

DEPARTMENT OF TREASURY

State Treasurer

UNCLAIMED PROPERTY

8 CCR 1508-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

1.1 Authority

This regulation is adopted pursuant to the authority in section 38-13-104, C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA"), C.R.S. and the Revised Uniform Unclaimed Property Act, sections 38-13-101 et seq. (the "Act"), C.R.S.

1.2 Scope and Purpose

- A. It is the intent of the Colorado State Treasurer to enforce the unclaimed property statutes so that property presumed abandoned under those statutes is reported to and collected by the State of Colorado, and returned to its rightful owner through an efficient advertising and claims processing program. Transferring the unclaimed property and related information to the Colorado State Treasurer allows the property and information to be compiled in a single location for the convenience of the absent owner and makes it possible for the Colorado State Treasurer to better protect the interests of missing owners. The State of Colorado indemnifies the holder against claims by individuals or other states once the holder reports and delivers unclaimed property to the Colorado State Treasurer in accordance with the Revised Uniform Unclaimed Property Act. This law shall also be observed by the Colorado State Treasurer when reporting and delivering property belonging to other states.

1.3 Applicability

The passage of the Revised Uniform Unclaimed Property Act modernizes the previous act, necessitating changes to the department's previous rules. The Amendments to existing rules and the creation of new rules relate to the handling of unclaimed property owner records, the remittance of records to the Unclaimed Property program, the oversight of third-party auditors, locator fees and other administrative functions. The amendments ensure that the rules comply with State statutes and Treasury Department operating guidelines. Amendments to the rules were adopted on October 11, 2021.

1.4 Definitions

The definition of any terms used herein specific to the Unclaimed Property Program are consistent with the definitions prescribed in 38-13-102, C.R.S. in addition;

- A. Division shall mean the Colorado Department of Treasury, Division of Unclaimed Property
- B. The Revised Uniform Unclaimed Property Act, or RUUPA in section 38-13-101 et seq., C.R.S

1.5 Rules

1.5.2 Knowledge of Owner

- A. A holder of unclaimed property may establish its knowledge of the existence or whereabouts of the owner of that property by recording any owner-generated activity relating to that property. The mailing of a statement, confirmation or other correspondence by a holder of unclaimed property to the last known address of the owner of that property and the nonreturn of such mail to the holder is insufficient to establish that the holder has knowledge of the existence or whereabouts of the owner. A holder may cross-reference with another account in the same institution or business that has current owner generated activity. To cross-reference a dormant or inactive account with an active account the same names must appear in some form either on the account, signature card or contract.
- B. A holder may establish a code for indicating "customer contact" or "owner-generated activity" for purposes of record-keeping. That code must be well documented.

1.5.7 Indemnification

- A. Upon payment or delivery of property to the Administrator, the state assumes custody and responsibility for safekeeping of the property. A person who pays or delivers property in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim with respect to the property.
- B. A holder who has paid or delivered property to the Administrator may make payment to a person who appears to be entitled to payment and upon filing proof of payment and proof that the payee was entitled to payment the Administrator shall promptly reimburse the holder for the payment without imposing any fee or charge.
- C. If the holder pays or delivers property to the Administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its unclaimed property laws, the Administrator, upon written notice of claim, shall defend holder against the claim and indemnify the holder against liability on the claim.

1.5.11 Located Property

- A. Except as otherwise provided in the Act, agreements to pay compensation to recover or assist in the recovery of property reported under the RUUPA are unenforceable within 24 months after date of payment or delivery to the Administrator. Compensation shall not exceed 10% except as provided by the Act.

1.5.13 Electronic Reporting

- A. Holders shall report unclaimed property as prescribed in 38-13-401, C.R.S. in electronic format only. The format of such report shall be through the current NAUPA Standard Electronic File Format uploaded on the Division website. Holders may file their reports using the manual reporting feature on the Colorado Treasury Unclaimed Property website or file their report electronically via reporting software. The Colorado Treasury Unclaimed Property website shall provide a list of vendors known to currently provide required reporting software along with what forms of reporting that are not accepted by the Colorado Treasury Unclaimed Property Division.
- B. Notwithstanding the filing of such electronic report, the Holder shall pay or deliver to the Treasurer all unclaimed property reported as required in 38-13-603, C.R.S

1.5.14 Electronic Signatures

- A. Any electronic signatures for unclaimed property business as the Administrator may prescribe shall be consistent with the Uniform Electronic Transactions Act, 24-71.3-101, et seq., C.R.S.

