

sheet with the correct facsimile phone number shall be proof of the date and time the notice was served.

**History.**—s. 1, ch. 63-135; s. 11, ch. 65-456; s. 35, ch. 67-254; s. 10, ch. 87-405; s. 11, ch. 90-109; s. 7, ch. 96-383.

**Note.**—Former s. 84.181.

### 713.20 Waiver or release of liens.—

(1) The acceptance by the lienor of an unsecured note for all or any part of the amount of his demand shall not constitute a waiver of his lien therefor unless expressly so agreed in writing, nor shall it in any way affect the period for filing the notice under s. 713.06(2), or the claim of lien under s. 713.08.

(2) A right to claim a lien may not be waived in advance. A lien right may be waived only to the extent of labor, services, or materials furnished. Any waiver of a right to claim a lien that is made in advance is unenforceable.

(3) Any person may at any time waive, release, or satisfy any part of his lien under this part, either as to the amount due for labor, services, or materials furnished or for labor, services, or materials furnished through a certain date subject to exceptions specified at the time of release, or as to any part or parcel of the real property.

(4) When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, a progress payment, the waiver or release may be in substantially the following form:

#### WAIVER AND RELEASE OF LIEN UPON PROGRESS PAYMENT

The undersigned lienor, in consideration of the sum of \$\_\_\_\_\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through (insert date) to (insert the name of your customer) on the job of (insert the name of the owner) to the following property:

(description of property)

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on \_\_\_\_\_, 19\_\_\_\_.

By: \_\_\_\_\_  
(Lienor)

(5) When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, the final payment, the waiver and release may be in substantially the following form:

#### WAIVER AND RELEASE OF LIEN UPON FINAL PAYMENT

The undersigned lienor, in consideration of the final payment in the amount of \$\_\_\_\_\_, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(description of property)

DATED on \_\_\_\_\_, 19\_\_\_\_.

By: \_\_\_\_\_  
(Lienor)

(6) A person may not require a lienor to furnish a waiver or release of lien that is different from the forms in subsection (4) or subsection (5).

(7) A lienor who executes a lien waiver and release in exchange for a check may condition the waiver and release on payment of the check.

(8) A lien waiver or lien release that is not substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release.

**History.**—s. 1, ch. 63-135; s. 35, ch. 67-254; s. 5, ch. 88-397; s. 8, ch. 96-383.

**Note.**—Former s. 84.202.

## CHAPTER 717

### DISPOSITION OF UNCLAIMED PROPERTY

- 717.101 Definitions.
- 717.105 Checks, drafts, and similar instruments issued or certified by banking and financial organizations.
- 717.106 Bank deposits and funds in financial organizations.
- 717.108 Deposits held by utilities.
- 717.1101 Stock and other intangible interests in business associations.
- 717.112 Property held by agents and fiduciaries.
- 717.113 Property held by courts and public agencies.
- 717.114 Gift certificates and credit memos.
- 717.116 Contents of safe-deposit box or other safe-keeping repository.
- 717.117 Report of abandoned property.
- 717.118 Notice and publication of lists of abandoned property.
- 717.119 Payment or delivery of abandoned property.
- 717.122 Public sale of abandoned property.
- 717.123 Deposit of funds.
- 717.124 Filing of claim with department.
- 717.1241 Conflicting claims.
- 717.1242 Restatement of jurisdiction of the circuit court sitting in probate and the department.
- 717.1243 Transfer of unclaimed property by operation of law.
- 717.125 Claim of another state to recover property; procedure.
- 717.126 Administrative hearing; burden of proof.
- 717.127 Election to take payment or delivery.
- 717.1311 Retention of records.
- 717.132 Enforcement; cease and desist orders; administrative fines.
- 717.134 Penalties and interest.
- 717.135 Agreement to locate reported property.
- 717.1355 Theme park and entertainment complex tickets.

**717.101 Definitions.**—As used in this chapter, unless the context otherwise requires:

(1) "Aggregate" means the amounts reported for owners of unclaimed property of less than \$50 or where

there is no name for the individual or entity listed on the holder's records, regardless of the amount to be reported.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Banking organization" means any state or national bank, international banking entity or similar entity, trust company, savings bank, industrial savings bank, land bank, safe-deposit company, private bank, or any organization otherwise defined by law as a bank or banking organization.

(4) "Business association" means any corporation (other than a public corporation), joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, dissolved pension plan, or utility.

