

**PART II. REAL AND PERSONAL PROPERTY AND DOMESTIC  
RELATIONS**

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**TITLE II. DESCENT AND DISTRIBUTION, WILLS, ESTATES OF DECEASED PERSONS  
AND ABSENTEES, GUARDIANSHIP, CONSERVATORSHIP AND TRUSTS**

**CHAPTER 200A. ABANDONED PROPERTY**

**Chapter 200A: Section 13. Agreements to recover property**

Section 13. All agreements to pay compensation to recover or assist in the recovery of property reported under section seven made within twenty-four months after the date payment or delivery is made under section eight A are unenforceable. Such an agreement made more than twenty-four months after payment or delivery is required under said section eight A is valid if: (a) it is in writing, signed by the owner and discloses the nature and value of the property and the name and address of the person or entity in possession of the property. (b) the fee or compensation does not exceed ten percent at any time.

Nothing in this section shall be construed to prevent an owner from asserting, at any time, that any agreement to locate property is based on excessive or unjust compensation.

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960 CMR 4.00: PROCEDURES FOR THE ADMINISTRATION OF ABANDONED PROPERTY

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4.01: Scope and Purpose

960 CMR 4.00 establishes and clarifies procedures for the administration of the Abandoned Property Division in the Department of the State Treasurer and is promulgated by the Department of the State Treasurer pursuant to M.G.L. c. 200A, § 13A. Issues not addressed in 960 CMR 4.00 for which any party seeks clarity are to be considered in light of the entire M.G.L. c. 200A.

4.02: Definitions

Unless otherwise enumerated below, all definitions associated with 960 CMR 4.00 shall be the definitions outlined in M.G.L. c. 200A.

Activity: Action taken by an owner with respect to his or her property which indicates that the owner intends for the property not to be presumed abandoned. Examples of owner activity include, but are not limited to: an owner-initiated deposit or withdrawal or posting of interest on a piece of property, such as a savings or checking account; notification to a holder of change of owner address; payment of an installment loan, such as a mortgage, equity loan or automobile loan; payment of a safe deposit box rental fee; and any action, such as written correspondence, e-mail message, fax, telephone call or person-to-person conversation between an owner and a holder or his/her representative, which can be documented so as to indicate an owner's interest in his or her property not being presumed abandoned.

Administrator/trix: A person appointed by a court to settle the estate of a person for whom no last will and testament has been admitted to a probate court of competent jurisdiction.

Agent: A person or entity that conducts an abandoned property examination/audit on behalf of the Treasurer.

Aggregate Property: Intangible property with a value of less than \$100.00 which has been sent to the State Treasury by a holder in a "lump sum" pursuant to M.G.L. c. 200A, § 7(b)(3), or property with a value of \$100.00 or greater for which a holder does not have the name or address of the owner in its records.

AP-1 Form: A form prescribed by the Treasurer for the annual reporting of abandoned property.

Assistant Treasurer: The Assistant Treasurer for Abandoned Property.

Book Entry Shares: Electronic form of holding shares between a depository and a participant.

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Burial Account: An account opened for the purpose of paying the final expenses associated with a funeral. In most cases, burial accounts are pre-paid and are held in custody by a funeral director.

Claimant: A person(s) or legal entity legally entitled to claim abandoned property held in custody by the Abandoned Property Division. A claimant may be an original owner or the court-appointed representative of an original owner or his/her estate.

Commercial Customer: Any person who maintains a current, multiple transaction, commercial relationship with a vendor in the conduct of the person's business within Massachusetts or through a vendor conducting business in Massachusetts. No individual purchasing goods or services in his/her capacity as a consumer at retail shall be considered a commercial customer.

Conservator: A person who is court-appointed to legally hold, manage and safeguard the value of another person's property.

Credit Balances: Outstanding balances that are recorded as current accounts receivable or accounts payable of a holder. The balance must have been generated in the normal and ordinary course of business between the holder and a then current commercial customer.

Director: The Director of Auditing in the Abandoned Property Division.

Division: The Abandoned Property Division.

Dormancy Period: The period of time during which an owner of property takes no action with respect to his or her property, after which the property is presumed abandoned and must be remitted to the Division unless claimed beforehand.

Due Diligence: Written notice sent by a holder after the appropriate dormancy period has elapsed that informs the owner that his/her property will be turned over to the State Treasury as abandoned property unless the owner contacts the holder.

Executor/trix: A person named in a will to administer and carry out the last will and testament of a deceased person.

False or Fraudulent Return: A report issued to the Division and signed by an authorized representative of a holder which contains information known by the authorized representative or other officer involved in the preparation of the report to be fraudulent or false as it applies to any material matter contained in the report.

Guardian: A person who has legal responsibility for the care and well being of another person who is either a minor or incompetent to manage their own affairs.

Heirfinder: A person or entity that, for a fee, assists a property owner in making a claim for abandoned property, or locates the owner of property on behalf of a holder.

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Holder: The entity that has custody of abandoned property until it is claimed by the owner of the property or transferred to the Division in accordance with the provisions of M.G.L. c. 200A.

Holder Certification: A written statement from an abandoned property holder certifying that the holder

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has reported certain abandoned property to the State Treasury.

Insufficient Return: a report issued to the Division and signed by an authorized representative of a holder that is subsequently determined by a review of the Division, its agent or representative to have underreported the value of the abandoned property by 50% or more of what is ultimately determined to be owed within any individual abandoned property reporting code.

