CLERK & COMPTROLLER
PALM BEACH COUNTY
OFFICIAL RECORDS DIVISION
RECORDING DEPARTMENT
CASH BONDS PROCESSING AUDIT

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Division of Inspector General

Audit Services Unit

August 4, 2015

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The Honorable Sharon R. Bock, Esq.
Clerk & Comptroller

We conducted an audit of Recording Department Cash Bonds Processing, which was included in the annual audit plan.

The objectives were to identify the risks and vulnerabilities impacting the cash bonds processes, evaluate the overall effectiveness and efficiency and related internal controls to mitigate the risks, verify compliance with pertinent laws and regulations as well as established policies, and compare processes with accepted standards and best practices.

Our audit was neither designed nor intended to be a detailed study of every process, procedure, transaction or system in each area. Accordingly, the observations and recommendations included in this report are not all-inclusive.

Our audit indicated that the Recording Department has generally adequate processes to ensure cash bonds placed in regard to liens or judgments are properly reviewed, processed, recorded, maintained, and disposed. The audit identified differences between the pending cash bond balances reported on Recording's two sets of electronic records and the underlying hardcopy official records as well as differences with the balances reported in the Finance subsidiary ledger account. Revenue enhancement opportunities exist by initiating the collection of registry fees on cash bonds received as permitted by Florida Statutes; our review of activity from January 1, 2007 through February 28, 2015 indicated fees of approximately $193,478 could have been collected. Opportunities exist to be more proactive in facilitating disposition of bonds that have been pending for extended periods of time.

We appreciate the cooperation of management and staff during the course of this audit.

Respectfully submitted,

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Executive Summary

The Division of Inspector General performed an audit of cash bonds processing within the Recording Department of the Official Records Division.

The Recording Department is responsible for bonds deposited in regard to liens or judgments that generally relate to real property disputes. These bonds are referred to as transfer bonds as depositing such bonds (cash or surety) transfers the lien or judgment from the underlying property to the bond. This action allows the property to be transacted (e.g., sale or purchase) without settling the original lien or judgment.

The objectives of this audit were to identify the risks and vulnerabilities impacting the cash bonds processes, evaluate the overall effectiveness and efficiency and related internal controls to mitigate the risks, verify compliance with pertinent laws and regulations as well as established policies, and compare processes with accepted standards and best practices.

We concluded that the Recording Department has generally adequate processes to ensure cash bonds placed in regard to liens or judgments are properly reviewed, processed, recorded, maintained, and disposed. The audit identified differences between the pending cash bond balances reported on Recording's two sets of electronic records and the underlying hardcopy official records as well as differences with the balances reported in the Finance subsidiary ledger account. Revenue enhancement opportunities exist by initiating the collection of registry fees on cash bonds received as permitted by Florida Statutes; our review of activity from January 1, 2007 through February 28, 2015 indicated fees of approximately $193,478 could have been collected. Opportunities exist to be more proactive in facilitating disposition of bonds that have been pending for extended periods of time.

This report contains three observations and eight recommendations.

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Introduction

Overall Conclusion

The Clerk & Comptroller's Recording Department has a generally effective methodology in place to ensure cash bonds placed in regard to liens or judgments are properly reviewed, processed, recorded, maintained, and disposed. In addition, Recording annually provides input to the Clerk's Finance Division in regard to cash bonds on hand that have not been claimed and are eligible for advertising as unclaimed funds.

Recording maintains hard copy files that serve as official documentation of cash bonds received and disposed, and those files are appropriately maintained and segregated for archiving. The audit identified differences between the pending cash bond balances reported by Recording on these hard copy files compared to the balances reported on the two sets of supporting electronic files as well as differences with the balances recorded in the Finance subsidiary ledger account. In addition, opportunities exist to enhance revenues by collecting registry fees on cash bonds received as permitted by Florida Statutes, and to be more proactive in facilitating the disposition of cash bonds that have been pending for extended periods of time.

Objectives, Scope and Methodology

The Division of Inspector General conducted an audit of Recording Department Cash Bonds Processing. This regularly scheduled audit was included in the annual audit plan.

The objectives of this audit were to perform a risk assessment to identify the risks and vulnerabilities impacting the cash bonds processes, evaluate the overall effectiveness and efficiency and related internal controls to mitigate the risks, verify compliance with pertinent laws and regulations as well as established policies, and compare processes with accepted standards and best practices.