(5) "Credit balance" means an account balance in the customer's favor.

(6) "Department" means the Department of Banking and Finance.

(7) "Domicile" means the state of incorporation, in the case of a corporation incorporated under the laws of a state, and the state of the principal place of business, in the case of a person not incorporated under the laws of a state.

(8) "Financial organization" means a state or federal savings association, savings and loan association, bank, trust company, international bank agency, cooperative bank, building and loan association, or credit union.

(9) "Holder" means a person, wherever organized or domiciled, who is:

- (a) In possession of property belonging to another;
- (b) A trustee in case of a trust; or
- (c) Indebted to another on an obligation.

(10) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including, by way of illustration and not limitation, accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(11) "Intangible property" includes, by way of illustration and not limitation:

- (a) Moneys, checks, drafts, deposits, interest, dividends, and income.
- (b) Credit balances, customer overpayments, security deposits and other instruments as defined by chapter 679, refunds, unpaid wages, unused airline tickets, and unidentified remittances.
- (c) Stocks, and other intangible ownership interests in business associations.
- (d) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.
- (e) Amounts due and payable under the terms of insurance policies.
- (f) Amounts distributable from a trust or custodial fund established under a plan to provide any health, welfare, pension, vacation, severance, retirement, death,

stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefit.

(12) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(13) "Lawful charges" means charges against dormant accounts that are authorized by statute for the purpose of offsetting the costs of maintaining the dormant account.

(14) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, a claimant, or a payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his legal representative.

(15) "Public corporation" means a corporation created by the state, founded and owned in the public interest, supported by public funds, and governed by those deriving their power from the state.

(16) "Reportable period" means the calendar year ending December 31 of each year.

(17) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States.

(18) "Utility" means a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

**History.**—s. 2, ch. 87-105; s. 23, ch. 91-110; s. 1, ch. 96-301.

### **717.105 Checks, drafts, and similar instruments issued or certified by banking and financial organizations.—**

(1) Any sum payable on a check, draft, or similar instrument, except those subject to ss. 717.104 and 717.115, on which a banking or financial organization is directly liable, including, by way of illustration and not limitation, a cashier's check and a certified check, which has been outstanding for more than 5 years after it was payable or after its issuance if payable on demand, is presumed abandoned unless the owner, within 5 years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization.

(2) No holder may deduct from the amount of any instrument subject to this section any charges imposed by reason of the failure to present the instrument for encashment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose those charges and does not regularly reverse or otherwise cancel those charges with respect to the instrument.

**History.**—s. 6, ch. 87-105; s. 2, ch. 96-301.

### **717.106 Bank deposits and funds in financial organizations.—**

(1) Any demand, savings, or matured time deposit with a banking or financial organization, including deposits that are automatically renewable, and any

funds paid toward the purchase of shares, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner has, within 5 years:

(a) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

(d) Owned other property to which paragraph (a), paragraph (b), or paragraph (c) is applicable and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or

(e) Had another relationship with the banking or financial organization concerning which the owner has:

1. Communicated in writing with the banking or financial organization; or

2. Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

(2) For purpose of paragraph (1)(a), property includes any interest or dividends thereon.

(3) No holder may impose with respect to property described in subsection (1) any charges due to dormancy or inactivity or cease payment of interest unless:

(a) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose those charges or cease payment of interest.

(b) For property in excess of \$2, the holder, no more than 3 months prior to the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges shall be imposed or that interest shall cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before July 1, 1987.

(c) The holder regularly imposes those charges or ceases payment of interest and does not regularly reverse or otherwise cancel those charges or retroactively credit interest with respect to such property.

(4) Any property described in subsection (1) that is automatically renewable is matured for purposes of subsection (1) upon the expiration of its initial time period except that, in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by

an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in s. 717.119, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

(5) If the documents establishing a deposit described in subsection (1) state the address of a beneficiary of the deposit, and the account has a value of at least \$50, notice shall be given to the beneficiary as provided for notice to the apparent owner under s. 717.117(5). This subsection shall apply to accounts opened on or after October 1, 1990.

