

# PERFORMANCE AUDIT REPORT

## Department of Trust Lands Unclaimed Property

Report No. 3036(b)  
(Report 2 of 3)  
January 5, 2016

STATE AUDITOR  
ROBERT R. PETERSON



Phone (701)328-2241  
Fax (701)328-1406

STATE OF NORTH DAKOTA  
**OFFICE OF THE STATE AUDITOR**  
STATE CAPITOL  
600 E. BOULEVARD AVENUE – DEPT 117  
BISMARCK, NORTH DAKOTA 58505

January 5, 2016

Honorable Jack Dalrymple, Governor

Members of the North Dakota Legislative Assembly

Lance Gaebe, Commissioner, Department of Trust Lands

We are pleased to submit this performance audit report on aspects of the Department of Trust Lands. Specifically, this report contains the results of our review to determine whether Unclaimed Property is effectively administrated. The report is the second of three reports to be issued by our office in conjunction with the performance audit of the Department of Trust Lands.

The audit was conducted at the request of the Legislative Audit and Fiscal Review Committee. We conducted this audit under the authority granted within North Dakota Century Code Chapter 54-10. Included in the report are the objectives, scope, recommendations, and management responses.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Peterson".

Robert R. Peterson  
State Auditor



# OFFICE OF THE STATE AUDITOR

## Performance Audit – Unclaimed Property Report Highlights

### Purpose

Determine whether the Department of Trust Lands is effectively administering unclaimed property.

### Audit Conclusion

We determined aspects of the unclaimed property program were operating ineffectively.

### Audit Recommendations

Our audit resulted in 19 formal recommendations related to unclaimed property. The Department agreed with 13 of the 19 recommendations. The recommendations and management agreement/disagreement are identified in Appendix A of the report. There are 6 Office of the State Auditor concluding remarks in this report.

### Background

When property has remained unclaimed by an owner for a specific time period, the property is presumed to be abandoned. Holders of abandoned property are required to submit the property to the Department of Trust Lands. The property is held in trust in perpetuity by the state and funds are deposited in the Common Schools Trust Fund. The Department is responsible for reuniting individuals with the unclaimed property.

### Summary Information

- The Department's online search function intentionally excluded certain owners from being informed property was held by the Department. (page 2)
- A lack of audits of in-state holders resulted in limited, to no, assurance property presumed abandoned was turned over to the Department. (page 4)
- Incomplete and inaccurate information in the unclaimed property database adversely impacts the owners' ability to locate their property. (page 7)
- The unclaimed property inventory listing was not complete. (page 7)
- Property submitted to the Department may not be entered into the unclaimed property database for up to a year. (page 8)
- Improvements are needed to adequately safeguard sensitive information obtained and maintained by the Department. (page 10)
- The Department was in noncompliance with state law requirements related to unclaimed property listed in a state agency's name. Also, the Department inappropriately provided state agencies an option to donate property not belonging to the agency. (page 12)
- The Department has not had a sale of unclaimed property in over 20 years. (page 12)
- The Department has not fulfilled the mission of unclaimed property. (page 14)

---

---

# Table of Contents

---

Transmittal Letter

Report Highlights

## **Chapter 1 Unclaimed Property Division**

Introduction .....	1
Background Information .....	1
Making Improvements Related to Owners .....	1
Improving Property Searches .....	2
Increasing Efforts to Locate Owners .....	3
Making Improvements with Holders .....	3
Conducting Audits of Holders .....	4
Providing Guidance to Holders .....	5
Making Changes with Negative Reports .....	5
Improving Early Acceptance of Property .....	6
Making Improvements with Property Held by the Department .....	7
Improving Data Integrity .....	7
Improving Receiving and Maintaining Processes .....	7
Performing Timely Inventorying of Property .....	8
Making Changes with Property Valued at Less than \$50 .....	8
Protecting Property .....	9
Safeguarding Sensitive Information .....	10
Improving the Claims Process .....	10
Increasing the Consistency of the Claims Process .....	10
Eliminating the Fee to Obtain Property .....	11
Making Changes with State Agency Properties .....	12
Conducting Property Sales .....	12
Establishing Administrative Code .....	13
Establishing Adequate Record Series .....	14
Fulfilling the Mission of Unclaimed Property .....	14

