

Indication of Death: Common Industry Practices

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Introduction

State laws require that mutual fund accounts (along with other types of property) deemed abandoned be escheated—that is, turned over—to the state to be held in trust for the owner until the owner is located and reunited with his/her property. In July 2016, the Uniform Law Commission (ULC)¹ adopted a Revised Uniform Unclaimed Property Act (RUUPA), which states may use as a guide in updating their existing abandoned property laws. Section 202 of the RUUPA addresses when property, including mutual funds, held in a tax-deferred retirement or health savings account is presumed abandoned.

To help ensure compliance with RUUPA Section 202, a working group of members of ICI's Abandoned Property Task Force drafted this brief paper.

RUUPA Section 202

RUUPA Section 202 states the following:

(a) Subject to Section 210, property held in a pension account or retirement account that qualifies for tax deferral under the income-tax laws of the United States is presumed abandoned if it is unclaimed by the apparent owner three years after the later of:

(1) the following dates:

(A) except as in subparagraph (B), the date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States Postal Service; or

(B) if the second communication is sent later than 30 days after the date the first communication is returned undelivered, the date the first communication was returned undelivered by the United States Postal Service; or

(2) the earlier of the following dates:

(A) the date the apparent owner becomes 70.5 years of age, if determinable by the holder; or

(B) if the Internal Revenue Code, [as amended], 26 U.S.C. Section 1 et seq., requires distribution to avoid a tax penalty, two years after the date the holder:

(i) receives confirmation of the death of the apparent owner in the ordinary course of its business; or

(ii) confirms the death of the apparent owner under subsection (b).

(b) If a holder in the ordinary course of its business receives notice or an indication of the death of an apparent owner and subsection (a)(2) applies, the holder shall attempt not later than 90 days after receipt of the notice or indication to confirm whether the apparent owner is deceased.

¹ The Uniform Law Commission (ULC) is a body charged with drafting laws to address issues of interest to the various states in order to better ensure uniformity of such laws (the Uniform Commercial Code is one such law).

As used in Section 202, the “holder” is the institution that maintains the account on behalf of its owner. The indication of death provision in subsection (b) only applies if subsection (a)(2) applies. Therefore, the indication of death requirement only applies for tax-deferred retirement accounts where the owner is at least 70½ years old or the plan requires a distribution to avoid a tax penalty.

Though the RUUPA does not specifically define what constitutes “an indication of the death of an apparent owner,” any such indication must be received by the holder in its “ordinary course of business.” In other words, the RUUPA does not require holders to seek out information regarding whether an account owner is still alive absent receiving an indication of death; nor does the RUUPA presume the apparent owner to be deceased if the holder is unsuccessful in its attempt to confirm whether the apparent owner is deceased.

Objective

Because subsection 202(a)(2) requires a holder to “attempt...to confirm whether the apparent owner is deceased,” the objective of this paper is to assist holders, such as mutual funds and their designated transfer agents, in (1) defining specific activities that could constitute an indication of death and (2) providing suggestions for attempting to confirm whether an owner is deceased. Such information will be relevant in those states that adopt RUUPA Section 202.

Indication of Death

The following items, when received in the holder’s ordinary course of business, may be considered an indication of death and require action by the mutual fund or transfer agent (this list is not all inclusive):

- » death indicator flag on a required Securities and Exchange Commission lost shareholder search;
- » telephone call from any person (e.g., beneficiary, executor, financial adviser/representative) informing the holder of the owner’s death;
- » written correspondence from any person (e.g., beneficiary, executor, financial adviser/representative on the account, or other third party) informing the holder of the owner’s death;
- » results from a third-party vendor search conducted in the holder’s ordinary course of business;
- » database search and/or internal research conducted in the holder’s ordinary course of business; and
- » notification from other internal business lines that the holder receives in its ordinary course of business.

Attempting to Confirm Whether Owner Is Deceased

Upon receipt of an indication of death in its ordinary course of business, the mutual fund or transfer agent must attempt to confirm within 90 days whether the owner is deceased. Methods to satisfy this requirement may include, but are not limited to:

- » Written correspondence to the address of record or telephone outreach to persons such as:
 - » the owner,
 - » the financial adviser or broker representative listed on the account,
 - » the designated representative listed on the account (applicable for the state of Texas), or
 - » the trusted individual listed on the account²
- » A database search (if applicable)
- » Use of a third-party search firm
- » An internet obituary search or database search for relatives

Mutual fund firms should have policies specifying the process they will use to confirm the death of an owner, including what documents they will obtain and retain, such as a certified death certificate or its equivalent (e.g., letters of testamentary, orders of appointment, letters of administration, or appropriate paperless legals).³

Note that Section 202 does not require any specific method of outreach. Funds and transfer agents should identify in their policies and procedures the applicable methods they will use to satisfy and document their compliance with Section 202's requirements. Compliance with the policies and procedures the holder has adopted should satisfy the holder's obligation under Section 202.

Holders should also consider documenting the methods they will use to confirm whether an owner is deceased. Documents affirming the holder's compliance with its chosen method(s) should be maintained for the record retention period for each state for audit purposes.

² Effective February 5, 2018, amendments to Financial Industry Regulatory Authority (FINRA) Rule 4512 require FINRA members to make a reasonable effort to obtain the name and contact information for a trusted contract person for a customer's account.

³ Under a paperless legals program, specific paper documents are not required to accompany financial instructions provided to the transfer agent if a valid Medallion Signature Guarantee is obtained from an eligible guarantor.



1401 H Street, NW
Washington, DC 20005
202-326-5800
www.ici.org