

**CLERK & COMPTROLLER
PALM BEACH COUNTY
CIRCUIT CIVIL DIVISION
TAX DEEDS & FORECLOSURES AUDIT**



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**Division of Inspector General
Audit Services Unit
January 18, 2018**



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

We conducted an audit of the Tax Deeds & Foreclosures Department, which was included in the audit plan.

Our risk-assessed 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 the report are not all-inclusive.

The audit disclosed that the Tax Deeds & Foreclosures Department was operating in a generally satisfactory manner. Various opportunities for improvement were noted during the audit.

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

Respectfully submitted,

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Executive Summary

An audit of the Tax Deeds & Foreclosures Department was performed by the Clerk & Comptroller's Division of Inspector General. This regularly scheduled audit was included on the annual audit plan.

The Tax Deeds & Foreclosures Department (Department) is responsible for handling the planning, scheduling, and execution of tax deed and foreclosure sales in Palm Beach County. The Department utilizes an internet-based electronic auction system, supported by Grant Street Group, to maintain bidder accounts and process sales.

The objectives were to: perform a risk assessment to identify risks and vulnerabilities impacting the Department processes, evaluate the overall effectiveness and efficiency of the Department processes 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.

The audit disclosed that the Tax Deeds & Foreclosures Department was operating in a generally satisfactory manner. The audit identified certain policies and practices did not ensure strict adherence to Florida Statutes and administrative orders though the Clerk's office was generally acting in accordance with the court's direction. Partitions were not in place to separate and protect clerks accepting payments from customers. Opportunities were identified to improve monitoring and case resolution activities over tax deed surplus items, which totaled \$9.2 million as of August 7, 2017. Additional improvement opportunities were noted to implement performance measures and related reporting to monitor the key departmental processes and objectives.

This report contains eight observations and eight recommendations.

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Introduction

Overall Conclusion

The audit disclosed that the Tax Deeds & Foreclosures Department was operating in a generally satisfactory manner. The audit identified certain policies and practices did not ensure strict adherence to Florida Statutes and administrative orders though the Clerk's office was generally acting in accordance with the court's direction. Various improvement opportunities were noted in strengthening physical security features for clerks accepting payments from customers, monitoring and case resolution activities over tax deed surplus items, and implementing performance measures and related reporting over key processes.

Objectives, Scope and Methodology

The Clerk's Audit Services Unit of the Division of Inspector General conducted an audit of the Tax Deeds & Foreclosures Department. This regularly scheduled audit was included on the annual audit plan.

The objectives were to: perform a risk assessment to identify risks and vulnerabilities impacting the processes, evaluate the overall effectiveness and efficiency of the tax deeds and foreclosure processes 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 order to meet these objectives, we conducted interviews and reviewed departmental policies and procedures. We identified the pertinent Florida Statutes and other laws and regulations. We performed a risk assessment of the Tax Deeds & Foreclosures Department functions by documenting workflows and activities, identifying key risks, and evaluating the adequacy of the internal control environment to mitigate the risks identified. Audit testing was designed for the risks representing higher vulnerabilities to the Department and Clerk's organization.

We performed other procedures that were deemed necessary under the circumstances. This audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

Background

As part of her duties, the Clerk serves as Clerk of the Circuit Court. In that function, the Clerk's Office provides support services for Civil and Criminal Courts within the Fifteenth Judicial Circuit for the state of Florida. The Tax Deeds & Foreclosures Department, within Circuit Civil, performs two discrete functions – processing tax deed sales and foreclosure sales. For fiscal year ending September 30, 2017, there were 4,617 foreclosure sales scheduled with 2,468 cancelled (53%) and 1,147 tax deed sales scheduled with 896 cancelled (78%).

Tax deed sales are initiated based on input from the Tax Collector's office through applications for tax deeds made by tax certificate holders for properties with unpaid taxes. Foreclosure sales are initiated by court order in cases where property mortgages or other commitments (e.g., mechanic's liens, association assessments) are unpaid and resolution of the outstanding debt has not been achieved through legal action. The Tax Deeds & Foreclosures Department receives and processes paperwork for the two functions, receives payments for initial deposit, conducts sales through the on-line auction sales portal supported by Grant Street Group, issues titles based on sales, and disburses proceeds of sale as appropriate. The results of the sales are recorded in official records for the county. The Grant Street Group portal allows on-line registration of potential bidders, advance deposits by prospective bidders through ACH transfers, on-line bidding and recording of results of sales, and maintenance of files and records involving the sales. The Department also coordinates efforts with Clerk's Finance to ensure receipts and disbursements are timely accounted for and properly recorded in the Clerk's financial records.

The Tax Deeds & Foreclosures Department is supported by 26 employees under the direction of Joyce Conway, Esq., Manager – Court Operations. The budget for FY 2017 was \$1.6 million, with 97% allocated to departmental employee compensation and benefits.