Intangible Property: Money, money orders, checks, drafts, deposits, interest, dividends, income and bonds; credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, mineral proceeds and unidentified remittances; stocks and other intangible ownership interests in business associations; money deposited to redeem stocks, bonds, coupons and other securities, or to make distributions; amounts due and payable under the terms of an annuity or insurance policy; amounts distributed from a trust or custodial fund established under a plan to provide any health, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefit, as defined in M.G.L. c. 200A, § 1.

Joint Account: An account payable on request to one or more of two or more parties, whether or not mention is made of any right of survivorship.

Joint Tenant, or With Right of Survivorship (WROS): An original owner who holds property jointly with another original owner(s). When one tenant dies, the entire tenancy remains to the surviving tenant(s).

Legal Representative of the Owner: A person, other than the original owner, claiming property on behalf of the original owner as an executor/trix or administrator/trix of an estate, as a conservator or guardian, or an authorized agent appointed in accordance with a properly-executed power of attorney.

Lessee: The person or persons in whose name or names a safe deposit box stands on the books of a bank or credit union, as the term is used in 960 CMR 4.05.

Negative Report: An abandoned property report filed by a holder in which the holder affirms that it has no property to report to the Division.

Normal and Ordinary Course of Business: The sale of goods or services to the general public and/or to others as part of a vendor's overall business purpose and activity, as well as the purchase of goods and services from a vendor for the purpose of supporting a commercial customer's overall business purpose and activity.

Notarized Signature: Signature of a claimant witnessed by a person who is an official Notary Public (appointed by the property appointing authority in a given state) attesting to the validity of the signature of a person who appears before him/her.

Original Document: The actual written document issued by an authority or government entity legally empowered to issue documents, such as a court, city or town clerk, attorney or any official keeper of records, or any other agreement or understanding legally executed between two or more parties, or any document which is considered an original document pursuant to P.L. 106-229, the Electronic Signatures in Global and National Commerce act (known as "E-SIGN").

Original Owner: A person (or persons) listed in the UPS System as the rightful owner, as reported from the records of the holder of the property.

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Owner: A person or entity having a legal or equitable claim to abandoned property.

Power of Attorney: A legal document in which a person gives another person authority to act for him/herself.

Reciprocity Agreement: An agreement between states in which property held in the name of out-of-state owners is collected and exchanged.

Surety Bond: Indemnity coverage for the State purchased by an owner before a duplicate security or check is issued to replace one that has been lost. The indemnification guarantees payment if the original security or check is produced at a later date for redemption or payment, by a person other than the original claimant, as a valid claim to the property previously paid by the Division.

Tangible Property: The contents of safe deposit boxes, which are turned over to the Division as abandoned property by a bank pursuant to M.G.L. c. 158, §17, or by a credit union pursuant to M.G.L. c. 171, § 75, or any other tangible property transferred to the Division as abandoned property in accordance with the terms of M.G.L. c. 200A.

Tenant in Common: An original owner who owns an undivided interest in a piece of property. When the owner dies, his/her interest passes to his/her estate.

True Attested/Certified Copy: Copy of an original document that is issued by a court or other government entity and displays a raised seal and/or original signature of the issuing authority certifying that the copy is a true copy of the original.

Trust: A legal arrangement whereby control of an account or property is transferred to a person or organization (trustee) for the benefit of another person (beneficiary).

UGMA (Uniform Gift to Minors Act) Account: An account opened for the benefit of a minor under the age of 21. Abandoned property from such accounts can only be paid to the appointed trustee in the name of the minor until the minor reaches the age of 21. When a minor beneficiary of a UGMA account reaches the age of 21, any abandoned property held for his/her benefit as a UGMA account shall become his/her sole property. A transfer made in accordance with the Uniform Gift to Minors Act will be treated as a transfer made in accordance with the Uniform Transfers to Minors Act (UTMA), as codified in M.G.L. c. 201A, except insofar as the application would impair constitutionally vested rights or extend the duration of a custodianship in existence as of January 30, 1987.

Undeliverable Shares: Securities returned by the U.S. Post Office (known as RPO) or any other certified private carrier as undeliverable.

Underlying Shares: Original shares of stock which have been issued by a business association, corporation, banking or financial organization, are not in the possession of the issuer and presumably are in the possession of the owner.

UPS System: The abandoned property records-keeping system maintained by the Division.

UTMA (Uniform Transfers to Minors) Account: An account opened for the benefit of a minor under the age of 21. Abandoned property from such accounts can only be paid to the appointed trustee in the name of the minor until the minor reaches the age of 21, as codified in M.G.L. c. 201A. When a minor beneficiary of a UTMA account reaches the age of 21, any abandoned property held for his/her benefit as a UTMA account shall become his/her sole property.

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Vendor: Any person or entity that sells goods or services in the ordinary course of business.

4.03: Reporting Abandoned Property

(1) Required Information for Reporting. All reporting of abandoned property must be done in accordance with M.G.L. c. 200A, § 7. Reports submitted to the Division must be in a format approved by the Treasurer and must include the following:

- (a) a completed and notarized AP-1 Form;
- (b) a statement that all due diligence requirements of the law have been met by the holder, signed under the pains and penalty of perjury, along with a copy of a sample due diligence letter;
- (c) an electronic copy of the report (magnetic tape or diskette) in the file format currently approved by the National Association of Unclaimed Property Administrators (NAUPA);
- (d) in the case of cash property, a certified check or money order made payable to the Commonwealth of Massachusetts or an Electronic Funds Transfer (EFT) (wiring instructions available at the Division);
- (e) in the case of securities, a Depository Trust Company (DTC) transfer to the Division (DTC instructions available at the Division), or, in the case of non-DTC eligible securities, direct delivery or transmittal to the Division;
- (f) confirmation statements must be included if mutual fund or dividend reinvest accounts are remitted;

(2) Negative Reports. Negative reports may be filed on the AP-1 Form only and not electronically.