**History.**—s. 7, ch. 87-105; s. 2, ch. 90-113; s. 63, ch. 91-110; s. 3, ch. 96-301.

**717.108 Deposits held by utilities.**—Any deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful charges, that remains unclaimed by the owner for more than 1 year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

**History.**—s. 9, ch. 87-105; s. 4, ch. 96-301.

**717.1101 Stock and other intangible interests in business associations.**—

(1) Except as provided in subsections (2) and (5), any stock or other intangible ownership interest in a business association, the existence of which is evidenced by record available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has for 5 years remained unclaimed by the owner and the owner has not within 5 years:

(a) Communicated in writing with the association or its agent regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(b) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association or its agent prepared by an employee of the association or its agent.

(2) At the expiration of a 5-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest shall not be presumed abandoned unless there have been at least five dividends, distributions, or other sums paid during the period, none of which has been claimed. If five dividends, distributions, or other sums are paid during the 5-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If five dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been five dividends, distributions, or other sums that have not been claimed by the owner.

(3) The running of the 5-year period of abandonment ceases immediately upon the occurrence of one

or more of the conditions referred to in subsection (1). If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back only to the time a subsequent dividend, distribution, or other sum became due and payable.

(4) At the same time any interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This chapter shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show:

(a) With respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within 5 years satisfied any of the conditions referred to in subsection (1); or

(b) The holder has reason to believe the owner has not received statements or other mailings for a 5-year period.

**History.**—s. 11, ch. 87-105; s. 5, ch. 96-301.

#### **717.112 Property held by agents and fiduciaries.—**

(1) All intangible property and any income or increment thereon held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has within 5 years after it has become payable or distributable increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary or an employee of the fiduciary.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the Internal Revenue laws of the United States are not payable or distributable within the meaning of subsection (1) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(3) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between said person and the business association provides otherwise.

(4) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

**History.**—s. 13, ch. 87-105; s. 6, ch. 96-301.

**717.113 Property held by courts and public agencies.—**All intangible property held for the owner by any court, government or governmental subdivision or

agency, public corporation, or public authority that has remained unclaimed by the owner for more than 1 year after it became payable or distributable is presumed abandoned. Notwithstanding the provisions of this section, funds deposited in the Minerals Trust Fund pursuant to s. 377.247 are presumed abandoned only if the funds have remained unclaimed by the owner for more than 5 years from the date of first production from the well.

**History.**—s. 14, ch. 87-105; s. 4, ch. 94-193; s. 71, ch. 96-321.

**717.114 Gift certificates and credit memos.—**  
[Repealed by s. 7, ch. 96-301.]

**717.116 Contents of safe-deposit box or other safekeeping repository.—**All tangible and intangible property held in a safe-deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business, and proceeds resulting from the sale of the property permitted by law, that remain unclaimed by the owner for more than 3 years after the lease or rental period on the box or other repository has expired are presumed abandoned.

**History.**—s. 17, ch. 87-105; s. 8, ch. 96-301.

#### **717.117 Report of abandoned property.—**

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department on such forms as the department may prescribe by rule with respect to the property as provided in this section. In lieu of forms, the holder may submit the required information via electronic medium as the department may prescribe by rule.

(2) The report shall be verified. Verification of a private corporation or unincorporated association shall be made by an officer; of a partnership, by a partner; and of a public corporation, by its chief fiscal officer. The report must include:

(a) Except with respect to traveler's checks and money orders, the name and social security number or federal employer identification number, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of a value of \$50 or more presumed abandoned under this chapter.

(b) In the case of unclaimed funds of \$50 or more held or owing under any life or endowment insurance policy or annuity contract, the full name, social security number, or federal employer identification number, if known, and last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds.

(c) In the case of the contents of a safe-deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and may be inspected by the department, and any amounts owing to the holder. Contents of a safe-deposit box or other safekeeping repository which consist of documents or writings of a private nature and which have little or no apparent value shall not be presumed abandoned.

(d) The nature and identifying number, if any, or description of the property and the amount appearing

from the records to be due, but items of value under \$50 each may be reported in the aggregate.

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property.

(f) Any person or business entity holding funds presumed abandoned of a total of \$10 or less may file a negative or nothing-owed report for that reporting period. The balance brought forward to the new reporting period is zero.

(g) Other information which the department prescribes by rule as necessary for the administration of this chapter.

(h) Credit balances, customer overpayments, security deposits, and refunds having a value of less than \$10 shall not be presumed abandoned.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(4) The report must be filed before May 1 of each year. Such report shall apply to the preceding calendar year. If such report is not filed on or before the applicable filing date, the holder shall pay to the department a penalty of \$10 per day for each day the report is delinquent, but such penalty shall not exceed \$500. As necessary for proper administration of this chapter, the department may waive any penalty due with appropriate justification. On written request by any person required to file a report, the department may postpone the reporting date.

