



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued May 31, 2016

Land Court Department

For the period July 1, 2014 through September 30, 2015





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Making government work better

May 31, 2016

The Honorable Judith C. Cutler, Chief Justice
Land Court Department
3 Pemberton Square, 11th Floor
Boston, MA 02108

Dear Chief Justice Cutler:

I am pleased to provide this performance audit of the Land Court Department. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2014 through September 30, 2015. My audit staff discussed the contents of this report with management of the court, whose comments are reflected in this report.

I would also like to express my appreciation to the Land Court Department for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

CDS	Copy Data Solutions Inc.
LCD	Land Court Department
MMARS	Massachusetts Management Accounting and Reporting System
OST	Office of the State Treasurer

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has performed an audit of various activities of the Land Court Department (LCD) for the period July 1, 2014 through September 30, 2015. The objectives of our audit were to determine whether LCD's cash-management practices were appropriate and in accordance with applicable requirements and whether its expenditures were appropriate and recorded in accordance with applicable requirements.

Below is a summary of our findings and recommendations, with links to each page listed.

Finding 1 Page 7	Funds totaling \$123,825 that were held in escrow were not transferred to the Office of the State Treasurer's (OST's) Abandoned Property Division. Two out of the five escrow accounts held by LCD were maintained for more than three years after the cases were completed and should have been declared abandoned and remitted to OST.
Recommendations Page 7	<ol style="list-style-type: none">1. LCD should transfer abandoned escrow accounts to OST three years after the completion of cases, in accordance with Section 6 of Chapter 200A of the Massachusetts General Laws and the policy of the Trial Court.2. LCD should ensure that all staff members who are responsible for handling escrow accounts understand the laws and policies regarding escrow funds and develop a process to monitor escrow accounts as they age.
Finding 2 Page 8	LCD is not using competitive bidding or agreements to procure and manage photocopy vending services. LCD has allowed a vendor to maintain two photocopiers at the LCD Records Department without conducting a competitive procurement process for these services; executing a formal written contract with the vendor; being reimbursed for overhead costs, such as office space and electricity; or protecting itself from any legal claims that could arise (for example, claims concerning protecting personally identifiable information).
Recommendations Page 9	<ol style="list-style-type: none">1. LCD should conduct a competitive bidding process for vendors who are providing services at the court.2. LCD should enter into an agreement with the supplier of the photocopiers to receive a percentage of the photocopy revenue collected from the public in order to offset overhead costs. Additionally, the terms of disposal should be outlined in any agreement or contract to ensure that state and personally identifiable information will be disposed of in a secure and complete manner.3. LCD should create a file for all vending-machine agreements, including one for the photocopiers, that contains all agreements/contracts and validation documents when income is received under an agreement.

Post-Audit Action

On December 31, 2015, LCD remitted to OST the two escrow account balances (including accrued interest for October, November, and December 2015), which together totaled \$123,831.

OVERVIEW OF AUDITED ENTITY

The Land Court Department (LCD), which was established under Section 1 of Chapter 211B of the Massachusetts General Laws, is one of seven departments that compose the Trial Court of the Commonwealth. The Massachusetts Trial Court was created by Chapter 478 of the Acts of 1978, which restructured the courts into seven departments: the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Probate and Family Court, the Superior Court, and the Land Court. According to its website,

The court has exclusive, original jurisdiction over the registration of title to real property and over all matters and disputes concerning such title subsequent to registration. The court also exercises exclusive jurisdiction over the foreclosure and redemption of real estate tax liens [under Section 1 of Chapter 185 of the General Laws]. . . . The court has concurrent jurisdiction over specific performance of contracts related to real estate and over petitions for partitions of real estate. . . . The court shares jurisdiction over matters arising out of decisions by local planning boards and zoning boards of appeal. Both the Land Court and the Superior Court Department have jurisdiction over the processing of mortgage foreclosure cases. . . . Additionally, the court has superintendence authority over the registered land office in each registry of deeds.

LCD consists of six associate justices and one Chief Justice. The Chief Justice is subject to the superintendence authority of the Supreme Judicial Court and acts as the administrative head of LCD.

LCD is located at 3 Pemberton Square in Boston. As of September 2015, it had approximately 59 employees. LCD judges normally sit in Boston; it also holds trials in other locations as needed.