1.5.15 Power of Attorney

- A. A claim made pursuant to 38-13-903, C.R.S. by a person with a duly authorized Power of Attorney on behalf of the original owner may be processed as required by law at the Administrator's discretion. If claim by a Power of Attorney is initiated, such action does not preclude the Administrator from seeking verification from the original owner.

1.5.16 Aggregate Reporting

- A. Aggregate reporting under 38-13-402(j)(2), C.R.S. shall consist of like properties each of which has an individual value of less than \$25. The holder shall maintain a record of the itemized information for ten (10) years.

1.5.17 Continuity of Records

- A. When a holder acquires unclaimed property from another holder, such as in a merger, acquisition, reorganization, consolidation or transfer, the successor holder shall have a duty to maintain and continue the records of the prior holder concerning unclaimed property, as prescribed in 38-13-404, C.R.S.

1.5.18 Remittance and Custody of Securities

- A. For payment or delivery of property as identified in 38-13-603(8), C.R.S. a holder is not required to deliver to the Administrator a security statutorily defined as nonfreely transferable. This includes securities that may be under global lock, restricted, worthless or nonfreely transferable for any reason.
- B. For unclaimed property as identified in 38-13-402, C.R.S. the report made by the Holder as prescribed in 38-13-401 C.R.S. for such property must match the dollar value of the property as transferred to the Administrator under 38-13-603, C.R.S. CUSIP changes, stock splits, etc. must be fully expressed on holder reports. For example, holders should not report 100 shares of stock A and then deliver 75 shares of stock B or 33 shares of stock A.
- C. The Administrator may decline to take custody of property pursuant to 38-13-607, C.R.S. if:
 - 1. The property has a value less than the estimated expenses of notice and sale of the property; or
 - 2. Taking custody of the property would be unlawful.

1.5.19 Nature of Unclaimed Property

- A. A holder must report under 38-13-402, C.R.S. the original nature of the property being reported, if known, and shall be reported according to the timeline specified for the original nature of the item. For example, if the underlying transaction is an unclaimed wage but the financial instrument is a cashier's check, the reportable item is the wage, and not the cashier's check.
- B. The report required under section 38-13-402, C.R.S. must include the name, last known address and social security number or tax payer identification of the apparent owner or property with a value of twenty-five dollars or more.

1.6.1 Reporting Deadlines and Extensions

- A. Unclaimed property reports, as identified in 38-13-403, C.R.S. must be filed before November 1 of each year with the exception of Insurance Companies as defined in 38-13-102, C.R.S., for which the report must be filed before May 1 of each year.
- B. Under 38-13-403(3), C.R.S., the Administrator may grant an extension in the form of 30 days for holders that are unable to submit their report before the deadline. Extension requests must be submitted for review to the Administrator at least 30 days prior to the original filing due date.

1.6.2 Local Government Agency Opt-Out Option

For local government unclaimed property exemption as identified in 38-13-1504, C.R.S., local government agencies that choose to opt-out from delivering unclaimed property to the State Treasurer must complete and submit an official opt-out form provided by the Division. This must be accepted by the division in advance of the local government annual report submission.

1.6.3 Notary of Claims

- A. The administrator shall require notarization for claims submitted by a person if the claim is equal to or greater than \$1000. This includes securities and tangible properties.

1.6.4 Audit Examination Estimation

The Administrator may examine the records of a holder to determine compliance with the Act under 38-13-1002, CRS or the Administrator may contract with a third-party to conduct examinations under 38-13-1009, C.R.S.

- A. Pursuant to 38-13-1006, C.R.S., if a Person subject to examination does not retain the records required by Section 38-13-401, C.R.S., the Administrator may determine the value of property due using a reasonable method of estimation based on all information available to the Administrator, including extrapolation and use of statistical sampling when appropriate and necessary.
- B. A payment not made in a timely manner based on estimation is considered a penalty as prescribed in 38-13-1204, C.R.S. A holder required to file shall retain records for ten years after the later of the date the report was filed or the last date a timely report was due to be filed. Estimation does not relieve a Person from an obligation to report and deliver property to a State in which the holder is domiciled.
- C. Unless agreed to by a Person subject to examination, estimation should be used only when there are insufficient records to perform an examination.
- D. An Auditor may not use estimation in an examination unless either:
 - 1. Person subject to examination agrees in writing to the use of estimation as part of an audit resolution agreement; or,
 - 2. Administrator approves in writing the use of estimation in the examination.
- E. Prior to approving the use of estimation in an examination under the Act the Administrator shall:
 - 1. Pursuant to 38-13-1003, notify the Person subject to examination in writing that the Administrator is considering the use of estimation because of a failure to maintain the records required by 38-13-404, C.R.S of the Act;

2. After considering any evidence submitted by the Auditor and the Person subject to examination, make a written determination that the Person subject to examination has failed to maintain the records required by Section 38-13-104, of the Act;
3. Provide an opportunity for the Person subject to examination to submit written objections including, but not limited to:
 - a. submitting evidence that the Person subject to examination has maintained sufficient records to perform the examination for some or all of the years during the time period covered by the examination; or
 - b. proposing an estimation methodology;
- F. Notify in writing the Person subject to examination of the estimation methodology to be used and for which years during the time period covered by the examination estimation will be used.

