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Delaware

**DELAWARE STATUTORY SUMMARY**

TYPE OF STATUTE: Custodial Abandonment Law

Statutory Citation: Abandoned and Unclaimed Prop. Law, § 1130 *et seq.*

1. Must holder be doing business in state:
  - a. Banking and financial organization.—No, § 1130.
  - b. Business association (dividends, stock, etc.).—Yes, § 1198(6).
  - c. Life insurance company.—Yes, § 1181.
2. Date report due:
  - a. Life insurance company.—May 1, § 1182.
  - b. All others.—March 1, § 1199(a); Banking Organizations August 1, § 1171(a).
3. Date payment due:
  - a. Life insurance company.—December 20, § 1185(a).
  - b. All others.—March 1, § 1201.
  - c. Exceptions.—Banking Organizations, November 10, § 1173(a).
4. Report period:
  - a. Life insurance company.—December 31, § 1182(a).
  - b. All others.—December 31, § 1199(a), Banking Organizations, June 30, § 1171(a).
5. Negative report required.—Banking Organizations, § 1171(b).
6. Turnover prior to expiration of abandonment period.—See § 1203(e).
7. Aggregation amount:
  - a. Amount.—\$50, § 1182(b)(2), § 1199(a)(2).
  - b. Mandatory.—No.
8. Must holder give notice to owner.—No.
9. Owner entitled to income on reported property.—No.
10. Interest paid by state to owner.—No, § 1145.
11. May holder reimburse owner.—Yes, traveler's checks, money orders, etc., § 1176, insurance companies, § 1187.
12. Liability of holder:
  - a. Relief from liability.—Yes, §§ 1144(a), 1176, 1186 and 1203(a) and (b).
  - b. Indemnification.—Yes, § 1203(c).
13. Anti-limitation provision.—Yes, § 1202, but see § 1198(10).
14. Statutory limitation on right of state to sue to recover property.—No

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provision.

15. Period covered by initial report.—Life Insurance Companies, see § 1182(a), Banking Organizations, see § 1170(c); others see §§ 1198(10), 1199(f).
16. Penalties:
  - a. Failure to pay.—Penalty in amount of 0.5% per month of any underpayment up to a maximum of 25% of such amount. Interest rate of 0.5% per month, not to exceed 50% of amount required to pay, § 1159(b), (d).
  - b. Failure to report.—Penalty in amount of 5% per month of the amount underreported up to a maximum of 50% of such amount, § 1159(a).
  - c. Fraudulent returns.—Holder guilty of perjury, penalty in amount of 75% of value of property, § 1159(c).
17. Retention of records:
  - a. Generally.—No provision.
  - b. Exceptions.—None.
18. Limitation on heir finder agreements.—No.
19. Abandonment period:
  - a. Savings account.—5 years, § 1170(a)(1).
  - b. Checking account.—5 years, § 1170(a)(1).
  - c. Money orders, cashier's checks and certified checks.—5 years, § 1170(a)(2).
  - d. Traveler's checks.—15 years, § 1198(9).
  - e. Safe deposit boxes.—See § 1170(a)(3).
  - f. Life insurance.—5 years, § 1181.
  - g. Utilities (deposits and refunds).—5 years, § 1198(9) and (11).
  - h. Dividends.—3 years, § 1198(9) and (11).
  - i. Underlying shares.—3 years, § 1198(9) and (11).
  - j. Dissolutions.—5 years, § 1198(9) and (11).
  - k. Fiduciaries.—5 years, § 1198(9) and (11).
  - l. State courts and agencies.—5 years, § 1160(a).
  - m. Federal courts and agencies.—See § 1160(b).
  - n. Wages.—5 years, § 1198(9) and (11).
  - o. Gift certificates.—Generally, 5 years, § 1198(8); see, however, § 1198(8) and § 1199(g).
  - p. All other property.—5 years, § 1198(9) and (11).
20. Property exempted from law.—Insurance Companies see § 1182; Banking Organizations see § 1170(c); all others, property presumed abandoned under

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law of other state prior to July 13, 1971, § 1210; see also §§ 1198(10) and 1199(f). Electric Utility Cooperatives, § 909.

## Contact persons:

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**Chapter 11 Escheats (Title 12, Del. Code Ann.)****Subchapter II Abandoned or Unclaimed Property****Article 1****Deposit to General Fund; Definitions**

Sec.

