

**ESCHEAT TASK FORCE
PROPOSED QUESTIONS AND ANSWERS**

Account Fee Increases

Q: If a financial institution decides to increase the monthly fees on an account and sends a change-in-terms notice to its customer, is the notice effective for escheat purposes if it is returned unopened by the Post Office?

A: If the notice is returned unopened due to a processing error on the part of the institution (e.g., a misstated address or insufficient postage), the notice is most likely invalid under state contract law and ineffective as to that customer. If the notice is returned because the depositor has moved and failed to provide the institution or the Post Office with a forwarding address, it may still be effective as a matter of contract law. A notice will be deemed effective for purposes of the Unclaimed Property Law if it is binding on the depositor under a valid, enforceable contract. (CCP §§ 1513(a), (b) and (g), 1520; 2 CCR §§ 1151, 1160 and 1162)

There may be circumstances where changes do not have to be communicated personally or by mail to the customer. For example, some service charges are not covered by Regulation DD (e.g., business account charges, fees for services offered to account and non-account holders alike, and fees for legal process). If the customer has agreed to a different type of notification for those charges (e.g., posting at the branch or on-line notification), the alternate type of notice may be effective, even if the customer does not receive the mailed notice.

Q: If a depositor asks the institution to hold all statements and notices at his or her branch of account, and agrees to be bound by those notices whether or not (s)he picks them up, are the notices effective?

A: Yes, assuming the depositor's agreement is valid and enforceable under state law.

Pledged Accounts

Q: If an account is pledged as collateral to the depository institution as security for a loan by the institution, who is considered the "owner" of the account for purposes of CCP § 1513?

A: CCP § 1501(g) defines the term "owner" for purposes of the Unclaimed Property Law as "a depositor in the case of a deposit . . . or any other person having a legal or equitable interest in property subject to this chapter . . ." When a depositor pledges an account to the institution as a borrower or guarantor, the institution obtains a perfected security interest in the account pursuant to UCC §9302(g) (Note: Different perfection rules apply to negotiable certificates of deposit; see §9105(e)). As long as the institution maintains its security interest in the account, the account is considered active for purposes

of the Unclaimed Property Law, whether or not the depositor engages in any of the three activities described in CCP §1513.

Q: What if the account is pledged to a third party? May the institution consider the circumstances of the pledge in determining whether the account is active?

A: Since the third party is deemed an "owner" for purposes of the Unclaimed Property Law, the account does not escheat if either the depositor or the secured party engages in any of the three activities described in CCP § 1513. If none of the three activities occurs during the three year period mentioned in CCP §1513, the account will escheat even if the bank has reason to believe that the pledge and/or the reason for the pledge (e.g., a loan) continues to exist.

Blocked Accounts

Q: Do blocked accounts escheat to the Controller if the owner fails to perform any of the activities described in CCP §1513 (i.e., conduct a transaction, correspond in writing, or otherwise indicate an interest in the account)?

A: Blocked accounts do not escheat to the Controller without prior approval from the court that has jurisdiction over the funds. (Unclaimed Property Holder Reporting Instructions; Financial Code §§764, 765 and 1586; Probate Code §9703).

There may be instances, however, where a court no longer retains jurisdiction over a blocked account. If an order is self-executing (e.g., the balance becomes distributable to a minor automatically when he reaches the age of 18), the account escheats if no activity takes place during the three years that follow the date it is no longer "blocked" by court order.

In-Lieu Accounts

Q: How should a bank treat funds that must be held in an account pursuant to state or federal law (e.g., funds deposited for the benefit of the state, in lieu of a bond to secure the depositor's performance)? In many cases, the depositor is not allowed to withdraw the funds, and a government agency is listed as the accountholder or the payee.

A: Funds deposited to an account for the benefit of a state agency pursuant to state law (e.g., as security pending the completion of a transaction or for licensing purposes) are considered active if: (1) the depositing party or the agency (both of which are "owners" under CCP §1501(g)) performs any of the activities described in CCP§1513 (i.e., conducts transactions, corresponds in writing, or otherwise indicates an interest in the account); or (2) the bank in good faith believes that state or federal law requires that the funds remain on deposit (e.g., pending the completion of a transaction or for licensing purposes).

Cashier's Checks

Q: If a banking or financial organization issues a cashier's check, regardless of its purpose, does the cashier's check escheat to the State as provided in California Code of Civil Procedure Section 1513(d)?

