



## ABOUT SMS

At SMS our goal is simple: Help clients reduce unclaimed property. Based in New York City, with offices in Salt Lake City and Chicago, SMS assists corporations in preventing hundreds of millions of dollars from escheating to states. SMS's experienced team designs custom unclaimed property programs to fit our clients' particular needs. From dormant bank accounts to lost shareholders, uncashed checks to gift card breakage, we realize that each company needs its own unique solution. SMS will tailor a program to help institutions reduce their unclaimed property, retain assets under management, service customers and maintain compliance with state regulations.

SMS offers a suite of services to meet your unclaimed property needs, including:

- Location & SEC Searches
- Compliance Consulting
- Corporate Asset Recovery
- SafeBoxSolutions



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## CURRENT EVENTS

At the recent Unclaimed Property Professionals Organization (UPPO) annual conference, SMS's Director of Marketing and Client Services, Nick Nichols, was honored by receiving the Outstanding Achievement Award for his volunteer work with the organization.

SMS will be exhibiting at the national conference of the Society of Corporate Secretaries and Governance Professionals (SCSGP) in Colorado Springs from June 27 to July 1.

SMS will be attending the annual conference for the Shareholder Services Organization (SSA) Hilton Head, SC from July 17-20.

On July 26th, Nick Nichols and Christa DeOliveira will be speaking on due diligence and owner outreach at the CheckFree Users' Conference in Salt Lake City, UT.

Effective June 1, 2007, the United States District Court issued a preliminary injunction prohibiting the California State Controller's Office to accept any unclaimed property. This comes on the coattails of the May 7, 2007 temporary restraining order that prohibited California from selling or converting unclaimed property in its possession, to cash. The order from the District Court also directs the Controller's Office to submit any proposed regulations to the court and if the court approves them, then the restrictions in the preliminary injunction could be modified or withdrawn. According to an announcement from the State Controller's Office, unclaimed property holders are directed "to hold any unclaimed property until further notice." The announcement can be found at [www.sco.ca.gov/col/ucp/holder/notices/injunction.pdf](http://www.sco.ca.gov/col/ucp/holder/notices/injunction.pdf). Updates will be posted to [www.sco.ca.gov](http://www.sco.ca.gov) and summarized in future issues of this newsletter.

## HOT TOPIC

### Electronic Transactions and Unclaimed Property

By Christa DeOliveira

Confusion often surrounds the unclaimed property implications of electronic transactions. Even some industry insiders would like more clarification on when electronic transactions can be considered customer or owner generated activity. For guidance, we need to look beyond the 1981 and the 1995 Uniform Unclaimed Property Acts to the Uniform Electronic Transactions Act (UETA). Like the Uniform Unclaimed Property Acts it was promulgated by the National Conference of Commissioners of Uniform State Laws but it was adopted in 1999. Subsequently, it has been adopted by most states; to date, Georgia, Illinois, New York, Washington, Puerto Rico and Guam are the only states, territories or possessions that have not adopted a version of this Act.

The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) was signed into law on June 30, 2000 by President Bill Clinton. The Act states its goal is to "facilitate the use of electronic records and signatures in... commerce." This Act focuses primarily on electronic records and signatures in commerce. It states, "a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form." This Act has some strong similarities to UETA and makes reference to it within its text.

Both UETA and E-SIGN were designed to facilitate electronic commerce, remove barriers to electronic transactions and increase public confidence in these new media. The relatively new electronic methods for

conducting business, processing transactions and innovative means of data storage have opened up doors for increased efficiency and convenience for consumers, businesses and government. However, without legal protection there is a risk of having contracts, signatures and transactions invalidated for the sole reason that they are in electronic form.

In the 19th century, with the introduction of the telegraph, similar issues arose as the question was raised whether a telegraph was actually considered to be signed. It was determined a telegraph carried the equivalent of a signature.

### The Uniform Electronic Transactions Act

The overarching intent of UETA is outlined in its preface; it states UETA’s purpose “is to remove barriers to electronic commerce by validating and effectuating electronic records and signatures.” With some noted exceptions, it ensures electronic records and signatures will be treated the same as written records and written signatures. UETA also seeks to clarify, simplify and modernize the body of law governing electronic commerce and governmental transactions. It promotes uniformity of law regulating electronic commerce. Additionally, it encourages the development of the legal and business infrastructure necessary to implement electronic commerce and governmental transactions. It was specifically designed to look to the future and encompass continued technological innovations. However, it does not seek to change any applicable substantive rules of law.

