



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

PART 1

PRELIMINARY MATTERS

Definitions

1. (1) In this Rule:

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

“Act” means the *Unclaimed Property Act*;

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

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

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

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

“loyalty program” means an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services;

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

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

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

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

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

Fair market value

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

- (a) if the property is in a Canadian currency, the value of the property in Canadian dollars;
- (b) if the property is in a foreign currency, the value of the property converted into Canadian dollars;

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

PART 2 APPLICATION

Excluded Property

- 3. (1)** The definition of “property” does not include any of the following:
- (a) a gift card as defined in the *Gift Cards Act*;
 - (b) property acquired from participation in a loyalty program;
 - (c) property in safekeeping or in a safe deposit box held by a provincially regulated credit union, trust company, or *caisse populaire*;
 - (d) property owed to an owner under an accident, disability or sickness insurance policy that is in force;
 - (e) property owed to an owner under an accident, disability or sickness insurance policy that has been terminated and either:
 - (i) the policy is a contract of group insurance that has been replaced by another contract in compliance with subsection 191.1(5) of the *Insurance Act* and the replacement contract provides that the full benefits required to be paid under subsection 191.1(2) of the *Insurance Act*, by the insurer of the initial contract are to be paid instead under the replacement contract; or
 - (ii) the fair market value of the property owed under the policy that has ceased to be in force is less than \$250;
 - (f) property that is an insurance policy that is not payable in accordance with applicable law;
 - (g) property that is held by a federal institution as defined in the *Canada Deposit Insurance Corporation Act (Canada)*;

- (h) property that is a pension benefit that is payable in accordance with the *Pension Benefits Act*, unless the pension plan has been wound-up.
- (2) A holder is not obligated to submit a report or deliver property to the Director if delivery is addressed by another Act of the Legislature, an Act of another province or territory of Canada, an Act of the Parliament of Canada or by an order or judgment of a New Brunswick court and the holder is complying with the other requirement.

When Property is Unclaimed – Indication of Interest

- 4. (1) For the purposes of paragraph 4(1)(b) of the *Act*, any of the following indicate that an owner or apparent owner has a right or interest in the property:
 - (a) the delivery of correspondence relating to the property of the apparent owner, unless returned as undeliverable or could not be delivered;
 - (b) a verification or review of the property's balance that creates a record;
 - (c) electronic access by the apparent owner to an account relating to the property, if the account requires a unique password for access.
- (2) If multiple property is held in the name of an apparent owner or owner, an indication of interest by the owner or apparent owner is an indication of interest in all of the property held in the name of the apparent owner or owner.
- (3) If property is held by a holder pursuant to a rental agreement and that agreement requires a regular automatic withdrawal from an account belonging to the apparent owner, the successful regular withdrawal indicates the apparent owner's interest in the property.
- (4) If property is acquired by means of regular automatic withdrawals of premiums by a holder from an account belonging to the apparent owner, the successful regular withdrawal of those premiums indicates the interest of the apparent owner in the property.
- (5) If property is acquired by means of regular automatic deposits, the successful regular deposit indicates the interest of the apparent owner in the property.

When Property is Unclaimed – Time Period

- 5. (1) For the purposes of subsection 4(1) of the *Act*, property that is not held in a registered retirement savings plan, a registered retirement income fund under the *Income Tax Act* (Canada), other similar plan or account that is qualified for tax deferral, or a trust established under the *Income Tax Act*, is presumed to be unclaimed if the owner or apparent owner has not made an indication of right or interest in the property during the following periods:
 - (a) for a cheque, or money order, three years after the date of issuance;

- (b) for a certificate of deposit, demand deposit, guaranteed investment certificate, guaranteed investment confirmation or other deposit made for a fixed period that has matured, the following:
 - (i) property held by a credit union regulated under the *Credit Unions Act*, ten years;
 - (ii) property held by other holders, three years;
- (c) for a savings or other deposit that does not have a fixed period or does not have a maturity date, the following:
 - (i) property held by a credit union regulated under the *Credit Unions Act*, ten years;
 - (ii) property held by other holders, three years;
- (d) for property that is a deposit held in trust under the *Pre-Arranged Funeral Services Act*, the following:
 - (i) property held by a licensed funeral provider three years after the death, or the date the provider knew or ought to have known the named beneficiary died;
 - (ii) property held by a licensed funeral provider where the date of death of the named beneficiary is unknown, the date the named beneficiary would be 105 years of age;
- (e) for property held in trust by other holders, three years after the later of the following:
 - (i) the last indication of interest;
 - (ii) the proposed date of the transaction for which the property was received;
- (f) for property owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the earlier either of the following:
 - (i) the date of the obligation to pay;
 - (ii) if payable as a result of the death of the person whose life was insured, the date the insurer knew or ought to have known the insured died or the date the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;
- (g) for property owed under an accident, disability or sickness insurance policy, three years after the date the policy ceased to be in force;