In addition, the objectives were to:

- Evaluate the adequacy of documented procedures within the Recording's Specialized Intake Unit to effectively and efficiently process cash bonds.

- Validate the cash bond individual balance sheets maintained by the Specialized Intake Unit and reconcile the balances with pending cash bond spreadsheets, hard copy cash bond documentation, and the Finance subsidiary ledger (General Deposits and Bonds account).
- Assess Recording's annual process to research open cash bond balances that should be considered for advertising as unclaimed funds on deposit.

Our scope included analysis of the records maintained in the Specialized Intake Unit and related Finance subsidiary ledger records for cash bonds on deposit as of February 28, 2015. Also included in the scope were annual research efforts for potential advertisement of unclaimed funds conducted in 2012, 2013, and 2014.

In order to meet these objectives, we reviewed the processes involving the receipt, recording, deposit, tracking, and disposition of cash bonds related to liens and judgments. We interviewed Recording management and staff as well as Finance staff involved in accounting for cash bonds within the Clerk's financial system. We reviewed Florida Statutes related to these cash bonds. We researched practices in other counties in Florida in regard to the collection of registry fees on cash bonds. We performed other procedures that were deemed necessary in the circumstances. This audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

Background

The Specialized Intake Unit within the Recording Department of the Official Records Division of the Clerk & Comptroller's Office is responsible for bonds deposited in regard to liens or judgments that relate to real property disputes. These bonds are referred to as transfer bonds, because depositing them (as cash or surety) transfers the lien or judgment from the underlying property to the bond. This action allows the property to be transacted (e.g., sale or purchase) without settling the original lien or judgment.

Transfer bonds can be placed after a lien has been recorded with the Clerk, whether a case has been filed to pursue the lien or not. If a case has been initiated, the transfer bond can still be placed to move the lien from the property to the bond. If the case has been initiated and a judgment ordered, the transfer bond can be placed to move the judgment from the property to the bond.

If a transfer bond has been placed in regard to a lien and no action is taken to enforce the lien within a year, the lien is no longer enforceable and the bond may be returned to the principal named on the bond upon request. If an action (e.g., court case) is timely initiated to enforce the lien, any subsequent release of the transfer bond must be in accord with a court order to do so.

The Fourth District Court of Appeals (in case 4D10-4206, dated March 7, 2012) cautions, however, that to maintain its validity, the initial case must be amended to include enforcement of the claim against the surety or the principal listed on the transfer bond within one year of recording the bond if that party was not the subject of the original claim stated in the case.

Pursuant to Section 55.10(1), Florida Statutes, a judgment lien is valid for seven years from the date it is recorded and may be extended for a period not to exceed twenty years from the date of the judgment. Florida Attorney General Opinion (AGO) 94-15 affirms that a transfer bond placed in regard to a judgment carries the same period of validity as the judgment itself.

Recording's bond handling responsibilities are to:

- ensure the bond is properly calculated and presented in proper form by someone with an interest in the underlying property;
- issue a certificate of transfer of lien or judgment to the bond and communicate it to the appropriate parties (principal and lienor);
- record the transfer bond in the Clerk's Official Records;
- maintain records of the status of the bond during its life to ensure its records correctly reflect the bonds on hand, and to release the bonds when appropriate within provisions of the Florida Statutes; and,
- document any actions taken by Recording that impact the bonds.

In addition, Recording annually responds to Finance's proposed list of bond balances on hand that have not been claimed and may be eligible for advertising as unclaimed funds.

Audit Team:
Michael Bodle, Senior Internal Auditor

Observations & Recommendations

The audit identified certain policies, procedures and practices that could be improved. The audit was neither designed nor intended to be a detailed study of every relevant system, procedure or transaction. Accordingly, the observations and recommendations presented in this report may not be all-inclusive of areas where improvement may be needed.

1. Recording has no definitive record of the amounts currently on hand for cash bonds deposited.

The Recording Department maintained two sets of electronic records for the cash bonds deposited but the two sources did not match each other nor match the underlying hard copy official records. In addition, these Recording cash bond deposit records did not reconcile to Clerk's Finance subsidiary ledger account.