(3) Disposition of Property. All cash property not associated with securities shall be deposited daily into the Massachusetts "Abandoned Property Trust Fund." All records of cash deposits shall be entered daily into the Division's UPS System. All securities and associated cash, such as dividends, shall be held by the custodian(s) designated by the Division.

(4) Required Information.

(a) All abandoned property holder reports submitted to the Division must include, to the extent such information is available to the holder, the following information:

1. owner's name;
2. owner's last known address;
3. owner's Social Security or Federal tax identification number (TIN);
4. owner's date of birth and policy number (for life insurance companies);
5. beneficiary's Social Security number (for life insurance companies);
6. owner's account number (for financial institutions);
7. check numbers, amounts and dates (for checks and money orders);
8. maker(s) of check(s), if available;
9. date of last activity or contact with owner;

(b) If submitting checks with unknown owners, holders must insert the word "unknown" in the last name field along with other property identification information required by 960 CMR 4.03(4).

(5) Rejection of Abandoned Property Reports. The Assistant Treasurer reserves the right to reject the report of any holder whose report is not received within 30 calendar days of the statutory reporting deadline, unless the holder has received an extension for reporting pursuant to M.G.L. c. 200A, § 13B. The Division shall notify every holder whose report is rejected by sending a registered letter to the holder within five business days of rejection of the report. Rejected reports shall be returned to the holder to be resubmitted in compliance with M.G.L. c. 200A, § 7.

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(6) Penalty.

(a) In accordance with M.G.L. c. 200A, § 12(c), any holder determined to have violated the provisions of M.G.L. c. 200A, § 7, shall be liable to a penalty of not more than \$500.00.

(b) In accordance with M.G.L. c. 200A, § 12(e), any holder determined to have failed to file an abandoned property report within the time prescribed by M.G.L. c. 200A, § 7, including those rejected in accordance with 960 CMR 4.03(5), shall pay the Treasurer interest at the rate allowed by M.G.L. c. 200A, § 12(e).

(7) Provision of Additional Information to the Division on Abandoned Property Reports. Holders of property with a value of less than \$100.00 are strongly encouraged to submit all information contained in 960 CMR 4.03(4), if it is readily available, so as to strengthen the Division's efforts to reunite all rightful owners with their abandoned property.

(8) Reciprocity Agreements with Other States.

(a) The Division shall accept reports containing property of non-Massachusetts residents who are owners of property held by Massachusetts holders if the state in which the owner resides has entered into a reciprocity agreement with the Treasurer. The Division shall maintain an up-to-date list of all states with which it is party to a reciprocity agreement.

(b) Holders incorporated in Massachusetts or non-corporate holders with a principal place of business in Massachusetts that wish to report abandoned property for customers who live outside Massachusetts should report the property to the respective state(s) in which those customers resided at the time their property became reportable according to the laws of that/those state(s).

(9) Holder Due Diligence Requirements.

(a) In accordance with M.G.L. c. 200A, § 7A, a due diligence notice must be sent by first-class mail to every owner's last known address at least 60 days prior to the filing of abandoned property reports with the Division. Nothing in 960 CMR 4.03(9) shall preclude holders from taking additional measures to contact owners before remitting their property to the Division.

(b) Due diligence notices sent to owners of property presumed abandoned pursuant to M.G.L. c. 200A shall include, but not be limited to, the following information:

1. a description of the property, including account number, policy number or other identifying information;
2. a statement explaining that state law requires holders of abandoned property to report and remit such property to the Division after a designated dormancy period (usually three years);
3. the date the property will be remitted to the Division if there is no owner contact.

(10) Holder Penalty for Failure to Perform Due Diligence Requirements. Any holder who knowingly fails to provide due diligence notice as required by 960 CMR 4.03(9) shall be subject to a fine of \$1.00 for each owner whose property is remitted to the Division by the holder, or \$1,000.00, whichever is greater.

(11) Activity. No owner's property reportable pursuant to M.G.L. c. 200A, § 3 shall be remitted to the Division if the owner maintains an active relationship with a holder with respect to any property of the same owner. This activity shall extend to all accounts, such as trust or investment accounts, which do not normally require activity within the standard period of dormancy described above. However, a "notice of inactivity" shall be sent to the owner of any piece of property presumed abandoned by virtue of dormancy, regardless of whether the property is subject to being remitted to the Division or whether the owner has other active property being held by the same holder.

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(12) Reporting Procedures for Individual Retirement Accounts (IRAs), Defined Benefit Plans, or Other

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Accounts or Plans Qualified for Tax Deferral under the Income Tax Laws of the United States. Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States shall be reported as abandoned property three years after the earliest of the following dates: the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date specified in the income tax laws of the United States by which distribution must begin in order to avoid a tax penalty.

(13) Exemption for Reporting Certain Credit Balances.

(a) Pursuant to the reporting requirements detailed in M.G.L. c. 200A, §§ 5 and 7, an exemption shall exist for any outstanding credit balances between vendors or commercial customers resulting from a transaction occurring in the normal and ordinary course of business. This exemption shall apply to all prior and current reporting years.

(b) Credit balances, as defined in 960 CMR 4.02, shall not be considered abandoned property, in accordance with M.G.L. c. 200A, § 5. Credit balances may originate from activities such as customer overpayments and shall include balance sheet credits, such as the payment to vendors for the purchase of goods and services.

(c) Nothing in 960 CMR 4.03 should be construed so as to suggest that any commercial customer incorporated or registered to do business in Massachusetts is exempt from abandoned property reporting obligations relative to credit balances, as defined in 960 CMR 4.02, in other domestic reporting jurisdictions outside of Massachusetts.