During the audit period, July 1, 2014 through September 30, 2015, LCD collected \$3,963,245 of fees, surcharges, and miscellaneous general revenue and transmitted them to the Office of the State Treasurer as either general or specific state revenue, as shown in the following table.

Source Revenue Category	July 1, 2014 through June 30, 2015	July 1, 2015 through September 30, 2015	Audit Period— July 1, 2014 through September 30, 2015
Fees	\$ 7,496	\$ 496	\$ 7,992
General Revenue	3,115,897	612,916	3,728,813
Surcharges	189,510	36,930	226,440
Total	<u>\$3,312,903</u>	<u>\$ 650,342</u>	<u>\$3,963,245</u>

LCD operations are funded by state appropriations managed by the Trial Court. According to the Commonwealth's records, expenditures associated with the operation of LCD were \$4,553,903 for the period July 1, 2014 through September 30, 2015.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Land Court Department (LCD) for the period July 1, 2014 through September 30, 2015.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Are LCD's cash-management practices appropriate and in accordance with applicable requirements?	No; see Findings <u>1</u> and <u>2</u>
2. Are LCD's non-payroll expenditures appropriate and recorded in accordance with applicable laws, rules, and regulations?	Yes

To accomplish our objectives, we performed the following audit procedures.

During our audit, we gained an understanding of the internal controls we deemed to be significant to our audit objectives and evaluated the design and effectiveness of those controls. In addition, we performed the following testing:

- We identified a population of 37 non-payroll expenditures for the audit period and reviewed 8 expenditures for appropriateness and supporting documentation.
- We verified that custodial accounts were maintained and reviewed custodial-account assets to determine whether they were current or should be transferred to the Office of the State Treasurer's Abandoned Property Division. Our testing in this area included interviews with LCD personnel and a review of case-record information provided by LCD.

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- We selected 11 out of a population of 84 waivers of fees to verify that they were supported by completed, signed, and approved Affidavits of Indigency in the case files.
 - We conducted interviews with LCD personnel and reviewed applicable statutes, policies, procedures, accounting records, and other source documents.
 - We verified that no variances that were reportable under Chapter 647 of the Acts of 1989¹ occurred during the audit period.
 - We reviewed the results of the internal audit dated June 18, 2015 to determine applicability to our current audit objectives.
 - We reviewed fund-management activities by observing the cashiering function, daily closeout, and issuance of manual receipts.

To obtain audit evidence, we used nonstatistical, judgmental sampling to test revenue and non-payroll-related expenditures. We selected a cross-section of samples from throughout the audit period and accounted for the likelihood of error based on the details of the transactions. The results of these tests cannot be projected to those populations.

Based on our previous data-reliability assessment of the information-technology controls of the Massachusetts Management Accounting and Reporting System (MMARS)² and our current comparison of source documentation with MMARS information, we determined that the information obtained from MMARS for our audit period was sufficiently reliable for the purposes of this report.

1. Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, requires agencies to file a report with the Office of the State Auditor if they find any “unaccounted for variances, losses, shortages or thefts of funds or property.”

2. In 2014, the Office of the State Auditor performed a data-reliability assessment of MMARS. As part of this assessment, we tested general information-technology controls for system design and effectiveness. We tested for accessibility of programs and data, as well as system change management policies and procedures for applications, configurations, jobs, and infrastructure.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. Funds totaling \$123,825 that were held in escrow were not transferred to the Office of the State Treasurer's Abandoned Property Division.

Two out of the five escrow accounts held by the Land Court Department (LCD) were maintained for more than three years after the cases were completed and should have been declared abandoned and remitted to the Office of the State Treasurer (OST). As of September 30, 2015, LCD had five escrow accounts, totaling \$234,659, in its custody. Of the two accounts that should have been remitted, one was valued at \$7,986 and held for six years and two months and the second was valued at \$115,839 and held for five years and eight months, for a combined total of \$123,825.

Authoritative Guidance

Section 2 of the Trial Court's Fiscal Systems Manual states that funds that are unclaimed and held by the court for three years after their related cases are closed must be submitted to OST in accordance with Section 6 of Chapter 200A of the Massachusetts General Laws, which states,

Monies paid into any court within the commonwealth for distribution, and the increments thereof, shall be presumed abandoned if not claimed within three years after the date of payment into court, or as soon after the three year period as all claims filed in connection with it have been disallowed or settled by the court.