(5) Not more than 120 days prior to filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to this chapter if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate.

(b) The claim of the apparent owner is not barred by the statute of limitations.

(6) Any holder of intangible property may file with the department a petition for determination that the property is abandoned requesting the department to accept custody of the property. The petition shall state any special circumstances that exist, contain the information required by subsection (2), and show that a diligent search has been made to locate the owner. If the department finds that the proof of diligent search is satisfactory, it shall give notice as provided in s. 717.118 and accept custody of the property.

(7) On written request by any entity required to file a report, stating their justification for such action, the department may place that entity in an inactive status as an abandoned property "holder."

(8) This section shall not apply to the unclaimed patronage refunds as provided for by contract or

through bylaw provisions of entities organized under chapter 425.

**History.**—s. 18, ch. 87-105; s. 1, ch. 92-169; s. 30, ch. 92-319; s. 1, ch. 93-280; s. 9, ch. 96-301.

#### **717.118 Notice and publication of lists of abandoned property.—**

(1) It is specifically recognized that the state has an obligation to make an effort to notify owners of abandoned property in a cost-effective manner. In order to provide all the citizens of this state an effective and efficient program for the recovery of abandoned property, the department shall use cost-effective means to make a single attempt to notify owners of the existence of abandoned property held by the department. The means of notification may include post, print, visual, telecommunications, or electronic media. Publication of the names of owners on the Internet is not an attempt to notify owners under this subsection. The department shall implement such notification within 13 months following the receipt of the report required by s. 717.117.

(2) The following notification requirements shall apply:

(a) Notifications that are published or televised shall consist of the names of apparent owners of abandoned property, listed in alphabetical order, and information regarding recovery of abandoned property from the department. Such notification shall be televised or published in the county in which the last known address of the apparent owner is located or, if the address is unknown, in the county in which the holder has its principal place of business. Published notifications must be in accordance with s. 50.011.

(b) Notification provided directly to individual apparent owners shall consist of a description of the property and information regarding recovery of abandoned property from the department.

(3) The department shall publish in the notice any items of more than \$100.

(4) This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed abandoned under s. 717.104.

**History.**—s. 19, ch. 87-105; s. 2, ch. 88-256; s. 31, ch. 92-319; s. 2, ch. 93-280; s. 10, ch. 96-301.

#### **717.119 Payment or delivery of abandoned property.—**

(1) Every person who is required to file a report under s. 717.117 shall simultaneously pay or deliver to the department all abandoned property required to be reported. Such payment or delivery shall accompany the report as required in this chapter for the preceding calendar year.

(2) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the department, which will no longer be presumed abandoned, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(3) All stock or other intangible ownership interest reported under this chapter on the annual report filing

required in s. 717.117 shall be sold and the proceeds remitted to the department with the report. Reasonable fees within the industry's standards may be deducted from the proceeds for the costs of selling the stock or other intangible ownership interest. Upon delivery of the net proceeds to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder is relieved of all liability of every kind in accordance with the provisions of s. 717.1201 to every person for any losses or damages resulting to the person by the sale and delivery to the department of the net proceeds.

(4) All intangible and tangible property held in a safe-deposit box or any other safekeeping repository reported under s. 717.117 shall not be delivered to the department until 120 days after the report due date. If such property is not filed on or before the applicable filing date, the holder shall pay to the department a penalty of \$10 for each safe-deposit box received late, but such penalty shall not exceed \$1,000. As necessary for proper administration of this chapter, the department may waive any penalty due with appropriate justification. On written request by any person required to deliver safe-deposit box contents, the department may postpone the delivery.

(5) Any holder may request an extension in writing of up to 60 days for the delivery of property if extenuating circumstances exist for the late delivery of the property, and the department may grant such an extension in writing.

**History.**—s. 20, ch. 87-105; s. 11, ch. 96-301.

#### **717.122 Public sale of abandoned property.—**

(1) Except as provided in subsection (2), the department after the receipt of abandoned property shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the department the most favorable market for the property involved. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. The department shall have the discretion to withhold from sale any abandoned property that the department deems to be of benefit to the people of the state. If in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least 3 weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the department deems advisable. The department may authorize the agent or broker acting on behalf of the department to deduct fees from the proceeds of these sales at a rate agreed upon in advance by the agent or broker and the department. The department shall reimburse owners accounts for these brokerage fees from the State School Fund.

