

# Washington Law Review

---

Volume 30  
Number 3 *Washington Legislation-1955*

---

8-1-1955

## Personal Property

Cornelius J. Peck  
*University of Washington School of Law*

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Property Law and Real Estate Commons](#)

---

### Recommended Citation

Cornelius J. Peck, *Washington Legislation, Personal Property*, 30 Wash. L. Rev. & St. B.J. 212 (1955).  
Available at: <https://digitalcommons.law.uw.edu/wlr/vol30/iss3/8>

This Washington Legislation is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact [cnyberg@uw.edu](mailto:cnyberg@uw.edu).

pencies, which is unlikely, after the 1955 enactments are incorporated into the code—will still only be *prima facie* evidence of the law.<sup>2</sup>

The statute law committee will continue the work of preparing a code for Washington which will be an organized and accurate restatement of legislative enactments. It is hoped that the code which is presently in the process of being "reprepared" will, when completed, be adopted as the official and conclusive statement of the statutory law of this state.<sup>3</sup>

WILLIAM E. LOVE

### PERSONAL PROPERTY

By the enactment of the Unclaimed Personal Property Act at the 1955 Session of the legislature<sup>1</sup> Washington became the first state to adopt the recently approved Uniform Disposition of Unclaimed Property Act.<sup>2</sup> Several significant changes in the Uniform Act were made, but the Washington statute appears to serve the basic purpose of the Uniform Act—that of avoiding multiple liability on the part of holders of unclaimed property where two or more states having jurisdiction over the property enact inconsistent statutes dealing with unclaimed property.<sup>3</sup> Of course, the Washington statute also serves the purpose which will undoubtedly make the Uniform Act attractive to other jurisdictions without a comprehensive statute governing unclaimed property—that of providing additional revenue for state operations.

The statute is custodial in nature and does not result in an automatic

<sup>2</sup> Chapter 5, Laws of 1955.

<sup>3</sup> RCW 1.08.026.

<sup>1</sup> C. 385, as amended L. 55 (Extraordinary Session), c. 11.

<sup>2</sup> The Uniform Act was approved by the National Conference of Commissioners on Uniform State Laws at the conference held on August 9-14, 1954. According to the records of the National Conference, the Uniform Act has been adopted in no other jurisdiction.

<sup>3</sup> In *Connecticut Mutual Insurance Co. v. Moore*, 333 U.S. 541 (1947), the Supreme Court of the United States held that the State of New York might take possession of unclaimed funds due on insurance policies issued to persons in New York, even though the insurance company holding the funds had its domicile in another state. In *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), the Supreme Court held that the State of New Jersey might escheat stock and dividends due on the stock of a corporation organized under its laws even though the last known address of the holders of the stock were at places outside New Jersey. Even if the possibility of multiple liability on the part of the holder of unclaimed property suggested by the two decisions might be avoided under the full faith and credit clause of the United States Constitution, an undesirable race of diligence between states having jurisdiction over the property and the holder could result. Section 10 of the Uniform Act and Section 10 of the Washington statute avoid this result by giving recognition, on the basis of reciprocity, to the laws of other states concerning abandoned and escheated property and giving the state of last known address of the owner of the claim custody of the property.

loss or forfeiture of the owner's property rights. Unless an action to escheat is instituted the state remains custodian of the property in perpetuity, with no limitation on the time within which the owner must file a claim for return of the property. However, section 22 of the Washington statute does direct the Tax Commission to institute escheat proceedings whenever it appears that the owner of abandoned property delivered to the Commission has died and that no other person is entitled to it. If a decree of distribution entered in such a proceeding declares the property escheated, it appears that even claimants having no knowledge of such proceedings are bound thereby and can apply to the state for relief as a matter of grace only.<sup>4</sup>

The unclaimed property covered by the statute includes: bank deposits; deposits and funds paid for the purchase of shares in savings and loan associations, credit unions and similar organizations; funds due on life insurance policies, endowment policies, and annuities; deposits made with public utilities and refunds which a utility has been ordered to make; stock, dividends, and profit distributions of business associations; intangible personal property distributable in the course of voluntary dissolutions of business associations; property and income held in a fiduciary capacity by business associations, banks, and other financial organizations; and intangible personal property held by any court or public authority. Various criteria are established by the statute for determining when different types of property will be presumed to have been abandoned. For example, section 2 (1) of the statute provides that bank deposits will be presumed to be abandoned ". . . unless the owner has, within twelve years: (a) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or (b) corresponded in writing with the banking organization concerning the deposit; or (c) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization."

