It is the Comptroller's obligation to return the actual securities to their owners whenever possible, along with any accruals, such as dividends, earned by the securities while they are in the Comptroller's custody. The Comptroller maintains an inventory of abandoned securities in order to meet this obligation. If the actual securities cannot be returned for any reason, the Comptroller will return the current market value of the securities, and all accruals, to the owners.

- There are more than 21 million account records on file with the largest unclaimed property account valued at \$1.7 million.
- The State pays interest for the first five years on unclaimed interest bearing accounts, such as savings accounts and Certificates of Deposit, to an owner who reclaims the property. The rate paid is set quarterly by the New York State Department of Taxation and Finance and is currently 5 percent.

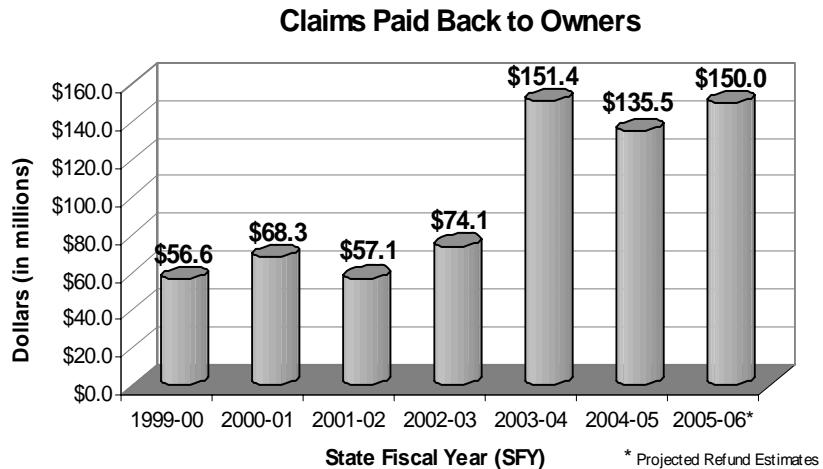
In SFY 2004-05:

- 36 percent of all claims were for \$50 or less, and about 53 percent were for \$100 or less.
- The returns represented more than 197,000 processed accounts.
- 62 percent of all claims are identified via searches of the New York State Comptroller's electronic database, www.osc.state.ny.us, and more than 4.7 million searches have been conducted since the website was introduced.

The amount of the abandoned property funds reported to the State varies from year to year with banking institutions generally being the primary source of cash and accounts. Banks, corporations, brokers/dealers and insurance companies reported the majority of the money that was turned over to the State in State fiscal year (SFY) 2004-05.

- Banks: 42 percent
- Corporations: 32 percent
- Brokers/Dealers: 8 percent
- Insurance Companies: 10 percent
- State Court Funds: 2 percent
- All Other: 6 percent

The State gave back over \$135 million to the owners of accounts in SFY 2004-05. Year-to-year fluctuations can occur due to unusually large claims or other one-time occurrences. The large increases seen since SFY 2002-03 have been primarily due to improved processing and technological advances. In SFY 2003-04, \$151 million was returned to owners. This amount, which was more than double the amount in claims returned the previous year, was in part due to initiatives put in place to clear a large back-log of claims the Comptroller inherited in SYF 2002-03. This was in addition to improvements made in processing efficiency and other technical advances during the same period. Since SFY 1999-00, the Comptroller's Office has returned \$543 million in claims.



The difference between the money the State receives and the money returned to rightful owners, plus any accrued interest, dividends or other payments, is transferred to the State's General Fund.

The Comptroller also works with the U.S. Treasury's Office of Foreign Asset Control to make sure that no payments are made to foreign countries, entities or individuals whose accounts have been "blocked" in accordance with U.S. foreign policy and security goals. For example, in April 2004, the Comptroller identified \$2 million in blocked accounts associated with the Central Bank of Iraq and, in accordance with the President's Executive Order, transferred these funds to the U.S. Treasury Department.