(3) Unless the department deems it to be in the public interest to do otherwise, all securities presumed

abandoned and delivered to the department may be sold upon receipt. Any person making a claim pursuant to this chapter is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, less any amounts deducted pursuant to s. 717.123, but no person has any claim under this chapter against the state, the holder, any transfer agent, any registrar, or any other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the state.

(4) The purchaser of property at any sale conducted by the department pursuant to this chapter is entitled to ownership of the property purchased free from all claims of the owner or previous holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership.

**History.**—s. 23, ch. 87-105; s. 3, ch. 90-113; s. 12, ch. 96-301.

#### **717.123 Deposit of funds.—**

(1) All funds received under this chapter, including the proceeds from the sale of abandoned property under s. 717.122, shall forthwith be deposited by the department in the State School Fund, except that the department shall retain in a separate account an amount not exceeding \$3 million from which it shall make prompt payment of claims allowed by it. Costs incurred by the department for administration and enforcement of this chapter shall be reimbursed from the State School Fund.

(2) The department shall record the name and last known address of each person appearing from the holder's reports to be entitled to the abandoned property in the total amounts of \$5 or greater; the name and the last known address of each insured person or annuitant; and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due.

**History.**—s. 24, ch. 87-105; s. 13, ch. 96-301.

#### **717.124 Filing of claim with department.—**

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant. The department shall determine each claim within 90 days after it is filed. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57.

(2) A claim for a cashier's check or a stock certificate without the original instrument may require an indemnity bond equal to the value of the claim to be provided prior to issue of the stock or payment of the claim by the department.

(3) The department may require an affidavit swearing to the authenticity of the claim, lack of documentation, and an agreement to allow the department to provide the name and address of the claimant to subsequent claimants coming forward with substantiated proof to claim the account. This shall apply to claims equal to or less than \$250.

(4) If a claim is determined in favor of the claimant, the department shall deliver or pay over to the claimant the property or the amount the department actually

received or the proceeds if it has been sold by the department, together with any additional amount required by s. 717.121.

(5)(a) If a claimant assigns his rights to receive payment to an attorney or private investigative agency which is duly licensed to do business in this state pursuant to a written agreement with such claimant, the department is authorized to make distribution of property or money in accordance with such assignment.

(b) Payments made to an attorney or private investigative agency shall be promptly deposited into a trust or escrow account which is regularly maintained by the attorney or the private investigative agency in a financial institution authorized to accept such deposits and located in this state.

(c) Distribution by the attorney or private investigative agency to the claimant shall be made within 10 days following final credit of the deposit into the trust or escrow account at the financial institution, unless a party to the agreement protests in writing such distribution before it is made.

(d) The department shall not be civilly or criminally liable for any property or funds distributed pursuant to this subsection, provided such distribution is made in good faith.

**History.**—s. 25, ch. 87-105; s. 3, ch. 89-291; s. 8, ch. 89-299; s. 4, ch. 90-113; s. 14, ch. 96-301; s. 295, ch. 96-410.

**Note.**—The word "to" preceding the word "less" was deleted by the editors.

#### **717.1241 Conflicting claims.—**

(1) When ownership has been established but conflicting claims have been filed, the department shall remit the property as follows:

(a) If both the owner and the owner's representative file claims for the same property:

1. To the owner, if the owner has appointed the owner's representative as the owner's attorney in fact but has not irrevocably assigned the unclaimed property in whole or in part to the owner's representative; or

2. To the owner's representative pursuant to s. 717.124 if the owner has irrevocably assigned the unclaimed property in whole or in part to the owner's representative.

(b) To the owner's representative who first executed a contract with the owner more than 12 months after the property has been reported to the department, unless paragraph (a) applies;

(c) To the owner's representative who first executed a contract with the owner within 12 months after the property has been reported to the department, unless paragraph (a) or paragraph (b) applies.

(2) The purpose of this section is solely to provide guidance to the department regarding to whom it should remit the unclaimed property and is not intended to extinguish or affect any private cause of action that any person may have against another person for breach of contract or other statutory or common-law remedy.