## **Chapter 2 Audit and Background Information**

Purpose and Authority of the Audit .....	16
Background Information .....	16
Objective of the Audit .....	16
Scope and Methodology .....	17

## **Appendices**

Appendix A: List of Recommendations and Management Responses
Appendix B: Unclaimed Property Information
Appendix C: Supplemental Responses and Concluding Remarks

---

# Unclaimed Property Division

---

## Introduction

An objective of this performance audit was to answer the following question:

“Is Unclaimed Property effectively administered?”

We determined aspects of the program were operating ineffectively. Significant improvements for increasing the effectiveness of operations are included in this chapter. Improvements of less significance were communicated in a separate letter to management of the Department of Trust Lands. To conduct a review of the program, we:

- Reviewed applicable laws and policies.
- Reviewed a selection of safe deposit boxes and claims.
- Determined compliance with laws and policies.
- Interviewed selected personnel.

---

## Background Information

Unclaimed property is all property held, issued, or owing in the ordinary course of a holder’s business and has remained unclaimed by the owner for more than the established time frame for the type of property. Unclaimed property can include checks, unpaid wages, stocks, amounts payable under the terms of insurance policies, contents of safe deposit boxes, etc. A holder can include banks, insurance companies, hospitals, utility companies, retailers, local governments, etc. An owner is a person or entity having a legal or equitable interest in property subject to the unclaimed property law.

Since 1975, the Unclaimed Property Division of the Department of Trust Lands (Department) has been responsible for reuniting individuals with property presumed abandoned. The Administrator of the Division oversees the operations of unclaimed property. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the state and funds are deposited in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act created by the national Uniform Law Commission was adopted by the state in 1985.

See Appendix B for additional information related to the Unclaimed Property Program.

---

## Making Improvements Related to Owners

We reviewed efforts made by the Department to reunite owners with their property. This included a review of outreach efforts conducted by the Department to locate owners and information provided on unclaimed property. This also included a review of the resources provided by the Department to be used by owners to search for unclaimed property. We conclude improvements are needed to increase property owners’ chances to be reunited with their property.

---

## Chapter 1 Unclaimed Property Division

---

### *Improving Property Searches*

A free search feature is available on the Department's website allowing individuals to search for unclaimed property. Individuals may search for unclaimed property by entering a last name, city, or zip code. Once an individual enters the search information, the website will display a list of results matching the search information or a message stating "No claims returned. Please try another search." If the individual locates themselves on the list, the matching property can be selected and the individual can proceed to start a claim for the property.

**The Department's decision to limit the capabilities of the unclaimed property online search function adversely impacts reuniting owners with their property.**

We identified a scenario when individuals using the online search function would not be provided accurate search results. Certain search results would not show a match although the Department was holding property for the individual. The error in the search result was created intentionally by the Department. The Department programmed the website search to not show property matches when the owner's address was not reported by the holder. We identified:

- Even if the Department had an owner's name, social security number, and other information, if the address was not provided by the holder, the owner's name may not be searchable.
- The Department promotes the use of the online search function. However, the Department does not identify the limitations of the search function.
- In addition to the online search function, individuals may call the Department to inquire if they have unclaimed property. Department representatives stated individuals calling would be informed of property held by the Department even if the address was not submitted by the holder. Therefore, individuals may receive a different result when searching for property depending on the search method used.
- When an address was not provided by a holder, the address field in the unclaimed property database may be left blank or "Unknown" would be entered. If the address was blank or "Unknown," the online search function may not show a match although the Department was holding property for the individual. However, if the word "Unknown" was misspelled (such as "Unkown"), we identified an individual using the online search function would show a match.

