

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

Proposed Rulemaking

Title 18. Property Chapter III. Auditor of State Subchapter A. Generally Part 1. Arkansas Unclaimed Property Administrative Rules

Promulgated by: Arkansas Auditor of State

Subpart 1. General

18 CAR § 1-101. Title.

This part shall be known as the "Arkansas Unclaimed Property Administrative Rules."

18 CAR § 1-102. Purpose.

The purpose of this part is to provide clear and consistent rules for all participants in the Arkansas Unclaimed Property Program.

18 CAR § 1-103. Intent.

(a) (1) The Arkansas Unclaimed Property Program is one (1) element of the state's consumer protection initiatives.

(2) It allows lost or abandoned property to be collected in a single, neutral location for the convenience of the owner, and makes it possible for the state to better protect the interests of property owners.

(b) It is the intent of the Auditor of State to enforce and administer the Arkansas Unclaimed Property Program so that property presumed abandoned thereunder is:

- (1) Properly reported to the state;
- (2) Collected and held in trust by the state; and
- (3) Returned to its rightful owner or owners through an efficient and secure claims process.

18 CAR § 1-105. Definitions.

(a) This part adopts the definitions set forth in Arkansas Code § 18-28-201.

(b) In addition to the definitions set forth in Ark. Code Ann. § 18-28-201, this part defines the following terms:

(1)(A) "Descendants" means an individual's children, grandchildren, and all others, however remotely related to such a person, who are in a direct line of descent from the individual.

(B) In other words, the term "descendants" refers to lineal descendants and excludes an intestate's ascendants or collateral relatives.

(C) The term "descendants", wherever used in these rules, shall also include adopted children and their descendants of the intestate or of any other person in connection with whom the term "descendants" may be used.

(D) In determining which of an intestate's descendants shall constitute an inheriting class, the descendants of a living descendant shall be excluded from the class;

(2)(A) "Due diligence" means taking reasonable and necessary steps in good faith to locate the rightful owner of property before the property is reported to the state.

(B) Due diligence may be performed via email or other electronic means.

(C) Due diligence should include documentary proof of the steps taken;

(3)(A) "Dying intestate" means dying without a valid last will and testament.

(B) A person so dying is referred to in this part as an "intestate", and it is recognized that a person may die wholly or partially intestate.

(4) "Positive owner contact" means any reasonable contact between an owner and the holder, either generated or initiated by the owner or in response to the holder.

Subpart 2. General Administration

18 CAR § 1-201. Organization and administration.

(a) The Auditor of State is the administrator of Arkansas' Unclaimed Property Program.

(b) The Auditor of State has explicit authority to delegate his or her duties to division directors or employees as deemed appropriate.

(c) The Auditor of State's office has:

(1) a division which is known as the Unclaimed Property Division; and

(2) Assigned the routine administrative duties of the Unclaimed Property Act to the Unclaimed Property Division.

18 CAR § 1-202. No permanent escheat.

(a) Unclaimed property received by the State of Arkansas does not permanently escheat to the state.

(b) It remains held in trust, in perpetuity.

Subpart 3. Holders and Reporting

18 CAR § 1-301. Time periods.

(a) Generally, property becomes subject to the Unclaimed Property Act between three (3) and seven (7) years after dormancy.

(b) However, some properties take as little as one (1) year or, in the case of traveler's checks, as many as fifteen (15) years.

(c) Please consult Arkansas Code § 18-28-202 and § 18-28-403 for the complete statutory list of properties and when they become subject to the act.

18 CAR § 1-302. Reporting required.

Any person holding unclaimed property, as defined by Ark. Code Ann. § 18-28-201 *et seq.*, or § 18-28-401 *et seq.*, is required to file a report of unclaimed property to the Auditor of State.

18 CAR § 1-303. Statutory indemnification.

(a) A holder who has remitted abandoned property to the state is relieved of liability for any claim which exists, or which may arise pursuant to Arkansas Code § 18-28-208(d).

(b) Should a holder be sued for the remittance of property under the Arkansas Unclaimed Property Act, notice by registered mail including a copy of the summons and any other pertinent information shall be sent to the Auditor of State at least twenty (20) days before the return date for filing an answer to the underlying suit.

