

**AUDIT REPORT –
NEW CASTLE
COUNTY SHERIFF’S
OFFICE**

*Final Report
February 15, 2012
from the New Castle
County Auditor’s
Office*

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Audit Report – Sheriff’s Office

To: Trinidad Navarro, Sheriff
Stuart Snyder, Chief Deputy

Overview

The Sheriff’s Office (the “Office”) executes the service process of court-approved documents to named defendants and other parties, as well as the auction of real estate and personal/business property that has been foreclosed upon due to the non-payment of a mortgage, debt, or various local government taxes/liens (real estate only). Additionally, the staff coordinates the completion of court-ordered wage attachments and evictions. The Office interfaces routinely with the courts, attorneys, other New Castle County (NCC) departments, incorporated municipalities throughout NCC, lenders, and the citizens of NCC to ensure its duties are carried out in accordance with all relevant laws and regulations and with a high degree of professionalism. The efforts of the Sheriff’s Office generated approximately \$7 million in gross revenue for NCC in Fiscal Year (FY) 2011. This is a substantial increase from FY 2010 revenues of approximately \$5.2 million.

Sheriff’s Sales

The largest contributor to the Office’s revenue is the commissions generated from Sheriff’s Sales of real property; these were approximately \$5.8 million in FY 2011. The Office conducts these sales monthly and, in FY 2011, facilitated the sale of approximately \$157 million (in winning bids) of foreclosed real estate, an average of approximately \$13 million each month. (Please note that the Sheriff’s Office does not collect the winning bid on “buybacks”, where the entity foreclosing upon the property “buys back” the property at the sale. Therefore, the amount collected by the Office is substantially less than the amount of winning bids.) The Office handles all facets of the sale including the advertising, communication to relevant parties, the auction itself, collection of funds from winning bidders, accounting for the funds, and disbursements to all parties who are legally due portions of the sale proceeds. Per NCC Code, 4% of the winning bid is retained by the Sheriff’s Office (with a maximum commission of \$10,000). Other statistics for FY 2011 include:

- There were 3,443 properties scheduled for Sheriff Sale, with 1,182 of these actually going to sale. The others were “stayed” before or on the date of the sale. This is a monthly average of 287 properties scheduled for sale and 99 properties actually sold.
- Approximately \$20.7 million was collected by the Sheriff’s Office in FY 2011, a monthly average of approximately \$1.7 million. The majority of these funds were collected for Sheriff’s Sales. The Office also handled the disbursements of these funds to NCC and other third parties.

The sale of personal and business property (referred to as “Goods & Chattels”) is also conducted by auction; these events are held outside of NCC offices. Auctions are generally held on-site where the property has been previously located by a Sheriff’s Deputy. This requires significant effort by the Office to coordinate with the Plaintiff’s attorney and the Defendant to ensure all parties and property are in attendance at the scheduled time and designated location. Because the value of the property is significantly lower than real estate, these sales do not normally result in a high enough winning bid to result in significant revenue for the Sheriff’s Office. (The fee is 3% of the winning bid.)

Service of Court Documents

The process of serving court documents falls into two categories: the receipt, logging and assignment of the documents to be served (as well as the related fees) and the actual service of the documents by Sheriff’s Office Deputies. During FY 2011, the Sheriff’s Office received, entered and assigned over 28,000 new documents. Please note that many documents involve service to multiple parties. Sheriff’s Deputies made over 62,000 attempts to serve the documents with a completed service rate of 81% (remaining 19% returned to issuing court). Documents for which the named defendant cannot be located to complete service are returned to the court “Non-Est”. Deputies are required to complete an extensive search to locate an individual before declaring the document undeliverable. In these situations, it is not unusual for a Deputy to complete five or more delivery attempts, as well as numerous phone calls, over the course of three weeks before the Office returns the document to the Court.

Over the last several years, the economic distress experienced across the U.S. has resulted in significant increases in the volume of legal actions pursued through the courts. This trend has certainly permeated Delaware and NCC. In turn, it has created a substantially heavier workload for the Office and has challenged the Office’s abilities to provide efficient, accurate service levels for all its delegated responsibilities. Efforts to increase process efficiency and effectiveness, primarily through the implementation of a new version of Civil Serve in 2010, have enabled the staff to absorb much of the higher volume. Productivity losses due to illness, vacations, and military service do strain the team at times. The group meets its commitments due in large part to the extensive knowledge and dedication of the staff whose average tenure exceeds 14 years (excludes Sheriff and Chief Deputy).

An organization chart is presented as Appendix A to this report.

Audit Objectives

At the request of the NCC Sheriff, the County Auditor’s Office performed a comprehensive audit of internal controls over the activities of the Sheriff’s Office. The overall objective of the audit was to provide (1) recommendations on enhancements in

the Office to strengthen internal controls and to improve effectiveness and efficiency, and (2) an opinion on the internal controls in the Office which help to ensure the following objectives:

- Revenue: The Office is timely collecting all revenue to which it is entitled, the revenue is adequately safeguarded and properly accounted for, and funds due to the County are being remitted on a timely basis.
- Expenditures: Expenditures are properly authorized, are made for legitimate purposes, and are properly accounted for.
- Assets: The Office's checking account(s) is adequately safeguarded, is periodically reconciled to an independent source, and is not reflective of unauthorized or improper disbursements. The Office's accounts receivable is being managed appropriately and reflects the actual amounts owed to the Office.
- Liabilities: The Office maintains adequate records of funds due to third parties and is paying liabilities within a reasonable timeframe, and has proper authorization for all disbursements.
- Management Reporting: Management is receiving adequate reports to enable it to make well-informed decisions on the Office's affairs.
- Compliance with Laws & Regulations: The Sheriff's Office is in compliance with relevant sections of County and State Codes as well as its own internal policies.

Scope

We conducted our audit in accordance with standards promulgated by the Institute of Internal Auditors and the United States General Accounting Office. Our audit encompassed testing of the following:

- The set-up of court documents on the Civil Serve System.
- The service of court documents to defendants and other parties.
- For Sheriff's Sales, the set-up on Civil Serve of information not contained in the court document such as taxes owed to NCC and other municipalities.
- Disbursements of fee income to NCC.
- Disbursements to municipalities, including NCC, entitled to portions of proceeds from Sheriff's Sales (e.g., unpaid property taxes).
- Disbursements to third parties, other than municipalities, entitled to portions of proceeds from Sheriff's Sales (e.g., law firms representing banks and mortgage companies).
- Disbursements to municipalities of real estate transfer taxes.
- Disbursements to the Prothonotary's Office of excess proceeds on Sheriff's Sales.
- Refunds.
- Daily settlement of funds received by Office.
- Monthly bank statement reconciliations.

We also analyzed the following:

- Status of comments and recommendations from 2007 audit report on Sheriff's Sales.
- Available Civil Serve reports and the Office's use of them.
- Security user profiles within Civil Serve.

- Office security, particularly that over checks.
- Conversion to Civil Serve Version 4.
- Efforts to reduce accounts receivable balances.
- Support requests to Soft Code (the vendor for Civil Serve).
- Office's policies and procedures.
- Interaction between Sheriff's Office and NCC Treasury Division.
- Efforts made to identify funds in Version 3 checking account.
- Office's compliance with State and County Codes and Superior Court rules.
- The work of the Finance Department's Control Self Assessment Unit in the Sheriff's Office.
- Camden County N.J. Sheriff's Office's use of Civil Serve Version 4.

We also performed an investigation concerning time and attendance records, and found an anomaly pertaining to an employee who is no longer employed by NCC. The results of such investigation are a personnel matter and thus will be reported to management in a separate, confidential memorandum.

Please note that, although we did document the processes for goods & chattels sales and wage attachments, we did not test such transactions and, accordingly, do not express an opinion on them.

Professional auditing standards require that we plan and perform the audit to obtain reasonable assurance whether internal controls are adequate in all material respects. Our audit of internal control included obtaining an understanding of the internal controls over the major functions within the Office, testing the operating effectiveness of the controls, and performing such other procedures as we considered necessary in the circumstances.

Our evaluation of internal control may reveal three categories of internal control deficiencies. The first two categories are of a much greater magnitude than the third category.

- A Material Weakness is a matter that, in our judgment, could adversely affect the Sheriff's Office's ability to accomplish its major objectives. **There are 2 Material Weaknesses in this report beginning on page 16.**
- A Significant Deficiency is a control exception that is of a lesser magnitude than a material weakness; however, it could potentially have an adverse impact upon the Sheriff's Office's ability to accomplish its major objectives in the future and, therefore, warrants management's attention. **There are 5 Significant Deficiencies in this report beginning on page 22.**
- Other Reportable Items are opportunities for improvements in the system of internal control. There are 13 Other Reportable Items in this report, beginning on page 33.

In general, our testing involves audit sampling. We evaluate the results of the tests and use professional judgment, based on the number of exceptions and/or the materiality of such exceptions, whether to include exceptions in the audit report and, if so, in which

category to include them. In some cases, we perform additional testing to help us obtain additional audit evidence in making such evaluation and determination.

Because the scope of an audit does not allow us to examine every single function and transaction performed by an area, an audit would not necessarily disclose all matters that might be material weaknesses, significant deficiencies, or other reportable items.

Opinion

In our opinion, internal controls need improvement, primarily in the Sheriff's Sale function, and we have worked with the Sheriff's Office to identify areas where control enhancements can be made.

Our audit did not reveal any instances of irregularities such as misappropriation of funds, mismanagement of funds, unauthorized activities, etc. We believe the staff members in the Office perform their duties very well, are conscientious in the performance of their job responsibilities, and do everything they can to ensure the functions of the Office are handled appropriately and in accordance with policies, procedures, laws, and regulations. However, with the volume of activity in this Office, we do believe that additional controls are necessary to limit the Sheriff's Office's risk of processing transactions incorrectly. We are primarily concerned with Sheriff's Sales because of the millions of dollars which the Office processes with respect to these transactions.

We have identified two material weaknesses which begin on page 16 and are as follows:

- **Additional Control over Sheriff's Sale Processing:** Because there are limited second reviews of the various aspects involved with Sheriff's Sale processing, we are concerned that an error or omission could be made and not be detected on a timely basis.
- **Office Security:** There is little impediment to visitors freely roaming around any area of the Sheriff's Office and having access to checks, court documents, and staff members. It would be extremely embarrassing if the Sheriff's Office lost a check and had to request another one from the issuer. There could be significant adverse consequences if a sensitive court document (such as a witness subpoena) was stolen and used for the wrong purpose.

Separate Memorandum to Superior Court

In analyzing the court writs the Sheriff's Office receives from Superior Court, we identified certain issues which fall under the purview of the Superior Court and we believe should be addressed by them. Therefore, we are issuing a separate memorandum to the Chief Justice of the Superior Court and to the Prothonotary's Office (the administrative arm of the Superior Court).

The Sheriff's Office does not have any control over the format and accuracy of the Court writs. However, we believe the lack of standardization of such writs increases the risk that amounts paid from Sheriff's Sale proceeds could be incorrect. The liability most likely would be on the Superior Court, as the Sheriff's Office must assume that the court documents are correct in that they are sworn to by an officer of the Court.

Response

The Sheriff responded to the comments and recommendations, and his responses have been incorporated into this report.

cc: Paul Clark, County Executive
Gregg Wilson, Acting Chief Administrative Officer, County Attorney
Edward Milowicki, Acting Chief Financial Officer
Vincent Meconi, Deputy Chief Administrative Officer
Christopher McBride, Real Estate Coordinator
Ronald Fioravanti, Chief Deputy Sheriff
New Castle County Council Members
New Castle County Audit Committee Members

General Comments on Sheriff's Office

General Comment - Competent, Dedicated Staff

We spent several months working in the Sheriff's Office and had the chance to interact with management and staff. Everyone was receptive to the audit process and seemed open to constructive ideas for improvements. We believe the staff is hard-working, dedicated, and wants the Office to be highly effective. We also believe that the new Administration is setting the proper tone for the entire office by setting a good example as far as work ethic, good communication, and an emphasis on training and continual improvement.

General Comment – Cost versus Benefit of Internal Controls

Internal Audit's responsibility is to evaluate the internal controls management has in place to enhance the likelihood that management's objectives relating to the Sheriff's Office's activities will be achieved. Management must evaluate the comments and recommendations in this report and balance the costs of implementing new or enhanced controls versus the benefits to be derived. We realize that management may elect not to implement a new or enhanced control after weighing the costs versus the benefits.

General Comment - Initiatives Undertaken by New Sheriff

The new Sheriff took office January 3, 2011. Since this date, he has begun several initiatives which we believe warrant mention in this report:

- Savings in advertising for Sheriff's Sales of real estate: The Office has reduced the size of legally-required newspaper ads, resulting in a significant savings in advertising costs.
- Savings in the creation of Sheriff's Sale posters: The Office has utilized software technology to create these posters in-house, eliminating the need to pay an outside printing contractor and resulting in a savings of nearly \$300,000 in the coming year. As a result of this initiative and the one above, the Sheriff's Office proposed, and County Council adopted, an ordinance to streamline fees and reduce the upfront deposit and costs for a Sheriff's Sale of real estate.
- Focused efforts on collection of delinquent fees: The Office dedicated an individual in the Office to focus on collecting delinquent fees on Sheriff's Sales, an effort which resulted in the collection of approximately \$1,100,000 from law firms during the months of May through September, 2011.
- Savings in fuel: The Office issued a memorandum to field deputies with several suggestions to increase fuel economy, resulting in an average of 10% fuel savings, with an effort to save even more.
- Standardization of Deputy Uniforms: The Sheriff's Office now provides the field deputies with standard uniforms to ensure the public readily recognizes them and their lawful authority.