The decision to limit the capabilities of the online search has an adverse impact on reuniting owners with their property. It appears the Department's decision impacts over 10,000 properties valued at over \$7 million from being searchable.

We also identified additional scenarios preventing individuals from being able to find property using the website search function. Due to the following issues, individuals may not be appropriately made aware property is held by the Department.

- Owner names have been misspelled or entered incorrectly. For example, the last name of Staples was entered into the system as "Stapels."

---

## Chapter 1 Unclaimed Property Division

---

- Cities are misspelled. For example, the city of Bismarck was entered into the system as “Bis” and “Bismarack.”
- Incomplete zip codes are entered. For example, the zip code of 58504 was entered into the system as “585.”

### Recommendation 1-1

We recommend the Department of Trust Lands ensure complete and accurate resources are available to those searching for unclaimed property.

### Management’s Response

The Department agrees with this recommendation. Department has recently created additional reports to better identify properties suited to web posting and plans to automate processes to help ensure that only property without identifying information is excluded from internet searches. The Department will review additional options in order to publish more unclaimed property information.

### *Increasing Efforts to Locate Owners*

We conclude the Department was allocating a minimal amount of resources to locate owners of unclaimed property. Beyond the state law requirement to advertise twice a year in the newspaper, limited other outreach efforts were identified during the audit time period.

We identified the Department provided preferential treatment to stock owners by attempting to find current addresses of the owners of stock turned over to the Department the previous year. If a current address was identified, the Department would send a letter to the stock owner notifying the owner of the property. Until June 2015, the Department did not appear to take similar steps for owners of other types of unclaimed property.

### Recommendation 1-2

We recommend the Department of Trust Lands:

- a) Increase efforts to locate owners of unclaimed property.
- b) Ensure efforts to locate owners are done in a fair and consistent manner.

### Management’s Response

The Department agrees with this recommendation. In 2014 additional staff was hired and support staff reassigned to full-time unclaimed property responsibilities and the Department continues to strive for improvement in this area. The number of properties paid in calendar year 2015 increased by 37% over 2014. Enhanced efforts will continue.

---

### Making Improvements with Holders

Holders are required by state law to annually submit a report with the abandoned property sent to the Department. The report is to contain certain information regarding the abandoned property. As part of this performance audit, we reviewed efforts made by the Department to ensure property deemed abandoned had been submitted to the Department. Also, we reviewed the Department’s handling and tracking of reports received from holders. We identified improvements were

---

## Chapter 1 Unclaimed Property Division

---

needed to ensure abandoned property was submitted to the Department as required by state law.

### *Conducting Audits of Holders*

There is limited, to no, assurance property presumed abandoned has been turned over to the Department.

State law authorizes the Department to conduct audits to determine if holders have complied with requirements of the unclaimed property law. The Department had not performed audits of North Dakota holders since 2007. Thus, the Department had limited, to no, assurance property required to be submitted had, in fact, been turned over to the Department. In addition, the Department had limited, to no, assurance holders were conducting due diligence efforts to notify owners the holder was in possession of abandoned property. The lack of performing audits negatively impacts an owner's ability to be reunited with their property. In addition, the Department was not monitoring or tracking reports being received from holders. By not tracking holder reporting, indications of potential noncompliance are not being properly identified.

A recommendation related to audits of holders was included in the Department's financial audit as of June 30, 2014. The private CPA firm recommended the Department find a way to implement the audit function to ensure all unclaimed property was received and properly assess and collect penalties from businesses not in compliance. The Department's response was, "In response to legislation adopted in 2013 to allow third-party auditors to conduct in-state unclaimed property audits; existing vendor contracts were amended to permit the review of in-state holders. Future vendor contracts will also permit audits of in-state as well as out-of-state organizations." We identified no amendments were made to existing contracts as the Department had stated.