- 1130 Definitions**
- 1131 Deposit to General Fund**
- 1132 [Reserved.]**

**Article 2****General Provisions**

- 1140 Statutes of limitations not a bar**
- 1141 Escheator to maintain public record**
- 1142 Publication of abandoned property by State Escheator**
- 1143 Sale of personal property by State Escheator**
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- 1151 Waiver of publication**
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- 1154 State Escheator to make regulations**
- 1155 Examination of records**
- 1156 Court of Chancery—Jurisdiction**
- 1157 Presumption of abandonment of personal property held by federal government**
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**Article 3****Unclaimed or Unknown Owner Court Funds**

- 1159 Abandoned property defined**
- 1160 Publication of list of abandoned property**
- 1161 Payment of abandoned property; presumption as to last known address**
- 1162 Report to accompany payment**

**Article 4****Unclaimed Property Held or Owing by Banking Organizations**

- 1163 Abandoned property defined**

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- 1164 Annual report of abandoned property**
- 1165 Publication of list of abandoned property**
- 1166 Payment of abandoned property**
- 1167 Abandoned property held by the State Bank Commissioner after receivership**
- 1168 Payment of abandoned property after receivership**
- 1169 Reimbursement for instruments paid**

**Article 1. Deposit to General Fund; Definitions****§ 1130. Definitions.**

As used in this subchapter:

“Banking organization” includes any organization, corporation or association organized and existing under Chapter 7, 15 or 17 of Title 5 or the corresponding provisions of statutes in effect prior to February 12, 1953 or any bank or credit union created under the laws of the United States or any state.

**§ 1131. Deposit to general fund.**

(a) The State Escheator shall deposit into the General Fund all moneys or proceeds of property received pursuant to this subchapter.

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this chapter, the title to which has failed and the power of alienation suspended by reason of: (1) The death of the owner thereof, intestate, leaving no known heirs-at-law; (2) the owner thereof having disappeared or being missing from the owner's last known place of residence for a continuous period of 5 years or more, leaving no known heirs-at-law; or (3) the same having been abandoned by the owner thereof, as hereinafter defined, shall descend to the State as an escheat in accordance with the Constitution, the general laws of this State or this subchapter.

**§ 1198. Definitions.**

For purposes of this subchapter, the following definitions shall apply:

(1) "Abandoned property" means property against which a full period of dormancy has run.

(2) "Appropriation" means the act of the State, through its duly constituted officers or agencies, in taking or accepting possession or custody of abandoned, unprotected, unclaimed or lost property as conservator thereof for later disposition by descent to the State as an escheat or redemption by the owner as provided in this subchapter.

(3) "Distributions held by financial intermediaries for unknown owners" means property as generally defined in subdivision (10) of this section, which consists of dividends, interest, stock and other distributions made by issuers of securities which are held by financial intermediaries (including, by way of example and not limitation, banks, transfer agents, brokers and other depositories) for beneficial owners whose identities are unknown.

(4) "Escheat" means the descent or devolution of property to the State under and by virtue of the Constitution of the State, the general laws of this State or this subchapter.

(5) "Escheatable property" means property which is subject to escheat to the State under and by virtue of the Constitution of the State, the general laws of this State or this subchapter.

(6) "Escheated property" means property which has descended to the State as an escheat.

(7) "Holder" means any person having possession, custody or control of the property of another person and includes a post office, a depository, a bailee, a trustee, a receiver or other liquidating officer, a fiduciary, a governmental department, institution or agency, a municipal corporation and the fiscal officers thereof, a public utility, service corporation and every other legal entity incorporated or created under the laws of this State or doing business in this State. For purposes of this subchapter, the issuer of any intangible ownership interest in a corporation, whether or not represented by a stock certificate, which is registered on stock transfer or other like books of the issuer or its agent, shall be deemed a holder of such property. This definition shall be construed as distinguishing the term "holder" of property from the term "owner" of property as hereinbefore defined and as

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excluding from the term “holder” any person holding or possessing property by virtue of title or ownership.

(8) “Owner,” in addition to its commonly accepted meaning, shall be construed to particularly mean and include any person, as hereinbefore defined, having the legal or equitable title to property coming within the purview of this subchapter.

(9) a. “Period of dormancy” means the full and continuous period of 5 years, except a period of 15 years for traveler’s checks, during which an owner has ceased, failed or neglected to exercise dominion or control over property or to assert a right of ownership or possession or to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property. Notwithstanding the foregoing, “period of dormancy” means the full and continuous period of 3 years with respect to intangible ownership or indebtedness in a corporation or other entity whether or not represented by a stock certificate or other certificate of membership, bonds and other securities including fractional shares, interest, dividends, cash, coupon interest, liquidation value of stocks and bonds, funds to redeem stocks and bonds, and distributions held by financial intermediaries.