Under UETA, records and signatures may not be denied simply because they are in electronic form. When a law requires a record or signature to be in writing, an electronic version satisfies the requirements of the law. If other laws require that information be made available before a transaction may be conducted, the sender must ensure such information is provided and in a form that may be retained by the recipient. UETA applies when parties have agreed to conduct transactions electronically, regardless of whether there has been a formal agreement. The nature of an agreement, express or implied, can be inferred from the circumstances and evidence within the transaction. Transaction participants are not forced to conduct transactions electronically and both UETA and E-SIGN allow for parties to opt out of electronic transactions.

Furthermore, electronic records need to accurately reproduce the information with a functional equivalence to paper records, such that they may be used for archival, audit, evidentiary or other similar needs. This could require migrating information to new systems as a means to protect against technological obsolescence and ensure continuing accessibility to information.

The Act also permits converting original paper records to electronic records for retention as long as they accurately reproduce the information. It could be useful to scan copies of due diligence letter responses and save them in electronic form. Anytime scanned copies or other data are maintained, it is advisable to conduct regular system back ups; then in the event of system failure or data corruption there will be a redundant copy to rely on. Depending on software capabilities, scanned copies can be more easily searched to find specific records. Additionally, for documentation purposes a holder could keep a data file showing to whom due diligence letters

were mailed. Complimentary to this, a sample copy of the corresponding letter that was sent should also be maintained.

UETA encourages state governments to migrate to electronic media; it empowers state government entities to electronically communicate and create, send, receive and store records electronically. For some time, both state and federal taxing authorities have permitted filing and payment by electronic means. States are also beginning to accept unclaimed property reports electronically, in addition to payments. Undoubtedly, state government will be revolutionized by electronic media, just as the private sector has been.

### Definitions Directly From UETA

**AUTOMATED TRANSACTION** means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

**COMPUTER PROGRAM** means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

**CONTRACT** means the total legal obligation resulting from the parties’ agreement as affected by this [Act] and other applicable law.

**ELECTRONIC** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

**ELECTRONIC AGENT** means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performance in whole or in part, without review or action by an individual.

**ELECTRONIC RECORD** means a record created, generated, sent communicated, received or stored by electronic means.

**INFORMATION** means data, text, images, sounds, codes, computer programs, software, databases or the like.

**ELECTRONIC SIGNATURE** means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**INFORMATION PROCESSING SYSTEM** means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

**RECORD** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**SECURITY PROCEDURE** means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

**TRANSACTION** means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs.

<http://www.law.upenn.edu/bill/archives/ulc/fnact99/1990s/ueta99.htm>

A critical component of the definition for automated transaction is the lack of need for a human participant on either side of the transaction. This opens up the door for commerce on the Internet where an order can be placed by an individual to an automated system, which automatically confirms the order. In this context, when the consumer clicks on "process order" or "I agree" when ordering, this click through process amounts to an electronic signature, as it represents the intent to proceed with the purchase and the obligation to pay for it. Thereby, the computer program for ordering is acting as an electronic agent for the transaction and it forms a contract. Electronic Data Interchange (EDI) also makes use of automated transactions which can take the form of a computer system tracking inventory for a manufacturing facility and automatically place an order with a supplier once inventory levels dip below programmed thresholds. In this example, EDI can subsequently be used for sending an electronic invoice to the manufacturing facility for the inventory supplied.

Electronic agents are another key component of UETA. One example of an electronic agent would be an Automatic Teller Machine (ATM). This machine is an automated means of conducting banking transactions that could also be transacted with a human teller, but rather they are performed with the machine, within the technical parameters of its programming. It is relevant to note, ATMs, have the security procedure of

requiring a Personal Identification Number (PIN) to be entered to confirm the identity of the person, before transactions may be conducted. This equates with an electronic signature, as inputting the PIN is attributable to that person. Another example of an electronic agent would be a Voice Response Unit (VRU), sometimes called Interactive Voice Response (IVR). By making use of these systems, callers can call into a bank or another entity and conduct transactions via phone by either using the numbers on the keypad of their phone to direct the system or by the system responding to voice directives of the caller.

Electronic Transactions and Owner Generated Activity

SMS conducted a survey of several states' unclaimed property offices regarding both traditional and electronic transactions as they relate to banking activity and whether certain transactions are considered owner generated activity. Here are the questions and answers from several of the states that were surveyed. Naturally, for evidentiary reasons any transaction or communication can only be considered customer generated activity if there is a means of capturing the details and recording it in the customer's account history. This will also require unique transaction codes: for instance, if an ATM deposit is considered to be customer generated, but a direct payroll deposit is not, then it is necessary to have unique transaction codes for each of these to ensure accurate dormancy periods are maintained.