### **Recommendation 1-3**

We recommend the Department of Trust Lands:

- a) Monitor abandoned property reporting information from entities in the state.
- b) Have audits of entities in the state conducted to ensure abandoned property is appropriately turned over to the Department.

### **Management's Response**

The Department agrees with this recommendation. Compliance efforts will continue to expand. The Department requested additional unclaimed property audit staff in each of the past three budget cycles and the 2015 Legislature approved an FTE for shared compliance oversight with Department's oil and gas royalty collection responsibilities.

In 2013 the Department successfully requested legislative changes which removed language that prohibited third party auditors to audit North Dakota based businesses; to date no audits of North Dakota businesses have been conducted. Formal amendments of contract auditor agreements was released by the State Procurement Office in December 2015.



---

## Chapter 1 Unclaimed Property Division

---

### *Providing Guidance to Holders*

Providing guidance and training to entities could increase reporting compliance.

Providing proper guidance and training to entities related to requirements for reporting abandoned property to the Department could increase holders' reporting compliance. We identified the Department's guidance and training could be improved. For example:

- In the last four years, the Department had sent educational letters to three industry groups. We conclude the three industry groups do not appear to be high risk industries for noncompliance with unclaimed property requirements. For example, the Department sent letters to veterinarians in the state. We do not consider veterinarians as a high risk industry group.
- The National Association of Unclaimed Property Administrators had an online webinar training session related to unclaimed property. The Department sent an email to North Dakota holders who had an email address in the unclaimed property database. However, only holders reporting information to the Department are included in the database. In addition, less than 20% of the in-state holders in the database had email addresses. Thus, the majority of holders in the state were not made aware of the training.
- The Department received a report periodically from the Secretary of State listing entities registered in North Dakota. However, the Department had not been using the reports to periodically contact entities. In June 2015, the Department used information provided by the Secretary of State to send letters to entities registered in 2007. The entities registered in 2007 may not have been aware of abandoned property requirements for an extended period of time.

### **Recommendation 1-4**

We recommend the Department of Trust Lands provide proper guidance and training on unclaimed property requirements to North Dakota entities.

### **Management's Response**

The Department agrees with this recommendation. In addition to additional internet exposure and possible interaction with other state agencies in describing holder responsibilities, the Department will evaluate tools, including those used by other states, to determine which industry sectors have low compliance and will use this information to target trade groups with educational materials and instruction.

### *Making Changes with Negative Reports*

State law requires holders to annually submit a report with the abandoned property sent to the Department. If a holder does not have property presumed abandoned, a negative report may be submitted (a form certifying no abandoned property exists). However, the law does not require holders to submit a negative report. Holders were provided contradicting information regarding negative reporting on the Department's website. The main unclaimed property web page stated, "Annual reporting is required whether or not the business has any funds to remit." However, the Holder Reporting Instructions included on the Department's website stated "If you have nothing to report, we recommend filing a negative report..." Also, within the holder frequently asked questions web page the Department's answer to the question "Is

---

## Chapter 1 Unclaimed Property Division

---

a negative report required?” was “Technically, no. However, we highly recommend the practice since it helps to create & maintain a filing history for your business.”

Based on discussions with Department representatives, it appears the Department performs no reviews of negative reports. The Department does not appear to use negative reports to appropriately track compliance. It appears very minimal, if any, action is taken by the Department with negative reports submitted.

### Recommendation 1-5

We recommend the Department of Trust Lands eliminate language related to negative reporting for unclaimed property or take appropriate action to require negative reports and track holder compliance.

### Management's Response

The Department disagrees with this recommendation. State law is permissive with respect to negative reporting. The Department will continue to encourage voluntary submission of negative reports which may help indicate that holders are aware of the responsibility to report unclaimed property to the State.

### State Auditor's Concluding Remarks

We conclude there is no value added to the unclaimed property program with voluntary submission of a negative report. First, the Department has no valid basis to use the reports for analysis purposes or to draw conclusions regarding a holders' compliance. Second, the Department may inappropriately use the lack of submission of a voluntary report as an indication a holder may not be in compliance with laws. Lastly, we conclude requesting information from holders the Department does not monitor, or appropriately use, can be a waste of holder and government resources.