**History.**—s. 15, ch. 96-301.

#### **717.1242 Restatement of jurisdiction of the circuit court sitting in probate and the department.—**

(1) It is and has been the intent of the Legislature that, pursuant to s. 26.012(2)(b), circuit courts have jurisdiction of proceedings relating to the settlement of the

estates of decedents and other jurisdiction usually pertaining to courts of probate. It is and has been the intent of the Legislature that, pursuant to s. 717.124, the department determines the merits of claims for property paid or delivered to the department under this chapter. Consistent with this legislative intent, any estate or heir of an estate seeking to obtain property paid or delivered to the department under this chapter must file a claim with the department as provided in s. 717.124.

(2) Should any estate or heir of an estate seek to obtain or obtain an order from a circuit court sitting in probate directing the department to pay or deliver to any person property paid or delivered to the department under this chapter, the estate or heir may be ordered to pay the department reasonable costs and attorney's fees in any proceeding brought by the department to oppose, appeal, or collaterally attack the order.

**History.**—s. 16, ch. 96-301.

#### **717.1243 Transfer of unclaimed property by operation of law.—**

When a claim for unclaimed property is made by an heir of an owner who died intestate, it shall not be necessary to accompany the claim with an order of a probate court if the claimant files with the department an affidavit stating that the heirs have amicably agreed among themselves upon a division of the estate, that the assets of the estate of the owner, excluding the unclaimed property, are sufficient to pay all just claims, and that no probate proceedings have been instituted upon the estate. If the owner dies testate but the will is not probated, the claim shall be accompanied by a certified copy of the will and an affidavit stating that the assets of the estate of the owner, excluding the unclaimed property, are sufficient to pay all just claims and that no probate proceedings have been instituted upon the estate. This section only applies if all of the unclaimed property held by the department on behalf of the owner has an aggregate value of \$1,000 or less.

**History.**—s. 17, ch. 96-301.

#### **717.125 Claim of another state to recover property; procedure.—**

(1) At any time after property has been paid or delivered to the department under this chapter, another state may recover the property if:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(b) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(c) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under laws of that state the

property escheated to or was subject to a claim of abandonment by that state;

(d) The property was subject to custody by this state under s. 717.103(6) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(e) The property is the sum payable on a traveler's check, money order, or other similar instrument that was subjected to custody by this state under s. 717.104, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or abandoned property under this section must be presented in a form prescribed by the department, and the department shall determine the claim within 90 days after it is presented. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57.

(3) The department shall require a state, prior to recovery of property under this section, to indemnify this state and its officers and employees against any liability on a claim for the property.

**History.**—s. 26, ch. 87-105; s. 296, ch. 96-410.

#### **717.126 Administrative hearing; burden of proof.—**

Any person aggrieved by a decision of the department may petition for a hearing as provided in ss. 120.569 and 120.57. In any proceeding for determination of a claim to property paid or delivered to the department under this chapter, the burden shall be upon the claimant to establish entitlement to the property by a preponderance of evidence.

**History.**—s. 27, ch. 87-105; s. 297, ch. 96-410.

**717.127 Election to take payment or delivery.—**The department may decline to receive any property reported under this chapter that the department considers to have a value less than the expense of giving notice and of sale. If the department elects not to receive custody of the property, the holder shall be notified within 120 days after filing the report required under s. 717.117 or remitting the property required under s. 717.119.

**History.**—s. 28, ch. 87-105; s. 18, ch. 96-301.

#### **717.1311 Retention of records.—**

(1) Every holder required to file a report under s. 717.117 shall maintain a record of the specific type of property, amount, name, and last known address of the owner for 5 years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) or by rule of the department.

(2) Any business association that sells in this state its traveler's checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly responsible, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for 3 years after the date the property is reportable.

(3) If a holder fails to maintain the records required by this section and the records of the holder which are

available for the periods subject to this chapter are insufficient to permit the preparation of a report, the holder shall be required to report and pay such amounts as may reasonably be estimated from any available records.

**History.**—s. 32, ch. 87-105; s. 24, ch. 91-110; s. 19, ch. 96-301.

#### **717.132 Enforcement; cease and desist orders; administrative fines.—**

(1) The department may bring an action in any court of competent jurisdiction to enforce or administer any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department.

(2) In addition to any other powers conferred upon it to enforce and administer the provisions of this chapter, the department may issue and serve upon a person an order to cease and desist and to take corrective action whenever the department finds that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department. Any such order shall contain a notice of rights provided by ss. 120.569 and 120.57.