A: Yes. California Code of Civil Procedure ("CCP") Section 1513(d) unambiguously sets the escheat period for written instruments on which a banking or financial organization is directly liable at five years, as follows: "Any sum payable on any other written instrument on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, any draft or certified check, that has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, when the owner, for more than five years, has not corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum, or other record on file with the banking or financial organization." Further, California Uniform Commercial Code ("UCC") Section 3104(g) defines a cashier's check to "mean a draft with respect to which the drawer and drawee are the same bank or branches of the same bank." Accordingly, since CCP Section 1513(d) applies to written instruments on which a bank is directly liable, and since UCC Section 3104(g) defines a cashier's check to be such a written instrument, CCP Section 1513(d) applies to cashier's checks and the appropriate escheat period is five (5) years.

Early Withdrawal Penalties

Q: May a banking or financial organization assess an early withdrawal penalty to a time deposit withdrawn prior to maturity due to the funds escheating to the State of California?

A: Yes. Both Federal law and the deposit agreement between a banking or financial organization and its customer support the imposition of an early withdrawal penalty. First, Title 12, Code of Federal Regulations Part 204, Section 204.2 (c)(1)(i) states in part that a time deposit means "(a) deposit that the depositor does not have a right and is not permitted to make withdrawals from within six days after the date of the deposit unless the deposit is subject to an early withdrawal penalty of at least seven days' simple interest on amounts withdrawn within the first six days after deposit." Thus, Federal regulation requires a banking or financial organization to impose an early withdrawal penalty for withdrawals within six days after the date of the deposit. Federal regulation also allows the imposition of such a penalty for withdrawals beyond the first six days after deposit but prior to maturity, subject to disclosure requirements and a limited number of exceptions. Second, the deposit agreement between a banking or financial organization and its customer contractually provides for the imposition of an early withdrawal penalty when a time deposit is withdrawn after the first six days of the deposit but before the maturity date. An early withdrawal penalty is a pricing provision agreed-upon by the banking or financial organization and its customer in order to ensure that a banking or financial organization gets what it contracted for when the parties agreed to open a time deposit. Accordingly, as a matter of Federal law and pursuant to

contractual agreement with its customer, a banking or financial organization may assess an early withdrawal penalty when escheating funds from a time deposit prior to maturity.

Inactive Savings Accounts

Q: Under what terms and conditions, if any, may a banking or financial organization cease the payment of interest to an inactive savings account?

A: Section 1513(a) of the Code of Civil Procedure (“CCP”) provides the following, in part: “No banking organization may discontinue any interest or dividends on any savings account because of the inactivity contemplated by this section.” Similar restrictions are provided as to “financial organizations” under §1513(b) of the CCP. The term “inactivity” is not defined in the California Unclaimed Property Law. However, that term is defined in the Unclaimed Property Regulations, at §1153 (Cal.Admin.Code, §1153, Title 2, Subchapter 8):

The term “inactivity” means non-occurrence of any of the events or acts described in (1), (2) or (3) of subdivision (a) or subdivision (b) of Code of Civil Procedure Section 1513. A period of inactivity cannot be terminated by the unilateral act of the holder.

The Unclaimed Property Holder Reporting Instructions (at page 5) confirm the foregoing requirement as to savings accounts.

Notwithstanding the foregoing, a banking or financial organization may cease the payment of interest to an inactive savings account under the following:

a. Under valid enforceable contracts, as to savings accounts where interest is paid calendar monthly or quarterly, some banking or financial organizations do not pay accrued but unpaid interest to a savings account if that account is closed prior to the end of a calendar month or quarter. As and when banking or financial organizations submit reports of and deliver or remit electronically unclaimed property to the Controller under CCP §§1530 or 1532, in the event such delivery or remittance is prior to the ending of a calendar month or quarter, such organizations are not required to pay interest to savings accounts to the date of delivery or remittance. The delivery or remittance is deemed a closing of the savings account prior to the end of a calendar month or quarter and accrued but unpaid interest for the applicable period is forfeited.

b. Under §§1530 and 1532 of the CCP, funds are delivered or remitted to the Controller contemporaneous with the report of unclaimed property submitted by banking or financial organizations. The report is to be filed prior to November 1 of each year as of June 30 or fiscal year-end next preceding. Generally, banking and financial organizations report as of December 31 of the preceding year; their fiscal year is tied to a calendar year. In order to ease the administrative burden assumed by banking and financial organizations under the Unclaimed Property Law, such organizations may cease payment of interest for a reasonable period of time between the preceding fiscal year-end and the

date of the actual delivery or remittance of the funds in savings account under the reports filed pursuant to §§1530 or 1532 of the CCP, provided the period of cessation does not exceed thirty (30) days. As a practical matter, in some cases, the computer system of a banking or financial organization governing savings accounts may be unable to credit accrued and unpaid interest to inactive savings accounts precisely up to the date such accounts are delivered or remitted to the Controller. If the Controller does not provide some flexibility under §§1530 and 1532, banking and financial organizations with such deficient computer systems may be compelled to compute manually accrued and unpaid interest as to each and every savings account.