(14) Reporting Procedures for Certificates of Deposit.

(a) The dormancy period for any Certificate of Deposit (CD) shall be deemed to commence upon the initial maturity date of the certificate. Thereafter, certificates of deposit shall be presumed abandoned in accordance with the provisions of M.G.L. c. 200A, § 3.

(b) If a Certificate of Deposit reaches its initial maturity date and automatically "rolls over", the Certificate becomes reportable as abandoned property three years following the maturity date of the first "rollover", unless the owner consents to renewal at or about the time of renewal by communicating with the person holding the property pursuant to M.G.L. c. 200A, § 3A. An automatic "roll over" of a Certificate of Deposit is not considered owner activity despite the fact that an initial agreement between the holder and owner may include an automatic "rollover" provision that requires no action by the owner.

For purposes of the application of 960 CMR 4.03(14)(b), a six month Certificate of Deposit would be reported as abandoned property four years from the date the account was opened, a one-year Certificate of Deposit would be reported as abandoned property five years from the date the account was opened, and a three-year Certificate of Deposit would be reported as abandoned property nine years from the date the account was opened.

(c) If, at the time provided for remittance of a dormant Certificate of Deposit in 960 CMR 4.03(14)(b), a penalty or forfeiture in the payment of interest would result from the remittance of the property, the time for remittance is extended until the time when no penalty or forfeiture would result.

For purposes of the application of 960 CMR 4.03(14)(c), a five-year Certificate of Deposit would be reported as abandoned property 15 years from the date the account was opened.

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(15) Holder Fees.

(a) In accordance with M.G.L. c. 200A, § 15C, a holder of savings/checking accounts may assess a charge or fee, including an abandoned property processing fee, for accounts that become inactive, provided that the charge or fee is:



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1. expressed in a valid, enforceable and written contract between the holder and the customer specifying the amount of the charge or fee;
  2. the customer is notified prior to the imposition of the charge or fee; and
  3. it is not the policy of the holder to waive the charge or fee.
- (b) Any charge or fee shall be listed in a holder's periodic schedule of charges and fees and shall be provided to every customer upon the opening of his/her account.
- (c) If a holder of savings/checking accounts advises a customer of an increase in a charge or fee, or the imposition of a new charge or fee, and the notice is included in a statement to a customer that is returned as undeliverable, then the financial institution shall not impose the new or higher charge or fee.

(16) Retention of Owner Records. Any holder who submits an abandoned property report pursuant to M.G.L. c. 200A, § 7, and 960 CMR 4.03(1), shall maintain all owner records and other information submitted in the report for a period of six years following the remittance of the holder's records and information to the Division.

4.04: Claims Process

(1) Issuance of a Claim Form

(a) Claim forms shall only be issued to persons identified by Division staff as having a valid interest in a certain property/properties. A person shall be declared as having an interest in the property if he/she if one of the following:

1. the original owner or an officer of a corporation or business which is an original owner or legal successor;
2. a person with a court appointment, such as an administrator/trix or executor/trix;
3. a person duly appointed as the power of attorney for the original owner;
4. a guardian, trustee, conservator or other court-appointed legal representative;
5. an individual who has petitioned a court of proper jurisdiction for appointment as the legal representative of the original owner

(b) Prior to the issuance of a claim form, an employee of the Division must verify the original owner's address and Social Security/Federal Tax Identification Number (TIN), unless such claim is for a piece of property which may have been reported to the Division in "aggregate" form or the Division has no record of the original owner's name and/or address or Social Security/TIN.

(c) The Division will not issue a claim form prior to the receipt of the Social Security/TIN and current mailing address of any individual or entity claiming property held by the Division.

(d) In the case of a person claiming property on behalf of an estate, that person must provide the Division with the Tax Identification Number (TIN) of the estate or his/her own Social Security number, and not the Social Security number of the deceased.

(2) Required Documentation for Claims

(a) Claims by Original Owner

1. For cash claims valued between \$0 and \$4,999 – signature of claimant and/or co-owner, date of signature and Social Security/TIN number of claimant; holder certification, if applicable; proof of former residence, if reported; passbook or monthly statement, if applicable; original check or surety bond, if applicable; and other documentation as may be required by the Division to substantiate the validity of the claim.
2. For cash claims valued \$5,000 and greater – signature of claimant and/or co-owner, date

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of signature and Social Security/FBEN number of claimant; holder certification; proof of former residence, if reported; passbook or monthly statement, if applicable; original check or surety bond, if applicable; and other documentation as may be required by the Division to substantiate the validity of the claim.

3. For aggregate cash claims – signature of claimant and/or co-owner; date of signature and

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Social Security/TIN number of claimant; holder certification; and other documentation as may be required by the Division to substantiate the validity of the claim.

4. For shares of stock or mutual funds (except for undeliverable shares and book entry shares) – signature of claimant and/or co-owner, date of signature and Social Security/TIN number of claimant; holder certification (unless property was turned over to the Division by a third-party reporting service), if applicable; proof of former residence, if reported; original stock certificate(s) or surety bond; lost stock affidavit, if applicable; monthly statement, if applicable; and other documentation as may be required by the Division to substantiate the validity of the claim.

(b) Claims by Legal Representative of the Owner

1. For cash claims valued between \$0 and \$4,999 – signature of claimant, date of signature and Social Security/TIN number of claimant; holder certification, if applicable; copy of deceased owner's death certificate (for joint tenant and joint accounts), if applicable; copy of original owner's death certificate and certified copy of claimant's appointment as executor/trix, guardian, administrator, or conservator, if applicable; copy of claimant's power of attorney, if applicable; copy of marriage certificate, if applicable; proof of former residence, if reported; passbook or monthly statement, if applicable; original check or surety bond, if applicable; and other documentation as may be required by the Division to substantiate the validity of the claim.