### *Improving Early Acceptance of Property*

State law allows a holder, with written consent from the Administrator of the Unclaimed Property Division, to submit property before the property is presumed abandoned. We identified the Department was receiving property before it was presumed abandoned. However, no written consent was given to the holder.

The Department is in noncompliance with state law requirements regarding acceptance of property not presumed abandoned.

State law requires the Department to hold property submitted prior to it being presumed abandoned until the proper time has passed for the property to be presumed abandoned. We identified, once the Department receives property not yet presumed abandoned, the Department does not hold the property until the proper time has passed for the property to be presumed abandoned. The Department does not distinguish between actual abandoned property received and property submitted prior to it being presumed abandoned. We identified the Department delivered property to an individual when the property had yet to meet the requirements to be abandoned.

---

## Chapter 1 Unclaimed Property Division

---

### Recommendation 1-6

We recommend the Department of Trust Lands comply with state law requirements and:

- a) Provide written consent to holders if property is to be submitted to the Department prior to the property being presumed abandoned.
- b) Ensure property is held until the proper time has passed for property to be presumed abandoned.

### Management's Response

The Department agrees with this recommendation. State law has not been followed as it relates to the submission of early reported property which has been published and made available for owners to claim as soon as the property is received. The Department will investigate law changes to permit the Department to publish, and the owner to claim, property that is reported ahead of the abandonment date.

---

## Making Improvements with Property Held by the Department

### *Improving Data Integrity*

Errors in data adversely impact an owner's ability to locate their property.

Tangible property submitted to the Department is inventoried and entered into the Department's database once a year. Intangible property submitted to the Department is entered into the Department's database immediately. In a review of the processes to receipt, inventory, and safeguard property submitted to the Department, we identified improvements were needed.

Our review of information within the unclaimed property database identified incomplete and inaccurate information. For example, we identified multiple individuals with the same social security number. Other instances of inaccurate information included owners' names and cities being misspelled, incomplete zip codes, etc. Information submitted electronically by holders was uploaded into the database with no review performed by the Department. The Department manually enters information into the database from reports not submitted electronically. We identified data integrity issues related to both electronic information uploaded and information manually inputted by the Department. Data integrity issues adversely impact an owner's ability to locate their property. For example, names entered incorrectly into the database impacted the online search feature.

### Recommendation 1-7

We recommend the Department of Trust Lands ensure unclaimed property data is complete, accurate, and consistently entered.

### Management's Response

The Department agrees with this recommendation. The Department has implemented processes to further review the data received by holders in an effort to increase the likelihood an owner would find property and will make additional efforts to work with holders to obtain more accurate data.

### *Improving Receiving and Maintaining Processes*

State law requires holders to send contents of safe deposit boxes and safekeeping repositories to the Department. In review of information related to the receiving, inventorying, and maintaining of tangible property, we identified improvements were needed. For example, the

---

## Chapter 1 Unclaimed Property Division

---

The unclaimed property inventory listing was not complete.

Department did not properly compare the holder report identifying all tangible property submitted to what was actually submitted. The Department did not properly include all items on the inventory listing or itemize coins and other property with a commercial value and used specific descriptions such as gold, silver, and diamond rather than generic terms such as clear stone or gold colored. The Department had no basis to use specific descriptions such as gold, silver, and diamond as property was not appraised. We identified the Department may separate contents of a safe deposit box into multiple envelopes. This practice increases the risk of items being misplaced. In our review of information for 17 safe deposit boxes, the Department provided the contents of the safe deposit box incorrectly for three boxes. The Department was able to eventually provide the correct contents.

### Recommendation 1-8

We recommend the Department of Trust Lands consistently and appropriately receipt and maintain a complete list of unclaimed property.