b. A full period of dormancy shall be deemed to have run with respect to any dividends or other distributions held for or owing to an owner at the time a period of dormancy shall have run with respect to the intangible ownership interest in a corporation partnership, statutory or common law trust, limited liability company, or other entity to which such dividend or other distribution attaches. For good cause shown, and upon notice to the State Escheator, the Court of Chancery may, with respect to property over which the court has otherwise assumed jurisdiction, extend the period of dormancy to a specific date by which an owner may exercise a right, make a demand or file a claim, provided each extension is set forth in a separate order of the court referring specifically to this section, and each extension is no longer than 3 years, provided further there shall be no more than 2 extensions under this subsection. Except as provided in § 1210 of this title, the period of dormancy shall not commence to run with respect to which claims, demands or other property held by a holder pursuant to a written agreement which contemplates that there shall be a specific period of inactivity, until the expiration of the contemplated period of inactivity. This definition shall be construed as excluding any act or doing of a holder of abandoned property not done at the express request or authorization of the owner. Notwithstanding the foregoing, the “period of dormancy” with regard to gift certificates shall be the shorter of: (1) Five years, or (2) the expiration period, if any, of the gift certificate less 1 day. In the event the period of dormancy is determined by reference to the expiration period of the gift certificate, the rights of the Escheator shall attach at the time provided in item (b) of this subdivision, but the issuer may continue to hold the property and may report and pay over such property as if the period of dormancy were 5 years. A full period of dormancy shall be deemed to have run with respect to any property that is otherwise reportable and payable to this State that a holder



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in accordance with the laws of the jurisdiction wherein the holder is located, is obligated or required to report and pay over such property to the other jurisdiction because of a shorter period of dormancy or reporting period.

(10) “Person” includes a natural person, a corporation organized or created under the laws of this State or a corporation doing business or which has been engaged in business in this State, a copartnership, a voluntary association and every or any other association or organization of individuals, but excludes banking organizations and any life insurance company.

(11) “Property” means personal property, including “distributions held by financial intermediaries for unknown owners” as that phrase is defined in paragraph (3) of this section, of every kind or description, tangible or intangible, in the possession or under the control of a holder, as hereinafter defined, and includes, but not by way of limitation, (i) money; (ii) bills of exchange; (iii) intangible ownership interests in corporations, whether or not represented by a stock certificate, bonds and other securities; (iv) credits, including wages and other allowances for services earned or accrued on or after January 1, 1958, money orders and traveler’s checks, also amounts received in consideration for gift certificates which are unredeemed, or, in lieu of which the State Escheator may in the Escheator’s discretion and upon the specific request of the issuer, accept: (1) Gift certificates reissued at face value on the date on which they are tendered to the Escheator; or (2) where the gift certificates provide that they are redeemable for merchandise only, an amount in money representing the maximum cost to the issuer of merchandise represented by the certificate. The burden of proof as to the cost of merchandise shall be on the issuer of the certificate; (v) dividends, cash or stock; (vi) certificates of membership in a corporation or association; (vii) security deposits; (viii) funds deposited by holder with fiscal agents of fiduciaries for payment to owner of dividends, coupon interest and liquidation value of stocks and bonds; (ix) funds to redeem stocks and bonds; (x) amounts refundable from excess or increased rates or charges heretofore or hereafter collected by a corporation for utility services lawfully furnished by it which have been or shall hereafter lawfully be ordered refunded to consumers or other persons entitled thereto and any interest due thereon and which have remained unclaimed by the persons entitled thereto for 5 years from the date they became payable in accordance with the final determination or order providing for the refunds; (xi) amounts refundable from customer deposits heretofore or hereafter collected by a public utility and any interest due thereon, and which have remained unclaimed by the persons entitled thereto for 5 years from the date they become payable; and (xii) all other liquidated choses in action of whatsoever kind or character. For purposes of this subsection, the phrase “amounts received in consideration for gift certificates” shall not include amounts received in consideration for gift certificates having a face value of \$5.00 or less and which are issued by a holder whose business is described in § 2906 of Title 30 whether or not such holder conducts such business within this State. The word “property” does not include:

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a. Credits or deposits evidenced by cash balances on unclaimed or refused personal property nor any property, except the items mentioned in items (i) through (xii) of this subdivision including specifically and without limitation consideration received for unredeemed gift certificates, the right to recover which in a proceeding brought by the owner would be barred by any statute of limitations, state or federal; or

b. Non-escheat capital credits as defined in § 909 of Title 26.

**§ 1199. Report by holders of abandoned property.**

(a) Every holder of funds or other property, tangible or intangible, deemed abandoned under this subchapter shall file with the State Escheator, on or before March 1 of each year, as of December 31 next preceding, a report with respect to such property. The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property deemed abandoned under this subchapter;

(2) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$50 each may be reported in aggregate;

(3) The date when the property became payable, demandable or returnable and the date of the last transaction with the owner with respect to the property; and

(4) Other information which the State Escheator may prescribe.

(b) Upon written request the State Escheator may grant an extension of time with respect to the date for filing the report.

(c) The requirements of this section for filing an annual report shall not apply to municipal corporations or counties and the fiscal officers thereof.

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