2. For cash claims valued \$5,000 and greater – signature of claimant, date of signature and Social Security/TIN number of claimant; holder certification; copy of deceased owner's death certificate (for joint tenant and joint accounts) if applicable; copy of original owner's death certificate and certified copy of claimant's appointment as executor/trix, guardian, administrator or conservator, if applicable; original check or surety bond, if applicable; and other documentation as may be required by the Division to substantiate the validity of the claim.

3. For aggregate cash claims – signature of claimant, date of signature and Social Security/TIN number of claimant; holder certification; copy of deceased owner's death certificate (for joint tenant and joint accounts), if applicable; copy of original owner's death certificate and certified copy of claimant's appointment as executor/trix, guardian, administrator or conservator, if applicable; original check or surety bond, if applicable; and other documentation as may be required by the Division to substantiate the validity of the claim.

4. For shares of stock or mutual funds (except for undeliverable shares and book entry shares) – signature of claimant, date of signature and Social Security/TIN number of claimant; holder certification if original shares are not available (unless property was turned over to the Division by a third-party reporting service), if applicable; copy of deceased owner's death certificate (for joint tenant and joint accounts), if applicable; copy of original owner's death certificate and certified copy of claimant's appointment as executor/trix, administrator, guardian or conservator, if applicable; copy of claimant's power of attorney, if applicable; copy of marriage certificate, if applicable; proof of former residence, if reported; original stock certificate(s) or surety bond; monthly statement, if applicable; and other documentation as may be required by the Division to substantiate the validity of the claim. A letter from a transfer agent or broker stating that the original shares have been confiscated by the agent per Securities and Exchange Commission (SEC) regulations may be submitted in lieu of the original certificate(s).

(c) Signature Requirements – If any property, such as an account, is held jointly, then the signatures of all original owners, unless one is deceased, must appear on the claim form before it can be approved at any level within the Division. If one of the original owners of an account held as a tenant in common is deceased, the lawful representative of the decedent's estate must sign the claim form along with the other original owner before it can be approved at any level within the

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Division. However, if any property, such as an account, is held as a joint tenant or "with right of survivorship" (WROS) or as a joint account, the signature of one of the original owners shall be deemed sufficient to satisfy the signature requirement before approval of any rightful claim against the property.

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(3) Approval of Claims. Each claim submitted to the Division must receive three levels of approval on the UPS System prior to payment.

(a) Level One approval shall first be required from the Division staff person(s) who sent out the original claim form. This approval shall be given if it is determined that the claimant has submitted all documentation requested when the claim form was sent out from the Division. If any documentation is missing when a claim form is sent to the Division for approval, the claim form shall be returned to the claimant by the Division staff person who originally sent it out with a letter explaining what documentation is missing from the claimant's submission. Level One approval shall then be entered into the UPS System only if all required documentation is subsequently submitted by the claimant.

(b) Level Two approval shall be required from the Division staff person(s) designated to approve claims at such level. This person shall closely inspect all Level One claims and determine whether the proper documentation was requested and received. If either of these two criteria are not met, the claim shall be rejected in the UPS System and returned to the Level One staff person who originally sent out the claim form to effect the necessary changes, and shall not be entered into the UPS System as approved at Level Two until the Level One approval of the claim has been judged to be complete and accurate. Level Two staff persons shall also have Level One approval authority (along with the ability to send out claims). However, no Level Two staff person shall approve the same claim at both Level One and Level Two of the claims approval process.

(c) Level Three approval shall be required from the Division staff person(s) designated to approve claims at this level. This person shall verify that all documentation requested be in order and that Level One and Level Two approvals have been properly granted. Level Three approval shall then be entered into the UPS System.

(4) Payment of Claims.

(a) In the case of cash claims, Level Three approval shall result in the electronic transfer of the claims approval data to the Office of the State Comptroller, where the individual claims shall be paid by check.

(b) In the case of stock and mutual fund claims, Level Three approval shall result in a letter being sent to a third-party agent responsible for the transfer of ownership of the stocks/mutual funds, instructing the agent to have ownership of the appropriate number of shares of the property re-registered in the name of the claimant.

(5) Reimbursements. In the case of a reimbursement requested by a holder due to property having been sent to the Division in error, Level Three approval shall be granted by the Division within 60 days of the receipt by the Division of all documentation which may be required by the Division to substantiate the validity of the reimbursement request.

4.05: Tangible Property

(1) Reporting of Contents of Safe Deposit Boxes and Other Tangible Property The contents removed from any safe deposit box pursuant to M.G.L. c. 158, § 17, and M.G.L. c. 171, c.75, and any other tangible property delivered to the Division pursuant to M.G.L. c. 200A, shall be placed in packages approved by the Division. It shall be the responsibility of any holder that delivers the contents of safe deposit boxes and any other tangible property to the Division to separate any lessee's tangible property from his/her intangible property and label packages containing each type of property accordingly. All

4.05: continued

contents of safe deposit boxes shall be sent to the Division "as is" and shall not be replaced or converted to any other form of currency or legal tender by the bank or credit union. For example, no coins shall be converted to cash or check before delivery to the Division and no old paper money shall be replaced by newer currency.

