



FINANCIAL AND CONSUMER SERVICES COMMISSION
RULE UP-001 *Unclaimed Property - General*

PART 1
PRELIMINARY MATTERS

1.1 Definitions

(1) In this Rule:

“accident and sickness insurance” means insurance with respect to any of the following:

- (a) against loss resulting from bodily injury to, or the death of, a person caused by an accident;
- (b) under which an insurer undertakes to pay a sum or sums of insurance money in the event of bodily injury to, or the death of, a person caused by an accident;
- (c) against loss resulting from the sickness or disability of a person not caused by an accident, but does not include insurance for losses resulting from the death of a person caused by sickness;
- (d) under which an insurer undertakes to pay a sum or sums of insurance money in the event of the sickness or disability of a person not caused by an accident;
- (e) under which an insurer undertakes to pay a sum of insurance money in respect of the health care, including dental care and preventative care, of a person;

“Act” means the *Unclaimed Property Act*;

“beneficiary” for an insurance policy, insurance contract or annuity means a beneficiary as defined in section 186 of the *Insurance Act*;

“business organization” includes a cooperative as defined in the *Cooperatives Act*;

“endowment insurance” means endowment insurance as defined in the *Insurance Act*;

“gift card” means a gift card as defined in the *Gift Cards Act*;

“life insurance” means life insurance as defined in the *Insurance Act*;

“security” means a security as defined in the *Securities Act*;

“utility” means a business organization that performs a necessary public service and is subject to government oversight;

“wind-up” means wind-up as defined in the *Pension Benefits Act*.

- (2) The definitions contained in the *Act* apply to this Rule, unless the terms in question are defined in this Rule.

1.2 Fair market value

For the purposes of the *Act* and the Rules, fair market value means any of the following:

- (a) if the property is in a Canadian currency, the value of the property in Canadian dollars;
- (b) if the property is in a foreign currency, the value of the property converted into Canadian dollars;
- (c) if the property is a negotiable instrument or another item that is equivalent to cash, the face value of the instrument plus any interest owing;
- (d) for all other property, the fair market value as determined by any of the following:
 - (i) a professional appraiser;
 - (ii) an appraisal guide;
 - (iii) the historical records or the recorded value of the property on a financial statement of, or prepared for, the apparent owner;
 - (iv) the books, records or documents of the holder;
 - (v) any other method that the Director considers reasonable.

PART 2 APPLICATION

2.1 Excluded Property

- (1) The definition of “property” does not include any of the following:
- (a) a gift card;
 - (b) property acquired from participation in a loyalty program;

- (c) property in a safe deposit box held by a provincially regulated credit union, trust company, *caisse populaire* or federal financial institution;
 - (d) property owed to an owner under an accident or sickness insurance policy, if the owner's policy is in force;
 - (e) property with a fair market value of less than one dollar;
- (2) A holder is not obligated to submit a report or deliver property to the Director if delivery is required by another Act of the Legislature, an Act of another province or territory of Canada, an Act of the Parliament of Canada or by an order or judgment of a New Brunswick court.

2.2 When Property is Unclaimed – Indication of Interest

- (1) For the purposes of paragraph 4(1)(b) of the *Act*, any of the following indicate that an owner or apparent owner has a right or interest in the property:
- (a) the delivery of statements relating to the property to the apparent owner, unless the statements are returned as undeliverable;
 - (b) a verification or review of the property's balance that creates a record;
 - (c) electronic access to an account relating to the property, if the account requires a unique password for access.
- (2) If a holder has more than one property in the name of the same apparent owner, an indication of interest in any one of those properties is an indication of the apparent owner's interest in all of the apparent owner's property;
- (3) If property is held by a holder pursuant to a rental agreement and that agreement requires a regular automatic withdrawal from an account belonging to the apparent owner, the successful regular withdrawal indicates the apparent owner's interest in the property;
- (4) If property is acquired by means of regular automatic withdrawals of premiums by a holder from an account belonging to the apparent owner, the successful regular withdrawal of those premiums indicates the interest of the apparent owner in the property.