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- Deputy access to County Police crime report database from their cars: This database can be searched to reveal recent police activity for the address being served. The deputy can then determine if he or she may need assistance in serving the location.
- Obtaining grant funding for 50% of the cost of ballistic vests for the Deputies.
- Obtaining grant funds for the first time from the State of Delaware Criminal Justice Council (CJC). Such funds will be used to pay for a projector to be used for presentations to Senior Centers and other groups.
- Request for an internal audit: The new Sheriff requested the County Auditor to conduct a thorough internal audit of the Office's processes and internal controls to ensure the Office is operating under best practices, has sound internal controls, and is operating efficiently and effectively.

General Comment – 2007 Audit Report on Sheriff’s Sales

Version 3 Checking Account

Executive Summary:

- **Risk: There could be inadequate records to substantiate owners of funds in the Sheriff’s Office’s checking account.**
- **Control Concern: Until 2007, the Sheriff’s Office did not maintain adequate records to substantiate the owners of funds in the Office’s checking account.**
- **Recommendation: This situation has been corrected. However, the Office needs to conclude the distribution of the remaining funds in the Version 3 checking account.**

Comment

Background – Pre Civil Serve Version 4

When we performed our 2007 audit of Sheriff’s Sales, the Sheriff’s Office had two accounts relating to Sheriff’s Sale proceeds -- one account to handle Sheriff’s Sale transactions in July 2005 and forward (the “Version 3” account) and one account which handled Sheriff’s Sale transactions prior to July 2005 (the “legacy” account). The reason for establishing the Version 3 account was that the legacy account held funds (primarily excess proceeds from Sheriff’s Sales) for which the Sheriff’s Office did not know the rightful owner. These funds had accumulated in the account over several years. The Sheriff’s Office wanted to “cut off” transactions in this account, establish a new account, and work with the Prothonotary’s Office going forward to ensure that any excess proceeds from Sheriff’s Sales were turned over to that Office. The amount in the legacy account as of June 30, 2006 was approximately \$2.8 million.

When the Version 3 checking account was established in 2005, an Excel spreadsheet was still used to record Sheriff’s Sale transactions, manual receipts were prepared for deposits collected on the day of the Sheriff’s Sale, and manual bank account reconciliations were performed. This was how the Sheriff’s Office had been handling Sheriff’s Sale transactions for years (due to limited manpower, little involvement by the former management team, and little investment in technology).

When concerns were verbally expressed by external auditors and the County Auditor in 2006 (and formally expressed in a County Auditor’s audit report in 2007), a Sheriff’s Office staff member set up the checking account on QuickBooks as a means of having a more effective and efficient bank reconciliation. However, the Excel spreadsheets and QuickBooks were set up separately and were never reconciled against each other. Also, at the time the Version 3 checking account was opened, the Sheriff’s Office scheduled an average of 177 sales a month, with an average of 44 properties actually going to sale.

Today, due to the economic crisis, those numbers are 287 and 99 respectively. As the monthly volume increased, Sheriff's Office management still left a single staff member in charge of the processing and accounting (this has since been addressed), thus making it more difficult for this staff member to make additional improvements in the recordkeeping process.

As this staff member became more experienced with Sheriff's Sales and QuickBooks, he did begin keeping more detailed records in QuickBooks. However, the fact remains that the Sheriff's Office records for the Version 3 checking account continued to be insufficient for a period of time.

In 2007, the Sheriff's Office analyzed every Sheriff's Sale from July 2003 through June 2005 (when the new account was created and the legacy account was "frozen") to determine any instances where:

- There were "excess proceeds" from a sale. "Excess proceeds" represent the amounts remaining from a sale after all outstanding mortgages, liens, and other expenses have been paid.
- The 3% Sheriff's Sale fee was collected but not remitted to the County.
- Buyers of properties had overpaid delinquent property taxes, delinquent water/sewer bills, or other items.

The Office also analyzed checks issued by the Sheriff's Office that had remained "uncashed" for the State of Delaware statutory escheat (unclaimed property) period.

As a result of this analysis, the Sheriff's Office issued checks to New Castle County (two checks totaling \$421,843), the State Of Delaware Unclaimed Property Bureau (multiple checks totaling \$1,067,035), and the State Prothonotary's Office (multiple checks totaling \$1,244,024). Please note that funds were only disbursed to the State if they could be identified with a particular case; therefore, those funds that could not be associated with a particular case remained in the legacy account.

In March 2007, the unidentified funds in the legacy account (approximately \$148,000) were transferred to the Version 3 account. The Sheriff's Office informed us that the majority of these funds are presumed to be interest earned in the legacy account.

In 2007, the Delaware Superior Court established Project Rightful Owner, in which someone believing he/she is entitled to the excess proceeds from a particular sale can complete the process of proving entitlement to the funds. If one can prove entitlement to all or a portion of the excess proceeds, he/she will also receive interest from the time the money was transferred from the Sheriff's Office to the Prothonotary's Office (the administrative arm of the Superior Court). The Sheriff's Office now disburses unclaimed excess proceeds to the Prothonotary's Office 90 days after the confirmation date of the sale. The funds are then listed on the Superior Court's website.

Conversion to Civil Serve Version 4

When the Sheriff's Office made the conversion to Version 4 of the Civil Serve System in April 2010, the Sheriff's Office opened a new checking account for all transactions post-conversion.

Despite insufficient records for the Version 3 checking account (from the inception of the account until sometime in 2007), the Sheriff's Office has recently been able to identify the "resting place" for some of these funds. For example, some funds were identified as unclaimed excess proceeds on Sheriff's Sales and were disbursed to the Prothonotary's Office. Some funds were identified as belonging to attorneys or other third parties.

The Sheriff's Office believes that the remaining funds in this account (approximately \$420,000) belong to NCC as interest and commissions. Also, if any third parties are entitled to any of these funds, they would have contacted the Office by now. We concur with the Sheriff's Office's reasoning in this matter. Based upon our discussions with the Real Estate Coordinator as to the research he performed on the remaining funds in the Version 3 checking account, we agree with the Sheriff's Office that it is more likely than not that these funds belong to the County because:

- The Real Estate Coordinator has strived to identify if such funds belong to anyone else.
- No one has stepped forward to claim the funds.
- The recordkeeping at the time was such that the Sheriff's Office could have missed remitting funds to the County."

Please note that we did not audit the Version 3 funds due to the lack of records for the timeframe this account existed.

Recommendation

The Sheriff's Office should discuss with the Finance Department the research that has been performed on the Version 3 account. If Finance agrees the funds should be distributed to NCC, then the Sheriff's Office should distribute the balance of this account accordingly.

Management Response

Prior to this audit, we have had our real estate coordinator making every effort to distribute the remaining funds that are contained in our Version 3 software. He has been able to distribute a substantial amount by forensically examining each transaction. The problem has been a lack of accurate documentation to verify each and every transaction of real estate sales prior to converting to Version 4. As you are aware, we converted our

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operation to Version 4 in April, 2010. We are currently at a point with this account that we feel that the remaining funds belong to the County. The real estate coordinator discussed with your office our reasoning for why the funds belong to the County, and your office agreed with this reasoning.

We will work with the New Castle County Finance Department in the next few weeks to transition these funds over to the County and close out Version 3.

Postscript

The Sheriff's Office distributed the funds to the County in January, 2012.

Comments & Recommendations - Material Weaknesses

1. Additional Control over Sheriff's Sale Processing

Executive Summary:

- **Risk: Sheriff's Sales may not be processed in accordance with policies, procedures, laws, and/or Court rules.**
- **Control Concern: The processing of Sheriff's Sales is a complicated process; each case has its own unique circumstances. This coupled with the fact that the volume of Sheriff's Sales has significantly increased because of the economy, increases the chances that errors and/or omissions may be made. There is currently little review of the work performed by the staff members involved in the process.**
- **Recommendation: Implement a corrective control whereby a supervisor/manager reviews a sample of Sheriff's Sales each month to ensure the sale was handled in accordance with formal policies and procedures. Tailor the sample size and quality control procedures based upon results of prior reviews.**

Comment

In any agency, a variety of risks may hamper management from fulfilling its responsibilities and achieving its goals. Some of these risks can arise from within the entity itself (e.g., change in personnel), while others may originate outside the entity. Management is responsible for the design, implementation, and maintenance of control-related policies and procedures to control these various risks.

One way of looking at controls is to view them from the perspective of how they work:

- **Preventative Controls:** These prevent mistakes from being made and the cost of correcting mistakes. These are usually automated controls such as the automatic calculation within Civil Serve of the 4% Sheriff's Sale fee. Once they are designed and implemented, they tend to be in place and operate correctly all the time. Preventative controls are the best type of controls.
- **Detective Controls:** These are not as good as preventative controls because, although they detect errors in time to be fixed, the errors still must be fixed. An example of a detective control over Sheriff's Sales is that a staff member, prior to disbursement of funds to NCC, verifies the accuracy of the amount set up on Civil Serve for NCC property taxes.
- **Corrective Controls:** These are the least efficient because they are not performed until the error has already been made. They allow you to correct an error; however, there may be a cost in correcting the error after it has already occurred. An example of a corrective control in the Sheriff's Office is the monthly bank reconciliation.

Due to the economic recession, the volume of Sheriff's Sales has increased dramatically over the last few years. This has resulted in a dramatic workload on existing staff. Such increased workload increases the risk that errors, omissions, and/or inconsistencies may be made in the processing of Sheriff's Sales. As noted in the cover letter of this report, the Sheriff's Office processes millions and millions of dollars and has tremendous responsibility to ensure the Sheriff's Sales are handled in accordance with State and County Code, Court Rules, and general policies.

Although we believe the staff members involved with Sheriff's Sale processing are competent, hard-working, and conscientious, we are concerned that there is very little review of their work. This comment is not at all intended to be critical of the hard work they perform on a daily basis. Our testing did reveal a few errors on the part of Sheriff's Office staff.

- For one case, the purchaser of the property mistakenly paid more than the sales price of the property. The Sheriff's Office returned this excess amount to the Prothonotary's Office instead of the purchaser. The error was corrected when we brought it to the Sheriff's Office's attention.
- For one case, the fee paid to the attorney was approximately \$60 more than what was stated in the judgment because the Sheriff's Office did their own calculation instead of relying upon the explicit dollar amount in the judgment.
- See Appendix B regarding miscalculations of attorneys' fees and interest.
- See comment #23 on page 27 regarding one property not being advertised and one only being advertised in one paper.

In response to our review of Sheriff's Sales in 2007, management implemented segregation of duties over the various aspects of the process. As a result, there are several staff members involved now. For instance, there could be different individuals (1) setting up the initial information on the potential sale, (2) setting up additional information before the sale, (3) setting up additional information after the sale, (4) preparing an invoice where applicable, (5) receipting and applying payments, and (6) making disbursements. In general, these individuals are not reviewing the work of each other (although the individual responsible for disbursements does verify the accuracy of items set up to be paid to NCC).

We also observed that 3 of the individuals involved in Sheriff's Sale processing are "appointed employees." We find this unusual given that these employees are performing the same type of work as other Merit System employees in the Office. Since "appointed employees" are appointed by the Elected Official in the Office, we are concerned that these employees' knowledge and experience could be lost if a future Elected Official decided not to retain them (which could easily occur as such employees do not enjoy the protection of the Merit System).

Recommendations

(1) Implement a corrective control process (similar to testing we did on this audit), whereby a supervisor/manager reviews a sample of Sheriff's Sales each month to ensure the sale was handled in accordance with formal policies and procedures. Examples of items to be reviewed in this quality control process are:

- Items were set up on Civil Serve in accordance with the court writ and information received from municipalities.
- Disbursements on a case appear legitimate and accurate based upon the court writ and information received from municipalities, and such disbursements were made on a timely basis.
- All key documents are in the file.
- If there are unusual items regarding the case (such as a court order rescinding the sale after the date of the sale, a redemption, or the buyer of the property purchasing from the defendant the right to the residual proceeds), review the documentation supporting such items.

As this process evolves, we would expect management to tailor the sample size and procedures based upon the results of prior reviews. Also, since the process is a corrective control – not preventative or detective – management should determine, based on the results, whether detective and/or preventative controls may need to be implemented in the future.

Management may want to consider hiring a part-time person (such as an individual with accounting, auditing, and/or financial analysis experience) to perform this role. Such a person could also be involved with quality control over other aspects of the Office.

(2) Consider taking the necessary steps to change the status of the 3 appointed individuals noted above to Merit System positions.

Management Response

You mentioned how complicated the process is regarding Sheriff's Sales, as well as the "dramatic" increase in the last two years with the number of sales, and the corresponding "dramatic" increase of workload on our staff. We agree with your assessment. An area of risk we see is that of three critical staff positions in the real estate section that are non-merit appointees. Your reference to the complicated and high volume work falls on positions that are critical to the mission of the office. The potential that the next elected Sheriff could dismiss these employees without review would cause significant harm to the operation, and possibly expose great liability. It's my intent to seek to have these positions in real estate evaluated by County Human Resources, and have the appropriate merit positions created. I did not appoint these employees, but retained them after a thorough transitional analysis by my chief deputy and myself. There is no such policy binding the next elected Sheriff to this process

Because you cited some anomalies, with the potential of others, we intend to implement your recommendation of a corrective control by having a person with accounting,

auditing or financial analysis experience randomly select a number of cases each month for review. This position was recommended by you and could probably be accomplished with a part time or contracted person with these skills to oversee this type of ongoing audit process. Without this person, this type of duty would fall to the real estate coordinator. We have already identified funding in the current budget to contract for professional accounting services. In addition, we are proposing a program improvement request to allocate additional funding in the next fiscal year to continue with this professional review of transactions. With the current workload, the amount of oversight by current staff would be minimal and probably insufficient to accomplish this task in a meaningful manner.