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Transferring Abandoned Property to the State

The New York State Abandoned Property Law establishes dormancy timeframes according to which banks, insurance companies, corporations, courts and other organizations must transfer abandoned property to the State Comptroller. Generally, if there has been no activity between two and five years, depending on the type of account, money is considered unclaimed or abandoned. Before unclaimed funds are turned over to the State, all holders of property are mandated by law to notify the individual by mail at the last known address on record. In addition, banks, insurance companies, utility companies and courts are required to advertise the names and addresses of the account holders in local newspapers. Despite these efforts, many accounts remain unclaimed and are turned over to the Comptroller, who is the sole custodian until the rightful owners or their heirs recover the property.

A Handbook for Reporters of Unclaimed Funds, which is published by the State Comptroller, provides a detailed listing of property type and reporting requirements and is available at the following website:

<http://www.osc.state.ny.us/ouf/oufhandbook/money.htm>.

If contact between a custodian of abandoned property and the legal owner has not occurred during the designated amount of time, the custodian must report the details of its holdings in an annual report submitted to the State Comptroller. The following types of property must be reported as abandoned if no contact has been established with the owner(s) within:

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- Five years for bank accounts, money orders, gift certificates, vendor checks, stock and dividends or court funds,
- Three years for insurance policies and property from brokers/dealers, credit balances, payroll checks or bond interest,
- Two years for utility deposits, and
- One year for uncashed, New York State-issued checks.

Current reporting requirements designate the month that specific types of entities must turn over abandoned property to the Comptroller. The month for reporting is generally determined by the type of entity holding the property, although, in some cases (e.g., travelers checks), the month for reporting is determined by the type of abandoned property.

Entity/Type	Reporting Month
Corporations & Broker/Dealers	March
Courts	April
Travelers Checks	June
Insurance Companies	September
Utilities	October
Banks	November

Note: Certain entities report several times during the year, depending on the activities of subsidiaries within a corporation.

Abandoned Property from the Holocaust

During the Second World War, thousands of Jewish families living in Germany and German-occupied territories transferred assets to Swiss banks in an attempt to safeguard their possessions from the Nazis. After Germany's defeat, the Swiss banks made it difficult for either survivors or heirs to reclaim their assets. To avoid returning these assets, the banks required detailed information from claimants about bank accounts, life insurance policies and other financial data to process claims. Banks even required death certificates of Holocaust victims for claims filed by heirs. Because survivors were unlikely to have documentation of asset ownership, and because death certificates were not issued at concentration camps, Swiss banks managed to avoid their obligation to repay money that had been entrusted to them.⁷

In 1995, the late Israeli Prime Minister Yitzhak Rabin approached Edgar Bronfman, Sr., President of the World Jewish Congress (WJC), to represent Holocaust survivors and the heirs of victims in pursuing restitution claims. Bronfman and others at the WJC began an international campaign to help reclaim abandoned assets held by Swiss banks and demanded that the banks turn over all documentation of dormant accounts held during the war. Since New York City has the largest number of Holocaust survivors and heirs of any city in the world, Bronfman enlisted the help of New York's former Senator, Alphonse

⁷ New York City Comptroller Press Release. "Hevesi to be Honored by Israeli Government for His Work Helping Achieve Restitution from Swiss Banks." October 10, 1998; Oleck, Joan. "A Guide to Settling Holocaust Claims." September 18, 1998

<www.businessweek.com/1998/39/b3597133.thm>.

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D'Amato, who was then Chair of the Senate Banking Committee, and Alan G. Hevesi, who was then City Comptroller, to obtain justice.⁸

Comptroller Hevesi wrote to the major Swiss banks, urging them to help uncover Holocaust accounts and other assets stolen by the Nazis. When the banks failed to take action, Comptroller Hevesi, joined by then State Comptroller H. Carl McCall, announced that a series of escalating sanctions against Swiss banks would be imposed beginning September 1, 1998. They were supported by many other New York State and City officials, including Governor George Pataki, Assembly Speaker Sheldon Silver, Mayor Rudolph Giuliani and Council Speaker Peter Vallone. Other state and local governments announced similar actions.⁹