18 CAR § 1-304. Prior to reporting.

(a)(1) More than ninety (90) days prior to reporting property presumed abandoned under Arkansas law, each holder must exercise due diligence to locate the rightful owner.

(2) Those efforts should include, but are not limited to:

(A)(i) Reviewing the holder's own records to determine whether the owner has another active account(s) with the holder, or a related entity.

(ii) If the owner has an active account, other than the property subject to the abandonment period, then the subject property is not considered abandoned, and the holder should update its records accordingly;

(B) Mailing a letter, first-class with postage prepaid and with return address requested, to the last known address of the owner;

(C) Written correspondence in the format and medium most commonly used between the holder and owner; and

(D)(i) Contacting the owner by telephone.

(ii) For any telephonic or verbal contact, the holder shall document:

(a) the time, date, and nature of the attempted contact; and

(b) whether contact was made.

(b) If the owner is located, the holder shall notify the owner of the following:

(1) The type of property being held;

(2) The process for collecting the property from the holder; and

(3) If the Owner fails to claim the property from the holder, the holder will report the property or account to the Auditor of State as unclaimed property.

(c) If the holder is unable to locate the owner, the holder shall:

(1) Verify that the owner is not a current employee of the holder;

(2) Review telephone directories, or other reasonably available databases to verify the owner's address and telephone number;

(3) Verify that the owner is not a well-known individual or organization with reasonably available contact information (for example, Department of the Treasury, the Internal Revenue Service, an easily identifiable business entity.);

(4) Verify that the Holder has not had any positive owner contact related to:

(A) The subject property or account; or

(B) Any other property or account belonging to the owner (*e.g.*, the trust department of a financial institution should contact other departments within the institution).

(5) Verify the lack of a memorandum, correspondence, or other record on file indicating an interest in the property; whether by the owner or any successors-in-interest.

(d) A holder must maintain documentary evidence of all due diligence efforts for ten (10) years *after* remitting the subject property to the Auditor of State.

18 CAR § 1-305. Reporting form and format.

(a)(1) A holder shall submit reports electronically using the most current National Association of Unclaimed Property Administrators' (NAUPA) standard electronic file format.

(2) The reports must be submitted through the Arkansas unclaimed property portal, available on the Auditor of State's website.

(3) A Holder may:

(A) request a copy of the current NAUPA standard electronic file format from the Auditor of State; or

(B) Download a copy from NAUPA's website.

(b)(1) A holder may request permission to submit a hard-copy report.

(2) The request must be in writing and include an explanation why electronic filing is exceptionally difficult or impossible:

(A) A request for a hard-copy report can only be granted by the:

(i) Auditor of State;

(ii) _____ Unclaimed Property Manager; or

(iii) Unclaimed Property Director of Compliance.

(B) Permission is not considered granted until it is received in writing.

(3) If a hard-copy request is granted, the holder must follow the form and format required by the Auditor of State.

(4)(A) Hard-copy permissions are only applicable for a single reporting period.

(B) _____ If a similar need arises in a subsequent reporting period, a new request must be submitted.

(c) Unclaimed property reports shall clearly and concisely declare:

(1) The name and address of the holder;

(2) The holder's federal employer identification number, if applicable;

(3)(A) The type of organization filing the report (corporation, partnership, etc.).

(B) _____ If the report is filed by a corporation, it must also include:

(i) The date of incorporation;

(ii) _____ The state of incorporation; and

(iii) _____ The state in which the corporation has its principal place of business.

(4) The name and title of the person or persons who actually prepares or was directly responsible for preparing the report.

(5) All pertinent owner information maintained by the holder, or any related entity maintaining Owner information on behalf of the Holder, including, but not limited to:

(A) Full name, including any previous names or aliases;

(B) Date of birth;

(C) Date of death;

(D) Employer identification number;

(E) Social security number;

(F) Last known address; or

(G) Amount due each owner plus the description and identifiers, if any,

of the property;

(6) The date property became payable, demandable, issued, or returnable, if any, and the date of the last transaction.

18 CAR § 1-306. Reporting and Delivery of Property.

(a)(1) Holders are responsible for the content, accuracy, and timeliness of reports, as well as the retention of all records associated with the reports.