- (h) for any entitlement to a pension benefit under the *Pension Benefits Act* resulting from the wind-up of a pension plan, three years after the wind-up report is approved by the Superintendent of Pensions or the authority designated under the *Pension Benefits Act* and provided that the transfer is permitted under subsection 36(8) or approved under section 37 of the *Pension Benefits Act*;
 - (i) for wages, salary or other remuneration, three years after the wages, salary or other remuneration are due and payable;
 - (j) for property held by a utility, three years after the property is credited, due and payable or distributable;
 - (k) for property held by a court, government or governmental organization, three years after the date the property is due and payable or distributable;
 - (l) for property received by a court as proceeds of a class action and not distributed under the judgment, three years after the distribution date set out in the judgment;
 - (m) for a security, three years after the earlier of any of the following:
 - (i) a dividend, share split, or other distribution that was unclaimed by the apparent owner;
 - (ii) an event or action that the apparent owner did not respond to or complete as required; or
 - (iii) correspondence to the apparent owner that is returned as undeliverable or could not be delivered;
 - (n) for property that is a debt of a business organization and is owed to an apparent owner, three years after the date of the earliest unclaimed payment;
 - (o) for property of a business organization distributable in the course of dissolution, three years after the date of dissolution.
- (2)** For the purposes of subsection 4(1) of the *Act*, property that is held in or the proceeds from, a registered retirement savings plan, a registered retirement income fund under the *Income Tax Act* (Canada), other similar plan or account that is qualified for tax deferral, or a trust established under the *Income Tax Act*, is presumed to be unclaimed if the owner or apparent owner has not made an indication of right or interest in the property during any of the following periods:
- (a) for property where the owner or apparent owner has made no request for payment under the plan, three years following the expiry date of the plan;
 - (b) three years after the receipt of information that the apparent owner is deceased;
 - (c) three years after the earliest of any of the following:

- (i) the date of distribution or attempted distribution of the property,
 - (ii) the date of the required distribution as stated in the plan or the trust agreement governing the plan, or
 - (iii) the date, if determinable by the holder, specified in the income tax laws of the jurisdiction in which the plan or account is registered or held, by which the distribution of the property must begin; or
- (d) three years after the date of payment or obligation to pay.
- (3)** For the purposes of subsection 4(1) of the *Act*, all other property is presumed to be unclaimed if the owner or apparent owner has not made an indication of right or interest in the property after three years.

When Obligation to Deliver is Not Required

- 6. (1)** A holder is not obligated to submit to the Director the unclaimed property report and is not obligated to deliver the unclaimed property referred to in the report under section 9 of the *Act*, if all of the following apply:
- (a) the total fair market value of the property included in the unsubmitted unclaimed property reports from the previous 5 years, inclusive of the current year's report, is less than \$1000;
 - (b) each individual property listed in the unsubmitted unclaimed property report has a fair market value of less than \$50 as of December 31st of the year covered in the report.
- (2)** A holder is not obligated to submit to the Director the unclaimed property report and is not obligated to deliver the unclaimed property referred to in the report under section 9 of the *Act*, if the property has a fair market value of less than one dollar as of December 31st of the year covered in the report.
- (3)** Even if not required to submit a report and deliver unclaimed property due to subsections (1) or (2), a holder may choose to submit a report and deliver the unclaimed property referred to in that report under section 9 of the *Act*.

PART 3 RIGHTS AND DUTIES OF HOLDERS

Notice to Apparent Owner

- 7. (1)** For the purposes of section 7 of the *Act*, a notice to apparent owner must contain all of the following:
- (a) the name of the apparent owner;
 - (b) a statement that the holder may be holding unclaimed property in the apparent owner's name;

- (c) a statement indicating that the continued failure to communicate with the holder will result in the delivery of the property to the Director;
 - (d) the estimated date on which that delivery to the Director will take place;
 - (e) how the apparent owner can claim the property from the holder and prevent the delivery of the property to the Director.
- (2) If a holder has a mailing address for an apparent owner, written notice must be sent by mail or courier..
- (3) A notice sent electronically shall not include personal information of the apparent owner other than the apparent owner's name and requirements in subsection (1).
- (4) If a holder has both an electronic address and a mailing address, the holder may choose which method to use first and utilise a secondary method if there is no response from the first notice.
- (5) If a holder does not know the identity of an apparent owner of the property, the holder is not required to give notice.