### Management's Response

The Department agrees with this recommendation. The Department will implement additional steps to further validate that contents reported by financial institutions are verified as inventoried by the holder.

### *Performing Timely Inventorying of Property*

The Department may take no action on property submitted for up to a year.

The Department receives contents of safe deposit boxes from holders throughout the year. Rather than inventorying and entering information into the database when contents were received, the Department waits until approximately June of each year. As a result, tangible property is in the custody of the Department for an extended period of time without being properly inventoried and entered into the unclaimed property database. This impacts an owners' ability to locate their property. We also identified the Department is in noncompliance with annual advertisement requirements within state law. Since the tangible property was not being timely entered into the unclaimed property database, the Department did not properly include owners in the annual published list of names in the newspaper.

### Recommendation 1-9

We recommend the Department of Trust Lands ensure unclaimed tangible property received is inventoried/accounted for timely and comply with requirements for publishing notice in the newspaper.

### Management's Response

The Department agrees with this recommendation. Tangible property received as of January 12, 2016 has been processed and will be included in the 2016 newspaper publication.

### *Making Changes with Property Valued at Less than \$50*

State law allows holders to report properties valued at less than \$50 in the aggregate. Holders are not required to perform due diligence or report the owner's name, address, or any other identifying information for abandoned property valued at less than \$50. Also, the Department is not required to publish the names of owners who are reported with property under \$50 in the required annual newspaper notice. Over the

---

## Chapter 1 Unclaimed Property Division

---

last four years more than \$1.9 million has been entered as aggregate into the Department's unclaimed property database.

When the Department changes an owner name to "Aggregate," the ability of the owner to be reunited with their property is diminished.

When aggregate is used for owner names the likelihood of the property being claimed is diminished. We identified holders submitting name, address, and other identifying information on property valued under \$50. However, owner information may not have been entered into the database. This would be due to the Department changing the reported owner name to "Aggregate." If holders provide identifying information, it is in the owners' best interest for the identifiable information to be entered into the database.

In review of aggregate reporting information from eight selected states, we identified one state does not appear to allow aggregate reporting. Four states appear to allow certain searches of properties reported under the aggregate threshold if the holders submitted owner information. Our discussions with representatives in two states identified each was in the process of lowering the aggregate amount (from \$50 to \$10 and from \$100 to \$25).

### Recommendation 1-10

We recommend the Department of Trust Lands:

- a) Enter owner information into the unclaimed property database when the holder provides adequate owner information regardless of the property value.
- b) Take appropriate action to lower the aggregate reporting amount.

### Management's Response

The Department disagrees with the recommendation. The Department is following state law related to handling aggregate property.

### State Auditor's Concluding Remarks

We do not agree the Department is, in fact, following state law. We identify no state law authorizing the Department to change an owner name to "Aggregate" when the holder has reported the name. State law authorizes holders, not the Department, to determine if property is reported in the aggregate.

---

## Protecting Property

Holders send contents of safe deposit boxes and safekeeping repositories to the Department. In a review of the tangible property received by the Department, we conclude items were not adequately safeguarded. Due to the sensitive nature of safeguarding tangible property, no additional information is provided.

### Recommendation 1-11

We recommend the Department of Trust Lands adequately safeguard unclaimed property submitted to the Department.

### Management's Response

The Department agrees with this recommendation.

---

## Chapter 1 Unclaimed Property Division

---

### Safeguarding Sensitive Information

Improvements are needed to adequately safeguard sensitive information.

Holders submit owner information to the Department as required by state law. The information may contain social security numbers. In addition, when owners submit claims for property the information submitted may include social security numbers, copies of driver's licenses, etc.

Sensitive information should be adequately stored and secured to safeguard against unauthorized acquisition, use, or disposition. We identified sensitive information, stored electronically, was accessible by employees who had no business related purpose to access such information. In addition, records containing sensitive information were not adequately safeguarded.

### Recommendation 1-12

We recommend the Department of Trust Lands adequately safeguard confidential and sensitive information obtained and maintained by the Department.