By August 1998, the Swiss banks reached a \$1.25 billion agreement with Holocaust survivors and heirs, as well as with WJC. As a result of this agreement, Comptrollers Hevesi and McCall dropped the threat of sanctions.¹⁰

Today, State Comptroller Hevesi continues to monitor efforts by claimants to gain restitution from banks in other countries, insurance companies and companies that used slave and/or forced labor during the Second World War. The Office of the State Comptroller has turned over a large number of records from Swiss banks operating in New York and New York banks operating in Europe for review by numerous other offices, including the U.S. Presidential Advisory Commission on Holocaust Assets and the Dutch Ministry of France. The Office of the State Comptroller also maintains continuous contact with the New York State Banking Department to locate additional records as needed. The Comptroller's website provides information to Holocaust survivors and heirs.¹¹

⁸ New York City Comptroller Press Release. "Hevesi to be Honored by Israeli Government for His Work Helping Achieve Restitution from Swiss Banks." October 10, 1998; New York City Comptroller Press Release. "Hevesi, Bronfman, Eizenstat & D'Amato Honored by Israeli Government for Helping Achieve Restitution from Swiss Banks." November 17, 1998.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Office of the State Comptroller. <<http://www.osc.state.ny.us/ouf/holocaust.htm>>.

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The Recovery of Unclaimed Funds

A large number of New York State residents have lost track of money or property that has now been turned over to the State. The most common reasons abandoned property is turned over to the State include a resident:

- Moving without notifying every business contact,
- Opening a school savings account as a child or for a child and then forgetting about it,
- Moving without receiving a utility deposit refund,
- Forgetting to cash a health insurance check,
- Neglecting to cash interest or dividend checks on a security,¹²
- Leaving a job and not returning for the final paycheck, and
- Leaving no account information or a process for notifying heirs upon his or her death.

¹² Failing to cash dividend checks can result in the security itself being considered abandoned, and thus turned over to the State. For example, if a person fails to cash dividend checks from IBM stocks, the stock itself will eventually be considered abandoned and turned over to the State.

The Search Process for Unclaimed Funds

To locate specific property that was lost begins with an individual or corporation initiating a claim. The easiest method to file a claim with the State:

1. Visit the Comptroller's website at www.osc.state.ny.us,
2. Click on the section labeled "Unclaimed Funds," and
3. Search the online database using the name of the owner and the last known city of residence.
4. The online database only contains records of calculated property valued at \$50 or more.

Search Now!

Name:

City:

To search the list, enter your LAST NAME
(space) FIRST NAME (space) MIDDLE INITIAL
(or name of business) from 2 to 35 characters.
For better results add a CITY of residence up to
19 characters.

If the database does not produce a match on the first attempt, try to enter the information differently.

- Use only a **LAST NAME (space) FIRST INITIAL**.
- Eliminate any space before or after the name (other than to separate the last and first names). Spaces will affect the results.
- Eliminate spaces or punctuation within the **LAST NAME**. Try a few spelling variations of the LAST NAME (try common misspellings).
- Try abbreviating corporate entity names (e.g., AT&T or A T & T or Amer Tel & Tel).

An individual or corporate entity may find more than one record listed under the name searched. This usually happens when an individual or corporate entity has a common name, such as “John Doe” or “ACME, Inc.” The key is to find a listing that includes a familiar address. This will narrow the search to a specific record, allowing the rightful owner to file a claim.

If the abandoned property is valued at less than \$50, was abandoned prior to 1985 or is not located using the recommended techniques, but there is reason to believe that property exists and has been turned over to the State, the Comptroller’s Communications Center is the next course of action.

The Comptroller’s Communications Center is available Monday through Friday, 7:00 a.m. to 5:00 p.m. EST—dial toll free 1-800-221-9311 or 518-270-2200.