2. Office Security

Executive Summary:

- **Risk: Checks, Court documents, and other sensitive documents could be accessed by unauthorized individuals.**
- **Control Concern: The configuration of the Sheriff's Office is such that such documents could be accessed by unauthorized individuals.**
- **Recommendation: Strengthen physical security in Office, particularly over checks and sensitive court documents, by making it structurally more secure.**

Comment

As noted elsewhere in this report, the Sheriff's Office deals with millions of dollars in checks. There are also sensitive court documents on many of the staff members' desks. As such, we believe the Office should be re-configured to establish more security.

The set-up of the Office is such that it is basically one big open room with a few offices on the perimeter. The Office receives visitors, including attorneys and people who are facing foreclosure. There is little impediment to such visitors freely roaming around any area of the Office and having access to checks, court documents, and staff members.

On several occasions, we noted checks payable to the Sheriff's Office sitting on staff members' desks after working hours. At times, the piles of these checks were quite large. These included checks with a staff member's daily work (already posted to Civil Serve and to be deposited the next day) or checks to be included with the next day's work (and to be deposited the following day). We noticed that many of these checks did not have a restrictive endorsement, indicating that checks are not always restrictively endorsed when received. Also, staff members receiving checks do have endorsement stamps; however, some stamps say "For Deposit Only – New Castle County Sheriff's Office." Others just say "For Deposit Only."

We believe it would be extremely embarrassing if the Sheriff's Office lost a check and had to request another one from the issuer. Also, there could be significant adverse consequences if a sensitive court document (such as a witness subpoena) was stolen and used for the wrong purpose. It should be noted that we did not find any such scenarios during our time in the Office.

Recommendations

- Discuss with Special Services the possibility of reconfiguring the Sheriff's Office to provide the level of security warranted for this Office. Perhaps it could be configured similar to the Recorder of Deeds Office where non-employees do not have access to areas where people are working and sensitive documents are maintained.
- Require staff members to restrictively endorse checks "For Deposit Only – New Castle County Sheriff's Office" as soon as possible after receipt.
- Require staff members to secure checks payable to the Sheriff's Office in a locked drawer/cabinet after working hours.

Management Response

With regard to office security, upon taking office, I noticed that stacks of paperwork and checks were normally laying out in plain view on desks. The entire office is wide open with no physical barriers to the working area. I agree with your observations concerning the physical security of the office. We've already implemented a policy requiring employees to place checks in a locked file drawer when they are away from their work station. However, there is minimal security at the main entrance to the building, where visitors are only scanned for weapons. A visitor could be anonymous, unarmed, and freely enter and leave the building. Once inside, they are free to roam about the building. After normal hours, the front door to the office is left open due to the need for custodians to clean. The office is easily entered, and court documents could be stolen and or destroyed. This type of act would certainly harm the operation, and make recovery tedious and difficult. If checks are attached to those documents, they could be altered, forged, and deposited.

We have already made a request to the Special Services building superintendant, as well as one of the assistant general managers of Special Services, of our need for some structural security in the office. The building superintendant recommended the County hire a contractor to modify the current entry area of the office to provide greater physical security for the work area. I have also made this need known to the County Executive. The Executive has approved our request and we have been working with Special Services on the modifications. As of this date, a purchase order has been created to go forward with the modifications to enhance the physical security of our office. With physical security being one of the two material weaknesses cited in the audit, the effort to increase our security is certainly a priority.

Comments & Recommendations - Significant Deficiencies

1. Policies and Procedures Manual

Executive Summary:

- **Risk: Inconsistencies could occur in how Sheriff's Office personnel handle the various transactions occurring in the Office.**
- **Control Concern: The Office does not have a formal Policies and Procedures Manual governing the various aspects of the Office. This has, at times, resulted in inconsistencies in the processing of transactions.**
- **Recommendation: Develop a formal Policies and Procedures Manual.**

Comment

The Sheriff's Office has very little in the way of a formal Policies & Procedures Manual. There are some policies and procedures that have been issued; however, these are not in a formal manual and some of these have been issued as a memorandum or in an e-mail – not in the format of a policy for a formal manual. The following are areas where we believe standardization and a formal Policies and Procedures manual would be helpful.

Please note that a comment regarding the lack of a Policies and Procedures Manual appeared as an "Other Reportable Item" in our 2007 audit report. The former Administration responded that they would "*develop a complete and concise procedures manual.*" We now believe this comment is a significant deficiency because of the complexity of the Sheriff's Sale and other processes, the millions of dollars processed by the Office, and the fact that the former Administration did not address the comment from our 2007 audit report. Please note that the new Administration told us before the audit that they wanted to hold off on preparing this manual until the audit was complete,

Sheriff's Sales:

- A checklist for the key documents that should be contained in the Sheriff's Sale file for each case. The checklist could be attached to the inside left cover of the file via a fastener or other means, and the person responsible for the file would initial and date the line for each document (signifying that the item is in the file). The documents themselves should be secured within the file via a fastener or other means. We realize there are non-standard documents which could be contained in a file based on the facts and circumstances of a particular case; these could be handled by having miscellaneous lines on the checklist and the person responsible for the file would manually write a description for each of these documents. In general, we believe each file (paper file and information on Civil Serve) should be able to stand on its own as to all the facts and circumstances of a particular case.

- Note: The Sheriff's Office should also consider, at some point, implementing a system whereby documents are scanned and maintained in a computer file for each case. Such file could also encompass an automated checklist which the person responsible for the file would complete on-line. We realize that there may still be certain documents, for legal or other reasons, that the Sheriff's Office may need to maintain in hard copy.
- A checklist or set of procedures for all key items which must be set up for a Sheriff's Sale. Although existing staff are experienced and seem to know what they are doing, this would be helpful for setting expectations, ensuring consistency, and in training for new employees.
- There is a lack of standardization or formal policy on what fee items get set up in Civil Serve before the date of the sale versus after. For example, our testing revealed that items owed to the City of Wilmington are sometimes set up before the sale and sometimes after the sale. (This was addressed during our audit; there is now standardization.) Whether they are set up before or after the sale may not necessarily have any effect (since the important thing is that they are indeed set up), and the fact that they may be set up after the sale may be due to lack of time on the part of the staff; however, having a policy on whether fee items should be set up before or after the sale would give clear direction to staff on what is expected.
- There is a lack of standardization on when to "apply" funds received in Civil Serve.
- On the day of the Sheriff's Sales, one staff member records the high bid for each sale. The Chief Deputy Sheriff also records each sale; however, he may be called upon to assist in other responsibilities and may not be able to record the high bid for each sale. Therefore, there is a risk that the incorrect high bid could be recorded. We were informed that there have been instances where a bidder denied making the high bid, a bidder thought he/she was the high bidder when in reality he/she was not, or a bidder claimed the incorrect property address was read by the auctioneer and the bidder thought he/she was bidding on another property. We believe the bidding process could be better controlled if it were recorded; however, recording equipment may not be able to pick up the sound of each bid and bidders don't identify themselves when making bids. The Sheriff's Office has already begun consulting with Offices in other jurisdictions to determine best practices on ensuring bids are recorded correctly and that any complaints regarding the process for a particular sale can be easily rebuked.
- In the Sheriff's Sale files, we noticed inconsistency in providing documentation on interest calculations (i.e., the interest between the judgment date and the confirmation date). Sometimes the staff member calculating the interest includes an adding machine tape showing the calculation; sometimes the staff member does not. We also noticed, for other items set up from the writ, that there is inconsistency in providing documentation on how items set up on Civil Serve relate to the items in the writ. For example, if a staff member classifies the total of a few miscellaneous items from the writ as "miscellaneous", he/she may indicate on the writ which items comprise that total; at other times, he/she may not.
- For disbursements, we noticed some inconsistency in how certain disbursements are classified in Civil Serve. For example, our testing revealed a disbursement for \$51,493.76 that was labeled "Overpayment – Real Estate." Actually, this was a payment on the judgment amount, but was not classified as such.

- In general, we believe formal procedures are needed for all aspects of Sheriff's Sales, e.g.,
 - Receipt of documents from the court.
 - Set-up of the property on Civil Serve prior to the date of the sale, including obtaining information from municipalities.
 - "Stays" before and after the sale date.
 - Key processes during the sale itself.
 - Information to be set up on Civil Serve after the sale.
 - The invoicing of attorneys for buybacks, and the follow-up of delinquent invoices.
 - Payments made to vendors providing services (e.g., newspapers).
 - The receipt and application of funds received.
 - Deeded properties and real estate transfer taxes.
 - Disbursements to all involved parties (e.g., attorneys, New Castle County, other municipalities).
 - Redemptions.
 - Return of documents to court.

Civil Transactions: Although we have not included any particulars regarding civil transactions, we would be glad to do so if asked.

Recommendation

Develop a formal Policies & Procedures Manual covering the above items as well as other items management deems necessary. We will be glad to review polices and procedures which the Office develops.

Management Response

You mentioned the lack of a formal policies and procedures manual. We had asked for your assistance in writing such a manual at the time of requesting this audit in December, 2010. We realize that such assistance isn't in the scope of the actual audit, but we feel that you and your staff would be the best resource to assist us in this endeavor. With our office handling over \$20 million in transactions each year, it's in the County's and the public's best interest to formulate the best accounting policies and reviews possible. We recognized the need for such a manual, but held off on trying to compose one until after you made your recommendations. We realized that your review would result in some process and procedure changes and possibly some shifting of duties and reviewing processes. We will be working with our contracted auditor to assist us in the creation of written processes and procedures for each work station responsible for accounts.

2. Implement formal supervisory reviews over key aspects of Office processes

Executive Summary:

- **Risk: Sheriff's Office transactions may not be processed in accordance with policies, procedures, laws, and/or Court rules.**
- **Control Concern: The Office has not defined key aspects of its processes which require a supervisory review. Existing supervisory reviews appear non-routine.**
- **Recommendation: Define key reports to be reviewed on a periodic basis. Identify key aspects of Office processes and implement supervisory reviews over such processes. (Suggestions have been provided to management.)**

Comment

The following are areas where we believe the implementation of a formal supervisory review would be helpful. Please note that our 2007 audit report included a comment on the lack of supervisory review over the Sheriff's Sale process.

- There should be a package of key reports which management meets to discuss on a periodic basis, e.g., monthly, to help management in evaluating progress towards Office goals. Such reports could include:
 - Accounts Receivable Aging: There should be general discussion on items in the 60-90 day category and more detailed discussion on items in the Over 90 day category.
 - Service Statistical Reports such as "Service Activity by Deputy": There should be a discussion on the overall effectiveness and efficiency of the Office as well as on individual deputies.
 - Accounts Payable Reports: There are various On Hand reports which could be used by management to determine the magnitude of dollar amounts to be paid to third parties. There does not appear to be an On Hand report which provides an aging of these items. Management should address this issue with the software vendor.
- Ensuring all properties scheduled for Sheriff's Sales have been properly advertised. Our testing revealed two Sheriff's Sales where the property had only been advertised once or had not been advertised at all. (See comment # 3 on page 27 for additional information.) For one of these, the newspaper had "killed" the advertisement (did not advertise it after originally being told to advertise it); however, the Sheriff's Office told us that they had not given the newspaper instructions to "kill" it. The Sheriff's Office has already begun taking steps to reduce the risk of a property scheduled for sale not being properly advertised.
- Issuing an invoice for buyback transactions: There is a designated staff member who prepares the invoices for attorneys representing the financial institutions who buy back properties at Sheriff's Sale. We believe this staff member does an excellent job and have no reason to believe that this person has prepared any incomplete or

inaccurate invoices, or has failed to prepare an invoice where required. However, we believe it makes good business sense and is a sound internal control practice for someone independent of the preparer to review the invoices to ensure they are complete and accurate, and to ensure an invoice has been prepared for each property. We believe that, at a minimum, management should assign a second person to ensure that an invoice has been issued for each property requiring one. Perhaps the “Unpaid Fees Not Invoiced” report could be used for this purpose.

- Reviewing exempt fees: Our review of the “Actions Marked Fee Exempt Fees” report for the period 7/1/10 through 6/30/11 revealed that there were eight pages of fees that were marked exempt. Management should periodically review this report to ascertain the legitimacy of cases where fees are being marked exempt.
- Reviewing “Case Fees with Non-Standard Amount” report: Management should periodically review this report for reasons why cases are not being charged the standard fee.
- Reviewing “Missing Checks” and “Checks Voided by User” reports: Management should periodically review these reports for unusual reasons.
- Reviewing “Negative Pending by Case and Remit to Name” report: This report shows cases where the amount disbursed on the case exceeds either the amount of funds receipted on the case or the amount of funds applied on the case. Management should periodically review this report to ensure the reasons for items appearing on this report are legitimate.
- Reviewing “Unpaid Fees Not Invoiced” report: Management should periodically review this report to determine if there are fees which should have been invoiced which have not been.
- Reviewing “Unapplied Receipts” report: Management should periodically review this report to determine if there are receipts which should have been applied to a fee type, but have not been.
- Reviewing “Actions Marked Do Not Remit” report: Management should periodically review this report for reasons why items have been set up to not be remitted.

Recommendation

Implement formal supervisory reviews over the above items as well as others management deems necessary.

Management Response

You noted a significant deficiency regarding formal supervisory review over key aspects of office processes. One of our initial requests was for you to recommend to us what reports generated from our software would give us the key information to review our processes. We will work with our contracted auditor and abide by your recommendations for specific reports to be generated, and the frequency of their review.