### Management's Response

The Department agrees with this recommendation. The Department has, and will take additional steps to safeguard against unauthorized access to confidential information.

---

### Improving the Claims Process

When an owner becomes aware unclaimed property may be held by the Department, a claim for the property can be submitted. The documentation required to be sent to the Department with a claim form varies depending on the information the Department received from the holder and the type of property being claimed. The owner may need to send a copy of their driver's license, social security card, proof of address submitted from the holder, or proof of association with the holder. The Department approves or denies the claim based on the claim documentation. We identified improvements were needed with claims processing.

### *Increasing the Consistency of the Claims Process*

Improvements are needed to process claims timely and consistently.

In a review of a selection of 43 claim numbers (40 approved and 3 not approved), we identified inconsistencies existed in how the Department processed claim requests. For example, an online resource was available to the Department to verify address information of claimants. The Department used the resource for certain claims and did not use the resource for others. Also, we identified the Department was inconsistent on how a claim was processed if additional information was necessary to process the claim. A claim requiring additional information could result in a denial letter, the Department contacting the claimant, or the Department mailing back all documents received with a letter requesting additional documentation. The claims process should ensure all claimants are treated in a fair and consistent manner.

Our review of claim information also identified the Department was in noncompliance with state law requirements related to processing claim requests. For example, the Department is required to provide written notice to a claimant within 90 days of the claim being submitted. We

---

## Chapter 1 Unclaimed Property Division

---

identified 4 instances (28 applicable claims) of submitted claims not being provided written notice within 90 days.

### **Recommendation 1-13**

We recommend the Department of Trust Lands consistently and appropriately process claims for unclaimed property.

### **Management's Response**

The Department agrees in part and disagrees in part with this recommendation. See Appendix C for the Department's complete response.

### **State Auditor's Concluding Remarks**

See Appendix C for State Auditor's concluding remarks.

### *Eliminating the Fee to Obtain Property*

When securities (stocks, bonds, mutual funds, and other intangible ownership interests in business associations) are presumed abandoned, the holder changes the name to the Department of Trust Lands. Holders may transfer the securities to the Department or retain the securities at the holder's location. Once a year, the Department will liquidate securities received during a specified time period. The net proceeds of the liquidation are held for the owner.

When an owner makes a claim for their securities prior to the Department's annual liquidation, the owner can either have the Department sell the securities or have the securities turned over. If the securities are sold, a commission (approximately 3 cents per share) is charged and the net proceeds are paid to the owner. If the securities are to be turned over, the owner is required to pay a \$50 fee. We identified no authority for the Department to charge a fee to an owner to receive property yet to be sold. We identified no other fees charged by the Department for an owner to receive unclaimed property yet to be liquidated or sold. In addition, the Department does not charge fees to, or recover locating costs from, owners for unclaimed property located in other states by third-party auditors and submitted to the Department. For example, the Department paid a contract auditor over \$10,000 for locating and submitting abandoned property being held by an out-of-state holder belonging to North Dakota owners. The Department would not attempt to recover the costs by charging owners a fee when the property was claimed.

### **Recommendation 1-14**

We recommend the Department of Trust Lands not require owners to pay a fee to receive their unclaimed property which has not been sold or liquidated by the Department.

### **Management's Response**

The Department does not agree with the recommendation. The Department will seek a legal clarification of NDCC 47-30.1-24 which states in part that the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator. The Department will follow the advice offered by Attorney General counsel.

---

## Chapter 1 Unclaimed Property Division

---

### State Auditor's Concluding Remarks

Regardless of whether the Department legally can charge a fee for property not sold, we conclude the Department should not be requiring only certain owners to pay a fee.

### *Making Changes with State Agency Properties*

The Department receives unclaimed property belonging to state agencies. State law requires the Administrator to send a certified letter to the agency regarding the unclaimed property. The Department is required to provide the Budget Section a report of agencies not claiming the property within one year of the certified letter.