Observations & Recommendations

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. Foreclosure Sale Cancellation / Rescheduling Motions are not filed timely.

Foreclosure Sale Cancellation / Rescheduling Motions are not filed in a timely manner in accordance with Administrative Order (AO) 3.301 issued by the Fifteenth Judicial Circuit. The AO was reissued on May 5, 2010, and states that "This motion shall be filed at least seven (7) business days before the sale date and must be set on the Uniform Motion Calendar."

Statistics maintained by the Tax Deeds & Foreclosures Department for fiscal year 2017 show that on average 53% of foreclosure sales were cancelled after having been set. The vast majority of the cancelled sales were rescheduled for another sale date. The Foreclosures staff had to re-perform a significant amount of work as a result of the cancellations and rescheduling.

A significant number of the foreclosure sale cancellations in Palm Beach County result from court orders cancelling and rescheduling the sales. The Fifteenth Judicial Circuit recognized the impact that cancellations have on the Clerk staff (as well as the judiciary) and issued an Administrative Order requiring any party who wishes to cancel and reschedule a foreclosure sale to file a motion at least seven business days before the sale date.

Our review of the on-line auction calendar identified sales cancellations ordered on the day of or one business day prior to the proposed sale date in many instances, as summarized below.

- A review of August 2017 activity identified 39 foreclosure sales cancelled by judicial order signed the same day or one business day prior to the scheduled sale date, 32 of which had motions filed less than the required seven days before the sale date.
- A review of March 2017 activity identified 58 foreclosure sales cancelled by judicial order signed the same day or one business day prior to the scheduled sale

date. Our sample review indicated 9 of 13 cases had motions filed less than the required seven days before the sale date.

- Our review of these two months identified two instances (one in each month) in which the auction calendar is annotated "order to cancel sale rec'd post sale". Foreclosures staff contacted the successful bidders and notified them that the sale had been cancelled by judicial order and they would not take possession of the property.

Recommendations:

A. The Clerk's Office should consult with the judiciary regarding AO 3.301 to address the following.

- Determine whether the judiciary intends the seven day advance filing to be enforced.
- Determine whether hearings to discuss the motions to cancel and reschedule can be set sufficiently in advance of the scheduled sale to allow the efficient and effective case management contemplated by the AO. If the judiciary agrees with and intends to enforce the AO, civil court operations should reject motions to cancel foreclosure sales that are not filed at least seven business days prior to the scheduled sale date.
- If any changes are made by the judiciary, Foreclosures management should coordinate with Civil Court operations to ensure continued timely processing of judicial orders and e-filed orders that may impact foreclosure sales.

Management Responses:

A. The Clerk's Office has discussed this issue with Court Administration. We believe this may have been put in the administrative order during the height of foreclosures. Court Administration has requested additional time to respond. Management will provide an updated action plan based on these discussions.

Target Completion Date: 3/31/2018

2. Clerk Administrative Policy 93-5 is not in strict compliance with Florida Statutes.

Clerk Administrative Policy 93-5 is not in strict compliance with Section 197.542(2), Fla. Stat., which requires full payment for tax deed sales to be submitted within 24 hours.

Clerk Administrative Policy 93-5 sets a specific deadline for payment in full for tax deed sales, which is 2PM of the business day subsequent to the sale. Section 197.542(2), Fla. Stat. states that "If full payment of the final bid and of documentary stamp tax and recording fees is not made within 24 hours, excluding weekends and legal holidays, the clerk shall cancel all bids, readvertise the sale as provided in this section, and pay all costs of the sale from the deposit".

Tax deed sales are conducted and close in the morning. Payments received by 2PM would not be within 24 hours of the sale. Tax deeds are conducted on-line, once or twice a month, depending on volume of activity. Auctions open at 9:30AM, although bids can be placed and will be accepted beginning at 8AM the day of the auction. Over a three-year period from June 2014 through May 2017, one tax deed sale was conducted each month. On average for that period, the sale ended approximately at 10:07AM (the earliest sale end time was 9:44AM and the latest sale time was 10:48AM). Therefore, the Clerk-specified deadline for submitting final payment was always over three hours later than the 24 hours specified by Florida Statute.

A review of websites of other counties in Florida in which final payment deadline information was readily available disclosed that 39 of 46 counties appeared to satisfy the statutory requirement by requiring final payment within 24 hours.

Recommendation:

- A. Revise the deadline for submitting final payments for tax deed sales in Clerk policy as well as on the Clerk and vendor websites to comply with Florida Statutes.

Management Response:

- A. Some time ago, the Clerk's Office instituted the 2:00PM time limit. Due to the large volume of sales in this Circuit, the 2:00PM timeframe was carefully researched and believed to be the most efficient way to serve the customer. Setting the 2:00PM deadline is well within the Florida Statutes.