3. Compliance with State Code and Court Orders

Executive Summary:

- **Risk: The Sheriff's Office could be in non-compliance with applicable laws, Court Rules, and Court documents.**
- **Control Concern: Our testing of 40 properties sold at the April 2011 sale revealed one instance where the Sheriff's Office had not complied with State Code on the advertising of Sheriff's Sales. Our testing of 15 refunds during FY '11 revealed one instance where the Sheriff's Office had not yet complied with a Court Order. (In this same test, although we were not testing for proper advertising, we noticed a note in the System which indicated another property that had not been advertised.)**
- **Recommendation: Enhance internal controls to ensure compliance with laws and Court documents.**

Comment

For the period July 1, 2010 through May 31, 2011, we selected a sample of 15 refunds¹ from the Civil Serve "Refund List" and tested the items for legitimacy and accuracy. Our testing revealed the following:

- One of the cases in our sample was not advertised by the Sheriff's Office, as required by State Code.² We were told that this was an oversight. Since this particular sale was rescinded by the City's CFO, there is most likely not an adverse effect. Please note that, in our set-up testing, we discovered one instance where a property was only advertised in one paper. Thus, in both of these situations, there was a violation of State Code.
- For one case, the court "set aside" a sale after the sale had already occurred. The Court Order was dated February 22, 2011. There were notes in the file indicating that the Sheriff's Office had to ask the City of Wilmington for a refund of funds paid to

¹ The Sheriff's Office disburses refunds on Sheriff's Sales for the following reasons:

- Stay refunds: For any cases in which the status in Civil Serve was changed to "stay" (due to judgment amount being paid by defendant for example), the unused portion of the \$500 set-up fee will be returned to the plaintiff.
- Rescissions: If a Sheriff's Sale is rescinded by the CFO of the City of Wilmington, the CFO of New Castle County, or the court, the unused portion of the \$500 set-up fee will be returned to the plaintiff and the down payment on the purchase of the property will be returned to the purchaser.
- Redemptions: If a property is "redeemed" by the defendant within the statutorily-prescribed timeframe after the sale, the set-up fee is returned to the plaintiff and any amounts paid by the purchaser are returned to him/her.
- Excess Proceeds: If there are "excess proceeds" from the sale, i.e., funds remain undistributed after all first lien holders have been paid, these funds are generally disbursed to a second lien holder or to the defendant.
- General: A purchaser may inadvertently pay more than required, necessitating the need for a refund.

² Delaware State Code Title 10, Chapter 49, Subchapter V, Section 4972 requires public notice of sales of real estate. Such notice requires advertisement for two weeks prior to the sale in "(1) a newspaper of general circulation published in the county wherein the property is situated and (2) a newspaper of general circulation published nearest to the place where the property is situated ... Not more than 3 insertions per week shall be made in any one newspaper ...". The daily newspaper used is The New Journal, and the weekly papers are the Newark Post, the Middletown Transcript, and the New Castle Weekly, depending on the location of the property.

the City. (The Court Order stated that all funds paid by the purchaser were to be returned to him. Some of these funds were used to pay outstanding items due the City of Wilmington.) As of August 3, 2011, the Sheriff's Office had not yet obtained the funds from the City; thus, the Sheriff's Office could have been in violation of the Court Order. (The Sheriff's Office has now obtained the funds from the City.) Also, the Court Order stated that the plaintiff was responsible for all costs of the sale (total of \$452), and the e-mail from the City's CFO exercising the right of rescission stated that the City was responsible for the advertising costs and the auctioneer's fee. However, the Sheriff's Office returned the entire \$500 set-up fee to the City.

Recommendations

- Continue efforts the Office has already undertaken to reduce the risk of a property scheduled for sale not being properly advertised.
- For situations where the Sheriff's Office needs to get additional funds or information to comply with a Court Order, use the Alert feature in Civil Serve (or implement some other tickler) as a reminder to complete the task.

Management Response

We have addressed this issue in the response to Comment #2 under "Material Weaknesses." Testing and oversight by someone with accounting or auditing experience, along with our new process for placing newspaper ads, should adequately address this concern.

One of the anomalies cited was that there were two instances of properties not being advertised in the newspaper according to statute. With our new process of sending the list of sale properties to the newspapers in Excel format, and they then converting them to their publishing software, this issue should be resolved. We no longer forward documents to the newspapers for them to key enter each individual sale ad. This new process has significantly reduced the verbiage, size, and cost of the ad, as well as taking the bulk of the error factor out of the newspapers' venue. To add insurance to this, we will ask for a confirming e-mail from the respective newspapers acknowledging receipt of the list, as well as a "contact" sheet in a PDF or similar format to ensure the number of ads placed match the number of properties up for sale. Further scrutinizing this list by comparing each individual ad to each file would prove to be too time consuming for current staff. The very small chance of a property not being advertised would not justify the significant staff time to further examine this process. We respectfully feel that the new process, confirmation of ad receipt, and accounting for the number of ads should be an adequate control process for newspaper advertisement.

4. Civil Serve System Controls

Executive Summary:

- **Risk: The Sheriff's Office may not be able to rely upon the adequacy of the internal controls within and surrounding the Civil Serve System.**
- **Control Concern: The Sheriff's Office has not obtained sufficient information from the software vendor to enable it to obtain assurance on the adequacy of the internal controls within and surrounding the Civil Serve System. Nor did it perform sufficient testing of such system prior to conversion.**
- **Recommendation: Ask software vendor to provide a report on its system of internal controls (e.g., a SSAE 16 report).**

Comment

Although the Sheriff's Office performed testing of Civil Serve Version 4 prior to conversion, we get the general impression that there was not a comprehensive test plan developed (covering all aspects of Civil Serve and all aspects of the Sheriff's Office) as is done for most system development projects. We also get the impression that there is no documentation of the internal controls (e.g., system edits) within Civil Serve.

Many entities employ the services of external organizations to provide business applications and data processing resources that would otherwise be too expensive or time consuming to develop and maintain internally. These external organizations are often referred to as "service organizations."

The Sheriff's Office contracts with SoftCode, Inc. to utilize the Civil Serve System for the processing and accounting of Sheriff's Sales and the service of civil documents. (The Sheriff's Office and the County own the data.) We asked SoftCode if they had ever contracted with an external auditing firm to provide a report on the adequacy of information system control policies and procedures with respect to Civil Serve. SoftCode responded that they had never been asked by any of their clients for such a report.

Statement on Standards for Attestation Engagements SSAE No. 16 (SSAE 16) is now the accounting standard governing the reporting of controls at service organizations. SSAE 16 requires the service organization to provide a description of its system. This description should provide intended users of the report with sufficient information to understand the services being provided. This information should be comprehensive, accurate, well-presented, and covering all processes, policies, procedures, personnel and operational activities that constitute the service organization's core activities that are relevant to user entities. SSAE 16 also requires a written "assertion" made by the service organization representing and asserting to a number of essential clauses, such as the following:

- The description of the system is fairly presented.
- The control objectives were suitably designed (Type 1 report) and operating effectively (Type 2 report) during the dates and/or periods asserted to.
- The criteria used for making these assertions were in place (Type 1 report) and were consistently applied (Type 2 report).

Obtaining a SSAE report from SoftCode would give the Sheriff's Office assurance on the adequacy of the internal controls within and surrounding the Civil Serve System. For example, such report could report on the existence and operating effectiveness of:

- System edits regarding proper calculations and proper management reporting.
- Program/system change controls.
- System audit trails.
- Disaster recovery procedures.

Recommendation

Request a SSAE 16 report (or other such report) from Soft Code. Perhaps the Office could collaborate with other entities using Civil Serve to request such a report. If SoftCode does not feel it is financially feasible to obtain such a report, perhaps management should deal with this by asking SoftCode to make certain representations in its contract with the Sheriff's Office.

Management Response

We will contact our software vendor and ask for documentation that the software itself has been tested for internal controls and accuracy as it relates to its ability to extract the proper data elements from its tables, and create reliably accurate management and operational reports. I would assume extensive testing was performed before marketing this software and I would hope the software vendor can supply this proof or some certification of successful internal testing.

We will attempt to work with Soft Code to obtain assurances of adequate testing of internal processes and reports. I have the following statement from the website of SoftCode, offering their general qualifications regarding the competence of their product.

“SoftCode, Inc. started working with County Government in 1989 and has been incorporated since 1991, with its headquarters in Marlborough, Massachusetts. Early on, management realized that the Civil Process Department had unique responsibilities and needs that did not mesh with the other County departments like jail, dispatch and RMS. Most software companies devoted most of their research and development efforts in those areas with Civil Process as an afterthought. SoftCode decided to specialize in Civil Process and has become the National leader in the field. A further sign of the excellent product that SoftCode has developed is that leading providers of integrated public safety

software are now using CivilServe in lieu of developing their own product. The combination of software engineering experience, the financial expertise of MBA's on staff and 20 years of working with civil departments put us in the unique position to create the ultimate in civil process software”.

Soft Code provides the software solution to nearly 100 Sheriff's agencies throughout the United States, and is by far the largest provider of such service in the country. From an auditor's standpoint, I realize that it is much “cleaner” to have a third party report certifying the accuracy of internal transactions relating to reports pulling the proper data elements from respective tables. I believe that the conclusion can be drawn that the transactions are verifiably accurate. With the number of agencies using CivilServe, and the millions of transactions that occur, it would seem that extensive “testing” is done in the field, and that errors would have been captured during practical applications. As I stated earlier, we will see if we can obtain a written statement reflective of the internal testing done by Soft Code, and if a third party had been involved.

The above described internal testing is not a function that our office can perform, nor is there funding available to have this done by an outside source. We will seek assurances from the vendor to the best degree possible to satisfy this point made in the audit.

5. Contract with SoftCode, Inc

Executive Summary:

- **Risk: The Sheriff's Office may not be adequately protected in the case of the software vendor having financial or other problems.**
- **Control Concern: The Sheriff's Office has not executed a written contract with SoftCode for Civil Serve Version 4.**
- **Recommendation: The Sheriff's Office (or IS Division) should execute a new contract with SoftCode Inc., and ensure that certain key items are addressed.**

Comment

As addressed in the previous comment, the Sheriff's Office contracts with SoftCode, Inc. to utilize the Civil Serve System for the processing and accounting of Sheriff's Sales and the service of civil documents.

Our efforts to locate a contract between NCC and SoftCode Inc. are summarized below:

- We asked the Sheriff's Office and the Information Systems (IS) Division for a copy of the contract with SoftCode. Neither area had a copy of the contract, which we find unusual since the Sheriff's Office uses the system and IS has a designated individual assigned to the system.

- The Law Department told us that the Contracts Tracking System indicated there was a 2003 contract with SoftCode; however, they could not locate a copy of it.
- The Purchasing Division told us that a Purchase Order (P.O.) was issued in 2010 for the purchase of Civil Serve Version 4, and that they are not aware of any contract associated with this P.O.

Thus, even if there is a written contract with SoftCode (besides the P.O.), it is most likely outdated as it wouldn't cover Civil Serve Version 4.

Recommendations

We believe the County should execute a new contract with SoftCode Inc., and that the following items should be addressed:

- The provision of annual audited financial statements. (If the vendor's financial condition deteriorates, the Sheriff's Office can consider formulating one or more contingency plans of action.)
- A copy of the programming source code of the current version of the software should be stored in escrow by an independent third party so it is available to NCC in the event that SoftCode goes out of business. We asked NCC's Information System (IS) Division whether this provision is in any of the contracts that NCC has with other software vendors who have proprietary systems. IS informed us that such requests to other vendors have been met with resistance and, therefore, such language is not in any software vendor contracts.
- Ongoing maintenance services provided (e.g., the normal hours during which service technicians are available, the expected response times) and the costs for such services.
- Requirements of each party to terminate the contract.
- Penalties or liabilities to either party for nonperformance of the contract.
- Any warranties by SoftCode.

Management Response

We will first seek from New Castle County a copy of the current contract. If it is unavailable, we'll check with Soft Code to see if they can supply a copy of the contract. Most of this weakness refers to the weakness in the prior comment, relating to verification of internal testing of the software.

Comments & Recommendations - Other Reportable Items

1. Financial Reporting

Executive Summary:

- **Risk: Summary financial information in Civil Serve System could be inadequate for external financial reporting purposes.**
- **Control Concern: Because there is always a portion of the Sheriff's Office checking account balance which is "unapplied" (i.e., funds received but not applied to a particular account category because additional information is needed), it is not possible to ascertain, at any particular point of time, how much of the account balance is due to New Castle County and how much is due to third parties.**
- **Recommendation: Discuss with external auditors and Finance Department the nuances of Sheriff's Sales and the reasons why the Sheriff's Office is not able to furnish the precise components of the checking account balance at fiscal year-end. Obtain assurance from external auditors that they are comfortable with obtaining an educated estimate of how much is due to New Castle County and how much to third parties.**

Comment

In our November 2007 audit report, we commented, "We believe that the analysis of the checking account balance could be greatly enhanced if the Sheriff's Office had a system which enabled the Accountant to report to management on various components of this account balance. A system needs to be designed or purchased which has the capability of easily breaking down the system balance into various categories ... ideally, the individual items within these categories would be aged ... so management could analyze funds to be turned over to the Prothonotary's Office as well as any situations which may require management's attention ... Without the ability to timely obtain such information, it makes it more difficult for the Sheriff's Office to identify and respond to situations that may need corrective action."

Since the issuance of our 2007 report, the Sheriff's Office has implemented Civil Serve Version 4, which enables funds to be allocated to various "buckets" such as 4% commissions due to New Castle County, funds due to various other municipalities, etc. Thus, the Sheriff's Office has made great strides in gaining a better understanding of the components of the Office's checking account balance. However, because there is always a portion of this balance which is "unapplied" (i.e., funds received but not applied to a particular account category because additional information is needed), it is not possible to ascertain, at any particular point of time, how much of the account balance is due to New

Castle County and how much is due to third parties. The Finance Department needs this information periodically to adequately report on the County's assets, liabilities, and revenue. For external reporting purposes, this primarily becomes a concern at the County's fiscal year-end, June 30th. The Finance Department and the County's external auditors recently asked for this information as of 6/30/11, and the Sheriff's Office was not able to provide them with precise information because of the reason stated above. As a result, the Sheriff's Office had to provide Finance with estimates.

