

CHAPTER 85-03-04 EXAMINATIONS

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85-03-04-01. Contract examiners.

1. The administrator may contract with a person to conduct unclaimed property examinations to determine compliance with North Dakota Century Code chapter 47-30.2.
2. A contract to conduct an examination may provide for compensation of the person based on a fixed fee, hourly fee, or contingent fee.
3. An examiner may not engage in any unclaimed property examination to determine compliance with North Dakota Century Code chapter 47-30.2 without written authorization from the administrator.
4. An examiner shall report in writing to the administrator at least monthly on the status of all unclaimed property examinations the examiner has been authorized to perform by the administrator.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55

85-03-04-02. Notice of examination.

1. All unclaimed property examinations begin with an official notice of examination.
2. The notice of examination must include:
 - a. An explanation that the administrator is authorized to examine the records of the person subject to examination pursuant to North Dakota Century Code chapter 47-30.2;
 - b. The identity of the assigned examiner; and
 - c. The examiner's contact information.
3. A notice of examination may either be sent directly to the person subject to examination by the administrator or to the examiner assigned to the examination for delivery to the person subject to examination.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55

85-03-04-03. Entrance conference.

1. Once an examination is assigned and written notice of examination is provided to the person subject to examination, an entrance conference will be scheduled with the examiner and representatives of the person subject to examination. A representative of the administrator may participate in an entrance conference.
2. During the entrance conference, the examiner shall, to the extent practicable:
 - a. Identify the types of property that will be subject to the examination and the time period covered by the examination;
 - b. Discuss an examination work plan, a tentative schedule, and the scope of work;
 - c. Provide contact information for both the examiner and the administrator;
 - d. Notify the person subject to examination of the person's ability to request an informal conference with the administrator pursuant to North Dakota Century Code section 47-30.2-61;
 - e. Advise the person subject to examination that the administrator and not the examiner makes determinations concerning that person's liability under North Dakota Century Code chapter 47-30.2 and that interpretations of that chapter are made by the administrator;
 - f. Request records and materials necessary to proceed with the next steps of the examination;
 - g. Explain the requirement to provide a due diligence notice to the apparent owner of property presumed abandoned; and
 - h. Explain that, unless otherwise agreed to in writing by the administrator, the person subject to examination shall remit any unclaimed property identified during the examination that is owed to the state of North Dakota.

History: Effective April 1, 2022; amended effective April 1, 2024.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-57, 47-30.2-58, 47-30.2-61, 47-30.2-62

85-03-04-04. Examination refusal.

If the person subject to examination refuses to adhere to the rules and laws, the examiner shall inform the administrator of the refusal and the commissioner may bring action to enforce the rules and laws as outlined in North Dakota Century Code chapter 47-30.2, including issuing an administrative subpoena.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2

85-03-04-05. Examination guidelines.

1. The examiner and the person subject to examination shall act in good faith to conduct the examination under the terms and within the time frame established in the entrance conference.
2. During the examination, the examiner may make subsequent requests, to the person subject to examination, for additional books and records required to complete the examination.

- a. The examiner shall submit record requests to the person subject to examination in writing or, if the request is made verbally, shall follow up with written documentation of the request.
 - b. Record requests must have reasonable deadlines in order to move the examination forward and avoid unnecessary delays.
 - c. The examiner shall provide a reasonable time frame for the person subject to examination to respond to the request based on the type and extent of the information requested and other relevant facts and circumstances.
 - d. The examiner shall provide confirmation of receipt with reasonable projected response times to submissions received from the person subject to examination.
3. The examination must include access to the original books, records, and other supporting documentation deemed by the administrator to be necessary to ascertain compliance with North Dakota Century Code chapter 47-30.2.
 4. The examiner shall properly document the examination and make the working papers gathered during the unclaimed property examination available for review by the administrator. The working papers must include planning information and all related calculations, statistical analyses, and summarizations.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-57, 47-30.2-58

85-03-04-06. Estimation.

Examinations carried out using estimation as set forth by North Dakota Century Code section 47-30.2-59 adhere to the following rules:

1. Estimation may only be used when the person subject to the examination failed to comply with North Dakota Century Code section 47-30.2-24, or when the person and the administrator mutually agree to the use of estimation. The ability of the administrator to use estimation is intended as a deterrent to the intentional or negligent destruction of records that would be used in an unclaimed property examination to identify unclaimed property.
2. A payment made based on estimation under this section does not relieve a person subject to an examination from an obligation to report and deliver property to a state in which the holder is domiciled.
3. An examiner may use estimation in an examination if:
 - a. The person subject to examination agrees in writing to the use of estimation as part of an examination resolution agreement; or
 - b. The administrator concludes that the person subject to an examination failed to comply with North Dakota Century Code section 47-30.2-24 and the administrator approves in writing the use of estimation in the examination.
4. Estimation by the administrator should reasonably approximate the amount of unclaimed property that should have been reported to North Dakota if all reports had been filed and records had been maintained as required by North Dakota Century Code chapter 47-30.2.
5. In circumstances where the administrator has concluded that the person subject to an examination failed to comply with North Dakota Century Code section 47-30.2-24 and the

administrator has approved in writing the use of estimation in the examination, before the use of estimation in an examination, the administrator shall:

- a. Notify the person subject to examination, in writing, that estimation is being considered because of a failure to maintain the records required by North Dakota Century Code section 47-30.2-24;
- b. After considering any evidence submitted by the examiner and the person subject to examination, make a written determination that the person subject to examination has failed to maintain the records required by North Dakota Century Code section 47-30.2-24;
- c. Provide an opportunity for the person subject to examination to submit written objections, including:
 - (1) Submitting evidence that the person subject to examination has maintained sufficient records to perform the examination for some or all of the years during the time period covered by the examination; or
 - (2) Proposing an estimation methodology;
- d. Notify in writing the person subject to examination of:
 - (1) The estimation methodology to be used; and
 - (2) For which years during the time period covered by the examination estimation will be used.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-24, 47-30.2-55, 47-30.2-59, 47-30.2-62

85-03-04-07. Multistate examinations.

1. The administrator may agree to participate in an examination of a person for compliance with unclaimed property laws of multiple states, including North Dakota Century Code chapter 47-30.2, when examiners perform examinations for more than one state.
2. As different states participating in a multistate examination will have different rules for examinations, there may be conflicts between the statutory or regulatory requirements for how the examiner should conduct the examination. When practicable, the examiner should comply with the requirements of this section when conducting a multistate examination. However, if there is a conflict between the requirements of this section and the requirements of one or more other states, the examiner may vary from the requirements of this section so long as the examiner:
 - a. Follows any requirements imposed by North Dakota Century Code chapters 44-04 and 47-30.2, including confidentiality requirements; and
 - b. Uses North Dakota Century Code chapter 47-30.2 with regards to any property for which the state of North Dakota has the superior claim.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-57, 47-30.2-63, 47-30.2-64

85-03-04-08. Bankruptcy.

If, at any time before or during an examination, the person subject to examination files for bankruptcy, that person shall give notice of the filing to the examiner. The examiner shall, within seven calendar days after receiving notice or the discovery of the event, notify the administrator of the bankruptcy filing. If the administrator so elects, the examiner shall assist the administrator to ensure that a proper proof of claim is timely filed in the bankruptcy action.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-58, 47-30.2-62

85-03-04-09. Examination resolution agreements.

1. The commissioner may resolve an examination via negotiation and settlement with the person subject to examination.
2. The commissioner may not agree in a settlement to provide indemnification beyond that provided in North Dakota Century Code chapter 47-30.2.
3. A mutually agreed upon settlement resolves a specific examination and does not create any precedent on specific legal issues.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-03, 47-30.2-56

Law Implemented: NDCC 47-30.2-55, 47-30.2-58, 47-30.2-62

85-03-04-10. Voluntary disclosure agreement program.

1. The administrator may establish a voluntary disclosure agreement program for persons who are not in compliance with North Dakota Century Code chapter 47-30.2.
2. Under a voluntary disclosure agreement program, the commissioner may agree to waive, in whole or in part, interest and penalties for a person who voluntarily reports and remits to the administrator property that should have been previously reported, paid, or delivered to the administrator pursuant to North Dakota Century Code chapter 47-30.2. The voluntary disclosure agreement program includes property that is reportable pursuant to the transition provisions of North Dakota Century Code section 47-30.2-74. Property reportable under North Dakota Century Code chapter 47-30.2 or the previous Uniform Unclaimed Property Act may be eligible to be voluntarily reported and remitted under the voluntary disclosure agreement program.
3. A person who has been sent an official notice of examination may not participate in the voluntary disclosure agreement program.
4. Participation in the administrator's voluntary disclosure agreement program does not waive or otherwise limit the administrator's authority to order and conduct an unclaimed property examination pursuant to North Dakota Century Code section 47-30.2-55.

History: Effective April 1, 2022.

General Authority: NDCC 47-30.2-21, 47-30.2-56

Law Implemented: NDCC 47-30.2-22, 47-30.2-55, 47-30.2-58, 47-30.2-59, 47-30.2-62, 47-30.2-65, 47-30.2-66, 47-30.2-67, 47-30.2-74