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(2) Inventory Sheet. All items removed from a safe deposit box pursuant to M.G.L. c. 158, § 17, and M.G.L. c. 171, § 75, and all other tangible property delivered to the Division shall be listed on an inventory sheet approved by the Division, which is to be distributed to all banks and credit unions and other holders of tangible property. Such sheet shall, in addition to listing the name of the lessee(s) or owner(s) and his/her last known address and Social Security number, indicate, in the case of safe deposit boxes, the bank and branch of origin where the safe deposit box is located, along with the date the safe deposit box was opened. The original of such sheet shall be placed in the package along with the contents of the safe deposit box or other tangible property being delivered to the Division. Additionally, one copy of the sheet shall be affixed to the exterior of the package and one copy shall be retained by the bank, credit union or other holder of tangible property for a period of six years from the date the package is delivered to the Division.

(3) List of Owners. Each bank or credit union which delivers the contents of safe deposit boxes to the Treasurer and other holders of tangible property shall, for each report year in which tangible property is delivered to the Division, make a list of all owners whose property has been delivered to the Division, along with the owners' last known addresses, Social Security numbers and safe deposit box numbers (if applicable), and include this list with the AP-1 report it files with the Division.

(4) Reporting of Tangible Property. Each bank or credit union which delivers the contents of safe deposit boxes to the Division shall prepare a separate AP-1 Form for tangible and intangible property.

(5) Auctions of Tangible Property.

(a) All contents of safe deposit boxes delivered to the Division pursuant to M.G.L.c. 158, § 17, and M.G.L. c. 171, § 75, and the provisions of c. 200A, and other tangible property delivered to the Division, shall be held by the Division for not less than one year from the date of receipt before being deemed eligible for auction pursuant to M.G.L. c. 200A, § 9.

(b) All owners of tangible property whose names and last-known addresses have been remitted to the Division shall be sent a due diligence letter from the Division and shall be listed in the "notice of names of persons appearing to be owners of abandoned property" published by the Division pursuant to M.G.L. c. 200A, § 8(a).

(c) All contents of safe deposit boxes which are determined by the Treasurer to have some commercial value, having been held by the Division for not less than one year, and having remained unclaimed following the due diligence efforts and public advertisement provisions listed above, shall be deemed eligible for auction by the Division. Such property shall be appraised and sold at public auction, at a place and time to be determined by the Treasurer.

(d) Any tangible property delivered to the Treasurer pursuant to the provisions of 960 CMR 4.20 for which a claim form has been issued pursuant to 960 CMR 4.16, shall be eligible for auction under the provisions of 960 CMR 4.24 if such property is not returned to the claimant within one year of the date on which a claim form was issued for the property.

(6) Auction Previews. The Division may hold as many public previews of the property for sale at any auction held under the provisions of 960 CMR 4.05(6) as it deems necessary and desirable and shall be responsible for the safety and security of all property publicly displayed.

(7) Ineligibility to Purchase Property at Auction.

(a) The following persons are ineligible to participate in any public auction of the contents of safe

4.05: continued

deposit boxes and other tangible property held by the Division:

1. any employee of the Division and/or member of his or her immediate family;
2. any person(s) participating in the supervision of property displayed at Auction Previews per 960 CMR 4.05(6);
3. any person(s) employed by the Division to appraise tangible property;

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4. any person(s) employed by the Division to conduct an auction of tangible property.

(8) Disposition of Auction Proceeds. All net proceeds of any auction held under the auspices of M.G.L. c. 200A, § 9, shall be directly deposited into the Abandoned Property Trust Fund, in accordance with 960 CMR 4.03(3).

(9) Disposal of Tangible Property Not Subject to Auction.

(a) Any tangible property, but especially paperwork, which has been determined to have insubstantial commercial value and which has not been selected for auction shall, subject to the discretion of the Division, be destroyed no later than six months after any auction at which the property would have been eligible to have been included, provided that this action shall not conflict with the provisions of M.G.L. c. 66, § 8.

(b) If any tangible property delivered to the Division is subject to the provisions of M.G.L. c. 140 regarding firearms, this property shall be turned over to the State Police by the Division for disposal or other disposition in accordance with law.

(10) Disposition of Armed Service Medals. Medals awarded for military service in the armed forces of the United States shall not be subject to auction under the provisions of 960 CMR 4.05(5). Rather, the Division shall contact an appropriate state or federal governmental veterans agency for assistance in reuniting these medals with their rightful owners or heirs.

~~Procedures for Interaction with Heir Finders~~

(1) Registration of Heir Finders. All heir finders who seek to interact with the Division on behalf of an owner or holder must register with the Division on a form prescribed by the Treasurer. Registration information shall include, but not be limited to, an heir finder's previous business experience and whether the heir finder has a previous criminal record.

(2) Conflict of Interest. No heir finder shall be allowed to register with the Division and represent the interests of owners if this person or entity performs pre-escheat due diligence work for a holder.

(3) Posting of Bond. All registered heir finders must post a performance bond of not less than \$10,000 to insure the Division against any fraudulent claims that may arise as a result of an heir finder's representation of an owner or holder. NA

(4) Heir Finder Contracts. Pursuant to M.G.L. c. 200A, § 13, agreements or contracts to pay compensation to recover or assist in the recovery of abandoned property between heir finders and owners are unenforceable if made within 24 months of the date the property was received by the Division. An original copy of any agreement or contract between an heir finder and an owner, signed, dated and notarized, shall be included with the initial filing of any claim pursuant to 960 CMR 4.04. Handwritten agreements or contracts will not be accepted.

(5) Power of Attorney. No Power of Attorney filed by an heir finder will be recognized by the Division for the purpose of making a claim pursuant to M.G.L. c. 200A and the provisions of 960 CMR 4.04(2).

4.06: continued

(6) Release of Claim Forms to Owners Represented by Heir Finders; Payment of Claims.

(a) No claim form shall be sent to an owner being represented by an heir finder until and unless the owner or his/her legal representative has made direct contact with the Division.

