

## Unclaimed funds

In order to avoid holding funds in a trust account indefinitely and losing contact with the owner(s), a lawyer should promptly follow up on any trust account check that has not cleared within two to three months of disbursement.

Abandoned property, which OLR and the Department of Revenue interpret to include unclaimed funds held in lawyer trust accounts, is described as follows in Sec. 177.02(1), Wis. Stats.:

Except as otherwise provided in this chapter, all intangible property, including any income or increment derived from it, less any lawful charges, that is held, issued or owing in the ordinary course of a holder's business and that has remained unclaimed by the owner for more than 5 years<sup>1</sup> after it became payable or distributable is presumed abandoned.

**Escheatment of Funds held in Trust:** Pursuant to Wis. Stats., Sec. 177.03, there are a number of circumstances under which funds held in trust by a lawyer or law firm may have to escheat to the State of Wisconsin. These include the following:

1. the lawyer's or law firm's records reflect that the last-known address for the apparent owner is in Wisconsin;
2. the lawyer's or law firm's records do not reflect the identity of the person entitled to the property, and it is established that the last-known address of the person entitled to the property is in this state;
3. The lawyer's or law firm's records do not reflect the last-known address of the apparent owner; and it is established that the last-known address of the person entitled to the property is in Wisconsin.
4. The transaction out of which the property arose occurred in this state and the last-known address of the apparent owner or other person entitled to the property is either unknown or in a state that does not provide for escheatment of unclaimed property.

**Out-of-State Owners:** If the last known address of the owner is in another state, the funds may have to escheat to that state's unclaimed property program.

### Unclaimed Property Programs

The National Association of Unclaimed Property Administrators (NAUPA) maintains a website with links to unclaimed property programs in the U.S., Canada, and a number of other countries. Go to: <https://www.unclaimed.org/>

**Due Diligence Letters:** Prior to remitting funds to the Wisconsin Department of Revenue, a lawyer should send a "due diligence" letter to the owner of any unclaimed funds in excess of \$50.<sup>2</sup> [See, Wis. Stats., Sec. 177.17(5)]. While the statute does not

<sup>1</sup> The 5-year period may be shortened to 1 year if the attorney is joining another firm, retiring, or otherwise ceasing the practice of law. (See, Wis. Stats., Sec. 177.11)

<sup>2</sup> A sample due diligence letter can be found in the Unclaimed Property Holder Reporting Guide that is available on the Department of Revenue's website: <https://www.revenue.wi.gov/> or in hard copy by contacting the Unclaimed Property Office, toll free, at: 877-699-9211.

require “due diligence” letters for amounts of less than \$50, lawyers are encouraged to send such letters in all cases in order to document the lawyer’s efforts to locate the property owner and notify the owner of the impending transfer of trust funds to the Department of Revenue.

**Prohibited Deductions:** OLR takes the position that a lawyer may not deduct charges for efforts to locate the owner(s) of funds held in trust. Such efforts are part of a lawyer’s fiduciary obligations.

The DOR has an established policy that the only charges that may be deducted from unclaimed funds are the bank service charges and traveler’s check/money order fees authorized under Wis. Stats. SEC. 177.06(3) and Sec. 177.04(3). The DOR has also acknowledged that other statutory liens (Warehouseman’s, Self-Storage and Mechanic’s Liens) allow for expenses to be deducted prior to reporting to the Unclaimed Property Unit.

For further information, contact the Unclaimed Property Program Administrator at the Wisconsin Department of Revenue:

Toll Free No.: 877-699-9211

Website: <https://www.revenue.wi.gov/>

Updated: 10/20/2016

**177.03 General rules for taking custody of intangible unclaimed property.** Unless otherwise provided in this chapter or by another section of the statutes, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under ss. [177.02](#) and [177.05](#) to [177.165](#) are satisfied, and one of the following conditions is present:

(1) The last-known address, as shown on the records of the holder, of the apparent owner is in this state.

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last-known address of the person entitled to the property is in this state.

(3)

(a) The records of the holder do not reflect the last-known address of the apparent owner; and

(b) Either of the following is established:

1. The last-known address of the person entitled to the property is in this state.

2. The holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last-known address of the apparent owner or other person entitled to the property.

(4) The last-known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state.

(5) The last-known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state.

(6)

(a) The transaction out of which the property arose occurred in this state;

(b) Either of the following exists:

1. The last-known address of the apparent owner or other person entitled to the property is unknown.

2. The last-known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property; and

(c) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

**History:** [1983 a. 408](#); [1987 a. 23](#).