1.6.5 Third Party Audit Contracts

- A. Subject to the requirements of 38-13-1009, C.R.S., the Administrator may contract with a Person (hereinafter, "Auditor") to conduct unclaimed property examinations to determine compliance with the Act. Auditor is defined as the Administrator's agent in 38-13-202, C.R.S.
 1. A contract to conduct an examination may provide for compensation of the Auditor based on a fixed fee, hourly fee, or contingent fee.
 2. A contract with an Auditor to conduct an examination is a public record under the Colorado Open Records Act.
 3. An Auditor and the Auditor's staff shall collectively possess sufficient training and experience to adequately perform unclaimed property examinations.
 4. An Auditor shall not engage in any unclaimed property examination to determine compliance with the Act without written authorization from the Administrator.
 5. An Auditor shall maintain independence in performing the examination and avoid conflicts of interest.
 6. An Auditor shall report in writing to the Administrator at least monthly on the status of all unclaimed property examinations which the Auditor has been authorized to perform by the Administrator.

1.6.6 Notice of Third Party Audit Examination

- A. All third party audit unclaimed property examinations should begin with an official notice of examination letter.
 1. A notice letter will:
 - a. Notify the Person subject to examination that its books and records (including those belonging to subsidiary and related entities or maintained by a third party that has contracted with such Person) are subject to examination;
 - b. Identify the assigned Auditor; and,
 - c. Include Auditor contact information.

- B. A notice letter may either be sent
 - 1. Directly to the Person subject to examination by the Administrator or;
 - 2. to the Auditor assigned to the examination for delivery to the Person subject to examination.

1.6.7 Third Party Audit Examination Entrance Conference

- A. Once an examination is assigned and written notice of an examination is provided to the Person subject to examination, the Auditor and/or Examiner should schedule an entrance conference to include representatives of the Person subject to examination. A representative of the Administrator may, but is not required to, participate in an entrance conference.
- B. During the opening conference, by way of example and not limitation, the Auditor shall:
 - 1. Identify to the extent possible the types of property that will be subject to the examination and the time period covered by the examination;
 - 2. Discuss an examination work plan, a tentative schedule, and any potential issues related to scope;
 - 3. Provide contact information for both the Auditor and the Administrator;
 - 4. Provide the Person subject to examination a draft confidentiality agreement, if a draft has not been presented prior to the opening conference;
 - 5. Notify the Person subject to examination of their ability to request an informal conference with the Administrator pursuant to the Act;
 - 6. Advise the Person subject to examination that the Administrator and not the Auditor makes determinations concerning such Person's liability under the Act and that interpretations of the Act are made by the Administrator;
 - 7. Request records and materials necessary to proceed with the next steps of the examination;
 - 8. Explain the requirement to provide a due diligence notice to the apparent owner of property presumed abandoned. Due diligence requirements are described in 38-113-501 and 38-113-502, C.R.S.; and,
 - 9. Explain that, unless otherwise agreed to in writing by the Administrator, the Person subject to examination shall remit to the Auditor any unclaimed property identified during the examination that is owed to the state.

1.6.8 Third Party Audit Examinations Advocates

- A. A Person subject to examination may retain third-party Advocates (an "Advocate") to assist them in the examination process.
- B. The retention of an Advocate is no basis to delay the commencement of the examination and the Administrator will not delay the examination so that the Advocate may conduct a review or its own audit of the books and records of the Person subject to examination in advance of the Administrator's examination.

- C. The Administrator should cooperate with the Person subject to examination and its Advocate and keep both of them apprised of records requests, interviews, and the progress of the audit in general.

