



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Authors: Michael J. O'Neill, Division Chief  
Shannon Pleiman, Senior Budget Analyst  
Reviewers: Nick Thomas, Research Analyst  
Nelson Fox, Division Chief

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## Unclaimed Funds

People sometimes lose track of their assets. Other times, a person inherits the right to an asset without knowing that it exists, let alone where it is. As a result, the account holding the asset becomes dormant. The Unclaimed Funds Law requires these assets to be reported to, and sometimes delivered to, the state, providing a single location for a person to look for misplaced assets. It also relieves the holder of these assets of the burden of being responsible for them.

Under the law, most unclaimed funds are not considered abandoned – they still belong to the owner and can be claimed. While some unclaimed funds are ultimately paid to the true owner, others are never claimed. As a result, the balance in the state's Unclaimed Funds Trust Fund grows.

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### What are unclaimed funds?

**Unclaimed funds** are intangible property (money, rights to money, or other intangible property) that are in the possession of another (the holder) and that the owner has permitted to become dormant. More specifically, the owner has not, within a specified period of time (the dormancy period), done any of the following:

- Changed the amount of the funds;
- Assigned, paid premiums, or encumbered the funds;
- Corresponded with the holder concerning the funds; or
- Otherwise indicated an interest in or knowledge of the funds.

The Unclaimed Funds Law specifies a number of unclaimed funds categories, such as bank accounts, stocks, and insurance, each with its own dormancy period. The length of the dormancy period runs from one to 15 years depending on the category. Common kinds of unclaimed funds include dormant bank accounts, insurance proceeds, and unclaimed wages and employment benefits.

However, most gift cards, prepaid cards, and rewards cards are not kinds of unclaimed funds that can become subject to the law.

The **holder** is the person that has possession, custody, or control of intangible property, or that is indebted to another, if the holder has requisite Ohio contacts.

The **owner** is the person who is entitled to receive or has an interest in or claim against the unclaimed funds. Note that a person who can file a claim is broader than what is conventionally thought of to be the owner. For example, the Office of Child Support is authorized to file a claim against certain funds and therefore could be considered an owner.<sup>1</sup>

## When must a holder report unclaimed funds?

Each year, every holder of unclaimed funds must provide an unclaimed funds report to the Director of Commerce. If there is uncertainty regarding whether an item qualifies as unclaimed funds, the holder must file a funds report, if requested by the Director.<sup>2</sup> In addition, a holder still must report an item as unclaimed funds even if the statute of limitations has cut off a potential owner's right to sue to obtain the item.<sup>3</sup>

What the holder must report depends on the item's value, as indicated in the table:

Unclaimed Funds Notices and Reports		
	Items Worth \$50 or More	Items Worth Less Than \$50
<b>Holder's notice to owner</b>	At least 30 days before filing the annual unclaimed funds report, the holder must notify the owner of each item. For life insurance, notice also must be sent, usually, to each beneficiary.  The notice must identify the funds and amount due the owner, inform the owner that the funds will be	Notice to owner is not required.

<sup>1</sup> R.C. 9.39; 169.01(B), (C), and (D); 169.02; and 169.08. The scope of what are and are not unclaimed funds becomes less clear at the edges. A rare coin is tangible (not intangible) property but is money, but its value is more than its face value. That said, while items such as jewelry in a bank safe deposit box pose a problem for the holder, it is not a problem addressed by the Unclaimed Funds Law.

<sup>2</sup> R.C. 169.03(A)(1) and (C).

<sup>3</sup> R.C. 169.03(G) and (H).

Unclaimed Funds Notices and Reports		
	Items Worth \$50 or More	Items Worth Less Than \$50
	reported as unclaimed funds after 30 days, and instruct the owner how to express continued interest in the funds in order to remove their dormant status. <sup>4</sup>	
<b>Holder's report to Director of Commerce</b>	<p>The report must include, among other things:</p> <ul style="list-style-type: none"> <li>▪ Each potential owner's full name, last known address, and Social Security number;</li> <li>▪ The item's nature and identifying information and the amount due;</li> <li>▪ When the item became payable and when the owner last acted with respect to it;</li> <li>▪ If worth \$1,000 or more and the owner's last known address is uncertain, that the holder took efforts to find the accurate address.<sup>5</sup></li> </ul>	The report includes the categories of items of unclaimed funds, the number of items within each category, and the aggregated value of the items within each category. <sup>6</sup>

## How do people find unclaimed funds?

**Holder notice.** The holder of unclaimed funds having a value of \$50 or more must send a notice to the item's owner.

**Newspaper notice.** In the newspaper where the owner's last known address is, the Director of Commerce annually publishes a *Notice of Names of Persons Appearing to be Owners of Unclaimed Funds* for items worth \$50 or more. It must contain the owner's name and last known address as well as directions on how to obtain more information.<sup>7</sup>

<sup>4</sup> R.C. 169.03(D).