(2) Holders' report responsibilities apply regardless of whether the report is filed by the holder or another person on behalf of the holder.

(b) Holders must maintain a record of the name and last-known address of each owner in addition to any signature cards and other evidence that might assist in the

identification of the owner for ten (10) years after the property has been remitted to the Auditor of State.

(c) Where a holder acquires unclaimed property from another holder, such as in a merger, acquisition, reorganization, consolidation, or transfer, the successor holder shall have a duty to maintain and continue the records of the prior holder concerning unclaimed property.

(d)(1) Life insurance reports are due prior to May 1 of each calendar year.

(2) All other reports are due prior to November 1 of each calendar year.

(e)(1) The Auditor of State may, at its discretion, postpone the reporting date, or allow early reporting and payment or delivery upon written request by any person or entity required to file a report.

(2) Any requests for extension must be received, in writing, by the Auditor of State at least one (1) day prior to the reporting deadline.

(f)(1) Holders must designate an employee or internal representative to serve as the contact person responsible for reporting.

(2) If any report or correspondence is presented by a third-party, the holder's internal designee must still be included.

(g)(1) A holder must report the original nature of any property being reported, if known.

(2) Property shall be reported under the laws and regulations applicable to the original nature of the item.

(3) For example, if the underlying transaction is an unclaimed wage but the financial instrument is a cashier's check, the reportable item is the wage, and not the cashier's check.

18 CAR § 1-307. Properties with special reporting requirements.

(a) **Life insurance.** A life insurance company or person reporting life insurance proceeds must comply with the following additional requirements:

(1) The full name of each insured or annuitant, or if a class of beneficiaries is named, the full name of each current beneficiary in the class;

(2) The address of each beneficiary; and

(3) The relationship of each beneficiary to the insured.

(b) **Safe deposit boxes.** A holder of safe deposit boxes or similar safekeeping depositories must comply with the following additional requirements:

(1) Holders of safe deposit boxes are directed to sell the contents at public auction pursuant to Arkansas Code § 18-27-102(c)(3)(A);

(2)(A) After holders of safe deposit boxes have attempted to auction the contents of abandoned boxes, holders must report and remit excess proceeds and remaining property of value to the Auditor of State pursuant to Arkansas Code § 18-27-102.

(B) Holders of safe deposit boxes should dispose of items having no commercial value.

(C) If, after disposing of valueless items, no contents remain, then the holder should not include the box on the report of unclaimed property.

(3) When a holder sells the contents at auction, the holder may deduct the rental owed, the cost of opening the box, and damages in connection with the abandoned box from the proceeds of such sale pursuant to Arkansas Code § 18-27-102(c)(2).

(4) Where nonliquidated contents are delivered to the Auditor of State, the holder must complete the specific report form for safekeeping contents.

(5) Holders are not to remit, and the Auditor's Office will not accept, the following items:

(A) Human remains such as teeth, hair, or cremains;

(B) Medical devices or implants such as dentures, or IUD, etc.;

(C) Prescription drugs, illicit drugs, or drug paraphernalia;

(D) Firearms, explosives, or ammunition; or

(E) Property which has a value that is less than the expenses of notice and sale.

(c) **Securities.** In addition to the general reporting provisions, above, any holder, business association, transfer agent, registrar or other person acting on behalf of the holder of an intangible equity ownership interest deemed unclaimed according to Arkansas law, including, but not limited to, Arkansas Code § 18-28-202; Arkansas Code § 18-28-203; and Arkansas Code § 18-28-403, must:

(1) A report of unclaimed property must be received before the Auditor of State will agree to accept any securities transferred except for shares held within an individual retirement account which is subject to federal tax withholdings;

(2)(A) Two (2) days prior to delivery of securities, holders shall, in writing, convey an intent to deliver to Arkansas's custodian via an Excel Document containing the issue name, CUSIP, ticker symbol, number of shares, and the delivering party's DTC participant number or delivering party's information or both.

(B) If shares are transferred into the Auditor of State's account without prior approval, the shares may be rejected or DK'd;

(3)(A) Securities valued at less than \$0.01/share should not be reported or remitted.

(B) If the securities gain value, report and remit the shares at that time.