General Ledger Accounts in Civil Serve

There are three general ledger liability accounts on Civil Serve. These are:

- Accounts Payable: Credited for all receipts applied to fee types.
- Fees Unapplied: Fee payments received other than for Sheriff's Sales, but not yet applied to a particular fee type. Once applied, this account will be debited and a revenue account credited.
- Real Estate Escrow: Payments received on Sheriff's Sales which have not been applied to a fee type. Once applied, this account will be debited and a revenue account credited.

None of these three accounts provide information on how much of the checking account balance is funds due to NCC, funds due to municipalities, funds due to attorneys, etc.

Civil Serve Reports

There are various Civil Serve reports which provide pieces of this information. For example,

- On Hand By Remit To Name: Shows the amount in the Sheriff's Office checking account (per Civil Serve) by name of payee; however, as of 6/30/11, 62% of this balance was "unapplied", a portion of which belongs to NCC. The main reason the funds are unapplied is that payments have been received on Sheriff's Sales but typically won't be applied until after the confirmation date of the sale. Per Sheriff's Office management, the main reason why the funds are not applied until after the confirmation date is that various things could occur before the confirmation date which would cause adjustments to be made.
- On Hand Liability: Shows the amount in the Sheriff's Office checking account (per Civil Serve) by individual case. We noted that the amount on hand per this report does not agree to the amount on hand per the above report (difference of approximately \$29,000). We also noted that this report contains a column for "Undisbursed Sheriff Revenue", and that this total amount is greater than the total of the amount on hand (which seems like an impossibility). The Sheriff's Office is investigating these apparent discrepancies.

Recommendations

- The Sheriff's Office and the County Auditor met with the external auditors and explained the reasons why precise information can't be provided on the components

of the checking account balance at fiscal year-end. The Sheriff's Office did say that they could provide a well-educated estimate based on past experience, and the external auditors stated that they were comfortable with this. The County Auditor agreed to document the meeting discussion and to provide the external auditors and the Sheriff's Office with this document (to memorialize the fact that the external auditors are comfortable with receiving the well-educated estimate).

- Research the approximately \$29,000 difference between the "On Hand by Remit to Name" and "On Hand Liability" reports.

Management Response

It's our intent to work with our software vendor and our auditor to recommend specific reports that need to be generated to satisfy your recommended financial reports.

2. Monthly Bank Account Reconciliation

Executive Summary:

- **Risk: The monthly bank account reconciliation, and its subsequent review, may not cover all aspects of a "true" reconciliation.**
- **Control Concern: The Sheriff's Office performs a monthly bank account reconciliation; however, we believe the supervisory review could be enhanced by reviewing the bank copies of the checks and that management should consider having someone else perform the reconciliation.**
- **Recommendation: Perform the additional steps suggested.**

Comment

A Sheriff's Office staff member reconciles the bank statement monthly. The reconciliation consists of the following:

- Comparing each deposit on the bank statement to the daily deposits made per the Civil Serve System reports, and checking off on the statement and in Civil Serve each deposit amount verified.
- Comparing each check on the bank statement to the checks paid per Civil Serve and checking off on the statement and in Civil Serve each check verified.
- Preparing any necessary adjusting entries. The normal one is the interest for the month minus the bank service charge.
- Ensuring the Difference in the bank reconciliation feature of Civil Serve equals zero.
- Initialing and dating the bank reconciliation as evidence of performing the reconciliation.

The Chief Deputy Sheriff then reviews the reconciliation and also signs and dates it.

We have the following points to make on the bank reconciliation:

- The person reviewing the reconciliation should be looking at the bank copies of the checks to ensure (1) the payee is recognizable and legitimate and (2) the endorsement is in the name of the payee. At the time of our audit, the bank was returning copies of the checks on a CD; however, the Office was having difficulty accessing this information.
- Ideally, the person performing the reconciliation should be independent of the cash receipt, cash disbursement, and accounting functions. The staff member performing the bank reconciliation has the ability within Civil Serve to perform all of these functions. A compensating control is the supervisory review of the bank reconciliation.

Recommendations

Management informed us that the Chief Deputy Sheriff is now reviewing the bank copies of the checks. Management also informed us that they have hired a part-time professional to deal with some of the issues in this audit report. At some point in the future, this person will be the one performing the bank reconciliation.

Management Response

A response is not required.

3. User Access to Civil Serve System

Executive Summary:

- **Risk: Users could have access to Civil Serve System functions not necessary for their job responsibilities, or not compatible with such responsibilities.**
- **Control Concern: The Sheriff's Office has created different security profiles within Civil Serve. We believe, however, that management should consider creating additional security profiles to further limit user access to only the system functionality needed to complete specific job responsibilities.**
- **Recommendation: Evaluate the Civil Serve functions needed by each Staff member and create/adjust security profiles accordingly.**

Comment

We were not able to obtain a report from Civil Serve which identified each system user and the transaction types each user can perform within Civil Serve. Instead, we obtained a list of the users comprising each user profile (Administrator, Auditor, Real Estate, and Standard) and a list of all the transaction types in Civil Serve. We used these lists to identify which user profiles (and therefore which users) can perform various functions within Civil Serve, and we have the following observations. Please note that we realize

management may decide not to implement these ideas because of various reasons such as the fact that there are many staff members who serve as “backups” when other staff members are extremely busy, out for vacation or sick time, etc.

- Overall, we believe there could be more security groups created in Civil Serve to further limit user access to only the system functionality needed to complete specific job responsibilities. Specifically limiting user access would enable segregation of duties to become more automated and strengthen the internal control structure.
- The Bank Reconciliation function should be assigned to a group that does not have authority to create deposits or issue checks.
- The ability to adjust default fees should not be given to those who enter new cases into the system. This would require enhancements to the logic of the current fee table to capture all fee amounts for different actions, number of defendants, and number of locations to be served before this access can be limited.
- Deputies should only have access to system functions that surround the service process. They are currently in the “standard” group which can enter/modify cases.
- The ability to create 'Negative Pending' scenarios for any case should be limited.
- Only the real estate settlement team should have the authority to generate checks. It would even be better if a two-tier preparer/reviewer structure could be created in Civil Serve to ensure a review of a requested payment is completed before a check is issued.

Recommendation

Management should evaluate the Civil Serve functions needed by each Staff member and, based upon determining the costs versus benefits of making any changes, create/adjust user profiles accordingly.

Management Response

You point out that different jobs have cross access to different functions. Ideally, this shouldn't exist. However, due to staff size, everyone in the office has to be cross trained to do the work of others. As you discussed early in your report, we have a very senior staff. Our staff has a very significant amount of vacation and has used sick leave that is normal for employees of that tenure. Therefore, cross functionality is essential to keep the office running. We will look more closely at what limitations we could place on the sworn deputies' access, but currently functionality is limited in Civil Mobile.

4. Timely Collection of Accounts Receivable

Executive Summary:

- **Risk: The Sheriff's Office could bill for its services but not receive timely payment on invoices.**
- **Control Concern: The Sheriff's Office has had difficulty collecting timely payment of invoices from certain law firms, and there is no penalty to these firms from paying late. Please note, however, that the Sheriff's Office has made significant strides this past year in collecting delinquent accounts receivables.**
- **Recommendation: Evaluate whether additional steps need to be taken to deal with untimely payment of invoices from law firms.**

Comment

The Sheriff's Office has had difficulty in receiving timely payment of invoices from certain law firms, although management informed us that there has been significant improvement since the implementation of Civil Serve Version 4 (and the creation of invoices). Possible reasons for law firms not paying on a timely basis include:

- The law firms apparently do not pay the Sheriff's Office until they themselves have received payments from the banks and mortgage companies they represent. Although it was apparently a long-standing practice, under the prior Sheriff's Office Administration, of allowing law firms (and thus their clients) to pay after the due date, we believe the County and the Sheriff's Office must take a tougher stance on this issue because the Sheriff's Office is performing a service and is not being paid for it within the reasonable timeframe established.
- The invoices generated by the Sheriff's Office do not include a due date. The Sheriff's Office typically deals with the same law firms and these firms know, from their experience with the Office, that payment is due on or before the confirmation date (the third Monday of the month after the sale). However, we believe that the inclusion on the invoice of a due date, and language emphasizing that payment must be received on or before this date, would enhance the likelihood that payment is received on time.

Our review of the buybacks from the April Sheriff's Sales revealed that one law firm representing several purchasers did not pay the majority of its invoices by the May 25th confirmation date of the sale. Most of these invoices were paid in June or July; however, eight of 66 invoices for this firm remained unpaid as of the last week of July.

Our review of the "Accounts Receivable Aging" report as of March 31, 2011 revealed that there was approximately \$1.1 million in the Over 90 day category. (Please remember though that the number of days begins on the invoice date -- not the due date which is technically the third Monday of the month following the sale, or about 45 days.) One law

firm was responsible for 68% of this total and another firm was responsible for 15% (a total of 83% between these two firms). The Sheriff's Office assigned a staff member the task of stepping up efforts to collect these receivables. As a result, as of July 31, 2011, there was approximately \$130,000 in this category.

In our opinion, it is not good for the Sheriff Office's public perception if the Office is collecting timely payments from third party purchasers but not collecting timely payments from law firms on buybacks.

We discussed this situation with the Sheriff's Office's contractual attorney. He believes the law firms are not paying the invoices on time because they are waiting for their clients to pay them. He also informed us that a meeting was held a few years ago to address the issue of untimely payment of invoices and, as a result, the Superior Court agreed to change its rules and move the confirmation date to a later date – thus giving the law firms more time to pay.

Recommendations

- Consider approaching County Council about changing County Code to allow the imposition of a penalty if payments are not received by the due date. Banks and mortgage companies generally assess penalties when their customers do not make payments by the due date; therefore, they should not have a strong argument against being assessed a penalty when they do not pay their own bills on time.
- Consider filing a complaint with the Delaware Office of Disciplinary Counsel for law firms not paying invoices on time, and asking for the Office to conduct an audit.
 - Rule 1.15(d)(9)(G) of the Delaware Rules of Professional Conduct requires, with respect to fiduciary accounts, that “No funds which should have been disbursed shall remain in the account ...” Therefore, if the bank or mortgage company has paid the law firm, the law firm must pay the Sheriff's Office on a timely basis. In the instances where the law firms have been late in paying invoices, we don't know whether the law firm had received timely payment from the bank or mortgage company.
- Research the possibility of implementing ACH (Automated Clearing House) with the law firms, whereby the Sheriff's Office would have the ability to automatically debit the law firm accounts on the date that invoices are due. The law firms could be interested in this as it would create efficiencies in their offices also.
 - ACH should also be investigated for the transfer of funds between the Sheriff's Office and the County. This would speed up the time by which the County receives funds due to it, and it would also increase efficiencies in the Sheriff's Office as staff would not have to generate and deliver manual checks.
- Include a due date on the invoice and language emphasizing that payment must be received on or before this date.

Management Response

During May and June of 2011, we began invoicing law firms and had excellent results with more timely payments. Almost \$1 million was collected during that effort. We will continue with the invoicing. You noted that extra steps should be taken to ensure payment. Those measures would require creating ordinance(s) to associate financial penalties or interest for delinquent accounts. For now, we will see if the direct invoicing and repetitive invoicing is successful. If not, we will seek further action through complaints with the Bar Association disciplinary counsel or through legislation.

5. Bidders at Sheriff's Sales

Executive Summary:

- **Risk: Bidders may not be adequately trained on the nuances of Sheriff's Sales, resulting in questions and/or complications arising after the sale.**
- **Control Concern: The Sheriff's Office's contractual attorney, just prior to the beginning of the first sale of the day, explains all of the Sheriff's Sale rules to the people in the audience. However, we are still concerned that bidders could later express that they didn't fully understand all the rules and therefore seek redress.**
- **Recommendation: Require each potential bidder to attend a training class on all aspects of a Sheriff's Sale and to sign a standard certification acknowledging that he/she understands and agrees to all the rules governing such sales.**

Comment

An idea we discussed with management during the audit was the implementation of a policy in which anyone desiring to bid on a property at a Sheriff's Sale must:

- Attend a training class on all aspects of a Sheriff's Sale prior to bidding.
- Sign a standard certification designed by the Sheriff's Office, acknowledging that he/she understands and agrees to all the rules governing Sheriff's Sales.

Such a policy would help to ensure (1) people bidding at Sheriff's Sales have been trained in the Office's policies and procedures, thus being able to refute any bidder's arguments that he/she did not understand what he/she was getting into, and (2) limit the Sheriff's Office's liability when a bidder does not follow the rules and then claims he/she was unfairly treated.

Recommendation

We believe the above idea is a good one and support the Sheriff's Office should it decide to implement it.

Management Response

We agree that there is potential for misunderstanding of the rules and processes of the sales. There is also a potential for risk of a bidder being successful at an auction, then anonymously exiting the facility, causing confusion and necessitating a property being auctioned again. Your suggestion of having a training class for potential bidders is certainly one way of making the public better informed. However, it wouldn't be practical to hold a class at each auction, then holding attendees accountable to the fact that they understood all aspects covered with any certainty. In addition, if the class wasn't held at each sale, and it was a requirement, it would then put us in a position to exclude a member of the public from the sale based solely on our policy requiring the class attendance. This may bring up a legal issue in that we would be creating a policy impediment to the statutory right of the public to attend the auction and bid. We will explore the policy of registering bidders prior to the sale. A bidder would need to have a (photo) government identification, as well as the cash or cashier's check for deposit. The bidder would be issued a numbered card for identification during the sale. A bidder's instruction sheet would be handed to the bidder who would then sign for the receipt of those instructions. This process would identify and "pre-qualify" anyone bidding at the sale and would make them accountable for their transactions during the sale.