<sup>5</sup> R.C. 169.03(A)(2) and (I).

<sup>6</sup> R.C. 169.03(A)(3).

<sup>7</sup> R.C. 169.06(A) and (B).

**Contact the Department of Commerce.** For each item of unclaimed funds worth \$10 or more, the Director maintains a list of owners and their last known addresses.<sup>8</sup> The [Department's website](#) provides information.

**MissingMoney.com.** [MissingMoney.com](#) is a searchable multistate unclaimed funds database maintained by the National Association of Unclaimed Funds Property Administrators. As of June 2020, 40 states were participating in this online database.

## Filing a claim

An important thing to remember is that, under Ohio law, unclaimed funds are generally not considered abandoned – they still belong to the owner and can be claimed. In broad strokes, a person claiming unclaimed funds must demonstrate a property interest to get the funds. Upon receiving a claim, the Director considers relevant material and may hold a hearing. The Director prepares a written decision on each claim, summarizing the evidence and the Director's reasoning. No statute of limitations bars the allowance of a claim. A person adversely affected by the decision may appeal under the Administrative Procedure Act. A prevailing claimant also receives reasonable attorney's fees and costs.<sup>9</sup>

### Paying the claim and interest

If the claimant has established the right to the item, the Director must pay the claimant an amount equal to the value of the property delivered or reported to the Director, plus interest. The interest earned depends on the time or times during which the property was held.<sup>10</sup>

## What happens to the funds once reported?

### Some must be paid to the Director

Every reporting holder, at the time of filing, must pay to the Director specified amounts, which depend on the value of the items shown on the report:

- For items worth \$50 or less, the entire amount must be paid to the Director.
- For items worth more than \$50, 10% of the aggregate amount must be paid to the Director. The Director may opt to have the holder retain the remaining funds or pay them to the Director.

If securities and other intangible property are transferred to the Director, the Director must convert the property to cash. But, under certain circumstances, U.S. Savings Bonds are presumed abandoned and go (escheat) to the state.

### Mandatory 10%

The Director has a choice of where to deposit the 10% that must be paid to the Director. The Director may place the funds with a financial organization or deposit them in the state

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<sup>8</sup> R.C. 169.06(C).

<sup>9</sup> R.C. 169.08; *Sogg v. Zurz*, 2009-Ohio-1526.

<sup>10</sup> R.C. 169.08.

Unclaimed Funds Trust Fund (UF Trust Fund). According to the Division of Unclaimed Funds, as a matter of practice, all funds are placed in the UF Trust Fund, which is a State Treasury Asset Reserve (STAR) account that earns higher interest than a regular bank account.

Interest on the funds in the UF Trust Fund, is retained in the Trust Fund. While primarily held to pay claims to the owners of unclaimed funds, the funds on deposit in the UF Trust Fund are allocated among the Mortgage Insurance Fund, the Housing Development Fund, and the Minority Business Bonding Fund. (How the state uses these funds is discussed further below.<sup>11</sup>)

### **Remaining 90%**

Of the remaining amounts not statutorily required to be paid to the Director, plus earnings, the Director decides whether to have them paid to the Director or retained by the holder.

Funds paid to the Director must be deposited with a financial organization in income-bearing accounts to the credit of the Mortgage Insurance Fund or the Housing Development Fund. The financial institution has the option of crediting the earnings on these accounts to the account or paying them to the Director.

If the funds are retained by the holder, the holder must enter into an agreement with the Director to hold them either in a U.S. obligation or an interest-bearing account. Ultimately, interest and earnings on these funds are paid to the state and credited to the Mortgage Insurance Fund, Housing Development Fund, and the Minority Business Bond Fund.<sup>12</sup>

### **Upon payment, holder is relieved from liability**

Once the holder pays unclaimed funds to the Director, the holder is relieved of further responsibility for their safekeeping. For holders that retain unclaimed funds, the Director is required to defend them from liability.<sup>13</sup>

### **How does the state use unclaimed funds?**

If the true owner of unclaimed funds is established, UF Trust Fund money is used to pay the claim. The Trust Fund also may be used to pay operating and administrative expenses the Department incurs to administer and enforce the Unclaimed Funds Law.<sup>14</sup>

While some unclaimed funds are ultimately paid to the true owner, others are never claimed. As a result, the balance in the UF Trust Fund grows. In FY 2020, for example, \$283.0 million was collected and \$93.8 million was paid. As of July 2020, the UF Trust Fund maintained a balance of \$1.6 billion. The following table summarizes the unclaimed funds

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<sup>11</sup> R.C. 169.01(F), 169.05(A) and (C), and 169.051; telephone conversation with Akil Hardy, Superintendent of the Division of Unclaimed Funds, April 21, 2020.