Section 9 of the statute is a general, catch-all provision, which will probably be of most general interest. It includes, "All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable . . . *Provided, however* That this sec-

---

<sup>4</sup> See *In re Bailey's Estate*, 178 Wash. 173, 34 P.2d 448 (1934).

tion shall not apply to safe deposit companies.”<sup>5</sup> As the annotations to the Uniform Act point out, to be subject to this section the property must be held or owing “in this state in the ordinary course of the holder’s business.” According to the annotations to the Uniform Act, the section is intended to embrace a wide variety of items, “. . . including, by way of illustration, money, stocks, bonds, certificates of membership in corporations, securities, bills of exchange, deposits, interest, dividends, income, amounts due and payable under the terms of insurance policies not covered by section 4, pension trust agreements, profit-sharing plans, credit balances on paid wages, security deposits, refunds, funds deposited to redeem stocks, bonds, coupons and other securities, or to make a distribution thereof, together with any interest or increment thereon.”

Although the language of section 9 of the Washington statute is identical with that of the Uniform Act, it may have considerably less effect than it would under the unaltered Uniform Act. The Washington statute omits section 16 of the Uniform Act, which, as will be pointed out below, would make the fact that the applicable statute of limitations had run of no effect on the duty to report and deliver abandoned property to the state.

The procedural provisions of the statute establish a somewhat involved sequence of events in the process of reporting and delivering abandoned property to the Tax Commission, designed to afford adequate notice to the owners of the property.<sup>6</sup>

---

<sup>5</sup> The exception of safe deposit companies from the effect of this section was a departure from the Uniform Act, as was the elimination of a fourth subsection from section 2 of the Uniform Act which would have made subject to the Act “Any funds or other personal property, tangible or intangible, removed from a safe deposit box . . . on which the lease or rental period has expired due to non-payment of rental charges or other reason. . . .”

<sup>6</sup> Section 11 requires that the holders of property presumed to be abandoned file a report of such property held as of June 30 of each year before November 1 of that year. Within 120 days after the filing of the report, the Tax Commission is required to publish a notice for two successive weeks in the county of the last known address of persons named in the report. Within the same period of time, the Tax Commission is required to mail a notice to persons appearing to be entitled to the property.<sup>6</sup> Owners of unclaimed property are given 65 days from the date of the last publication of notice within which to claim the property from the holder. If the property is unclaimed within that time, the holder is required to pay or deliver the property to the Tax Commission, within 75 days after publication of the last notice. Upon delivery to the Tax Commission, the holder is relieved of all liability to the extent of such property delivered. The Tax Commission is authorized to sell all such property other than money at such time and in such a manner as will in its judgment bring the highest return. The proceeds of sales of the property are to be deposited to the general fund of the state, except that the Tax Commission is directed to establish a separate trust fund of one hundred thousand dollars from which to make prompt settlement of claims of owners. Persons claiming an interest in property which was not adjudged to be abandoned or escheated may make claims either to the former holder or to the Tax Commission. Determination by the former holder that the claimant is the true

As mentioned, above, the Washington statute does not include section 16 of the Uniform Act, relating to the effect of statutes of limitations. The purpose of Section 16 of the Uniform Act is to subject unclaimed property to the Act even though the applicable period of limitations has run prior to the date of presumed abandonment.