2.3 When Property is Unclaimed – Time Period

- (1) For the purposes of subsection 4(1) of the *Act*, property is presumed to be unclaimed if the owner or apparent owner has not made an indication of right or interest in the property during the following periods:
- (a) for a cheque, or money order, three years after the date of issuance;

- (b) for a certificate of deposit, demand deposit, guaranteed investment certificate, guaranteed investment confirmation or other deposit made for a fixed period that has matured, the following:
 - (i) property held by a credit union regulated under the *Credit Unions Act* or a federal financial institution, ten years;
 - (ii) property held by other holders, three years;
- (c) for a savings or other deposit that does not have a fixed period or does not have a maturity date, the following:
 - (i) property held by a credit union regulated under the *Credit Unions Act* or a federal financial institution, ten years;
 - (ii) property held by other holders, three years;
- (d) for a deposit held in trust for another person, the following:
 - (i) property held by a licensed funeral provider under the *Pre-Arranged Funeral Services Act*, three years after the death of the named beneficiary under the pre-arranged funeral plan;
 - (ii) property held by a licensed funeral provider under the *Pre-Arranged Funeral Services Act*, if the date of death of the named beneficiary is unknown, the date the named beneficiary would be 120 years of age;
 - (iii) property held in trust by other holders, three years after the later of the following:
 - (A) the last indication of interest;
 - (B) the date of the transaction for which the property was received;
- (e) for property that is part of a registered education savings plan under the *Income Tax Act* (Canada), for which the subscriber has made no request in regard to payments to the named beneficiary under the plan, three years following the expiry date of the plan;
- (f) for property owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, excluding property held in a registered retirement savings plan or a registered retirement income fund under the *Income Tax Act* (Canada), three years after either of the following:
 - (i) the date of the obligation to pay;

- (ii) if payable on proof of death, the date the insurer knew or ought to have known the insured died or the date the insured would be [age on mortality table] years of age;
- (g) for property owed under an accident or sickness insurance policy, three years after the date the policy ceased to be in force;
- (h) for property in a registered retirement savings plan under the *Income Tax Act* (Canada), three years after the receipt of information that the owner is deceased;
- (i) for property paid out of a registered retirement income fund under the *Income Tax Act* (Canada), three years after the date of payment;
- (j) for any entitlement to a pension benefit under the *Pension Benefits Act* resulting from the wind-up of a pension plan, three years after the wind-up report is approved by the Superintendent of Pensions;
- (k) for wages, salary or other remuneration, three years after the wages, salary or remuneration are due and payable;
- (l) for property held by a utility, three years after the property is credited, due and payable or distributable;
- (m) for property held by a court, government or governmental organization, three years after the date the property is due and payable or distributable;
- (n) for property received by a court as proceeds of a class action and not distributed under the judgment, three years after the distribution date set out in the judgment;
- (o) for a security, three years after the earlier of either of the following:
 - (i) a dividend, share split, or other distribution that was unclaimed by the apparent owner;
 - (ii) an event or action that the apparent owner did not respond to or complete as required;
- (p) for property owed to an apparent owner, three years after the date of the earliest unclaimed payment;
- (q) for property of a business organization distributable in the course of dissolution, three years after the date of dissolution;
- (r) for all other property, three years.

2.4 When Obligation to Deliver is Not Required

- (1)** A holder is not obligated to submit to the Director the unclaimed property report and is not obligated to deliver the unclaimed property referred to in the report under section 9 of the *Act*, if all of the following apply:
 - (a) the total fair market value of the property held by the holder listed in the report is less than \$500;
 - (b) each individual property held by the holder listed in the report has a fair market value of less than \$50.
- (2)** Even if not required to submit a report and deliver unclaimed property due to subsection (1), a holder may choose to submit a report and deliver the unclaimed property referred to in that report under section 9 of the *Act*.

PART 3 RIGHTS AND DUTIES OF HOLDERS

3.1 Notice to Apparent Owner

- (1)** For the purposes of section 7 of the *Act*, a notice to apparent owner must contain all of the following:
 - (a) the name of the apparent owner;
 - (b) a statement indicating that the continued failure to communicate with the holder will result in the delivery of the property to the Director;
 - (c) the estimated date on which that delivery to the Director will take place.
- (2)** If a holder has a postal mailing address for an apparent owner, the notice must be sent by regular mail through Canada Post.
- (3)** If a holder has an electronic address for an apparent owner, the notice must be sent electronically but the electronic notice shall not include personal information of the apparent owner other than the apparent owner's name.
- (4)** If a holder does not know the identity of an apparent owner of the property, the holder is not required to give notice to any person.