(3) In addition to any other powers conferred upon it to enforce and administer the provisions of this chapter, the department may impose and collect an administrative fine against any person found to have violated any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department in an amount not to exceed \$2,000 for each violation.

**History.**—s. 33, ch. 87-105; s. 4, ch. 93-280; s. 20, ch. 96-301; s. 298, ch. 96-410.

#### **717.134 Penalties and interest.—**

(1) The department may impose and collect a penalty of \$500 per day up to a maximum of \$5,000 and 25 percent of the value of property not reported until a report is rendered for any person who willfully fails to render any report required under this chapter. Upon a holder's showing of good cause, the department may waive said penalty or any portion thereof. If the holder acted in good faith and without negligence, the department shall waive the penalty provided herein.

(2) The department may impose and collect a penalty of \$500 per day up to a maximum of \$5,000 and 25 percent of the value of property not paid or delivered until the property is paid or delivered for any person who willfully refuses to pay or deliver abandoned property to the department as required under this chapter.

(3) Any person who willfully or fraudulently conceals, destroys, damages, or makes unlawful disposition of any property or of the books, records, or accounts pertaining to property which is subject to the provisions of this chapter is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) In addition to any damages, penalties, or fines for which a person may be liable under any other provision of law, any person who fails to report or pay or deliver unclaimed property within the time prescribed by this chapter shall pay to the department interest at the rate of 12 percent per annum on such property, or value

thereof, from the date such property shall have been paid or delivered. The department may waive any penalty due under this subsection with appropriate justification.

**History.**—s. 35, ch. 87-105; s. 21, ch. 96-301.

**717.135 Agreement to locate reported property.—**

(1) All agreements to pay compensation to recover or assist in the recovery of property reported under s. 717.117 shall be unenforceable if made within 90 days after attempted notification by the department or within 12 months after such property is reported, whichever occurs first. However, this section shall not apply to contracts made in connection with guardianship proceedings or the probate of an estate.

(2) All agreements and/or powers of attorney entered into pursuant to subsection (1) shall contain the following statement directly above the signature in no less than 6-point bold type: "THIS AGREEMENT TO PAY COMPENSATION TO RECOVER ABANDONED PROPERTY REPORTED TO THE STATE OF FLORIDA IS UNENFORCEABLE IF MADE WITHIN 90 DAYS AFTER THE ATTEMPTED NOTIFICATION OR WITHIN 12 MONTHS AFTER SUCH PROPERTY IS REPORTED, WHICHEVER OCCURS FIRST." Any agreement which does not contain this statement shall be unenforceable.

**History.**—s. 36, ch. 87-105; s. 1, ch. 91-261; s. 2, ch. 94-191; s. 22, ch. 96-301.

**717.1355 Theme park and entertainment complex tickets.**—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013(9), or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

**History.**—s. 23, ch. 96-301.

## CHAPTER 718

### CONDOMINIUMS

#### PART I

#### GENERAL PROVISIONS

718.112 Bylaws.

718.115 Common expenses and common surplus.

**718.112 Bylaws.—**

**(1) GENERALLY.—**

(a) The operation of the association shall be governed by the articles of incorporation if the association is incorporated, and the bylaws of the association, which shall be included as exhibits to the recorded declaration. If one association operates more than one condominium, it shall not be necessary to rerecord the same articles of incorporation and bylaws as exhibits to each declaration after the first, provided that in each case where the articles and bylaws are not so recorded, the declaration expressly incorporates them by reference as exhibits and identifies the book and page of the public records where the first declaration to which they were attached is recorded.

(b) No amendment to the articles of incorporation or bylaws is valid unless recorded with identification on the first page thereof of the book and page of the public records where the declaration of each condominium operated by the association is recorded.

(2) **REQUIRED PROVISIONS.**—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

**(a) Administration.—**

1. The form of administration of the association shall be described indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of a condominium which has five or fewer units, in which case in a not-for-profit corporation the board shall consist of not fewer than three members. In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of such officers customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. When a unit owner files a written complaint by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the complaint. The board's response shall either give a substantive response to the complainant, notify the complainant that a legal opinion has been requested, or notify the complainant that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the complainant. If a legal opinion is requested, the board shall, within 60 days after the receipt of the complaint, provide in writing a substantive response to the complainant. The failure to provide a substantive response to the complainant as provided herein precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the complaint.

**(b) Quorum; voting requirements; proxies.—**

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)3., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the divi-