Bond processing is one of the functions handled by the Specialized Intake Unit. The Unit keeps individual bond balance sheets for cash bonds and maintains a consolidated spreadsheet showing current status and pending action on bonds, with separate tabs for each year in which a bond was established. The consolidated spreadsheet includes cash bonds and surety bonds. Finally, the Unit maintains hard copy folders containing pertinent documentation for each bond. According to Recording staff, the hard copy folders are the official records of bonds. Hard copy records are also segregated by year, and within the year are filed numerically by the Clerk's File Number (CFN) under which the bonds are recorded. Because of the volume of hard copies and the need to be able to segregate those records to allow disposition in accord with retention requirements, hard copies are boxed up and stored. While this is an appropriate archival method, it makes research of the older bonds cumbersome at best.

The individual balance sheets and the consolidated spreadsheet are both maintained electronically in the Operations shared drive for the Specialized Intake Unit. While they both purport to show the current pending balance for all cash bonds on deposit, we noted that differences existed. Limited testing also disclosed that individual cash bond balances reported in these two sets of electronic records did not always match the hard copy official records.

The consolidated spreadsheet at February 28, 2015, reported pending cash balances totaling $3,149,138.97. The individual balance sheets reported cash balances as of

February 28, 2015, totaling $643,583.16. Separately, the Finance Department maintains a subsidiary ledger (Account 22940 - General Deposits and Bonds), which contains listings of all cash bonds for which there is currently a balance on hand. As of February 28, 2015, the Finance subsidiary ledger reported a balance of $535,757.86. There is no periodic effort to reconcile the three sets of records. On an annual basis, Clerk's Finance reports to Recording the cash bond balances that have been on deposit since the end of the calendar year prior to the one most recently ended; for example, the 2014 data provided the balances on deposit as of December 31, 2012. These open cash bonds have not been claimed and may be eligible for advertising as unclaimed funds.

Further review of the various differences between the three sources identified the following observations.

- In 76 cases, the individual balance sheet indicated the balance had been reduced to zero while the consolidated spreadsheet still showed a balance.
- In one case, the individual balance sheet showed a pending balance while the consolidated spreadsheet showed a zero balance.
- In two cases, bonds with balances shown on the consolidated spreadsheet did not have corresponding balance sheets on the Operations drive, and the reverse was also true in fifteen cases.
- In one case, incorrect data entry on a balance sheet gave the appearance that the bond had a negative balance of $24,810.26.
- Recording management did not require periodic reports of the pending cash balances on hand.

Recommendations:

A. Update the cash bond individual balance sheets and consolidated spreadsheets to ensure they are accurate and consistent.

B. Maintain an electronic record of all bonds received and their current status (modifying the updated pending transfer bonds could satisfy this if the original amounts received were maintained as a separate column and not deleted or reduced when the bonds were paid out).

C. Reconcile the open cash bonds reported in Recording's electronic records with the Finance subsidiary ledger and ensure that all updated balances are consistent with the subsidiary ledger.

D. Ensure the cash bond electronic records reflect the same information as the official hard copy records of amounts received and open balances.

Management Responses:

A. A complete reconciliation of all Recording Department bond records (1160 total from 1990 to present), cash and surety, will be performed.
Target Completion Date: Cash Bonds by 10/30/15 and Surety Bonds by 3/25/16

B. The process of electronically recording department bond event information will be enhanced to include both the initial bond amount, the current bond amount and all activity related to each bond.
Target Completion Date: 9/7/15

C. 1) In conjunction with the July 2015 Bond Advertisement, the Recording Department electronic records (consolidated spreadsheets) were updated to match the May 2015 Finance subsidiary ledger. The updated records will be used as the baseline going forward.
Target Completion Date: Completed

2) All electronic bond records variations will be addressed as part of the reconciliation of the cash and surety bonds.
Target Completion Date: 10/30/15

3) A process for reconciling the Finance subsidiary ledger to Recording's consolidated spreadsheets has been developed and will be implemented with the receipt of the June 2015 subsidiary ledger and each month thereafter.
Target Completion Date: 9/7/15

D. The hard copy records, individual balance sheets, will be converted to an electronic record and incorporated into the Recording consolidated spreadsheets. This will be done for bonds which are currently open (as per the reconciliation with the Finance subsidiary ledger). For all other bonds, this will be done as part of the complete reconciliation noted in Management Response A. above.
Target Completion Date: 9/7/15

2. Recording does not collect registry fees when accepting cash deposits for transfers from liens or judgments to bonds.

The Clerk's Office does not collect registry fees on deposits paid to transfer liens and judgments to cash bonds. Florida Statutes and Florida Attorney General Opinions support the collection of registry fees in these cases. We estimate that registry fees of approximately $193,478 could have been collected on cash bonds handled between January 1, 2007 and February 28, 2015.