(C) The Auditor of State may decline to receive shares if they are valued less than one cent (1¢) per share or are otherwise restricted, chilled, frozen, or delisted;

(4)(A) When possible, stock, including foreign stock, should be delivered via Automated Customer Account Transfer Services (ACATS) to:

Wells Fargo Clearing Services LLC,
ACATS Participant #0141,
Reference: State of Arkansas,
Unclaimed Property Division,
Account # 8348-6338.

(B) If stock cannot be delivered via ACATS, alternate electronic methods such as DTC Free Delivery, DRS or DWAC may be used.

(C) If stock cannot be delivered via ACATS, DTC, DWAC, or DRS, alternate delivery methods, including foreign delivery instructions can be obtained by contacting: ArkansasCustody@kelmarassoc.com

(d) **Registration and delivery of mutual funds.**

(1) When possible, mutual funds should be transferred via ACATS at:

Wells Fargo Clearing Services LLC,
ACAT Participant # 0141,
Reference: State of Arkansas,
Unclaimed Property Division,
Account # 8348-6338

(2) For mutual fund shares unable to be transferred via ACATS, contact ArkansasCustody@kelmarassoc.com to obtain a fund account number.

(3) If an omnibus account is provided as a fund account for mutual funds, please reference Bin# 8348-6338 during the delivery.

(4) CASH option must be selected for all dividend and capital gains registration.

(e) **Dividends, prepayments and capital gains.** Holders shall report and forward to the Auditor of State all outstanding accrued dividends, capital gains, or prepayments, along with the certificate.

(f) **Future income payable.**

(1) Holders shall forward any future income from remitted securities in the form of cash (for example: dividends, capital gains, etc.) payable to the Auditor of State along with a supplemental report of unclaimed property.

(2) Supplemental filings should be completed within sixty (60) days following the unclaimed property reporting deadline.

(3) Any account maintained in the state's name must maintain a zero balance upon completion of the filing period.

(g) **Securities liquidation by holder (special cases).** In certain instances, securities should be liquidated prior to transfer to the Auditor of State, as follows:

(1) Shares that are valued less than one cent (1¢) per share, chilled, or frozen should not be reported;

(2) Fractional dividend reinvestment plans and closed-end fund shares must be sold and reported as cash; and

(3) Private shares of stock must be sold and reported as cash.

(h) **Oil and Gas.**

(1) Production inactivity can be determined based on continuity of payments.

(2) For purposes of unclaimed property reporting, if no payments are made in the preceding three (3) years, a well can be considered inactive without a division order.

18 CAR § 1-308. Interest or service charge accrual.

Accrual of service fees or interest on account balances terminates once property is deemed abandoned under Arkansas law.

18 CAR § 1-309. Voluntary disclosure program.

(a) The voluntary disclosure program allows a holder to come into compliance with the reporting and delivery of property presumed abandoned without penalty during the period the Holder participates.

(b)(1) To participate in the voluntary compliance program, a holder must meet the following criteria.

(2) The holder:

(A) Has identified that it did not report or underreported property that was reportable and deliverable in a prior year;

(B) Is not subject to a current unclaimed property examination or audit;

(C)(i) Has not participated in the voluntary compliance program within the past ten (10) years.

(ii) The Auditor of State may waive this requirement if the property type is new or associated with a merger or acquisition of a new company.

(D) Has entered into a voluntary compliance agreement with the Auditor of State.

(c)(1) If qualified to participate in the voluntary disclosure program, the holder must:

(A) Enter into a voluntary disclosure agreement with the Auditor of State.

(B) Conduct a complete examination of the holder's, the holder's subsidiaries, or other related entities', books and records for the six (6) years immediately prior to participation;

(C) Report and deliver property that is required under Arkansas Code § 18-28-201 et seq. and Arkansas Code § 18-28-401 et seq.;

(D) Disclose the following for each subsidiary or related entity:

(i) The employer identification or tax identification number issued by the Internal Revenue Service;

(ii) The state of domicile;

(iii) The state of incorporation; and

(iv) The holder's corporate structure.