One can see from the questions and answers in the graphic below that a common thread for many of these actions or transactions is that the individual transaction or

Question	CA	IL	IN	KY	LA	MI	NJ	TX	UT	WI	WV
Do you consider a deposit processed by a teller while the account owner is at the bank to be customer generated activity?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Do you consider a deposit processed by a teller after a customer has conducted a deposit transaction at an ATM customer generated activity?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Do you consider a deposit processed online by transferring funds from a savings account to a checking account to be customer generated activity?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Do you consider a direct deposit of payroll to be customer generated activity?	Y	N	Y	Y	Y	N	Y	Y	Y	Y	N
Do you consider an account inquiry at an ATM to be customer generated activity?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Do you consider an account inquiry via online banking to be customer generated activity?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Do you consider a VRU phone inquiry to be customer generated activity?	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
Do you consider a phone inquiry to a live agent to be customer generated activity?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Would you accept a signed letter from a bank customer to be customer generated activity?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Would you accept a signed fax from a bank customer to be customer generated activity?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Has your state/jurisdiction passed a version of the Uniform Electronic Transactions Act?	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y

document (in the case of the letter or fax) is attributable to the owner, either by signature or by PIN. Additionally, with ATM, VRU and online transactions, there is intent to carry out the transaction selected by entering a code, giving a voice prompt or clicking to confirm a transaction. These mirror teller conducted transactions, as in person transactions begin with a request and there are accompanying documents, signatures and photo-identification to both discern intent and identity.

The answers from states in the graphic considering a payroll direct deposit to be customer generated activity were decidedly mixed. Unlike a single discrete deposit between the customer and the bank, for direct deposit the owner takes action through their employer to induce recurring transactions by signing up for payroll direct deposit. Once an employee has signed up, customer action for each individual deposit is unnecessary, thereby making the deposits passive relative to the owner, which is why some states asserted these are not customer initiated activity. At the same time, other states considered them to be customer generated activity. When asked why, they commonly answered that the act of the account owner performing work makes it customer generated activity or simply that money coming into the account on a regular basis keeps it active.

Unfortunately, when it comes to due diligence or any state statute specifically requiring notice via first class mail or Certified Mail, these requirements would not be altered by UETA and an email would not fulfill the requirement. The due diligence letter would still need to be sent via first class mail or Certified Mail as directed in the statute. Regardless, there is nothing to prevent holders from using email or other electronic notification methods to let owners know about unclaimed property as part of a holder's owner outreach program, well before statutorily required due diligence becomes necessary.

The UETA and E-SIGN Acts encourage the development of both the legal and business infrastructure essential to implement electronic commerce and governmental transactions. However, these methods of conducting business are still relatively new and poised to continue to rapidly evolve; the subsequent transformations could remain complex for years to come. Certainly, these inevitable changes will present challenges for the business community and government in general, as well as for unclaimed property compliance.

To subscribe, ask questions or submit suggestions, please send an email to [newsletter@msgroupllc.com](mailto:newsletter@msgroupllc.com).



## GUEST ARTICLE

### Choose the Right Solution for Unclaimed Property Filing

By Deborah Hopkins

As Christa DeOliveira of SMS reported in the last issue of this newsletter, the process you choose for unclaimed property management and reporting is affected by several variables, including your organization's geographical reach, the volume of unclaimed property you are holding, and the number of holders (business entities) for which you are reporting.

If your customers, suppliers, and employees are all located in a single state or limited region, you may only be expected to meet the reporting demands of one or a few states. However, if your organization does business or has employees in many states, the process of managing your records and complying with state requirements will be more extensive and complex. Each state has the authority to dictate its unclaimed property filing procedures and deadlines independently, and to modify the requirements at any time.

As a general guideline, companies that file in five or more states, and those that are managing more than 250 items of unclaimed property find tremendous benefit in automating the process. This can be achieved either with a software package, or by outsourcing the process to trusted professionals.

#### THE SOFTWARE OPTION

If you decide to automate the process internally, it is important to choose a software solution that is comprehensive, and yet simple to use. It should help you consolidate and manage all records and requirements associated with unclaimed property. And the system should include all state and territory legislation, filing dates and deadlines, due diligence requirements, property type codes and definitions, state filing formats, and aggregate limits. All of these factors can change from year to year so the vendor must provide regular updates to ensure continuing accuracy.

**Upside.** Automating unclaimed property compliance in your workplace allows you to retain direct supervision and complete control over the process. You will be able to tailor internal procedures and staff participation to match the needs and resources of your organization. In-house automation works well for organizations that have been filing manually and already understand the basic steps and requirements. These clients are delighted to discover how software dramatically expedites the tedious manual tasks of unclaimed property management, and facilitates accuracy in both internal and external reporting.