Florida Statutes prescribe fees to be collected by the Clerk's Office for deposits into the registry. Our research is based on the following key Florida Statutes (FS):

- FS 28.24 states that "The clerk of the circuit court shall charge for services rendered by the clerk's office in recording documents and instruments and in performing the duties enumerated in amounts not to exceed those specified in this section."
- FS 28.24(10) states that the list of charges includes receiving money into the registry of the court. FS 713.24(1)(a) allows the transfer of a lien to security to be made by depositing a sum of money into the clerk's office.
- FS 713.24(2) states "Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court."
- In regard to transfers of judgments to bonds, FS 55.10(5) authorizes depositing in the clerk's office a sum of money as an approved transfer method.
- FS 55.10(6) contains identical wording to FS 713.24(2), making such deposits as payments into the court.

Florida Attorney General Opinions (AGOs) further define and clarify such deposits as paid into the registry.

- AGO 83-07 states "Thus, money deposited with the clerk pursuant to FS 713.24(1) is, in my opinion, paid into the registry of the court..."
- AGO 94-15 establishes the period for which the Clerk must retain funds deposited into the registry, and peripherally defines deposits "transferring a judgment lien to security pursuant to section 55.10(6)" as deposits into the registry. The subject line of AGO 94-15 reads as "RE: CLERK OF COURT--PUBLIC FUNDS--REGISTRY OF COURT--length of time Clerk of Court should keep funds deposited into registry of the court transferring judgment lien to security."

- AGO 2001-50 specifically addresses the mandatory nature of the collection of charges for receiving money into the registry of the court. This opinion refers to the Fourth District Court of Appeals (4th DCA) statement that FS 28.24, by using the word "shall", makes collection of the fees enumerated therein mandatory upon the Clerk. The 4th DCA statement appeared in discussion of a lower court's ruling to have the registry fees returned upon set aside of a foreclosure sale; the Clerk appealed and won based on the mandatory nature of the statutory collection of registry fees.

During our audit, we reviewed transfer bond practices documented on the websites of nine other Florida counties. In seven of the nine counties, the websites contained clear instructions (including calculation examples and guidelines) that demonstrated the Clerk's offices were collecting registry fees on such deposits. These seven counties included: Broward, Citrus, Collier, Flagler, Lee, Orange, and Pinellas. In Orange County, the function rests within the Comptroller's Office, as such duties are separated from the Clerk's Office in that county.

Pursuant to Section 28.24, Florida Statutes, the fee for receiving money into the registry of court is: 3% of the first $500 and 1.5% for subsequent amounts. Based on the estimated cash bond balances on hand as of February 28, 2015 ($535,758) as well as the cash bonds paid out from January 1, 2007 through February 28, 2015 ($12,159,409), the registry fees that could have been charged and collected totaled $193,478.

Recommendations:

A. Obtain Chief Officer approval and initiate the process of charging and collecting registry fees on the cash amounts paid into the Clerk's Office to transfer real estate liens or judgments to cash bonds. Registry fees should be charged and collected in accordance with FS 28.24.
   Target Completion Date:

B. Develop and implement procedures for the new process (defined in A. above) and provide training as needed to Clerk staff.
   Target Completion Date:

Management Responses:

A. Actions will be taken to implement the recommendations.
   Target Completion Date: 10/1/15

B. Actions will be taken to implement the recommendations.
Target Completion Date: 10/1/15

3. Disposition of cash transfer bonds can be facilitated by more proactive efforts.

Opportunities exist to more efficiently research and dispose of cash transfer bonds that are reported as open on Clerk's records and the general ledger.

Cash transfer bonds can be released under a number of different circumstances. For example:

- If no court action has occurred during the legal life of a lien (or one year if no court action has been initiated to enforce the lien), the bond can be returned to the principal on request.
  - Alternately, the owner of the property against which the lien is placed may file a notice of objection to the lien. If the lienor does not initiate action to enforce the lien within 60 days of service of the notice, the life of the lien ends at the end of that 60-day period.

- If a court action has been initiated to enforce the lien, but the action is not modified to include the bond principal (or the surety) within one year, the action can be deemed (by court order) no longer valid and the bond returned to the principal.