(b) Payment for all claims made to an owner who has been assisted by an heir finder shall be made only to the owner and in no instance to the heir finder.

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(7) Notice to Claimants. A complete claim filed by an heir finder on behalf of an owner must include a notarized original copy of a "Notice to Claimant" form, prescribed by the Treasurer, giving clear indication to the owner of the statutory limit on heir finder fees expressed in M.G.L. c. 200A, § 13(b). In no case shall the heir finder fees or compensation exceed 10% of the amount of the property originally remitted to the Division.

(8) Fees for Owner Information. Consistent with M.G.L. c. 200A, § 13, owner information for each report year shall be made available to heir finders not earlier than 24 months after its receipt by the Division. Owner information shall be reproduced in a format to be determined by the Treasurer and shall be provided to any registered heir finder for a fee of \$75~~00~~ per report year. The fee shall be paid in the form of a certified check or money order and made payable to the Commonwealth of Massachusetts. All fees for owner information shall be received by the Division before the owner information is made available to any heir finder. \$10

4.07: Audit Program

Pursuant to M.G.L. c. 200A, § 12, the Treasurer, his/her designee or agent may at any reasonable time and upon reasonable notice examine or audit a holder's books, papers or other records to verify proper compliance with the reporting requirements of M.G.L. c. 200A.

(1) Period of Limitation. Pursuant to M.G.L. c. 200A, § 12, the Treasurer may examine the records of a holder at any time within six years of the date upon which an annual abandoned property report was due to be filed with the Division, or the date upon which such report was received by the Division pursuant to an extension granted under the provisions of M.G.L. c. 200A, § 13B, whichever is later. In the case of a holder who has filed abandoned property reports with the Division as required by law, the scope of the examination of the holder's records will be limited to property that had become reportable during the six-year period of limitation defined in M.G.L. c. 200A, § 12(f). In the case of a holder who fails to file abandoned property reports with the Division as required by law, or who files a false, fraudulent or insufficient report, the six-year period of limitation shall be waived for purposes of record retention and the conducting of examinations.

(2) Records Retention. In accordance with M.G.L. c. 200A, § 12(f), holders are required to maintain abandoned property records for nine years from the date of last activity for any property which has been reported to the Division, or six years from the date such property is reported to the Division.

(3) Failure to Maintain Records. In the case of a holder that has met the annual reporting requirement of M.G.L. c. 200A, § 7(d), but where the holder does not meet the records retention requirements of M.G.L. c. 200A, § 12(f), the Treasurer, his designee or his agent may employ such estimation techniques in the conduct of an audit as are customary and reasonable in the area of regulatory compliance and enforcement to fairly and accurately estimate the liability for property category types that may not have been reported or fully reported by the holder.

(4) Audit Process.

(a) Excluding any state-authorized multi-state abandoned property audit/examination, the Treasurer may conduct either a "desk audit" or a "field audit" of holder records pursuant to M.G.L. c. 200A, § 12 and the provisions of 960 CMR 4.07.

4.07: continued

(b) A "desk audit" shall consist of the Treasurer, his/her designee or agent examining the books, papers or other records of a holder at the office of the Division to determine compliance with the abandoned property reporting requirements of M.G.L. c. 200A, § 7. The person authorized to conduct this audit may request any information necessary to complete the audit and may require the holder or his/her representative to appear in person.

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Performance of a desk audit does not preclude the Division from the subsequent performance of any future desk or field audit, provided however, that following the conclusion of a field audit as defined in paragraph (c) and upon payment by the holder of any assessments issued in such audit, or upon payment of any assessments upheld in an appeal of such audit assessments, the period audited shall be closed to any future Massachusetts abandoned property audit in perpetuity. "

(c) A "field audit" shall consist of the Treasurer, his/her designee or agent conducting an examination of the books, papers or other records of a holder at the holder's place of business. The holder shall be notified in advance that he or she has been selected for audit and shall be instructed as to the books, papers and other records which should be made available to complete the audit.

(5) Audit Procedures.

(a) Excluding any state-authorized multi-state abandoned property audit/examination, every abandoned property audit conducted in accordance with M.G.L. c. 200A, § 12, shall include, but not be limited to, the following audit procedures:

1. A Notice of Intent to Audit shall be issued to the holder. The notice will provide the holder notification in writing that the Division intends to commence an examination of the holder's records pursuant to M.G.L. c. 200A, § 12, and that the holder will be required to provide certain records to facilitate the examination.
2. An Opening Meeting will be held. This meeting will be attended by the holder and/or his representative, the Treasurer or his/her designee or agent will be present to discuss how the examination will be conducted.
3. A Field Review will be undertaken, at which holder records made available for the opening meeting will be briefly discussed and examined.
4. A Pre-Engagement Analysis will be conducted by the Division or its agent to determine whether the examination should be continued or concluded.

(b) If it is determined by the Director and Assistant Treasurer that an examination/audit should be continued, the audit shall be deemed a "field audit." The field audit will include, but not be limited to, the following audit procedures:

1. A Letter of Engagement shall be prepared by the Treasurer's agent and, upon approval by the Director and Assistant Treasurer, shall be sent to the holder prior to the commencement of the actual examination. The Letter of Engagement shall inform the holder of the Treasurer's intent to commence a "field audit".
2. The Field Work shall be conducted under Audit Program Guidelines established by the Director and updated yearly as needed.
3. A Monthly Progress Report shall be prepared by the Treasurer's agent and forwarded to the Director detailing the status of the examination/audit.
4. A Holder Conference shall be held, at which the holder and/or his representative shall be afforded the opportunity to discuss the preliminary results with the Director and the Treasurer's agent. At this time, the holder shall be provided with a 30-day Review Period in order to perform additional due diligence or to present documentation to negate the presumption of abandonment. At the holder's request, a second conference may be held prior to the issuance of a Draft Report.
5. A Draft Report shall be prepared by the Treasurer's agent and forwarded to the Director for final review after all field work is completed.
6. A Final Report to the Division shall then be prepared by the Treasurer's agent and forwarded

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to the Director who, upon approval, shall transmit the Final Report to the holder by certified mail. The Final Report shall detail the results, methodology and objectives of the audit and shall be accompanied by a Letter of Demand, which will express to the holder the terms and conditions under which any findings are to be reported to the Division, and outline the right of appeal to the holder should he/she choose to appeal any findings.

