

Activity

2011 Maine Unclaimed Property Holder Seminar

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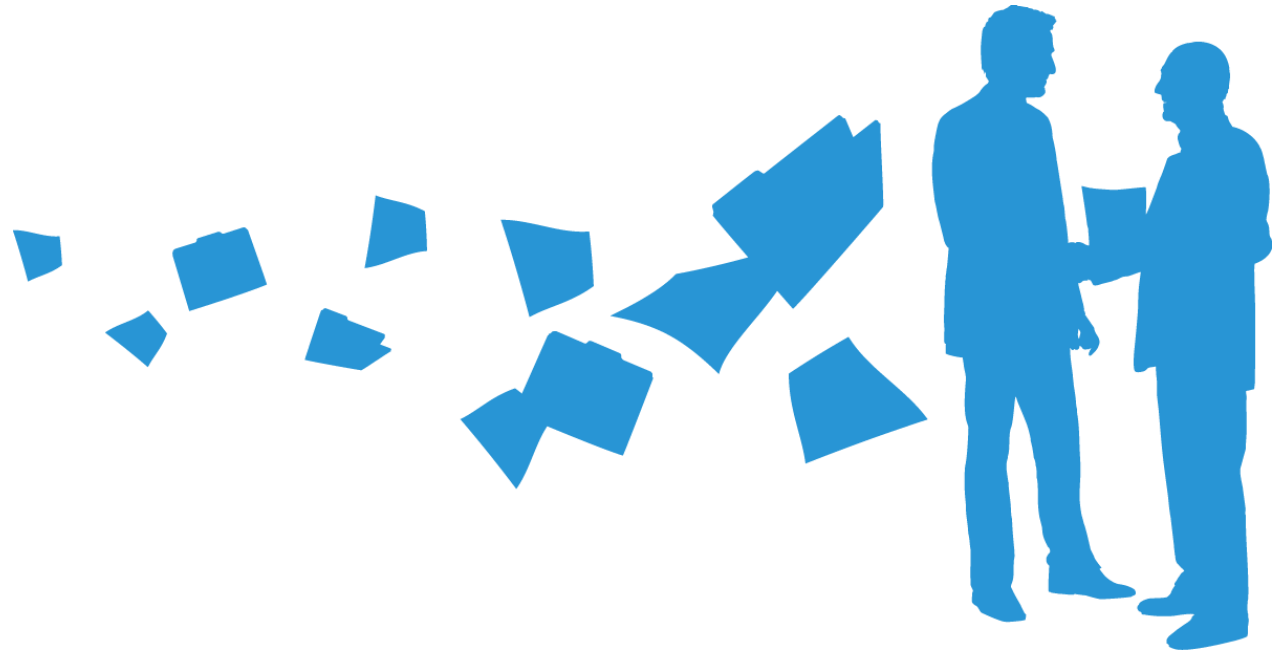
ACS, A Xerox Company

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Property is abandoned if it is unclaimed for the dormancy period unless there is activity by the owner



What Constitutes Activity

Under Maine Law property is unclaimed if for the dormancy period the owner has not communicated in writing or by other means reflected in a contemporaneous record with the holder and has not otherwise indicated an interest in the property

Maine defines activity as an action taken on property by the owner, which may include making a deposit or withdrawal, writing a memorandum to the holder, or taking any action that according to the law is adequate to determine that the owner is aware of the property.

Activity Requires Action on the Part of the Owner

An owner is a person with a legal or equitable interest in the property or the person's legal representative

In Maine non-return of mail is not sufficient to constitute contact or activity—it is passive and there is no action by the owner

The Owner May Communicate in Writing or by Other Means

Communication by the owner may be in writing or by other means:

- Includes traditional written records and electronic records
- Must be identifiable as owner activity
- Use of electronic records is also supported by the adoption of UETA (Uniform Electronic Transactions Act)

There Must be a Record of the Communication

- “Record” is defined as information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
 - “This is the standard definition designed to embrace all means of communicating or storing information except human memory.”

ABA Report on Use of the Term “Record,” October 1, 1996.

- The record must be contemporaneous and prepared by or on behalf of the holder

Some Other Indication of Interest in the Property is Sufficient

Indications of Interest include:

- Cashing a dividend or distribution check
- Evidence that an electronic stock distribution was received
- Direction by the owner to increase, decrease, or change the amount of property in an account
- Deposit or withdrawal from a bank account
- Payment of an insurance premium

Is Reviewing Account Information Online Activity that will Rebut the Presumption of Abandonment?

Online Activity Considerations:

- Is the owner required to use a unique ID and password?
- Is account access otherwise restricted?
- What can be determined about what the owner saw and did online?
- How is the data captured or recorded?
- What IT controls are in place to ensure site security and integrity?

Is Reviewing Account Information Online Activity that will Rebut the Presumption of Abandonment? *(continued)*

- Maine law allows for communication “in writing or by other means”
- UETA makes electronic transactions the equivalent of written transactions
- If the review of account information online is traceable to the owner (e.g., initiated via unique login and password) and an audit trail and other security measures are maintained it appears that the legal requirements for activity are satisfied

Questions





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