Reasons for Noncompliance

LCD officials misunderstood the law concerning the transfer of abandoned escrow accounts to OST's Abandoned Property Division: they thought it had to be done within seven years, not three. When the audit team informed LCD employees that they were maintaining two escrow accounts in violation of this law, they took immediate action to transfer the two escrow accounts.

Recommendations

1. LCD should transfer abandoned escrow accounts to OST three years after the completion of cases, in accordance with Section 6 of Chapter 200A of the General Laws and the policy of the Trial Court.
2. LCD should ensure that all staff members who are responsible for handling escrow accounts understand the laws and policies regarding escrow funds and develop a process to monitor escrow accounts as they age.

Auditee's Response

As is correctly described in the audit report, the two escrow accounts were both immediately transferred to the Office of the State Treasurer. As you know the accounts had not been timely abandoned due to a misunderstanding of the required holding period. The Land Court is now aware of the correct three year time period and will apply it to future escrow accounts.

2. LCD is not using competitive bidding or agreements to procure and manage photocopy vending services.

LCD was not properly administering the photocopiers that it allowed the public to use at its facilities. Specifically, LCD has allowed a vendor, Copy Data Solutions Inc. (CDS), to maintain two photocopiers at the LCD Records Department. CDS provides all the maintenance and supplies for these photocopiers and charges the public 50 cents per copy. However, LCD has never conducted a competitive procurement process for these services. Further, LCD has not executed a formal written contract with this vendor for the services and is not reimbursed for any overhead costs, such as office space or electricity, that it incurs in operating these photocopiers on the vendor's behalf.

As a result, the Commonwealth is forgoing revenue that could be collected from this activity. Further, because it did not use a competitive procurement process, LCD may not have obtained the best price for these services. Finally, without a written agreement, LCD lacks a formal mechanism to monitor the vendor's performance, establish equitable terms and conditions for the use of the space and utilities, and protect itself from any legal claims that could arise. For example, LCD lacks a mechanism to ensure that the vendor removes any personally identifiable information that might exist on a photocopier's hard drive before the machine is removed so that the information would not be subjected to improper use.

Authoritative Guidance

The Trial Court's Chief Justice for Administration and Management provided guidance to courts regarding the competitive procurement of vending machines in January 1994. Section 1 of the justice's Memo #12 states,

1. *Vending Machines/Public Use Equipment.* Because coin or credit card operated vending machines, photocopiers, FAX units, and other such public conveniences can offer significant revenues to the vendor, such vendors should only be selected after a valid bid or RFP process. . . . Following the bid or RFP process, a contract must be made between the vendor and the Court division. . . .

2. *Basic Provisions. . . Requests for Proposals (RFP's) should include provisions which best ensure that the public will be fairly served, that the Commonwealth receives a benefit, and that you will be able to fairly compare the vendor's responses.*

Additionally, the memo states, in part,

For all vending machines that are installed in State owned buildings, a file must be retained for audit purposes. This file should contain all agreements/contracts and validation documents when income is received.

Reasons for Noncompliance

LCD officials did not know when this vendor first placed its photocopiers at this location but said that they believed it was a decision made by the Trial Court. They stated that they were unaware of the requirement to enter into a contract with the vendor and added that they believed it was the Trial Court's responsibility to administer this service. However, the guidance issued by the Trial Court clearly indicates that it is LCD's responsibility to enter into a contract with the vendor.

Recommendations

1. LCD should conduct a competitive bidding process for vendors who are providing services at the court.
2. LCD should enter into an agreement with the supplier of the photocopiers to receive a percentage of the photocopy revenue collected from the public in order to offset overhead costs. Additionally, the terms of disposal should be outlined in any agreement or contract to ensure that state and personally identifiable information will be disposed of in a secure and complete manner.
3. LCD should create a file for all vending-machine agreements, including one for the photocopiers, that contains all agreements/contracts and validation documents when income is received under an agreement.

Auditee's Response

The Administrative Office of the Land Court has already been in contact with the Trial Court Procurement Department. A portion of a now expired 2009 contract between the Trial Court Procurement Department and the copy vendor (to provide two photocopiers for public use in the Land Court Recorder's Office) was discovered, but no updates were located. At the direction of the Trial Court Procurement Department, the Land Court Department has begun the process of gathering use information from the current vendor in order to inform a competitive bidding process for this service, in accordance with the Trial Court Fiscal Year 1994—Memo #12. A competitive bidding process will occur, taking into account the recommendations included in the audit, and a file containing the agreement and accounts will be maintained by the court.