

(a)

UNCLAIMED PROPERTY ADMINISTRATION
Unclaimed Personal Property
Readoption: N.J.A.C. 17:18

Proposed: November 16, 2020, at 52 N.J.R. 2055(a).
 Adopted: June 15, 2021, by Steven R. Harris, Administrator,
 Unclaimed Property Administration.
 Filed: June 15, 2021, as R.2021 d.072, **without change**.
 Authority: N.J.S.A. 46:30B-107.
 Effective Date: June 15, 2021.
 Expiration Date: June 15, 2028.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 17:18 were scheduled to expire on May 19, 2021, as the Unclaimed Property Administrator timely filed a notice of proposal to readopt the chapter. Pursuant to Executive Order Nos. 127 (2020) and 244 (2021) and P.L. 2021, c. 104, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) is extended through January 1, 2022. Therefore, this chapter has not yet expired and, pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 104, this notice of readoption is timely filed.

Summary of Public Comment and Agency Response:

The comment period ended January 15, 2021 and a comment was received from Howard Mintz, President, Garden State Treasury Claims LLC.

COMMENT: The commenter states that the N.J.A.C. 17:18-42, either facially or as applied, violates a “searcher’s rights to contract for the performance of services to clients and to freely determine the means by which and the manner in which it is compensated” under the U.S. Constitution Amendment 9 XIV, § 1 and New Jersey Constitution Article I, § 1; that it is “an unconstitutional prohibition against an individual’s right to contract”; that it leaves searchers “with no means or manner ... to secure current and future contractual rights under the law”; and that it does not prevent fraud. The commenter suggests that the rule be changed to allow their searchers to receive customer funds directly, or that purported existing provisions allowing owners’ funds to be sent to third-party escrow providers be enforced.

RESPONSE: The rules proposed for readoption do not violate equal protection under either the United States or New Jersey Constitutions. There is both a rational basis and appropriate governmental interest to provide payment to the actual claimant, unless expressly directed otherwise by statute or court order, because:

1. Only claimants have an ownership interest in the funds;
2. It is the purpose of the Uniform Unclaimed Property Act to protect claimants’ interest in property; and
3. The rule does minimize fraudulent behavior in the realm of unclaimed property.

Making payments directly to claimants avoids fraud because Unclaimed Property Administration (UPA) has no way of verifying whether a person requesting payment is in fact a searcher and, if so, whether they will properly distribute the payment. It is, therefore, appropriate for the administrator to return funds only to claimants and not to non-claimants. Indeed, the UPA is only statutorily authorized to pay a claim “to the claimant” pursuant to N.J.S.A. 46:30B-79. The governmental interest in avoiding fraud and in making payments only to the person(s) statutorily intended to receive the funds amply satisfies Federal and State equal protection. The commenter’s concerns about whether the rule is valid as applied does not pertain to whether the rule is facially valid and appropriate for readoption.

Further, the rule does not in any way restrict searchers’ right to contract with claimants. The UPA is not party to searchers’ contracts with claimants and so is not bound to make payment according to the terms of those contracts. However, searchers are nevertheless free pursuant to this chapter to enter into such contracts and seek to enforce them in court, if necessary.

Finally, the commenter’s suggestion that the UPA enforce existing provisions that allow owners’ funds to be sent to third-party escrow providers is inapplicable because there are no such provisions to be enforced.

Federal Standards Statement

The readopted rules do not contain requirements that exceed any requirements imposed by Federal law. The rules represent policies of the State of New Jersey regarding implementation of N.J.S.A. 46:30B-1 et seq., that are independent of Federal requirements or standards. Accordingly, no Federal standards analysis is required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:18.