Or, inquiries may be sent to:

State Comptroller Alan G. Hevesi
Office of Unclaimed Funds
110 State Street
Albany, New York 12236

In May 2005, the Office started a new "Claim by Phone" program to eliminate the need to submit paper documents in order to expedite the claim process. Claimants can call the Comptroller’s Communications Center and answer a few questions from our Customer Service Representatives to determine if their claim is eligible for the program. The general criteria for the program is: accounts with a low dollar value being returned to the original owners (not heirs) who can verify some personal information.

If an entity or person is filing a claim on behalf of an owner (deceased, power of attorney, finders, businesses, etc), this Office may request additional documentation after the claim has been established. If the owner is deceased, a copy of the death certificate must be provided in addition to proof of address. Detailed instructions and responses to Frequently Asked Questions are provided on the website to help in the search and claim filing process.¹³

¹³ Office of the State Comptroller. <<http://www.osc.state.ny.us/ouf/faq.htm>>.

Proof of Address - Photocopies of the following are considered acceptable proof of address: driver's license, non-driver photo ID, birth and marriage certificates, passport (if address is shown), bills and statements (such as banking, utility, medical, credit cards), records (such as tax (W2, 1099), school, insurance, medical, military), legal papers (such as divorce decree, separation agreement, mortgage), and post-marked envelope.

Proof of Ownership - Copies of the following are considered acceptable proofs of ownership: bank books, passbooks, statements (bank, mutual fund, utility bills), certificates (stocks, bonds, bond coupons), uncashed checks (money orders, gift certificates, traveler's checks), insurance policies.

The Office of Unclaimed Funds is willing to help the rightful owners of abandoned property find any funds on record. Regardless of the method used to search for abandoned property in New York State, the services described above are provided free of charge.

Searching for Out-of-State Unclaimed Funds

Searching for abandoned property within New York State is fairly easy and straight forward. If a search of unclaimed funds within New York State yields no results, it is possible the property has been escheated to another state. Depending on the type and circumstances of the property in question, funds that were thought to be property within New York may legally be property of another jurisdiction. Guidelines for the determination of jurisdictional entitlement rights to the escheatment of certain property were determined in the U.S. Supreme Court by the 1965 landmark case *Texas v. New Jersey*.

Jurisdiction to escheat abandoned intangible personal property lies in the State of the creditor's last known address on the debtor's books and records or, absent such address or an escheat law, in the State of corporate domicile—but subject to later escheat to the former State if it proves such an address to be within its borders and provides for escheat of such property.¹⁴

¹⁴ *Texas v. New Jersey*. 379 U.S. 674; 1965, FindLaw, Legal News and Commentary. <<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=379&invol=674>>. For more information relevant to state jurisdictional issues, see *Pennsylvania v. New York*, 407 U.S. 206; 1972 and *Delaware v. New York*. 507 U.S. 490; 1993.

Although it may be more difficult to search for property that was lost out of state or if the place of origin is unknown, a central information source is available to help owners find abandoned property throughout the United States. This service is provided by the National Association of Unclaimed Property Administrators (NAUPA), a coalition of unclaimed property experts associated with the National Association of State Treasurers. New York and other states in the nation work closely with NAUPA to educate the public and provide additional resources for both owners and holders of abandoned property. The addresses, telephone numbers and websites for all the states, territories and the Canadian province of Quebec are linked to a single source and can be found at the following website: www.naupa.org.

NAUPA estimates there is approximately \$30 billion in unclaimed monies held throughout the nation. This estimate only includes the monies held by the states and U.S. territories and does not include the unknown billions in unclaimed funds held by the federal government.

NAUPA has also endorsed a website, www.missingmoney.com, which was created in 1999 by ACS Unclaimed Property Clearinghouse, a company that provides unclaimed property support services to state governments. The site consolidates abandoned property information for all participating states and territories. Although only a limited number of states currently participate in the missing money database, expectations are that the site will eventually host a comprehensive database of unclaimed property records to which the public will have free access.

Whenever the federal government is unable to locate the owners of abandoned funds, the money is generally turned over to the state where the owner is last known to have lived. If the funds are not turned over to the state, and it is believed that the federal government is still holding an owner's unclaimed funds, the search process can become more complicated. Unlike states, the federal government has no centralized information service or database on abandoned funds.

