

UNDERWRITING BULLETIN

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NY000296

Date: December 1, 2006

To: All New York State Office Counsel, Managers and Agents

From: Harold Boxer, Vice President and Senior Agency Counsel

Re: Escrow Deposit Review - Compliance with Sections 1317 and 1422 of the New York Abandoned Property Law

Pursuant to Section 1317 of the Abandoned Property Law, escrow deposits collected by title companies, their agents or representatives as an inducement to issue a title policy, which become 3 or more years old (measured from date of deposit) as of December 31 of any year, must be turned over to the State Comptroller as abandoned property unless there has been written communication from the depositor or other person claiming the deposit within the 3 year period.

This is a reminder that if your office has not already done so, a review should be conducted to identify those escrows that will become 3 years old as of December 31, 2003. If you have escrows that fall into this category, the following procedure is to be followed, pursuant to Section 1422 of the Abandoned Property Law.

At least ninety days prior to the applicable reporting date¹, you must send a written notice by first class mail to each person appearing to be the owner of the deposit at the address of the owner as it appears on your books and records. This requirement shall not apply where you do not have an address for the owner or you can demonstrate the only address you have pertaining to the owner is not the current address.

To the extent that the ninety day notice is required, you must, with respect to deposits in excess of \$1000.00, send a second written notice by certified mail, return receipt requested, unless you have, in response to the ninety day notice, received a claim from the owner of the property or the original mailing was returned to you as undeliverable.

¹ The applicable reporting date, pursuant to Section 1317 (2) is "...within the first ten days of March in each year..." for "Any such property deemed abandoned as of the preceding December thirty-first..."

The written notice required under Section 1422 shall advise the owner that deposit will be remitted to the state comptroller unless the deposit is claimed by the owner prior to the required remittance date².

In addition, pursuant to Section 1422, the cost of necessary certified mailing may be deducted from the deposit as a service charge.

Copies of Sections 1317 and 1422 of the Abandoned Property Law are attached to this Bulletin for your reference. It is strongly suggested that you review both statutes in their entirety. Further information, including forms for reporting to the Comptroller's office, is available at

<http://www.osc.state.ny.us/ouf/oufhandbook/money.htm>

Also attached to this Bulletin is a suggested form letter for notice to depositors in compliance with the statute.

Should you have any questions regarding the questions of escrows or the Abandoned Property Law, please contact Company Counsel.

References

Related Bulletins:	NY000125, 155, 163, 179, 185, 194, 217, 268
Underwriting Manual:	None
Exceptions Manual:	None
Forms:	None
References:	None

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² The required remittance date appears to be same as the applicable reporting date pursuant to Section 1317(2).

Under the terms of the Deposit Agreement dated _____ (the “Agreement”) a copy of which is attached hereto, you, as the depositor, agreed to provide satisfactory disposition of the items referenced in the Agreement by the performance date stated therein. As of this date, according to our records, that obligation has not been met.

It is our obligation to inform you that Section 1317 of the Abandoned Property Law of New York states that deposits such as this, held by a title insurer, or an agent of an insurer, are deemed abandoned property if unclaimed as of December 31st in any year for three years after the date of deposit, unless there has been written communication from the depositor or other person entitled to the deposit within said three year period. In the absence of written communication it is our obligation to report the deposit as abandoned property and remit same to the Comptroller of the state of New York.

Therefore, if you claim ownership of this deposit and do not want it reported as abandoned and remitted to the Comptroller, you must sign the enclosed copy of this letter and send it to the undersigned, on or before March 10, _____. Alternatively, you may send a separate written statement identifying the deposit and stating your claim thereto, by the aforementioned date.

Please be advised that we will not release funds to the depositor or any claimant in the absence of compliance with the terms of the Agreement and nothing herein is to be construed as a waiver of any of our rights under the Agreement or otherwise. Further, the Abandoned Property Law allows us to deduct the cost of certified mail incurred in this notification.

Sincerely,

I claim the funds deposited pursuant to the above referenced agreement.