<sup>12</sup> R.C. 169.05(A) and (C); telephone conversation with Akil Hardy.

<sup>13</sup> R.C. 169.07.

<sup>14</sup> R.C. 169.05(B).

reported, claims paid, and the UF Trust Fund balance over the five-year period between FY 2016 and FY 2020.<sup>15</sup>

Unclaimed Fund Activity from FY 2016-FY 2020 (in millions)			
Fiscal Year	Unclaimed Funds Reported	Claims Paid	UF Trust Fund Balance*
FY 2016	\$277.6	\$81.4	\$1,121.3
FY 2017	\$259.2	\$96.4	\$1,320.9
FY 2018	\$296.9	\$98.1	\$1,233.8
FY 2019	\$302.3	\$136.3	\$1,395.5
FY 2020	\$283.0	\$93.8	\$1,595.7

\*Represents the balance on the last day of the fiscal year (June 30).

### Transfers of unclaimed funds via codified law

As mentioned above, the Unclaimed Funds Law requires that some unclaimed funds paid to the Director must be deposited with a financial organization in income-bearing accounts or with the Treasurer of State to the credit of the Mortgage Insurance Fund, Housing Development Fund, and Minority Business Bonding Fund.

In regards to the Mortgage Insurance Fund, it appears that as a matter of practice, funds are deposited into two accounts with a small proportion of these funds kept in a bank account and a larger portion kept in the higher earning STAR account. Both accounts are used to transfer funds to the UF Trust Fund to pay claims and expenses. At the end of FY 2020, the account balance for the bank account was \$28.6 million and the account balance for the STAR account was \$603.8 million.<sup>16</sup> Unclaimed funds have been allocated to the Housing Development Fund used by the Ohio Housing Finance Agency (OHFA) for the federal Low-Income Housing Tax Credit Program to provide financing to developers. In the ten fiscal years through FY 2020, the Housing Development Fund received \$481.1 million in unclaimed funds. OHFA repays these funds as it receives loan payments from developers. During the ten-year period it repaid \$352.0 million.

Although authorized by statute, no unclaimed funds have been allocated in recent years to the Minority Business Bond Fund, but funds are available if requested by the Development Services Agency (DSA). The Minority Business Bond Fund is available to pay obligations on bonds under the Minority Business Bonding Program administered by DSA. The maximum amount that

<sup>15</sup> LSC, *Greenbook, LBO Analysis of Enacted Budget, Department of Commerce*, pp. 7-8; email conversation with Akil Hardy, August 27, 2020.

<sup>16</sup> Email conversation with Akil Hardy.

may be allocated to the Minority Business Bond Fund is \$10 million, unless the General Assembly authorizes additional amounts.<sup>17</sup>

### Transfers of unclaimed funds by other legislation

It has been a common practice for the General Assembly to periodically authorize cash transfers from the UF Trust Fund to the GRF and other state funds for specific reasons. The table below lists examples of these transfers.

Examples of Unclaimed Funds Cash Transfers Authorized by Legislation	
Fund	Amount and Fiscal Year
General Revenue Fund	<p>\$200.0 million (2018-2019 biennium) authorized \$200.0 million transferred</p> <p>\$125.0 million (2012-2013 biennium) authorized \$125.0 million transferred</p> <p>\$135.0 million (2011) authorized \$135.0 million transferred</p> <p>\$250 million (2010) authorized \$250.0 million transferred<sup>18</sup></p>
Medicaid Local Sales Tax Transition Fund	<p>\$207.0 million (2018-2019 biennium) authorized \$56.8 million transferred<sup>19</sup></p>
Unemployment Compensation Fund	<p>Amount authorized not specified in bill \$274.1 million transferred in the form of a loan (2017) and repaid the same fiscal year<sup>20</sup></p>

<sup>17</sup> R.C. 169.05(B).

<sup>18</sup> Section 512.40 of H.B. 49 of the 132<sup>nd</sup> General Assembly, Section 243.10 of H.B. 153 of the 129<sup>th</sup> General Assembly, and Section 241.10 of H.B. 1 of the 128<sup>th</sup> General Assembly.

<sup>19</sup> Section 512.40 of H.B. 49 of the 132<sup>nd</sup> General Assembly.

<sup>20</sup> Section 741.10 of H.B. 390 of the 131<sup>st</sup> General Assembly.