Late delivery – voluntary disclosure program

8. (1) For the purposes of subsection 10(3) of the *Act*, a holder who has not delivered property in accordance with section 9 of the *Act* may voluntarily apply to the Director to become compliant, unless either of the following has occurred:
- (a) the Director has notified the holder that the Director intends to conduct a compliance review or an examination;
 - (b) the holder has filed repeatedly under this section.
- (2) An application under section 10 of the *Act* must contain documentation to describe the circumstances as to why the holder is non-compliant.
- (3) An application approved under this section will not be subject to late fees and interest under section 14 of the *Act*.

Voluntary delivery

9. For the purposes of section 11 of the *Act*, a holder may submit a report and deliver property to the Director for property that would have been presumed to be unclaimed prior to the commencement of the *Act* if the holder has complied with the notice requirements in section 7 of the *Act*.

Delivery on the Holder's Initiative

- 10.** An application under section 12 of the *Act* must set out the reasons to support the early delivery of the property before the property is presumed to be unclaimed and include documentation in support of the application that specifically addresses:
- (a) the burden to the holder of holding the property until the applicable time period in section 5 of this Rule;
 - (b) the holder has provided notice to the apparent owner pursuant to section 7 of the *Act*; and
 - (c) such notice is returned as undeliverable or could not be delivered.

Submitting report and delivery of property that is a security

- 11.** (1) For property that is a security, the holder is the person with the books, records and/or documents regarding the apparent owner.
- (2) If two or more holders have the books, records and/or documents regarding the apparent owner, then the holder with the most frequent or usual contact with the apparent owner shall be deemed the holder, unless there is a written agreement that specifies the holder with the obligation to deliver for the purposes of the *Act*.
- (3) The holder must submit the most recent account statement of the apparent owner with the report required under subsection 9(2) of the *Act*.
- (4) If an apparent owner has securities with a total estimated fair market value of less than \$1000 as of December 31st of the year covered in the report, the holder shall liquidate the account of the apparent owner and deliver the liquidated property to the Director, in accordance with section 18 of the *Act*.
- (5) Pursuant to subsection 13(2) of the *Act*, the holder will deliver to the Director the net amount realized along with a copy of any remittances.
- (6) If an apparent owner has securities with a total estimated fair market value in an account of \$1000 or more as of December 31st of the year covered in the report, the holder shall submit a report to the Director in accordance with sections 9, 10, 11, or 12 of the *Act*, as applicable, and continue to hold the property until the Director gives the holder permission to deliver the unclaimed property.
- (7) For any property that continues to be held by the holder under 11(6) of this Rule, the holder will amend the name and address on the account statement to include the following:

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

**PART 4
RIGHTS AND DUTIES OF DIRECTOR**

Time for Reconsideration

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

PART 5 CLAIMS

Claims

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

Time Periods

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

Other Claims

- 15.** Pursuant to paragraph 26(1)(b) of the *Act*, the Director may pay a claim to any of the following:
- (a) an executor or an administrator of an apparent owner;
 - (b) a legal representative of an apparent owner;
 - (c) a successor company;
 - (d) a former holder, upon proof that the former holder made an equivalent payment to the apparent owner;
 - (e) a former holder that made a delivery in error;
 - (f) a trustee in bankruptcy authorized to act on behalf of the creditors of the apparent owner.

**PART 6
GENERAL**

Agreements to Locate Unclaimed Property

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

Effective Date

17. This Rule comes into force on 1 January 2022.

**PART 7
TRANSITIONAL PROVISIONS**

18. *A holder that is required to submit a report and deliver property to the director for a time preceding the date of the commencement of the Act and who had expunged the information identifying the apparent owner or owner of the unclaimed property from its books and records is not required to recreate the expunged records where the holder has taken all reasonable actions to comply with the requirements and the holder is otherwise in compliance with the Act. However, the holder remains liable to the apparent owner or owner for this unclaimed property without the relief under section 13(2) of the Act. The holder may voluntarily submit a report and deliver property presumed to be unclaimed if, for any reason, a holder's books, records or documents are not sufficiently complete to allow the holder to submit a report containing all of the information required by the Act.*