- If the court action has gone to judgment and a bond is deposited, the bond carries the same life as the judgment. Failing further action during the life (generally ten years) of the judgment, the judgment can be deemed no longer valid and the bond can be returned to the principal (by court order).
  - Alternately, the court can order disbursement of the bond to a particular party or parties in the court action (by court order).

Each spring, Clerk's Finance sends to operating units throughout the Clerk's Office a listing of balances on deposit that have been on hand since prior to the beginning of the calendar year immediately before the listing is referred. For example, the most recent of those listings was submitted to units in April 2014 and included all on-hand balances that had been received on or before December 31, 2012. The purpose of this listing is to

determine which balances can be advertised in the Palm Beach Daily Business Review (DBR) as unclaimed funds.

The ongoing recordkeeping requirements (e.g., maintaining active files for extended periods of time and researching the bonds each year to confirm the balances are still outstanding) are onerous, which could be eased by reducing the number of bonds kept active. The most recent annual advertising list provided to the Recording Specialized Intake Unit for review included 67 line items, the current Finance subsidiary comprised 65 line items, the current transfer bond pending sheet included 150 items with cash balances, and the individual bond balance sheets included 61 sheets with cash balances. Reconciling the multiple sets of records, as recommended in Observation #1 (Page 6), can assist in reducing the workload. However, taking proactive steps to allow release of cash transfer bonds could further reduce the recordkeeping and reconciliation burden.

Eight outstanding bonds, dated as early as 1997 and as recently as 2011, serve as good examples of the need for the Clerk's Office to be more proactive in facilitating release of cash transfer bond balances.

Bond Number	Date	Balance	Case Number	Dismiss Date
2011 0195783	5/27/11	$4,066.82	2011CC006599	12/16/13
2008 0145898	4/17/08	$2,181.32	2008SC010005	9/04/08
2006 0515824	9/7/06	$3,318.73	2006CA003467	10/03/07
2005 0751482	12/08/05	$28,470.00	2006CA006072	5/23/08
2003 0157435	3/20/03	$5,363.69	2002CC028599	9/30/04
2003 0254531	5/05/03	* $100.00	2003CC008514	6/23/04
2000 0378506	10/03/00	$4,120.00	2000CC012974	10/09/01
1997 0243576	7/10/97	$2,288.23	M 1981 2622 S	4/9/81

** A total of $6,171.98 was deposited for this bond. The court ordered release of $6,071.98 on June 23, 2004 and the balance of $100 has been outstanding since that time.*

Our research identified the following observations related to these eight bonds.

- Each of these eight bonds were shown on annual advertising responses from the Specialized Intake Unit as requiring a court order to release – five bonds for the last five years in a row and one bond for seven years.

- Parties entitled to these bonds (in accord with the disposition documented in the Banner system case files and/or Clerk's Official Records) remained identifiably active. All eight reside in Florida, of which six reside in Palm Beach County.

- The $100 balance shown for bond 2003 0254531 appeared to be the subject of a final docket dated November 16, 2005 in the Banner Courts case file, which indicated that amount was disposed by a check made payable to the Clerk & Comptroller.

- Research was complicated by the following factors:
  - ✓ One of the bond principals was categorized as "unknown dep" on the current Finance and Specialized Intake Unit records.
  - ✓ One of the bonds involved didn't have a balance sheet as required.
  - ✓ One bond had been overridden with data referring to a different bond.
  - ✓ In one case, multiple bonds were involved (including 2006 0515824) and four of five bonds had already been released – only one of which was required to obtain a court order prior to release.

We noted that during calendar year 2009, Recording's Specialized Intake Unit sent out notifications of bond balances that would be forfeited if not claimed. The notifications stated that balances were on hand as of July 31, 2009, and would be forfeited under FS 116.21 if action was not taken by September 15, 2009. These reminders were, according to Specialized Intake staff, only sent out that year.

Recommendations:

A. Permit advertising of available cash bond balances that are pending court orders to release the bonds.

B. Reinstitute the issuance of reminder letters to relevant parties in regard to open cash transfer bond balances.

Management Responses:

A. This applies to cases which are closed or have exceeded the time limit for initiating a court action. Advertising will be performed in conjunction with the annual (July) advertising review performed with the Finance department.
Target Completion Date: 6/30/16

B. This applies to cases which are closed or have exceeded the time limit for initiating a court action. Letters will be sent as part of the annual (July) advertising review performed with the Finance department.
Target Completion Date: 6/30/16