**Downside.** Certain skills are necessary to ensure a successful project. Many organizations just do not have sufficient staff or the unclaimed property knowledge required to develop the internal procedures and perform the necessary tasks. Some companies have trained a specialist, only to have that person move to another department or leave entirely. Still others decide that their staff time is better invested in activities that support the central business mission, rather than compliance tasks.

#### THE OUTSOURCING OPTION

Outsourcing can be a highly effective solution, depending on the competence of your service provider and how well you communicate. Research each potential vendor to verify

dependability and accuracy. Ask for references as well as the qualifications of the individuals assigned to your project. When you outsource with proven experts in the field, a high level of efficiency and accuracy can be achieved on your behalf.

**Upside.** Whenever you outsource a peripheral function, you can free valuable personnel to focus on core objectives and value creation for the business. Outsourcing eliminates the costs and challenges associated with staff turnover and software and hardware maintenance. Your staff will still need to identify, collect and categorize the unclaimed items, but will not be required to learn and retain extensive knowledge of the requirements and processes associated with due diligence mailings and unclaimed property filing.

**Downside.** It's possible for misunderstandings to occur on both ends of an outsourcing relationship, so be certain that you understand what your obligations are, as well as the services you will receive. Outsourcing could be disastrous if your outsourcing partner does not have a full appreciation of its fiduciary responsibility. Like any form of outsourcing, the freedom gained by delegating the process is counter-balanced by the loss of direct supervision and control.

#### OTHER CONSIDERATIONS WHEN SEEKING A VENDOR

Even with diligent owner outreach, ultimately only a few organizations are successful in locating every missing owner, so the property must eventually be reported and turned over to the state where the owner last resided. To address this critical role, companies must determine their needs and available resources. This involves assessing your internal resources and determining what is needed to augment those resources. Some considerations include determining whether you need a solution...

- Containing the compliance requirements of every jurisdiction at your fingertips,
- That easily generates accurate reports to meet state specific requirements and deadlines, or
- To fully outsource, if you choose.

There are several commercially available software packages to track and file unclaimed property as well as many vendors that provide outsource services.

In due course, the process you choose for unclaimed property management and reporting is affected by your organization's geographical reach, unclaimed property volumes and the number of holders (business entities) for which you report. Any solution you pursue should take into account both the great deal of variation in different states' unclaimed property laws and the constant change due to legislative activity. Carefully weighing the factors of your business needs and resources combined with the unclaimed property environment will help you determine the right solution for your specific needs.

*Deborah Hopkins is Vice President of Compliance Solutions for Fiserv, [www.fiservbusiness.com](http://www.fiservbusiness.com). Fiserv developed its TRACKER Unclaimed Property system to keep the compliance requirements of every jurisdiction at your fingertips and assist in generating accurate reports to meet state-specific deadlines. TRACKER software has been in the marketplace for over 15 years and is used by nearly 4,000 business entities.*

## NEW SERVICE OFFERING

### SMS Group Introduces Innovative Solution for Abandoned Safe Deposit Box Contents

SMS Group has formally introduced its SafeBoxSolutions product offering. The service is tailored for banks required by state laws to liquidate abandoned safe deposit box contents.

SafeBoxSolutions is designed to provide a single auction point for safe deposit box contents. The service removes the burden of working with multiple auction houses, while maximizing the dollars received for salable items. SMS is generating over 160% of appraised value on jewelry and coins and successfully selling "worthless items" for sizable amounts. The program is helping banks recover expenses from box drillings and unpaid rent, costs that would otherwise not be recovered.

Components of the program include:

- Staging: SMS works with you on presorting efforts to minimize appraisal time and costs.
- Appraisal: SMS brings an independent, certified appraiser to your location. Appraisers used are uniquely experienced in safe deposit box activities.
- Liquidation: SMS will liquidate items at or above appraised value. SMS handles all aspects of liquidation with a focus on generating as much revenue as possible.
- Reporting and reconciliation: SMS provides detailed reports by box showing each item sold, price received, items open for bid and forecasts.
- Controls: Extensive security, compliance and inventory controls are in place to protect items and confidential information.

Benefits of the program include:

- Comprehensive reporting for audit purposes and full reconciliation of items,
- Dramatically increases recovery of box drilling and unpaid rent fees,
- Reduce expenses and resource requirements associated with item liquidation,
- Provide a single auction point for all safe deposit box contents, and
- Comply with state unclaimed property laws for safe deposit boxes.

"Our goal was to create a service that simplifies the auction process for banks, while maximizing the dollars received for each item to benefit the owner and states" said Nick Nichols, Director of Sales and Client Services.