To conduct a search of funds held by the federal government, an owner must determine beforehand what type of benefit or payment is involved, the date on which the payment was expected and how the payment should have been made. Once this information is ascertained, the owner must access the United States Government Manual (which lists titles and addresses for all federal agencies) at www.gpoaccess.gov/gmanual/index.html or go to a public library and obtain the manual. The owner must then contact the bureau responsible for the administration of payment and initiate a claim with

that specific federal agency. Online databases may also be searched for certain types of property.

- Treasury Hunt provides a database of unclaimed savings bonds, U.S. Securities and payments at www.publicdebt.treas.gov.
- HUD/FHA provides a database of Mortgage Insurance Refunds at www.hud.gov.
- Credit Union unclaimed shares may be searched at www.ncua.gov.
- Pension Funds from Former Employers may be searched at www.pbgc.gov.

The resources made available for the public to help search for abandoned funds by New York State, NAUPA and the federal government are all free of charge. While these resources are very useful to owners or their heirs who are actively pursuing a claim, many who are unaware they have abandoned monies are not actively searching for the funds. This happens more than people realize since there is so much money held by the states that is never claimed. Sometimes money is left by a relative who died without any direct heirs. Other times bank accounts opened for a child's college education have been forgotten over the years and subsequently turned over to the State. Whatever the reason, many people do not realize they are the rightful owners of unclaimed funds until they are contacted by the executor of an estate or receive a letter in the mail from a locator firm.

Locator Firms

Locator firms (known as finders, heir locators, bounty hunters or asset recovery firms) are companies that specialize in tracking down the owners of abandoned property. It should be noted that individuals who are searching for abandoned or missing property in New York do not need to use locator firms if the property had been turned over to the Comptroller's Office. These firms are in the business of seeking out the owner or the owner's heirs and helping individuals claim their abandoned funds in return for a percentage of the total amount recovered. Once the owners are found, the locator firm will make them aware that an asset exists in their name, and for a percentage of the total (usually ranging from 10 to 35 percent, depending on how difficult the search process has been), the firm will tell them where and how to recover the asset. However, if the property has already been turned

over to the Comptroller, then the locator firm, by law, can only charge up to 15 percent of the amount recovered. Before firms will disclose this information, however, owners will typically sign a contract giving a set percentage of any recovered money to the firm for the service provided.

Some locator firms send out postcards or letters to people matching the names in state unclaimed property databases. These finders tend to ask for a “flat fee” in advance before they disclose information. These types of locator firms “are noted for collecting this fee and in return, send out a list of unclaimed property offices throughout the nation.”¹⁵ The practice of charging a “flat fee” is limited in New York State by a 1980 amendment to the Abandoned Property Law that capped the amount a locator firm can charge for services at 15 percent. However, the 1980 amendment only applies to property that has already been turned over to the State.

The 1980 law has been successfully used to protect the public from exorbitant fees levied by locator firms. *Abrams v. Abandoned Funds Information Center* (1985) barred a locator company from charging a set fee of \$32 for a recovered fund valued at less than \$100 because it violated the 15 percent maximum. Other violations in this case included a failure to provide a written agreement disclosing the address of the holder.¹⁶ *In re Devlin* (1992), an unconscionable fee (\$389,000) that was charged to the heirs of a 98 year-old woman was reduced to 15 percent of the gross value of the recovered claim (\$120,000), plus out-of-pocket expenses and attorney fees. The original fee charged by the firm was roughly 40 percent of the total estate.¹⁷

Many locator firms have developed contractual relationships with banks, insurance companies, courts and other institutions to help return abandoned property to owners before it is turned over to the state. Because the property has not yet been escheated to the state, locator firms are allowed to charge a higher percentage fee than mandated by law (15 percent in New York State). If an owner receives a letter from a legitimate locator firm, but cannot find his or her name listed in any state abandoned property databases, an owner may:

¹⁵ The National Association of Unclaimed Property Administrators. <www.unclaimed.org/mainframe.asp?VisitorType=owner>.