6. Civil Serve System Enhancements

Executive Summary:

- **Risk: The Civil Serve System may not be providing the Sheriff's Office with the tools it needs to maximize the effectiveness and efficiency of the Office.**
- **Control Concern: Civil Serve has increased the effectiveness and efficiency of the Sheriff's Office and has also strengthened internal controls. However, there are still available features the Office is not fully utilizing and there are future enhancements the Office would like.**
- **Recommendation: Further evaluate Civil Serve System capabilities and possible enhancements.**

Comment

The Sheriff's Office converted to Civil Serve Version 4 in April, 2010. The primary benefit of Version 4 is the module for Sheriff's Sales. Prior to the conversion, the Office primarily used a combination of QuickBooks and Excel to handle the accounting and processing of Sheriff's Sales. The Office has gained much experience with Version 4 during that time but admits there are still features that could be utilized but are not. Also, the Office has been submitting various support requests to the vendor for help dealing with certain situations and for possible system enhancements. Some of those

enhancements have been implemented in a new release of Version 4; for others, the vendor has provided the Office with a price to make the enhancement.

Based on our testing, and based upon discussions with Sheriff's Office staff, we believe the Office should consider the following system/report enhancements:

- The Sheriff's Office does not utilize the interest calculation figure in Civil Serve for interest between the judgment date and the confirmation date of the Sheriff's Sale; instead the Office manually calculates this amount. During the audit, we met with representatives of the Camden County N.J. Sheriff's Office who informed us that they utilize this feature. Please note that the Office could also utilize this feature to calculate attorney's fees when the court stipulates that such fees are based on a percentage of principal and interest.
- For buybacks (where the person/entity who obtained the judgment is purchasing the property), the Sheriff's Office prepares an invoice in Civil Serve for the amount of the outstanding purchase price on the property as well as other amounts (e.g., real estate taxes) owed. For third party sales, an invoice is not prepared. Rather, the purchaser is given a receipt on the day of the sale for the amount paid, and the receipt also includes the amounts the purchaser still must pay to become owner of the property. Because an invoice is not generated, these amounts owed do not appear as an accounts receivable within Civil Serve. Civil Serve only creates an accounts receivable item if an invoice is generated.

The number of buybacks far exceeds the number of third party sales (buybacks are typically 90% of a month's sales) and, therefore, the dollar amount owed on third party sales is much less than that on buybacks. A compensating control is that, although these items do not appear as accounts receivable within Civil Serve, the items do appear on the "Unpaid Fees Not Invoiced Report." Therefore, management can utilize this report to follow up on amounts due for third party sales.

- Civil Serve, for purposes of identifying invoices which are overdue, begins on the date of the invoice in counting the number of days overdue. Since the bill is not technically overdue until the third Tuesday in the month following the sale, the Accounts Receivable Aging Report is not technically accurate. Management should consult with the vendor on whether this date can be changed within Civil Serve.
- After the Sheriff's Sale, a staff member prepares invoices to be sent to the attorneys representing the persons/entities which have bought properties in buyback sales. She saves the invoices as PDF documents and then e-mails them to the attorneys. Instead of having to save these invoices as PDF files and to e-mail them to the attorneys, we suggest management consult with Soft Code to determine if a feature can be added to Civil Serve which, when activated, automatically e-mails an invoice to the attorney.
- We noticed a feature in Civil Serve which allows for alerts to be utilized as reminders of key tasks. It appears that Sheriff's Office personnel are not using this feature.

Management should consider whether this feature could be utilized to ensure certain tasks are completed on time.

- The “Real Property Cost Sheet” (RPCS) seems to be the “go to” sheet for Sheriff’s Sales. Attorneys sometimes request this sheet from the Office after the date of the sale. This document is generally included within each Sheriff’s Sale folder and includes such information as (1) key non-monetary information concerning the parties on the case, the type of writ, the sale date, the property address and parcel number, (2) fee set-up information, (3) dates, payers, and dollar amounts for receipts on the case, and (4) dates, payees, check numbers, dollar amounts and descriptions of disbursements made on the case. In performing our testing, we noted the following regarding the RPCS:
 - In cases where there is a \$15 Notice to Lienholders fee, the total receipts from the buyer do not equal the winning bid on the sale because the RPCS does not include the \$15 fee.
 - In one case, the excess proceeds amount paid to the Prothonotary’s Office was lower than the actual amount paid by \$2,800. We discovered that a refund of abatement fees from NCC for the same amount was not captured on the RPCS, which resulted in the lower amount of excess proceeds reported. The amount actually paid to the Prothonotary’s Office did include the refunded amount and was verified on the Prothonotary’s Office’s website.
 - In three Vend Ex cases brought by NCC, the RPCS did not show that the refund of the \$500 initial set-up fee was due to be paid to NCC. The Sheriff’s Office verified that the payment had been set up, but had been stuck in the pending queue for several weeks. In addition to the pending payment not being captured on the RPCS, the actual payment had not been issued. This was corrected once the Office was notified of this issue.
- The invoices within Civil Serve change if someone makes a change to one of the fee items that were set up for the case. For example, if NCC property taxes appear on the original invoice but then the Sheriff’s Office discovers that the purchaser has already paid the property taxes, a staff member must change the taxes originally set up to \$0. This causes the invoice within Civil Serve to change and, thus, distorts the picture of what appeared on the original invoice. Fortunately the staff member preparing the invoices maintains, in a separate computer file, PDF copies of the original invoices so that the Office can look at the original invoice if needed. Management should consult with the vendor on whether the original invoice can be saved within Civil Serve. Management could also consider, within Civil Serve, “attaching” the original invoice to the case so that the original information is not lost.
 - There is a similar situation with redemptions. If a property is redeemed, some of the original information concerning the sale is changed.
- Management should consider implementing within Civil Serve a due date for when management expects a case to be truly “closed.” This would most likely be the date by which management expects all fees due on the sale to have been collected and the property deed to have been received. Management could then use this date to

generate a report in Civil Serve of all cases which have extended beyond that date, and determine the appropriate action to take.

- The paper file maintained for each Sheriff's Sale includes hard-copy court documents which could easily be lost. Maintaining a paper file also creates inefficiencies in having to go to the File Room each time one wants to look at a particular file. Since court documents are maintained on Lexis-Nexis, and Sheriff's Office employees have access to these documents, management should pursue the idea of "uploading" court documents to Civil Serve and, thus, maintaining Sheriff's Office files in electronic form.

Recommendation

Evaluate each of the above items and determine whether it is cost beneficial (and beneficial from an internal controls standpoint) to pursue them.

Management Response

I've previously discussed numerous enhancements and interfaces with other software applications utilized by the Sheriff's Office as well as other departments in New Castle County, the Court systems, and private attorneys. I have compiled an extensive list to be submitted to the software company for their comments and/or cost estimates.

7. Third Party Purchase of Right to Excess Proceeds

Executive Summary:

- **Risk:** Sheriff's Office could pay excess proceeds to a party not entitled to the funds.
- **Control Concern:** The Sheriff's Office does consult with its attorney prior to disbursing excess proceeds. However, given the sensitivity of the case addressed in our below comment, we believe the Sheriff's Office should take extra precautions.
- **Recommendation:** Develop written policy on remittance of excess proceeds when a third party purchases the right to such proceeds.

Comment

Our disbursements testing revealed a situation in which the excess proceeds of a Sheriff's Sale were paid to the third-party purchaser of the property, not the defendant. Review of the file indicated that the purchaser had entered into an agreement with the defendant which gave the purchaser the legal right to the excess proceeds.

Not too long after our review of this case, the Wilmington News Journal published an article regarding this purchaser. The article revealed this company was investigated by the Attorney General's (AG's) Office in 2007 for defrauding consumers in purchasing residual rights to excess proceeds in claims filed with the Sheriff's Office. As part of a consent agreement with the AG's Office, the company's owners paid \$58,860 to the victims, \$3,000 to the Consumer Protection Fund, and \$10,000 for the cost of the investigation in exchange for the AG's Office not bringing action against them. The consent agreement directed the company, as to all future purchases of residual rights to excess proceeds, to (among other items):

- "Disclose to the consumer/assignor the amount of the excess proceeds reportedly held by the Sheriff's Office or the Prothonotary's Office."
- "State in any Petition for Release of Unclaimed Proceeds that the consumer/assignor has been advised of the amount of the excess proceeds reportedly held by the Sheriff's Office or the Prothonotary's Office."
- "Not make any misrepresentations, expressed or implied, as to the process by which consumers can obtain the excess proceeds from a foreclosure sale of the consumer/assignor's property."

Regarding these and other items in the consent agreement, there was nothing in the Sheriff's Office file indicating that these items had been complied with in this situation. There was only a "Notice of Assignment of Rights and Limited Power of Attorney" form indicating that the rights to the excess proceeds had been transferred from the defendant to the purchaser. There was an e-mail in the file indicating that the Sheriff's Office contractual attorney was reviewing the purchaser's request for excess proceeds; however, there was nothing in the file indicating what this review encompassed.

Per the Sheriff's Office, there have been 10 – 15 other cases where this company has purchased the right to the excess proceeds.

We discussed this situation with the new Sheriff as well as several other people in the Office, who told us they were not aware of the consent agreement until the Sheriff was contacted by the AG's Office in May, 2011. We spoke to the AG's Office who informed us that there was a very good chance the Sheriff's Office was never informed of the agreement at the time it was entered into.

We discussed this situation with the Sheriff's Office contractual attorney. He informed us that, going forward, he has advised the Sheriff's Office, in all cases involving any party purchasing the rights to such proceeds, to remit the proceeds to the Prothonotary's Office (under Project Rightful Owner) so that such party has to prove to the Prothonotary that it is entitled to such proceeds. This minimizes any risk to the Sheriff's Office. We agree with this advice.

Recommendation

Assuming the Sheriff's Office agrees with the above advice, we recommend that the Office document this in a written policy.

Management Response

I look forward to discussing with our attorney a written policy regarding excess proceeds. We'll form a policy after conferring with our attorney.

8. Duplicate Payments to New Castle County (NCC)

Executive Summary:

- **Risk: The Sheriff's Office could pay amounts due to NCC when the plaintiff has already paid them.**
- **Control Concern: The Sheriff's Office has had instances where it has paid items (such as unpaid property taxes) to NCC but the plaintiff had already paid the amount to NCC. This results in the Sheriff's Office having to request a refund of such items. The Office has now implemented a control to address this risk.**
- **Recommendation: Continue to monitor effectiveness of control which minimizes chances of making a duplicate payment to NCC of property taxes and other items.**

Comment

After a property is sold at Sheriff's Sale, a Sheriff's Office staff member accesses the Hansen System to determine if there are any property taxes, sewer charges, or other items (e.g., Code inspection violation fees) due to New Castle County (NCC). If there are, these items are set up on Civil Serve as items to be paid to the County from the proceeds of the Sheriff's Sale. The Sheriff's Office will pay these items to the County when the purchaser of the property pays the balance due on the sale.

There are times (primarily around September 30, when property taxes are due) that the purchaser of the property will pay the property taxes, and the Sheriff's Office will do the same. This is because the Sheriff's Office has sent an invoice, including the delinquent property taxes, to the attorney representing the purchaser. The attorney then pays the invoice amount to the Sheriff's Office, to be remitted to NCC; at the same time, the purchaser (usually the Mortgage Department of the purchaser) also pays the property taxes to the County.

We were informed by the Sheriff's Office that a control to prevent the Sheriff's Office from paying the taxes twice is that, prior to disbursing the taxes to the County, a staff

member accesses the Hansen System to verify that the taxes are indeed still delinquent. However, our testing revealed an instance of a check issued in January 2011 which included several items that had already been paid in full. As a result, the NCC Treasury Division returned the check to the Sheriff's Office. Of the 20 cases on the "Check Detail by Sale Date" report for this check, we found:

- 11 of the cases related to a particular law firm and were instances of the purchaser having already paid the taxes to NCC.
- Two of the cases involved the same purchaser and were instances of the purchaser having already paid the taxes to NCC.
- For three of the cases, the amounts remitted to NCC did not agree to the actual amount owed; however, the individual differences were less than \$30 and most likely were instances where a penalty had accrued but had not yet been waived. (It is NCC policy that if the Sheriff's Office remits a payment in one month and it relates to a sale in either of the prior two months, then the penalty accrued since the sale date is waived.)
- The amounts for the other four cases were correct.

We believe the above situation was due to a new person in the job beginning in January 2011. We believe the necessary checks and balances are in place now; however, we do believe management should pursue at some point the possibility of a link between Civil Serve and Hansen.

Recommendations

- Continue to monitor the effectiveness of the existing controls which minimize the chances of making a duplicate payment of unpaid NCC property taxes.
- Consider meeting with the Treasury Division on a periodic basis (e.g., quarterly) to discuss ways to make the information flow between the Sheriff's Office and Treasury more effective and efficient.

Management Response

By statute, the Sheriff's Office is required to collect all taxes due to the County after Sheriff's Sale. On occasion, tax payments are made contemporaneously to the County's Treasury Division. This has resulted in a net double payment to the County which creates a confusing transaction process to refund the excess payment by the Sheriff's office. A real time interface with the County's Hanson software system should almost eliminate this issue. There is still a possibility of receipt of double payment if the payment is made to County Treasury at the same time the calculation is being done by the Sheriff's Office. Real time access to Civil Serve by Treasury would further limit this possibility. We will work with our software vendor and County Treasury to see if this remedy is possible.

