



Financial Institutions Required to Confirm Death of Depositors in Certain Circumstances for Purposes of Abandoned Property Reporting

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Pursuant to a new requirement in New York State relating to abandoned property, if a financial institution receives “notice or an indication of death” of a depositor, the institution must attempt to confirm whether the depositor is deceased within 90 days of such notice or indication of death. Upon confirmation of the death, the applicable dormancy period for the depositor’s funds commences retroactive to the date of death.

This new requirement is set forth in a regulation which became effective on March 22, 2023 and applies to holders of property under New York’s Abandoned Property Law. The regulation states as follows:

“If a holder [of property], in the ordinary course of business, receives notice or an indication of the death of an owner [of property], the holder shall attempt to confirm whether the owner is deceased no later than 90 days after notice or indication of death. Notwithstanding any provision of the abandoned property law and any other law to the contrary, once the death of the apparent owner has been confirmed by the holder of the property, such property shall be subject to the dormancy period and the mandatory reporting applicable to such property as set forth in the abandoned property law. The dormancy period shall commence on the date of death.”

The regulation raises several issues for financial institutions and other holders of property in New York. For instance, it is unclear what actions the holder must or should take to “confirm whether the owner is deceased.” And, if the holder is able to confirm the depositor’s death, another issue is that the dormancy period will be deemed to have commenced back on the date of death. If the death occurred months or years earlier, the holder may have missed the deadline for reporting the property as abandoned. Finally, the regulation is silent on the expected action to be taken in a case where an institution receives a notice of a death but is not able to obtain confirmation of it.

We have spoken to an attorney at the Office of the New York State Comptroller (“OSC”) who informed us that guidance on the new regulation is expected to be released and posted on the OSC website before the end of the year. OSC also expects to include the guidance in the annual notice sent to financial institutions regarding abandoned property reporting.

This advisory is a general overview of this new requirement and is not intended as legal advice. If you have any questions, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com,

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