

Escheat of Escrow Funds

Q We have been holding an escrow for 5 years. Our last letter to the owner reminding them about the escrow was returned by the postal service as undeliverable. What do we do now?

A You may have to escheat it to the State of New Jersey.

N.J.S.A. 46:30B-1 et seq., the Uniform Unclaimed Property Act, provides that personal property which remains unclaimed for a period of three (3) years after it became “payable or distributable” is presumed abandoned and escheats to the State of New Jersey. While there is some debate whether or not this statute is applicable to title insurers and their agents, it does provide a method for addressing old, unclaimed escrows.

A few things must be kept in mind before seeking to escheat these funds.

First, the three year period begins to run when the purpose for which the escrow was established has passed. Thus, if an escrow is established for a Superior Court judgment, the three years would begin to run once the 20 year statute of limitations on enforcement of the judgment has passed without the judgment having been revived (in most cases, 23 years after the entry of the judgment). For an escrow for unpaid utility charges or taxes, the three years would begin to run on the day the charges or taxes were paid or the claim/lien resolved.

Second, reasonable efforts must be made to return the funds to the owner(s) of the funds (usually the depositor). It is a good practice to send periodic letters during the term of the escrow to the owner of the funds reminding them that the funds are being held and asking that they provide a forwarding address should they relocate.

If the term of the escrow has expired and three additional years have passed, and you have made a reasonable effort to locate the owner of the funds with no success, the funds should be escheated to the State of New Jersey. The proper forms and procedure to do so are accessed on line at www.unclaimedproperty.nj.gov.