4.07: continued

(c) An audit shall be deemed closed when all property identified as abandoned property in the Final Report is remitted to the Division, or all adjustments made by the holder during the Review Period are confirmed by the Treasurer's agent and all remaining properties are remitted to the Division in the prescribed format.

(6) Order of Priority of Audits. Excluding any state-authorized multi-state abandoned property audit/examination, all audits undertaken pursuant to M.G.L. c. 200A, c. 12, shall be conducted in the following order of priority, unless otherwise directed by the Treasurer:

- (a) First Priority – holders who have never reported abandoned property to the Division;
- (b) Second Priority – holders who have reported abandoned property to the Division in a previous year or years, but who are not currently reporting, or holders whose current reporting levels appear deficient;
- (c) Third Priority – holders who are currently in compliance with the reporting requirements of M.G.L. c. 200A, § 7.

(7) Appeals. Appeals of the findings of any abandoned property audit conducted by or on behalf of the Treasurer shall be undertaken in accordance with the provisions of M.G.L. c. 200A, § 12.

4.08: Amnesty.

(1) Operation of the Amnesty Program. Pursuant to the statutory authority granted in St. 2000, c. 198, the Treasurer has established an amnesty program in order to encourage voluntary compliance with the abandoned property laws of Massachusetts. The amnesty program will be in effect for 181 days, commencing on May 6, 2001, and ending on November 3, 2001. The Treasurer will not initiate an investigation and/or pursue criminal prosecution and will waive all penalties, fines or interest that may be imposed under M.G.L. c. 200A, § 12(e), for holders to whom the Treasurer grants amnesty and who voluntarily remit abandoned property and otherwise comply with the requirements of M.G.L. c. 200A and the provisions of 960 CMR 4.03.

(2) Eligibility of Holders. The Treasurer shall grant amnesty to any holder who files a Request for Amnesty form which is postmarked on or before November 3, 2001, and who meets the following criteria:

- (a) The holder is not the subject of an audit or investigation by the Treasurer or a party to litigation concerning abandoned property, as of May 6, 2001. The term "subject to an audit or investigation" shall mean that on or before May 6, 2001, the Treasurer or his/her agent or designee has sent a Letter of Engagement to a holder, as described in 960 CMR 4.07(5)(a)1., informing the holder of the Treasurer's intent to commence a Field Audit.
- (b) The property to be reported is in fact abandoned pursuant to M.G.L. c. 200A, §§ 1A, 2, 3, 4, 5, 5A, 5B, 5C, 6, 6A or 6B and was required to be reported on or before November 1, 2000, or in the case of life insurance companies, on or before May 1, 2000.
- (c) The abandoned property of the holder is transferred directly to the Treasurer, his designee or authorized agent during the amnesty period or the statutorily-authorized period of extension for filing reports of abandoned property, as defined in M.G.L. c. 200A, § 13B, whichever is later.
- (d) Appropriate reports pertaining to the property are filed with the Treasurer in a format satisfactory to the Treasurer during the amnesty period or authorized extension period, whichever is later. No holder that has filed a Request for Amnesty form on or before November 3, 2001, and has made a



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good faith attempt to report its abandoned property as described above prior to the expiration of the amnesty period shall be denied the right to participate in the amnesty program.

(e) Records pertaining to the abandoned property are maintained by the holder in compliance with M.G.L. c. 200A, § 12(f) and 960 CMR 4.03(16).

4.08: continued

(3) Types of Abandoned Property Eligible for Amnesty. The following types of property are eligible for inclusion in the amnesty program:

- (a) all delinquent abandoned property reports and past due remittances;
- (b) all previously under-reported abandoned property.

(4) Payment in Full. A holder must make full payment of all abandoned property due on or before November 3, 2001, or by the last day of an authorized extension period, whichever is later, in order to qualify for amnesty.

(5) Verification and Assessment. Any abandoned property report filed under the amnesty program shall be subject to assessment and verification as provided by statute. The Treasurer may review all cases in which amnesty has been granted and may, on the basis of fact, fraud or misrepresentation, rescind or permit his/her grant or denial of amnesty, respectively. Any holder who files a false or fraudulent report or attempts in any manner to defeat or evade the proper remittance of abandoned property under the amnesty program shall be subject to applicable penalties and fines, as defined in M.G.L. c. 200A, § 12 and 960 CMR 4.03(6).

4.09: Revocation of Prior Policies, Rulings and Agreements

960 CMR 4.00 supercedes any and all prior policy statements of the Division, whether internal or external, including but not limited to letter rulings, directives, technical information releases and regulations, with the exception of the Division's Audit Program Guidelines. All prior statements, letter rulings, directives, technical information releases and regulations of the Division, with the exception of the Division's Audit Program Guidelines, are hereby revoked in their entirety.

4.10: Severability

If any section or clause of 960 CMR 4.00 is held invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected thereby.

REGULATORY AUTHORITY

960 CMR 4.00: M.G.L. c. 200A, § 13A.