9. Refunds of Sheriff's Sale Set-up Fees to New Castle County (NCC)

Executive Summary:

- **Risk: Funds disbursed to NCC may not contain sufficient information to enable NCC to properly post such funds to its general ledger.**
- **Control Concern: Regarding cases where NCC is the plaintiff, when the Sheriff's Office returns the \$500 set-up fee (or a portion of it) to NCC, the description accompanying the check does not always state "Fee Refund."**
- **Recommendation: Ensure refunds of set-up fees to NCC (and other parties) provide descriptions which enable NCC to properly classify such refunds in the County's general ledger.**

Comment

We met with the NCC Treasury Division and were informed of the following:

- Regarding cases where NCC is the plaintiff, when the Sheriff's Office returns the \$500 set-up fee (or a portion of it) to NCC, the description accompanying the check does not always state "Fee Refund." In cases where a potential sale is "stayed" before the sale date, or is rescinded by the NCC CFO after the sale date, the description does appear as a fee refund. However, in cases where there has been an actual sale which has not been "stayed" or rescinded, the description is of the actual items that the \$500 was used to pay, e.g., "Handbills", "News Journal", "Auctioneer." We also saw cases where the description was something the set-up fee was not used to pay, e.g., "NCC Taxes", "Sheriff's 4% Fee."
 - Please note that this comment also applies to set-up fees being returned to other than NCC. However, the other entities do not appear to have a concern about these descriptions.
- Our review of three large checks issued to NCC for the months of June and July 2011 revealed that approximately 60% of the items encompassed within the checks were for the return of portions of the \$500 set-up fees and contained descriptions other than "Fee Refund." Since the Treasury Division records the return of the set-up fee as a credit to the original expense, they would like to see these items recorded as fee refunds. When the description appears as "Sheriff's 4% Fee", then the County is recording this as income from Sheriff's Sales – which it is not.

Recommendation

The Sheriff's Office informed us that the reason for the descriptions not being accurate is a Civil Serve limitation and that they have asked the software vendor for a system enhancement. We recommend that management continue discussing with the software vendor whether a system enhancement can be made to give the user the ability to provide the proper description.

Management Response

We will gladly meet with representatives of County Finance to ensure we're on the same page articulating the descriptions of refunds.

10. Amounts due to City of Wilmington from Sheriff's Sale Proceeds

Executive Summary:

- **Risk: The amounts the Sheriff's Office disburses to the City of Wilmington (from Sheriff's Sale proceeds) could be incorrect.**
- **Control Concern: The Sheriff's Office has procedures to obtain information from the City of Wilmington regarding amounts owed to them for unpaid taxes, sewer charges, and other items. However, this information can change between the time the Sheriff's Office obtains it and the time when the funds are disbursed to the City.**
- **Recommendation: Consider working with City of Wilmington on a better methodology for the collection of information regarding unpaid taxes, sewer charges and code enforcement fines.**

Comment

The Sheriff's Office, sometime before the date of the Sheriff's Sale, will send the City of Wilmington a spreadsheet listing all the properties scheduled for sale and will ask the City to identify any taxes, water/sewer charges, and code enforcement items that are owed on the property. The City returns the spreadsheet with this information completed, and the Sheriff's Office sets up the information in Civil Serve either before the sale date or shortly after.

The amounts owed to the City of Wilmington are generally not disbursed until after the confirmation date of the sale (the Friday following the third Monday of the month after the sale). The Sheriff's Office generally cannot make these disbursements until after the balance of the purchase price is received from the purchaser of the property. Thus, close to two months can pass between the time the City of Wilmington provides the Sheriff's Office with the information and when the funds are paid to the City. Interest, penalties, and additional fees can accrue during this timeframe.

If the owner of the property that has been sold at Sheriff's Sale decides to redeem the property within the statutorily-prescribed timeframe, then the Sheriff's Office must inform this person of all the costs that must be paid to do so. In this situation, the Sheriff's Office asks the City to provide current information on any items owed to the City. The City provides this information via e-mail.

Although the City of Wilmington has not asked the Sheriff's Office for a change in how this information is exchanged, we believe changes in how the information is exchanged would enhance the overall process.

Recommendation

We recommend the Sheriff's Office consider working with the City to establish a portal whereby the City can upload information periodically (perhaps weekly) regarding unpaid items due to the City. Before disbursements are made to the City, the Sheriff's Office could use the portal to ensure City of Wilmington items are current. Please note that the Sheriff's Office could also extend to other municipalities the opportunity to use this portal to provide their information to the County on items due on Sheriff's Sale properties.

Management Response

This comment references potential errors in determining amounts owed to the City of Wilmington following a Sheriff's Sale. As with New Castle County, taxes, fees, and penalties can accumulate on a daily basis. Without a real time interface into the City of Wilmington's accounting systems, it would be impossible to ensure a precise amount owed with absolute certainty. We can discuss this with personnel in the City to see if there's a better way to share this information on a real time basis.

11. Competitive Bidding of Vendor Contracts

Executive Summary:

- **Risk: The Sheriff's Office may not utilize procedures designed to choose the best-quality vendor at the best price.**
- **Control Concern: The Sheriff's Office had an unwritten contract with a vendor for many years to provide printing services. Competitive bidding procedures were not followed to select this vendor.**
- **Recommendation: In the future, in situations where it makes sense, utilize competitive bidding in the selection of vendors.**

Comment

The new Sheriff has undertaken an initiative to reduce printing costs by approximately \$300,000 a year by utilizing software technology to create smaller-sized Sheriff's Sale posters in-house instead of using an outside contractor. This single initiative will save nearly \$300,000 in the coming year. It should be noted that most of these savings accrue to the plaintiffs on Sheriff's Sales because these printing costs are paid for from the set-

up fees paid by the plaintiffs. However, because of this, the Sheriff's Office was able to increase the amount of the set-up fee passed on as revenue to the County.

Prior to this initiative, the Sheriff's Office utilized the services of a local printing shop to produce these posters. This contract, which was not in writing, was in place for many years and we could not find any evidence that the printing services were put out for competitive bid. (It is possible that such services were put out for bid many years ago; however, we spoke to the Purchasing Division and to some Sheriff's Office staff members with many years of experience, and no one could remember such services ever going out for bid.) Please note that we did not do any research on how much could have been saved by competitively bidding the contract every three years for example.

New Castle County Code Chapter 2, Article 5, Section 2.05.501 states, "The Purchasing Section is responsible for obtaining goods and services for public purposes according to the laws and procedures intended to provide for the economical expenditures of public funds." Section 2.05.502A.7.a states, "All purchases of and contracts for supplies and contractual services and all sales of obsolete or unusable personal property shall except as specifically provided in this subsection, be based on competitive bids." (The printing of Sheriff's Sale posters is not one of the specified exemptions to competitive bidding in 2.05.502A.7 and A8.) Section 2.05.502A.11 states, "All supplies and contractual services, except as otherwise provided in this subsection A, when the estimated cost thereof shall exceed twenty-five thousand dollars (\$25,000.00), shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting sealed proposals."

We do not believe the funds paid for the Sheriff's Sale posters are public funds because such funds are paid for from the set-up fee provided by the plaintiff. However, we do believe it would have made good business sense to place the contract out for bid at least every two-three years.

Recommendation

In the future, should a need arise to contract with a vendor, we recommend that the Sheriff's Office follow competitive bidding procedures in situations where it makes good business sense.

Management Response

The control concern mentioned the non-bid printing arrangement that lasted for many years prior to my election to office. As you may know, this arrangement was terminated as soon as we were able to make certain that the County print shop was able to handle the task with accuracy, reliability, and a cost savings of almost \$300,000. We have examined other business arrangements we have with vendors, and have reduced costs where

possible. We will certainly continue to utilize the County's competitive bidding process where it makes sense as stated in your recommendation.

12. Fees Not Paid in Advance of Service

Executive Summary:

- **Risk: The Sheriff's Office may perform services without being paid in advance.**
- **Control Concern: We discovered a couple of entities who are not required to pay for services in advance and there have been problems with collecting payment from such entities.**
- **Recommendation: Institute policy to require all service and set-up fees to be paid in advance of service.**

Comment

During the audit, we became aware of cases where the plaintiff had not paid the set-up fee associated with the particular type of case, but the Sheriff's Office still set up the case. These are cases where a Government is the plaintiff. For example,

- The State Department of Health & Social Services (DHSS) obtains judgments for welfare fraud cases. The case is set up and the papers are served without receiving the \$30 fee from the State. An invoice is sent to DHSS; however, DHSS does not pay the Sheriff's Office until the defendant pays them. Although the volume of these cases is not high (three or less each month), and thus the dollar amount is not large, we do not believe that the Sheriff's Office should be extending open-ended credit to an entity that is not exempt from service fees. There are currently 13 cases, at \$30 each, that are greater than 75 days past due (with seven of these past due for over a year).
- Until recently, in cases where the NCC Law Department was the plaintiff, NCC was asking the Sheriff's Office to serve court documents without providing payment. The Sheriff's Office was not enforcing up-front payment by NCC. NCC now provides up-front payment; however, there are still approximately 40 cases (as of August 2011) in which NCC still owes funds to the Sheriff's Office. The majority of these fees are the \$15 Notice to Lienholders fee for Sheriff's Sales. This does not have much effect on NCC's financial statements (since the dollar amounts are not large and the Sheriff's Office's income ultimately becomes NCC's income); however, to provide a true picture of NCC's expense and the Sheriff's Office's income, we believe NCC should pay the Sheriff's Office the outstanding balance owed.

Recommendations

- The Sheriff's Office should institute a policy requiring all plaintiffs to pay fees up-front. Otherwise, service will not be provided.

- The situation with NCC has been resolved and, therefore, we do not have any recommendation regarding this.

Management Response

This comment mentions fees not paid in advance of service. Specifically, there are a few occasions per month when the State Department of Health and Social Services (DHSS) does not provide advance set up fees for cases of welfare fraud. They would only pay when they recovered the funds they filed for. In most cases, services did not get paid. In addition, New Castle County did not provide up front payments for service. The policy has been changed. New Castle County now pays up front fees and past accounts are being reconciled. Of course, even when the County didn't pay up front, there was no loss of revenue to the County. The Sheriff's office ultimately turns all income from fees back to the County. This process will just make accounting for these transactions more uniform, and demonstrate compliance to policy. We will discuss this situation with DHSS to institute the same policy with them.

13. Enhancements in Reconciling Bills from Newspapers

Executive Summary:

- **Risk:** The process for ascertaining amounts due to newspapers may not be as efficient as the Office would like.
- **Control Concern:** The Sheriff's Office has worked with the newspapers to improve the format of the information they provide, thus saving the Office time in reconciling the bills. We believe the process could be made even more efficient if the newspapers agreed to provide the information in the format the News Journal does.
- **Recommendation:** Discuss with newspapers continued enhancements in format of information regarding advertisements.

Comment

Delaware State Code Title 10, Chapter 49, Subchapter V, Section 4972 requires public notice of sales of real estate. Such notice requires advertisement for two weeks prior to the sale in "(1) a newspaper of general circulation published in the county wherein the property is situated and (2) a newspaper of general circulation published nearest to the place where the property is situated ... Not more than 3 insertions per week shall be made in any one newspaper ...". The daily newspaper used is The News Journal, and the weekly papers are the Newark Post, the Middletown Transcript, and the New Castle Weekly, depending on the location of the property.

At the time of our audit, the process for reconciling amounts due to the newspapers was inefficient – largely due to the format of the billing statements provided by the newspapers. The Sheriff’s Office has worked with the newspapers to improve the format of this information, thus saving the Office time in reconciling the bills. The primary improvement has been that the newspapers now provide the Sheriff’s Office case #’s, and all but one of the newspapers provides them in sequential order. This makes it much easier to reconcile to the Excel spreadsheet of all properties scheduled for sale (which the Sheriff’s Office provides to the newspapers).

The process is now more efficient. However, we believe it could be even more efficient if the newspapers agree with the below recommendations.

Recommendations

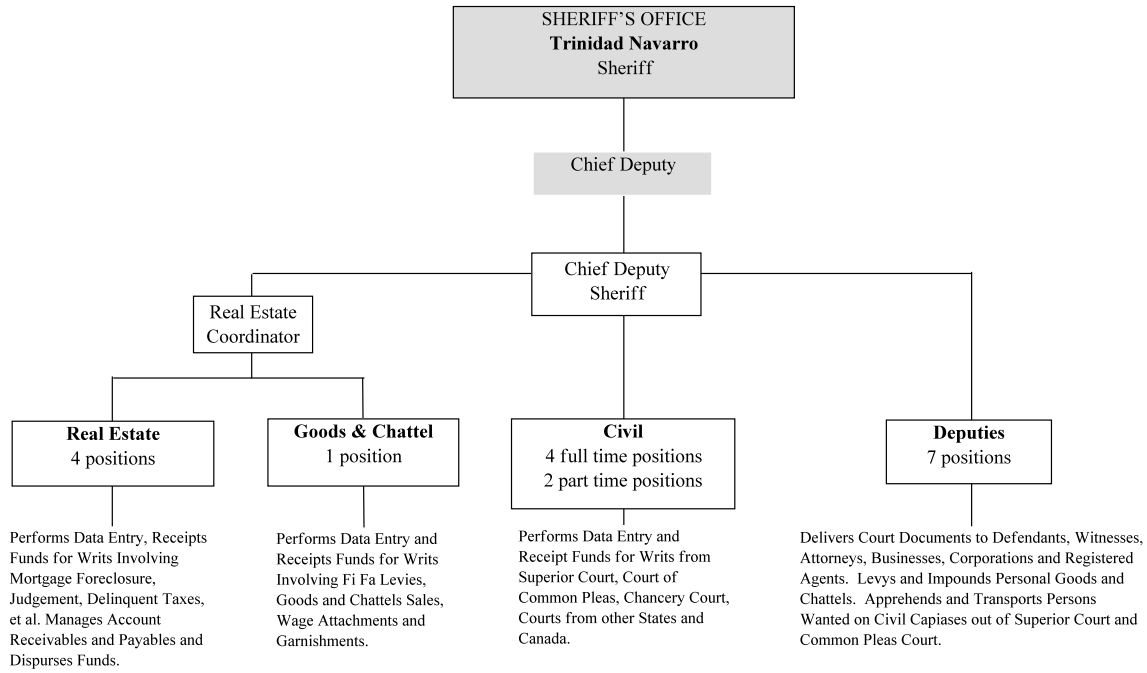
- Ask the one newspaper that is not currently providing (on the bill) the properties in sequential order by Sheriff’s Office case # to please do so.
- Ask the newspapers to send back electronically the Excel spreadsheet that the Sheriff’s Office sent to the paper, indicating which properties were advertised. (This is currently the way the News Journal lets the Sheriff Office know which advertisements have been run.)
- Ask the News Journal to return a copy of the advertisement (as the other papers do) to show that the property was actually advertised.