Target Completion Date: Completed

Division of Inspector General Follow-up Comment to Management Response:

We understand the operational challenges in monitoring whether full payment is made within 24 hours of the exact time of each tax deed sale transaction to ensure strict adherence to Section 197.542(2), Fla. Stat. We discussed this issue with Clerk Legal Counsel. In their opinion, the 2:00PM deadline has been in place for years, provides

additional time (2-3 hours) for customers to make final payments, and reduces the risk of customer complaints and potential mishandling errors by Clerk staff. The Clerk Legal Counsel concurs with the continuation of this policy.

3. Foreclosure sales may not be scheduled within the time requirement defined in Florida Statute.

Foreclosure sales may not be scheduled within the timeframe defined by Florida Statutes. Section 45.031(1), Fla. Stat. states that the “court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days or more than 35 days” after the date of the final judgment or order. In addition, “a sale may be held more than 35 days after the date of final judgment or order if the plaintiff’s attorney consents to such time.”

Foreclosure sales dates are entered into the final judgment or order by the judiciary based on available sales dates provided for each foreclosure hearing date by the Foreclosures staff. Our review disclosed the following examples of foreclosure sales scheduled more than 35 days after the date of final judgment/order.

- On August 2, 2016, foreclosure sale dates were scheduled at five day intervals from 30 days up to 75 days, and then at longer intervals as far out as 180 days.
- On May 17, 2017, foreclosure sale dates were scheduled beyond the 35 day timeframe in July 2017 (111), August 2017 (71), September 2017 (28), October 2017 (4), November 2017 (2), and as late as January 10, 2018 (1).
- On November 8, 2017, foreclosures sale dates were scheduled beyond 35 days in January 2018 (172), February 2018 (33), March 2018 (5) and April 2018 (4).

Recommendation:

- A. Consult with the judiciary and determine if fewer available foreclosure sales dates should be scheduled with the intent of concentrating sales within the 35 day timeframe established by Florida Statutes.

Management Response:

- A. This will require a discussion with Court Administration since the judge controls when the sale will happen. Most judges give the homeowner the ability to avoid the

foreclosure. The additional time is usually approved by the "Banks" since they actually do not want to become homeowners and would prefer the homeowner to either sell or pay. Court Administration has been advised. Management will provide an updated action plan based on these discussions with Court Administration.

Target Completion Date: 3/31/2018

4. Physical security features require enhancement for clerks accepting payments at the front counter.

Physical security features require enhancement for clerks accepting cash and other payments at the Tax Deeds & Foreclosures front counter. The current office configuration does not adequately protect the clerks from potential attack nor adequately safeguard the funds from possible theft by customers.

Specifically, there are no glass or other partitions separating the clerks from the customers. Clerk desks are directly behind the waist-high counter where the customers arrive to conduct business and provide payments. While payments are not received daily, cash amounts vary and are frequently significant. On one day of our review (November 6, 2017), we noted one customer paid cash, which two Clerk staff members counted using the automated bill counter in multiple stacks of \$8,000 each. Management stated that on another occasion, one customer made a cash payment of \$237,000.

Clerk management has requested improvements to the area in the form of surveillance cameras and a major project to install glass partitions. The cameras were installed and operational as of November 1, 2017, though management stated they do not have access to video recordings for ongoing review in their offices. The partition project is dependent on available county funding. The Capital Improvement Project (CIP) for this enhancement was submitted to the County staff on January 15, 2016.

Recommendation:

- A. Confirm the requested Capital Improvement Project is still active, and emphasize the large amounts of cash processed in this Department to ensure proper prioritization.

Management Response:

- A. Clerk Facilities has confirmed that the Capital Improvement Project (CIP) is set to install front counter glass for 2019.
Target Completion Date: 6/30/2019

5. Tax deed surplus monitoring and case resolution activities require improvement.

Current practices and tools used in tax deed surplus monitoring and resolution activities require improvement. For example, management utilizes an Excel spreadsheet to monitor surplus balances though actions taken and pending to disburse surpluses are not adequately documented.

As of August 7, 2017, the tax deed surplus spreadsheet included 397 surplus items outstanding, with amounts ranging from \$.01 to \$420,536.90, and a total balance of \$9,161,134. For tracking purposes, the spreadsheet shows the sale date, tax certificate number, amount of surplus, existence of pending claims, possible owner of surplus (if included on the Ownership and Encumbrances (O&E) report provided through the Tax Collector's office), and the last known state in which those possible owners reside. Further review of the spreadsheet line items and related surplus balances indicated various levels of updates were recorded including: some notations about actions underway or planned to disburse the surpluses, no notations, pending claims, or no pending claims. Substantive indicators of their status were not recorded for a substantial portion of the pending surplus amounts.