¹⁶ *Abrams v. Abandoned Funds Information Center, Inc.*, 129 Misc.2d 614, 493 NYS2d 907 (1985).

¹⁷ *In re Devlin*, 182 A.D.2d 322; 588 NYS.2d 316 (1992).

- Continue searching State databases until the property is eventually turned over to the State.
- Search personal records to determine which entity could be in possession of the lost property and go directly to the holder.
- Negotiate a better percentage with the locator firm, and then sign a revised contract.

In addition to locator firms, third-party auditors, “holder advocates” and CPAs can be directly or indirectly involved in the process. These businesses provide support services to the State, legal advice to holders and owners, accounting and auditing services, and advanced search capabilities to the public.

Fraud

While most locator firms operate within the confines of the law, there are some unscrupulous firms and individuals which have developed scams involving abandoned property. The public should be wary of any unsolicited letters promising money. Legitimate locator firms generally have information about the owner they are trying to contact. A form letter containing only generic information and promising huge payouts is the first indication that it may not be legitimate. New York does not provide general information about the value of abandoned property to locator firms. Contacting the Better Business Bureau to check on the firm in question is a good first step before calling any telephone numbers or signing any documents provided in an unsolicited letter.

The Comptroller’s Office provides guidelines for finders in part to help ensure that claimants know that they can obtain their property free of charge by working directly with the Office of the State Comptroller. If fraud is suspected within New York, call the Comptroller’s Communications Center at 1-800-221-9311 or 518-270-2200.

Con artists have attempted to claim abandoned funds from the states through identity theft and other fraudulent means. One individual searched through state databases for the names of companies that had gone out of business but were owed large sums of unclaimed funds.¹⁸ This individual then tried to re-establish the same company name in

¹⁸ This would be difficult to do in New York as the Comptroller’s Office does not publish the value of individual abandoned property accounts.

order to file a fraudulent claim. Such instances have resulted in a high level of due diligence by the states to ensure that the claims received are actually from legitimate owners or heirs. In New York State, documentation is thoroughly checked and confirmed before a claim can be paid. This process could take several months in complicated situations, but it is necessary to ensure that the rightful owners receive their property.

The following are just a few of the scams that have surfaced:

- *Internet ScamBusters™, Issue #100, by Audri and Jim Lanford* - Many consumers have received emails and letters claiming, "There's over \$400 billion in unclaimed money in North America—and some of it belongs to you!" Furthermore, these emails and letters claim that according to a recent Oprah show, it has been documented that "9 out of 10 people are owed money." The company tells the consumer that a search can be conducted for "free" and only if funds are recovered will a 15 percent fee be assessed. Unfortunately, the scammers make money once the consumer calls the 1-809 number to start the "free" search. Similar to the 900 prefix located in the United States, the 809 prefix is a toll number located in the British Virgin Islands (Bahamas). It is very difficult to get an 809 toll charge removed from a bill.
- *State of California Office of the Attorney General Press Release, May 2004* - AGA Lockyear filed a lawsuit against telemarketing con artists who used auto-dialing equipment to deliver pre-recorded messages and live solicitations to consumers. The complaint alleges that an unidentified speaker tells recipients they have more than \$500 or \$600 in unclaimed money, property or other assets and directs consumers to contact the "claims department." When consumers call the claims department, another recorded message instructs them to send a "retrieval fee," ranging from \$25 to \$99, in order to collect the lost property. The complaint alleges that in return for the fee, some consumers are instructed to complete a form which requires disclosure of personal information. To date, no consumer has received any of the advertised asset recovery. Some consumers have been given casino vouchers valued at \$500 or \$600, but the vouchers are not redeemable for cash.
- *The Corporate Crime Reporter, the Top 100 Corporate Criminals of the 1990s by Russell Mokhiber, Number 8* - On March 15, 1999, Bankers Trust was fined \$60 million for its role in a scheme by high-ranking bank officials to enhance the bank's financial performance

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by falsely recording approximately \$19.1 million in unclaimed customer funds as the bank's income and reserves.

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