

Banking & Finance Law Alert

A Corporate Department Publication

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Delaware extends its voluntary unclaimed funds compliance program

In a move of interest to both businesses organized under Delaware law and businesses that hold funds owned by or owed to Delaware residents, Delaware's unclaimed property voluntary disclosure agreement program has been extended. Pursuant to 79 Del. Laws, c. 278 (the Act), which was signed by Governor Jack Markell on June 30, 2014 the deadline to enter the Secretary of State's voluntary disclosure agreement program (SOS VDA), has been extended to Sept. 30, 2014; and the deadline to resolve all unclaimed property liability under that program has been extended to June 30, 2016. Before the Act, those deadlines had been June 30, 2014 for entry into the SOS VDA and June 30, 2015 for resolution of liabilities.

The SOS VDA offers participants the opportunity to reduce years of liability and to eliminate interest and penalties.

Those who should participate include holders of property owned by or owed to Delaware residents, and businesses organized under Delaware law that cannot locate a last known address for the owner of property. This second category, based on the holder's place of organization, follows the U.S. Supreme Court case *Texas v. New Jersey*, 379 U.S. 674 (1965), pursuant to which unclaimed property will be reported to the state of the owner's last known address. However, if the owner's last address is unknown or is in a foreign country, the unclaimed property is reported to the holder's state of organization.

In addition to extending the entry and resolution deadlines, the Act made three other changes to Delaware's unclaimed property law:

Record Confidentiality: The Act provides that it is unlawful for any officer or employee of the Department of Finance or the Department of State to disclose any of the following:

- the amount of unclaimed property reported to the state;
- the terms of any annual filing, unclaimed property voluntary self-disclosure agreement or settlement agreement; or
- any supporting documentation related to such reports or agreements.

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Penalties: Penalties for failure to file an unclaimed property report have been reduced from 5 percent of the amount owing under the report per month with a maximum penalty of 50 percent of the amount owing under the report to the lesser of:

- 5 percent of the amount owing under the report per month (not to exceed 50 percent of the amount owing under the report), or
- \$100.00 per day (not to exceed \$5,000).

Interest: The Act eliminates the imposition of 0.5 percent interest on unremitted unclaimed property.

The Delaware Secretary of State's unclaimed funds web site can be found at:

<http://revenue.delaware.gov/unclaimedproperty.shtml>.

For more information, please contact *Polly Harris* at 614.227.1962 or pharris@porterwright.com or any Porter Wright *Banking and Finance attorney*.