Discussion with the Tax Deed staff indicated that some level of review of these line items has taken place over time and is not always documented (annotated) on the spreadsheet. Tax Deed management acknowledged that there is a backlog of surpluses to be traced and actions to be initiated. In many cases, the indication that there are multiple possible claimants for the surplus forces initiation of an interpleader action to gain court directions on how the surplus should be disbursed. Additionally, the lack of certain identity of an owner of all or specific parts of the surplus prohibits transfer of the surpluses to the State of Florida as unclaimed funds.

Initiation and resolution of court action is often a long drawn-out process. The surpluses noted in the spreadsheet (summarized below) include amounts from sales ranging from 2009 (< 1%) to current year 2017 (25%) though some of the current year amounts are for sales still in the process of surplus notification and responses to the notifications, if received, have not yet been analyzed or prioritized.

Sale Year	Surplus Total Balance	Percentage
2009	\$13,345	<1%
2010	\$0	0%
2011	\$61,633	1%
2012	\$236,975	2%
2013	\$790,712	9%
2014	\$1,277,165	14%
2015	\$874,905	9%
2016	\$3,641,098	40%
2017	\$2,265,301	25%
Total	\$9,161,134	100%

Recommendation:

- A. Enhance the tax deed surplus monitoring process by regularly updating the spreadsheet with actions taken and the pending status. Continue efforts to reduce the tax deed surplus balances.

Management Response:

- A. The Tax Deed team intends to keep the spreadsheet updated and engage the Self Service vendor attorneys to assist in completing bringing the list up to date.
Target Completion Date: 12/31/2018

6. Opportunities exist to implement performance measures and related reporting.

Opportunities exist to implement performance measures and reporting used to monitor Clerk’s Tax Deeds & Foreclosures processes. Performance measures and related reporting

add value to the organization when linked to Clerk strategic objectives, operating department objectives, and compliance with laws and regulations.

Various checklists and spreadsheets are used by the Department supervisors to monitor work activities. Performance measures and related periodic reporting are not currently in place, which would enable management to more effectively monitor performance and ongoing compliance with laws and regulations. Numerous Florida Statutes and administrative orders govern the Department's activities, which should be considered in developing the key performance measures.

An optimal performance management system should identify the efficiency and effectiveness of the various processes and attempt to identify the timeliness and accuracy of outputs to assess how well the Department is achieving its objectives.

Recommendation:

- A. Establish key performance measures linked to primary departmental objectives to enable comparison of actual versus desired results, including monitoring compliance with laws and regulations. Implement periodic management reporting of these key performance measures to enable optimal decision making over areas such as workload, productivity, timeliness, accuracy, and staffing requirements.

Management Response:

- A. The Business Analyst will assist in creating a spreadsheet that allows the employee to update their work information daily. The employees' information can, in turn, be compiled with all the other employees to help measure each clerk's workload and the ability to monitor compliance.

Target Completion Date: 3/31/2018

7. Foreclosure sales information on the Clerk public website requires update.

The Clerk's public website provides outdated foreclosure sale information.

The Clerk's public website describes production of certificates of title as seriously delayed by staff and budget cuts, referring to 2009 problems, historic levels of foreclosures, and supplemental funding provided in 2010 to assist in clearing the backlogs. While staffing and budget have not been restored, the references to problems beginning in 2009 and particularly to an article from 2010 highlighting budget gaps as of 2010 do not clearly connect the difficulties to the current situation.

Additionally, the Clerk's public website provides information about foreclosure sales that states sales are held five days-a-week, while the sales have generally been held only four days-a-week since a change occurred in September 2016. The website was correctly updated in November 2017.

Recommendation:

- A. Update the information on the Clerk's public website to reflect current conditions.

Management Response:

- A. Management sent an email on August 20, 2017 to Clerk Communications to update the website. We reviewed to ensure all information was up to date.
Target Completion Date: Completed

8. Certificates of disbursement incorrectly identify Sharon Bock as a Deputy Clerk.

Certificates of disbursement incorrectly identify Sharon Bock as a Deputy Clerk.

Beginning in June 2016, certificates of disbursement (COD) in foreclosure sale cases in Palm Beach County have been issued indicating that Sharon R. Bock is "A Deputy Clerk for Clerk And Comptroller". CODs issued prior to May 31, 2016 as far back as July 14,

2014 correctly indicate that Sharon R. Bock is the "Clerk & Comptroller, Palm Beach County".

In both the earlier cases and the most recent cases, the COD is signed for Bock by the deputy clerk processing the COD, with the seal, printed name, and signature.

Recommendation:

- A. Certificates of disbursement should correctly reflect that Sharon R. Bock is the Clerk & Comptroller, not a deputy clerk for the office.

Management Response:

- A. We contacted our vendor, Grant Street, and the necessary changes were made to have it corrected.

Target Completion Date: Completed