1.6.9 Third Party Audit Examination Guidelines

- A. The Auditor and the Person subject to examination shall act in good faith to conduct the examination under the terms and within the time frame established in the entrance conference.
 - 1. During the examination, the Auditor may make subsequent requests to the Person subject to examination for additional books and records as needed to complete the examination.
 - a. The Auditor shall submit record requests to the Person subject to examination in writing, or if the request is made verbally, shall follow up with written documentation of the request.
 - b. Record requests shall have reasonable deadlines in order to move the examination forward and avoid unnecessary delays. The Person subject to examination is responsible for advising the Auditor in advance of any anticipated difficulties in achieving deadlines and agreed upon deliverables.
 - c. The Auditor shall provide a reasonable timeframe for the Person subject to examination to respond to the request based on the type and extent of the information requested and other relevant facts and circumstances.
 - d. The Auditor shall provide confirmation of receipt to submissions received from the Person subject to examination, with reasonable projected response times.
 - 2. The examination shall not be limited to a review of work papers, compilations, or record summaries prepared by the Person subject to examination or an Advocate but shall include, but not be limited to, access to the original books and records deemed by the Administrator to be necessary to ascertain compliance with the Act. The Third-Party Auditor may utilize data sources in their examination, for example the Social Security Administration's Death Master File (DMF), the United States Post Office National Change of Address database (NCOA), etc.
 - 3. The Auditor shall properly document the examination and make the working papers gathered during the unclaimed property examination available for review by the Administrator. Such working papers will include planning information and all related calculations, statistical analyses, and summarizations.

1.6.10 Confidentiality of Records Obtained or Compiled During the Third Party Audit Examination

- A. Records obtained and records, including work papers, compiled by the Administrator or the Administrator's agent in the course of conducting an examination are subject to the confidentiality and security provisions of the Act and are not public records.

1.6.11 Confidentiality Agreement- Third Party Audit Examination

- A. The person subject to examination may require, as a condition of disclosure of the records of the Person to be examined, that each person having access to the records disclosed in an examination execute and deliver to the Person to be examined a confidentiality agreement that:
 - 1. is in a form that is satisfactory to the Administrator; and

2. requires the Person having access to the records to comply with the provisions of Part 14 of the Act.
- B. If the Person subject to examination and the Auditor are unable to enter into a confidentiality agreement within 60 calendar days from the date an agreement reasonably satisfactory to the Administrator was first presented to the Person subject to the examination by the Auditor or the Administrator, then the examination may commence without a confidentiality agreement in place and the parties shall rely on the confidentiality provisions of Part 14 of the Act.
- C. Auditors shall not disclose confidential information obtained during an unclaimed property examination to any Person other than to the Administrator or the Administrator's designee and, in the case of a multistate examination, to authorized representatives of a state participating in the examination.
- D. Auditors shall not use confidential information obtained from the person subject to an examination for any purpose other than for purposes of the examination. Auditors shall take reasonable steps to ensure that the confidential information provided by the Person subject to an examination is securely maintained.

1.6.12 Third Party Audit Examination Bankruptcy

- A. If at any time before or during the course of an examination the Person subject to examination files for bankruptcy, such Person shall give notice of the filing to the Auditor. The Auditor shall, within ten calendar days of receiving notice or the discovery of the event, notify the Administrator of the bankruptcy filing. If the Administrator so elects, the Auditor shall assist the Administrator to ensure that a proper proof of claim is filed timely in the bankruptcy action.

1.6.13 Third Party Audit Examination Audit Resolution Agreements

- A. Pursuant to the Administrator's authority to conduct an examination, the Administrator possesses the authority to resolve an examination via negotiation and settlement with the Person subject to examination. This provides flexibility to both the Person subject to examination and the Administrator to resolve issues that could require formal appeal or litigation. Such settlements are often referred to as "audit resolution agreements."
- B. The Administrator may agree to reduce or waive interest and penalties as part of a settlement, to the extent permitted by law.
- C. A mutually-agreed upon settlement resolves a specific examination and does not create any precedent on specific legal issues.

1.6.14 Third Party Audit Examination Report to Holder

- A. At the conclusion of an examination, unless waived in writing by the Person being examined, the Administrator shall provide to the Person whose records were examined a report that specifies:
 1. the work performed;
 2. the property types reviewed;
 3. the methodology of any estimation technique, extrapolation, or statistical sampling used in conducting the examination;
 4. each calculation showing the value of property determined to be due; and,

5. the findings of the Auditor conducting the examination.

1.6.15 Multistate Third Party Audit Examinations

- A. The Administrator may agree to participate in an examination of a Person for compliance with unclaimed property laws of multiple states, including the Act, where a single Third-Party Auditor performs an examination for more than one state.
- B. Multistate examinations are intended to be more efficient and effective for both the Person being examined and the states which have authorized the examination.

Editor's Notes

History

Entire rule eff. 11/30/2021.