Management Response

This comment speaks about obtaining newspaper advertisement billing information in an easier to discern format. One vendor bills us without the “Lev Fac” number identifying each ad. This makes it difficult to verify each property advertised as the bill doesn’t place them in order. We will work with the vendor to see if they can add the “Lev Fac” number in a spreadsheet which would place the ads in numerical order. This would ease the verification process to be certain all ads were placed as requested.

Appendix A - Sheriff's Office Organization Chart

Sheriff of New Castle County



Appendix B - Comments Directed to Superior Court

Note: The responsibility for addressing these comments falls under the purview of the Superior Court of Delaware – not the Sheriff’s Office. We will be issuing a memorandum on these issues to the Chief Justice of the Superior Court. The comment only appears in this appendix because the Sheriff’s Office relies upon the documents received from Superior Court. Please note that the Prothonotary’s Office is the administrative arm of the Superior Court.

1. Accuracy/Reasonableness of Amounts in Court Writs

Executive Summary:

- **Risk: Plaintiffs in foreclosure cases could provide erroneous information to Superior Court, resulting in judgments reflecting erroneous amounts.**
- **Control Concern: The Superior Court is not verifying the accuracy/reasonableness of amounts being requested by plaintiffs and their attorneys.**
- **Recommendation: We will be issuing a separate memorandum to the Chief Justice of the Superior Court recommending that the Superior Court institute more effective controls over ensuring the accuracy/reasonableness of the amounts requested by plaintiffs in foreclosure cases.**

Comment

The writs received from the court sometimes include amounts which:

- Seem unusual in the relationship of certain dollar amounts to the judgment amount and/or the location of the property.
- The Prothonotary’s Office is not able to explain and/or has not verified because they rely upon the affidavit supplied by the attorney.
- In at least one case, are simply inaccurate.

In our disbursements testing and in our testing of the set-up of Sheriff’s Sale information, we found the following:

- On one case, the attorney obtained a judgment for approximately \$41,000 more than the actual principal owed on the property. Since the writ received from the Court reflected the erroneous amount, the Sheriff’s Office set up this amount on Civil Serve and, after the sale of the property, paid the attorney this amount. The attorney realized the mistake and returned the excess funds to the Sheriff’s Office. The Prothonotary’s Office informed us that the plaintiff had requested the erroneous amount; however, they would not have known the amount was erroneous because

they do not question amounts requested by attorneys unless such amounts are clearly unreasonable.

- In one case, the amount of property taxes requested by the plaintiff in the writ was over 1000% higher than the average annual property taxes on the property. We discussed this case with the Prothonotary's Office and they agreed that, if this much had accrued in property taxes, the property owner must have been delinquent for several years – in which case, the bank / mortgage company probably would have foreclosed upon the property much earlier.
- In one case, the amount of property taxes requested by the plaintiff in the writ was over 668% higher than the average annual property taxes on the property. We discussed this case with the Prothonotary's Office and they agreed that, if this much had accrued in property taxes, the property owner must have been delinquent for several years – in which case, the bank / mortgage company probably would have foreclosed upon the property much earlier.
- In one case, the writ specified \$16,124.61 in “Other fees assessed by plaintiff.” The writ did not specify the components of this dollar amount so the Sheriff's Office set up the amount on Civil Serve as a miscellaneous expense. The writ also specified \$41,102.08 as “Interest Credit Subject to Recapture.” This was also set up by the Sheriff's Office as a miscellaneous expense. The Prothonotary's Office was not able to tell us what these amounts represented.
- In one case, the writ specified \$7,922.79 in “Corporate Advances (Non-DRM).” We questioned the Sheriff's Office about this and a staff member contacted the law firm. The law firm was unable (until recently) to specify what these funds represented. Nor could the Prothonotary's Office.

The Prothonotary's Office informed us that attorneys are officers of the court and have a responsibility under the Delaware Rules of Professional Conduct to only request items in the judgment which are legitimate and accurate. Also, the attorneys are required to sign a sworn affidavit that the amounts being asked for are “justly due and owing.”

The Prothonotary's Office also told us that they do not have the staffing to actually verify the amounts requested by attorneys. (There is a hiring freeze in the State of Delaware.) We find this disconcerting because, in many other situations in the various Delaware courts, plaintiffs must be able to prove amounts owed with specificity.

Recommendation

As stated above, we will be issuing a memorandum to the Chief Justice of the Superior Court making him aware of these situations and recommending that the Superior Court institute more effective controls over ensuring the accuracy/reasonableness of the amounts requested by the attorneys for the banks and mortgage companies.

2. Standardization of Court Writs

Executive Summary:

- **Risk: Information received regarding Court Judgments on foreclosure cases may not be clear and understandable, making it more difficult for the Sheriff's Office to ascertain amounts due to plaintiff.**
- **Control Concern: There is not a standardized writ to be used by plaintiffs on foreclosure cases, thus negatively impacting the efficiency and effectiveness of the Sheriff's Office setting up case fees on Civil Serve. Also, plaintiffs' attorneys often submit to the Sheriff's Office (after the sale date) paperwork on amounts owed to them, and such paperwork is not verified by the Superior Court and it is sometimes difficult to relate to the writ.**
- **Recommendation: We will be issuing a memorandum to the Chief Justice of the Superior Court suggesting that (1) the Prothonotary's Office work with the Sheriff's Office to develop a standard form for Court writs, and (2) the Superior Court institute a rule that all amounts requested by attorneys after the sale date must be approved by the Superior Court.**

Comment

For Sheriff's Sales, the writ (LEV FAC for mortgage foreclosures, VENDEX for tax sales) received from the court includes information on the judgment obtained by the plaintiff. This information generally includes the judgment amount, interest on the judgment amount, and attorney's fees; it may also include information on other items such as escrow items paid by the petitioner, appraisal fees, title fees, etc. The Sheriff's Office uses this information to set up, on the Civil Serve System, the various amounts which are going to be due from the proceeds of the Sheriff's Sale.

In our testing of the set-up of Sheriff's Sales and the disbursements to the various entities entitled to receive funds from the Sheriff's Sale proceeds, we were not always able to verify items set up on Civil Serve to items per the court writ. Attorneys often submit to the Sheriff's Office (after the sale date) paperwork on what is owed to them and such paperwork is sometimes difficult to relate to the writ. We discussed this situation with the Prothonotary's Office who told us that the attorneys are not entitled to any fees which are not included in the writ. However, since the writs generally include language such as "Plus all other costs of this action", we can't really say that the costs on Civil Serve were not included on the writ (although we can certainly say that they were not specified in the writ).

Testing – Disbursements to Prothonotary’s Office

We selected all three checks issued to the Prothonotary’s Office (for excess proceeds) during the period 7/1/10 to 6/30/11 and reviewed each case encompassed within each check. We found the following concerning writs:

- For one case, we discovered that the attorney’s fee and the interest until confirmation date had apparently been calculated twice. When we asked a Sheriff’s Office staff member about this, he called an employee of the attorney, who then sent the Sheriff’s Office a spreadsheet indicating that the total amount paid to the attorney was accurate. However, our review of this spreadsheet indicated:
 - There were items on the spreadsheet that were not explicitly specified in the writ (e.g., an additional \$4,200 for escrow advance).
 - Our calculation of 5% of the principal and interest for attorney’s fees indicated that the fees paid to the attorney were almost \$5,000 more than what the attorney was entitled to. (Please note that the writ does include the language “Plus costs advanced for the payment of property taxes, assessments, insurance, and/or other charges” and “Plus all other costs of this action.”)
 - It appears that the interest to confirmation date figure includes over 100 days of additional interest.

It appeared to us that the attorney may have miscalculated the funds due and that the excess proceeds remitted to the Prothonotary’s Office may have been less than they should have been. We discussed this case with the Sheriff’s Office, who followed up with the attorney. The attorney’s explanation was that most of the additional cost was due to “forced-placed insurance” and:

- His client has an agreement with an insurance company to unconditionally insure any mortgaged property in the client’s portfolio upon request, sight unseen, and on a moment’s notice when the borrower’s coverage has terminated.
- Many of these properties are poorly maintained or vacant and are high risk properties for damage, theft and fire; therefore, the insurance company has to charge premiums five to eight times higher than normal.
- The purchase of such insurance is agreed to by the borrower in the client’s standard mortgage document.

This explanation, if accurate, is reflective of the language in the writ “Plus costs advanced for the payment of property taxes, assessments, insurance, and/or other charges.” However, the fact remains that the attorney was not obligated to provide any documentation to the Court or the Sheriff’s Office on these additional costs.

- For one case, the attorney contested the original amount paid by the Sheriff’s Office, which the Office had calculated based on the writ. The attorney requested another \$1,867, including additional attorney’s fees, based on the language in the writ “Other Miscellaneous Expenses.” It has been the Sheriff’s Office practice not to question the additional amounts requested by attorneys unless such amounts are clearly exorbitant.

Testing – Disbursements to Parties other than Municipalities (including NCC)

From the Civil Serve report “Disbursements to All Payees Except Municipalities and Treasurer”, we selected a sample of 25 disbursements during the period July 1, 2010 through May 31, 2011 and reviewed all the cases encompassed within the disbursements. Our testing revealed the following concerning writs:

- On one case, the writ included in the judgment “Plus accrued interest on the unpaid balance to 8/9/10 (\$30.66 per diem).” The Sheriff’s Office actually calculated the interest until confirmation date (a later date) although the writ did not include any explicit language stating the plaintiff was entitled to interest until this date. The writ did include language “Plus all other costs of this action.” This could include interest to confirmation date; however, based on our testing of many other cases, the court typically includes specific language to this effect. The Prothonotary’s Office informed us that the plaintiff must not have asked for interest to confirmation date.
- On one case, the attorney obtained a judgment for approximately \$41,000 more than the actual principal owed on the property. The Sheriff’s Office set up the erroneous amount on Civil Serve and issued a check to the attorney. The attorney realized the mistake and returned the excess funds to the Sheriff’s Office. The Prothonotary’s Office informed us that the plaintiff had requested the erroneous amount; however, they would not have known the amount was erroneous because they do not question amounts requested by attorneys unless such amounts are clearly unreasonable.
- On one case, the writ states “Plus attorney’s fees of 5% of principal and interest as of entry of judgment \$4,804.64.” The attorney’s fees set up on Civil Serve, and paid to the plaintiff, were a higher amount because the Sheriff’s Office calculated the attorney’s fees based on 5% of principal and interest through the confirmation date (which included interest after the judgment date).
- On one case, the LEV FAC stated attorney’s fees of \$938.79, while the “Direction of Entry of Judgment and Affidavit” stated fees of \$927.69. The Sheriff’s Office used the LEV FAC and set up the attorney’s fees as \$938.79. We also noticed that, in the LEV FAC, the Prothonotary’s Office did not include the attorney’s fees in the total amount of the judgment (which would not have happened if the LEV FAC was set up as an Excel document). Although these items may seem minor, we believe it is an indication of carelessness in the preparation of the documents by the plaintiff’s attorney and a lack of detailed analysis of the writs by the Prothonotary’s Office.
- The writs do not always include an easily calculable amount for attorney’s fees. For instance, instead of stating something like “5% of principal and interest”, the writ may only say “reasonable attorney’s fees.” The Prothonotary’s Office did direct us to Delaware Code, Title 10, Chapter 39, Section 3912³ which allows for attorney’s fees up to 20% of the principal and interest.
- The writ for one case had an item (“Suspense Balance – Pre Judgment) with a negative dollar amount of \$66.48. Sheriff’s Office management stated that unless a

³ “In all causes of action, suits, matters or proceedings brought for the enforcement of any note, bond, mechanics lien, mortgage, invoice or other instrument of writing, if the plaintiff or lien holder ... recovers judgment in any sum, the plaintiff or lien holder may also recover reasonable counsel fees, which shall be entered as part of such judgment ... Such counsel fees shall not ... exceed 20 percent of the amount adjudged for principal and interest. Such counsel fees shall not be entered as a part of such judgment unless the note, bond, mortgage, invoice, or other instrument of writing sued upon, by the terms thereof, expressly provides for the payment and allowance thereof ...”

negative dollar amount appearing on a writ is large, they do not reduce any of the other fees by the negative dollar amount. The Prothonotary's Office was not able to tell us what this item represented.

- In general, we noticed many examples of the writ stating a dollar amount for miscellaneous fees but not specifying any more detail.

The Sheriff's Office deals with many different law firms and each firm has their own form outlining the amounts they are seeking from the court. We believe all of the above items are instances where non-standardization of the writ causes confusion in the Sheriff's Office on what to set up on Civil Serve. The burden of ensuring the items on the writ are clear and understandable should be on the Prothonotary's Office – not the Sheriff's Office. In addition, the Sheriff's Office should not be put in the position where, after the sale date, attorneys request additional funds and the Sheriff's Office has to determine whether such request is legitimate.

Recommendations

We will be issuing a memorandum to the Chief Justice of the Superior Court suggesting the following ideas:

- The implementation of a standard form to be used by all law firms seeking property judgments. Having a standard form, which explicitly states amounts the firm is seeking and therefore causes the court to be explicit in the amounts it grants in the judgment, would greatly benefit the Sheriff's Office. It would remove any doubts on what the amounts are for. If such form is standardized, perhaps the form could be placed on Lexis-Nexis for law firms to easily access.
- For costs that are not specified in the writ issued by the Court (e.g., "Plus all other costs of this action"), the Superior Court should institute a rule that, once these costs are determined, the attorney must bring such costs to the Superior Court for approval. This would help to ensure the attorneys are careful and conscientious about what they submit for additional costs.