(E) Disclose, in writing, all business positions, methodologies, and estimation techniques, if applicable, used to determine reportable property;

(F) Disclose the due diligence performed to locate owners under the examination period;

(G) Verify the content and accuracy of the records examined, including the reason for each missing or unavailable record; and

(H) File a Holder's report in NAUPA standard electronic file format, pursuant to these rules and all applicable laws, within one hundred eighty (180) days after the holder enters the voluntary disclosure program.

(2) After the holder completes the voluntary disclosure program, the holder becomes subject to a penalty for failing to report, pay, or deliver property.

(3) The Auditor of State, at any time, may conduct an examination of the holder's records.

18 AR § 1-310. Holder advocates.

(a) A holder subject to examination may retain third-party advocates to assist them in the examination process.

(b) However, the retention of an advocate is not sufficient basis to delay the commencement of the examination.

(c) The Auditor of State, or his or her designee, will not delay examination so that the advocate may conduct a review or its own audit of the books and records of the person subject to examination in advance of the Auditor of State's examination.

18 CAR § 1-311. Confidentiality Agreements.

(a) A holder subject to examination may require, as a condition of disclosure, that the Auditor of State, or his or her agent, execute and deliver to the holder to be examined a confidentiality agreement that:

- (1) Is in a form that is reasonably satisfactory to the Auditor of State; and
- (2) Requires persons having access to the records to comply with the provisions of Arkansas Code § 18-28-220(d).

(b) If the holder subject to examination and the Auditor of State are unable to enter into a confidentiality agreement within sixty (60) calendar days from the date an agreement reasonably satisfactory to the Auditor of State was first presented to the holder subject to the examination, the examination shall commence without a confidentiality agreement in place and the parties shall rely on the confidentiality provisions Arkansas Code § 18-28-220(d).

18 CAR § 1-312. Estimation.

(a) If a holder subject to examination does not retain the records required by the applicable laws and regulations, the Auditor of State may determine the value of property due using a reasonable method of estimation based on all information available, including extrapolation and use of statistical sampling when appropriate and necessary.

(b) A payment made based on estimation under this section does not relieve a holder from an obligation to report and deliver property to a state in which the Holder is domiciled.

(c) The ability of the administrator to use estimation is intended as a deterrent to the intentional or negligent destruction of records that would be used in an unclaimed property examination to identify unclaimed property.

(d) Estimation should reasonably approximate the amount of unclaimed property that should have been reported to Arkansas if all reports had been filed and records had been maintained as required by applicable law.

Subpart 4. Owners and Claims

18 CAR § 1-401. Claims.

A person making a claim to property held under the Arkansas Unclaimed Property Act or Mineral Proceeds Act by the Auditor of State may file a claim for the property on a form prescribed by the Auditor of State and that is available on the Auditor of State's website, located at <https://www.claimitar.com/>.

18 CAR § 1-402. Burden of Proof.

(a)(1) The Auditor of State is the custodian for unclaimed property delivered to the state and is responsible for the safekeeping of that property.

(2) Any person making a claim for any property held by the Auditor of State shall bear the burden of proof in establishing that person:

(A) Is the lawful owner of the property; or

(B) Has an interest in the property.

(b) The Auditor of State will release the property to a claimant after the person establishes his or her ownership of the property or an interest as determined by the Auditor of State, and in accordance with applicable laws and rules.

(c) A claim will be considered complete when:

(1) A claimant has provided all the information and documentation requested by the Auditor of State as necessary to establish legal ownership; and

(2) That information or documentation is entered into the unclaimed property system.

(d) Unless extended for reasonable cause, the administrator shall issue a decision no later than ninety (90) days after a claim is complete.

18 CAR § 1-403. Power of attorney.

(a) A claim made by a person with a duly authorized power of attorney on behalf of the original owner may be processed at the Auditor of State's discretion.

(b) If a claim by power of attorney is initiated, such action does not preclude the Auditor of State from seeking verification from the original owner.

18 CAR § 1-404. Determining ownership.

(a) If an owner dies intestate, the Auditor of State shall apply the "Intestate Descent Table" set forth in Arkansas Code § 28-9-214.

(b)(1) The Auditor of State's form affidavit of heirship can be used to establish the heirs of a decedent when there is no probated will or estate.

(2) The affidavit of heirship can only be used for properties or claims valued at less than ten thousand dollars (\$10,000).

