DORMANT OR UNCLAIMED FUNDS AND THE ESCHEATMENT PROCESS

When entrusted funds remain in a trust account and the owner cannot be located despite reasonable efforts, or the owner of the funds is unknown, the funds may become subject to California's unclaimed property laws. Generally, funds held in a fiduciary capacity for more than three years after the owner's last activity or contact may be deemed unclaimed property and must be reported and remitted to the California State Controller's Office.

Under California's Unclaimed Property Law, holders of unclaimed property, including businesses, corporations, financial institutions, associations, and other entities, are required to attempt to notify the owner at the owner's last known address before the property is transferred to the State Controller's Office. If the owner does not respond or claim the funds, the property is transferred to the State Controller's Office for safekeeping. The State Controller's Office also conducts outreach efforts to notify owners of property reported to the state.

As set forth in the California Code of Civil Procedure, part 3, title 10, chapter 7, article 2 (§§ 1510-1528), funds held in a fiduciary capacity are subject to reporting and remittance requirements after the applicable dormancy period. In addition, rule 1.15 and rule 1.16(e)(2) of the California Rules of Professional Conduct require attorneys to properly safeguard entrusted funds and promptly distribute client funds and property when the attorney's obligation to hold such funds has ended.

For additional information regarding California's unclaimed property requirements, including reporting and remittance obligations, please refer to the California State Controller's Office website and the State Controller's Notice to Holders.

State Bar Recommendation to Timely Disburse Entrusted Funds

The monitoring of outstanding trust account activity should be incorporated into the monthly reconciliation process. To strengthen controls over outstanding disbursements and entrusted funds, the State Bar recommends that firms implement the following procedures:

1. **Timely Follow-Up:** Establish a policy requiring investigation and follow-up of checks that remain outstanding for more than 30 days, including documented outreach to the payee.

2. **Escalation Procedures:** Reissue checks or take other appropriate corrective action when outstanding items remain unresolved after reasonable follow-up efforts.

3. **Documentation:** Maintain documentation of all follow-up efforts, including correspondence, emails, letters, and call logs, within the client file and reconciliation records.

4. **Attorney Oversight:** Require the designated attorney to review and approve all outstanding checks as part of the monthly three-way reconciliation process.

5. **Escheatment of Funds:** Evaluate entrusted funds for escheatment to the California State Controller's Office when funds have remained unclaimed for the applicable dormancy period and reasonable efforts to locate the client or third-party payee have been unsuccessful.

6. **Voided Check Review:** Ensure that all voided checks are properly supported and documented, and that appropriate follow-up is conducted to determine whether the funds should be reissued, distributed, or remitted to the State Controller's Office as unclaimed property.