McKinney's Abandoned Property Law § 1317

C

Effective: May 15, 2003

McKinney's Consolidated Laws of New York Annotated Currentness

Abandoned Property Law (Refs & Annos)

Chapter 1 Of the Consolidated Laws (Refs & Annos)

Article XIII. Miscellaneous Unclaimed Property (Refs & Annos)

→ § 1317. Unclaimed security deposits held by the title insurance companies

1 Any amount held or owing by a domestic or foreign title insurer or by an agent or representative of such insurer as a security deposit, relating to the transfer or financing of real property located in this state, made as an inducement to issue a title insurance policy shall be deemed abandoned property if unclaimed as of December thirty-first in any year for three years from the date of deposit, unless there has been written communication from the depositor or other person entitled thereto to the insurer to its agent or representative within said three-year period.

2. Any such property deemed abandoned as of the preceding December thirty-first shall be paid and delivered to the comptroller within the first ten days of March in each year, together with a report of said property, including a listing of depositors and lienholders, in such form as the comptroller may prescribe.

3. The title insurer or its agent or representative shall retain records of the names and addresses of the depositors and lienholders, and any records necessary to show proof of entitlement of such deposits.

4. Notwithstanding any other provision of law to the contrary, the rights of a depositor to payment from a title insurer or its agent or representative pursuant to a security deposit agreement and the obligations of such insurer [FNI] its agent or representative to fulfill the requirements specified in any such agreement shall in no way be affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment or delivery to the comptroller of abandoned property hereunder. Claim for reimbursement may be filed with the comptroller by any title insurer or its agent or representative who may be required to pay or deliver any abandoned property to the comptroller pursuant to this section

5 The comptroller may require proof that the title insurer has made payment on the underlying claim under the terms of the security deposit agreement and is entitled to reimbursement therefor and after audit the comptroller shall pay the same

6. The comptroller shall not be liable for any action by the comptroller made in good faith or based upon representations made by a title insurer pursuant to this section.

[7. Repealed by L. 2003, c. 62, pt P, § 4, eff. May 15, 2003]

CREDIT(S)

(Added L.1993, c. 57, § 71. Amended by L.2003, c. 62, pt. P, § 4, eff. May 15, 2003.)

[FNI] So in original. "Comma" inadvertently omitted

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McKinney's Abandoned Property Law § 1422

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Effective: May 15, 2003

McKinney's Consolidated Laws of New York Annotated Currentness

Abandoned Property Law (Refs & Annos)

Chapter 1 Of the Consolidated Laws (Refs & Annos)

Article XIV. General Provisions (Refs & Annos)

→ § 1422. Mailing of notice to owners of record

1. Any holder of unclaimed funds which is not otherwise required to perform owner notification mailings under the provisions of this chapter shall send, not less than ninety days prior to the applicable reporting date for such unclaimed property, a written notice by first-class mail to each person appearing to be the owner of property listed in a report of abandoned property required to be filed under the provisions of this chapter, at the address of the owner as it appears on the books and records of the holder; provided, however, that the foregoing requirements shall not apply where (a) the holder does not have an address for the owner; or (b) the holder can demonstrate that the only address that the holder has pertaining to the owner is not the current address of the owner.

2. Where notice is required by subdivision one of this section, each holder shall, with respect to property listed in such report whose value is in excess of one thousand dollars, send a second written notice to the owner by certified mail, return receipt requested not less than sixty days prior to the applicable reporting date for such unclaimed property, provided that no notice pursuant to this subdivision shall be required where: (a) such holder has received a claim from the owner of the property; or (b) the original mailing was returned as undeliverable.

3. The written notice required by this section shall advise the owner that the property to which the owner appears to be entitled will be reported as abandoned property and will be remitted to the state comptroller unless such property is claimed by an entitled party before the required remittance date.

4. The failure of any holder of abandoned property to comply with the requirements of this section shall not in any way affect the reporting of abandoned property pursuant to the provisions of this chapter.

5. Costs paid to the postal authorities by holders of unclaimed property to provide such written notice by certified mail, return receipt requested, may be deducted from the property as a service charge.

CREDIT(S)

(Added by L.2003, c. 62, pt. P, § 6, eff. May 15, 2003.)

<Laws 1943, Chapter 697>

RESEARCH REFERENCES

2005 Electronic Update

Forms

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