3.2 Late delivery – voluntary disclosure program

- (1)** For the purposes of subsection 10(3) of the *Act*, a holder who has not delivered property in accordance with section 9 of the *Act* may voluntarily apply to the Director to become compliant, unless either of the following:

- (a) the Director has notified the holder that the Director intends to conduct a compliance review or an examination;
 - (b) the holder has filed repeatedly under this section.
- (2) An application under section 10 of the *Act* must contain documentation to describe the circumstances as to why the holder is non-compliant.
- (3) An application approved under this section will not be subject to late fees and interest under section 14 of the *Act*.

3.3 Delivery on the Holder's Initiative

An application under section 12 of the *Act* must set out the reasons to support the delivery of the property before the property is presumed to be unclaimed and include documentation in support of the application.

3.4 Submitting report and delivery of property that is a security

- (1) For property that is a security, the holder is deemed to be the person with the books, records and/or documents regarding the apparent owner.
- (2) The holder must submit the most recent account statement of the apparent owner with the report required under subsection 9(2) of the *Act*.
- (3) If an apparent owner has securities with a total estimated fair market value in the account of less than \$1000, the holder shall liquidate the account and deliver the liquidated property to the Director, in accordance with section 18 of the *Act*.
- (4) Pursuant to subsection 13(2) of the *Act*, the holder will deliver to the Director the net amount realized along with a copy of any remittances.
- (5) If an apparent owner has securities with a total estimated fair market value in an account of \$1000 or more, the holder shall submit a report to the Director in accordance with sections 9, 10, 11, or 12 of the *Act*, as applicable, and continue to hold the property until the Director gives the holder permission to deliver the unclaimed property.
- (6) For any property that continues to be held by the holder under 3.4(5) of this Rule, the holder will amend the name and address on the account statement to include the following:

Apparent Owner's Name
C/O Financial and Consumer Services Commission
Unclaimed Property Division
300-85 Charlotte Street
Saint John, NB E2L 2J2

**PART 4
RIGHTS AND DUTIES OF DIRECTOR**

4.1 Time for Reconsideration

Pursuant to subsection 17(2) of the *Act*, the prescribed period for the Director to reconsider a claim is 60 days from the date the Director receives notice of objection from the holder.

**PART 5
CLAIMS**

5.1 Claims

- (1) In addition to the requirements under section 25 of the *Act*, for property held in more than one apparent owner's name, the Director may require either of the following:
 - (a) the claim to be submitted by all apparent owners;
 - (b) proof of death of an apparent owner.
- (2) The Director may require a probate certificate for claims of property of an apparent owner who is deceased.
- (3) All payments for a claim of the property of a deceased individual will be payable to the estate of the deceased individual.

5.2 Time Periods

- (1) For the purposes of subsections 25(2) and 26(3) of the *Act*, the prescribed period for the Director to consider a claim is 120 days from the date the claim is submitted with all the necessary information to the Director.
- (2) For the purposes of subsections 25(5) and 26(6) of the *Act*, if the Director allows a claim, the Director shall deliver the unclaimed property within 60 days of the date the Director allowed the claim.

5.3 Creditors and other claims

- (1) Pursuant to paragraph 26(1)(b) of the *Act*, the Director may pay a claim to any of the following:
 - (a) an executor or an administrator of an apparent owner;
 - (b) a legal representative of an apparent owner;
 - (c) a successor company;

- (d) a former holder, upon proof that the former holder made an equivalent payment to the apparent owner;
- (e) a former holder that made a delivery in error;
- (f) a trustee in bankruptcy authorized to act on behalf of the creditors of the apparent owner.

**PART 6
GENERAL**

6.1 Agreements to Locate Unclaimed Property

For the purposes of paragraph 52(2)(b) of the *Act*, a provision in an agreement referred to in subsection 52(1) that establishes compensation in excess of 10% of the value of the unclaimed property is of no force or effect.

6.2 Effective Date

This Rule comes into force on *[Insert Date]*.