The Uniform Act is subject to the criticism that it may thereby make it possible for a party to avoid the bar of the statute of limitations on a particular claim which his debtor has paid or delivered to the Tax Commission by applying to the Tax Commission for a return of property or money.<sup>7</sup> Probably such a claimant would have been barred under the Washington statute by the exception of property “. . . subsequently adjudged . . . to be actually abandoned or escheated . . .” from the properties which an owner may reclaim from the state.<sup>8</sup> An express exception of claims which were barred by the statute of limitations from the refund provision of the Act could have been inserted to avoid the possibility of circumvention. The alternative selected by the legislature—omission of section 16 of the Uniform Act—will probably result in litigation as well as the loss of funds for which the owner's claim would be barred by the statute of limitations.<sup>9</sup> Such funds might otherwise have been recoverable under the general, catch-all provisions of section 9. For those types of property and claims for which a demand is necessary to start the running of the applicable statute of limitations, omission of section 16 of the Uniform Act should be of no effect.

Another significant departure from the Uniform Act worthy of comment is the addition in section 27 of the Act of a limitation of the fees which might be charged an owner or other person for finding or purporting to find property which has been reported or paid to the Tax Commission. The charging of a fee in excess of five percent of the

---

owner, is, in the absence of fraud, binding upon the Tax Commission, which is directed by the statute to make prompt payment to the claimant upon receipt of a certificate of the former holder's determination. Claims to the Tax Commission are to be approved or rejected in writing. Upon rejection by the Tax Commission, a hearing before the Commission may be demanded, with the right of appeal and trial de novo in the Superior Court of Thurston County.

<sup>7</sup> Likewise, insofar as the statute of limitations is viewed as a protection from stale claims on which evidence may have become unavailable, it is questionable whether it is wise to subject parties to a claim by the state on what is the same cause of action at the still later time when the claim is presumed to have been abandoned under the Act.

<sup>8</sup> L. 1955, c. 385, § 19(1).

<sup>9</sup> Cf. *State v. Standard Oil Company*, 5 N.J. 381, 293, 74 A.2d 565, 570. A further indication that the legislature intended to forego those claims which are barred by the applicable statute of limitations can be found in the omission of the seventh subsection of section 11 of the Uniform Act. That subsection provides: “The initial report filed under this act [by a holder] shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten year period preceding its effective date.”

value of such property constitutes a misdemeanor, punishable by a fine of not less than the amount of the fee and not more than ten times such amount, imprisonment for not more than thirty days, or both. The legislature has thereby discouraged the establishment of businesses specializing in the production of claimants with a resultant loss in state revenues. The provision also protects owners from exorbitant charges which they might have to pay for information later coming to them under the publication and notice provisions of the statute.

CORNELIUS J. PECK

## REAL PROPERTY

**Eminent Domain.** In *State ex rel. Eastvold v. Yelle*,<sup>1</sup> the court held the order-of-immediate-possession statute (RCW 8.04.090) violated the constitutional requirement of Article II, section 16, amendment 9, that just compensation must first be determined by litigation. Fast and orderly development of the state highway program is made more difficult by this barrier. The legislature took steps to facilitate the highway program in adoption of House Joint Resolution 22, proposing, for vote in November, 1956, an amendment to the constitution by insertion of

except that after the filing of an action in eminent domain the state shall be entitled to immediate possession of property upon payment into court, before trial, of such amount as shall be provided by law.

If the voters approve the proposed amendment, the legislature may provide adequate safeguards for the landowner whose property must be taken by the state in the road program.

In the meantime, Chapter 213 provides in section 4 for stipulation by the state and the condemnee for immediate possession, which can speed cooperative acquisition, when the area of dispute is cost, without the necessity of full trial before acquisition. In addition, by section 3, special juries shall (formerly, may) be called if there would otherwise be a delay of more than sixty days until the next regular jury term.

Chapter 156 authorizes a single jury to determine values in separate trials under a single petition filed by the state. Sections 4 and 5 permit award of damages taking into account the feasibility of moving structures from the area taken, and permitting the state to move structures if an order directing removal is not otherwise complied with. Section 6 eliminates the provision formerly in RCW 8.04.010 calling for inability

<sup>1</sup> 146 Wash. Dec. 155, 279 P.2d 645 (1955).