(3) For intestate heir claims greater than ten thousand dollars (\$10,000,) a court order establishing the claimant's ownership rights is required.

(c) Multiple owner tangible properties or properties valued less than two hundred dollars (\$200) may be delivered to first requesting heir within one (1) degree of consanguinity.

18 CAR § 1-405. Claims for securities with multiple owners.

Where the property at issue is a security with multiple owners, and the first owner to make a claim elects to sell the security, the entire security shall be liquidated.

18 CAR § 1-406. Dispute resolution.

(a) If a claimant disagrees with a final determination by the Auditor of State regarding payment of a claim, the claimant can file an action with the Pulaski County Circuit Court, naming the Auditor of State as a defendant pursuant to Arkansas Code § 18-28-216.

(b) Nothing in this part should be construed as a waiver of sovereign immunity.

18 CAR § 1-407. Delivery to owners absent a claim.

Pursuant to Ark. Code Ann. 18-28-215(e), the Auditor of State may, in its sole discretion, deliver property to an owner absent a claim when the following criteria are met:

(a) The property was delivered with owner identification information sufficient for the Auditor of State to reasonably believe it can positively identify and locate the owner; or

(b) The Auditor of State reasonably believes it has a current mailing address for the owner, with matching personal identification information, that has been verified within the previous two (2) years.

Subpart 5. Finders

18 CAR § 1-501. Contracts.

(a) All agreements to locate property on behalf of an apparent owner must be:

(1) In writing;

(2) Signed by all parties thereto;

(3) Dated; and

(4) Notarized.

(b) For claims in which a finder is assisting an apparent owner, the finder must submit to the Auditor of State a signed, dated, and notarized copy of all contracts and agreements between the finder and the apparent owner, in their entirety.

(c)(1) The agreements provided must contain the entirety of any financial arrangement or compensation as between the finder and apparent owner.

(2) This requirement applies to any written agreement for a third party to locate or claim unclaimed property on behalf of an apparent owner, no matter what that agreement is titled.

(3) Failure to do so may render any agreements between the finder and apparent owner null and void.

18 CAR § 1-502. Fees.

(a) No person shall be entitled to a fee for discovering presumptively abandoned property until it has been in custody of the Auditor of State for at least twenty-four (24) months.

(b) The total amount that a finder may charge an apparent owner shall be limited to not more than ten percent (10%) of the amount of unclaimed property collected.

(c) Any attempt to circumvent this limit will be referred to the Arkansas Attorney General's office for investigation and prosecution under the Deceptive Trade Practices Act, Arkansas Code § 4-88-101 et seq.

Subpart 6. Contract Auditors

18 CAR § 1-601. Third-party auditors permissible.

The Auditor of State may contract with private auditors for unclaimed property examinations and to determine holders' compliance with the applicable laws and regulations.

18 CAR § 1-602. Fee structure.

A contract to conduct an examination may provide for compensation of the vendor based on a:

- (1) Fixed fee,
- (2) Hourly fee, or
- (3) Contingent fee.

18 CAR § 1-603. Expertise and duties.

(a) A contract auditor shall collectively possess sufficient training and experience to adequately perform unclaimed property examinations.

(b) A contract auditor shall not engage in any unclaimed property examination without written authorization from the Auditor of State.

(c) A contract auditor shall report in writing to the Auditor of State at least monthly on the status of all unclaimed property examinations the contract auditor has been authorized to perform.

(d)(1) A contract auditor shall have in place data security practices, policies, and procedures reasonably required to prevent any security breach or loss as well as protect:

(A) User privacy,

(B) Computer security, and

(C) Network security.

(2) A contract auditor shall also have a cyber-incident response plan in the event of a security breach or loss as well as cybersecurity training programs on:

(A) New user awareness,

(B) Annual user awareness, and

(C) Post-incident refresher training.

18 CAR § 1-604. Limitations.

(a) The requirements and obligations placed on third-party auditors in this section of the Arkansas Unclaimed Property Administrative Rules govern the relationship between the Auditor of State and its contract auditors.

(b) Nothing in this section creates any individual claim or private cause-of-action against a contract auditor or the Auditor of State by any third party.