The Department is in noncompliance with requirements related to unclaimed property listed in a state agency's name.

The letter sent by the Administrator to state agencies provides the agencies two options - claim the property or, if the agency does not believe the property belongs to the agency, sign a box on the claim form. The letter states signing the box allows the property to stay in the Common Schools Trust Fund. We conclude the option provided to state agencies to allow property not even belonging to them to stay in the Common Schools Trust Fund (in effect donating the property) was inappropriate. We also identified the Department was in noncompliance with state law as state agencies not claiming property were not reported to the Budget Section.

State law requires the Administrator to not publish state agencies in the annual notice of persons appearing to be owners of abandoned property. We identified the 2014 and 2015 published notices included state agencies.

### Recommendation 1-15

We recommend the Department of Trust Lands comply with state law requirements related to unclaimed property in a state agency's name and:

- a) Ensure Budget Section is provided a complete list of state agencies not submitting a claim for property after a year of being notified.
- b) Not provide state agencies the "donation" option.
- c) No longer publish state agencies in the annual notice of property.

### Management's Response

The Department agrees with this recommendation. The Department is in the process of implementing data validation components related to identifying state agency property within the electronic reporting system. A similar review has also been conducted for manually entered properties and is scheduled for future automation. The Department will eliminate the donation option for state agencies and include all non-claiming agencies in the report to the Budget Section.

---

### Conducting Property Sales

State law authorizes the Administrator, not less than three years after receipt of abandoned property, to sell the property to the highest bidder at a public sale. The Department has not had a sale of property in over 20 years. Our review of other states information identified states holding periodic sales of property.



---

## Chapter 1 Unclaimed Property Division

---

The Department has not held a sale of unclaimed property in over 20 years.

State law authorizes the Administrator to destroy property received if it is determined to have insubstantial commercial value. We identified the Department did not destroy or otherwise dispose of any tangible property received. Our review of other states information identified items of noncommercial value being destroyed when inventoried or after a specified time period (for example two years). Items of noncommercial value would include wills, receipts, titles, certificates, etc.

### Recommendation 1-16

We recommend the Department of Trust Lands conduct periodic sales of unclaimed property and dispose of property with insubstantial commercial value.

### Management's Response

The Department disagrees with this recommendation. Items such as wills, receipts, titles, certificates may have nonmonetary value to owners. Sale or disposition of the property would forever eliminate the possibility of the owner to reclaim the original contents. In the near-term, the Department does not plan to conduct a sale or dispose of property of unknown value.

### State Auditor's Concluding Remarks

If the Legislature intended the Department to hold unclaimed property forever, it would not authorize the Administrator to hold a sale of the property. The longer the Department maintains property, the potential for loss due to various reasons (theft, disaster, etc.) increases. Department representatives stated after the first few years property is held, the chances of the property being claimed are slim.

---

## Establishing Administrative Code

State law allows the Administrator to adopt necessary rules to carry out the unclaimed property laws. No North Dakota Administrative Code sections have been established for unclaimed property. Establishing administrative rules would allow for public input regarding the operations of the program along with proper vetting of the rules. The administrative rules would also have the full force of law. Our review of unclaimed property operations identified administrative rules could be established in a number of areas. For example, no guidance exists related to how holders are to submit or not submit certain items (firearms, drugs, hazardous materials, illicit photos, etc.). Administrative rules could also be established related to owners and certain Department operations. For example, rules could be established related to the Department's enforcement of penalties, time frame for liquidating securities, disposal of items, claims processing, transferring of military medals, etc.

### Recommendation 1-17

We recommend the Department of Trust Lands take appropriate action to establish holder, owner, and Department requirements within Administrative Code for unclaimed property.

### Management's Response

The Department agrees with the recommendation. The Department will research and implement the steps to codify policies and procedures as appropriate.

---

## Chapter 1 Unclaimed Property Division

---

### Establishing Adequate Record Series

State law requires agencies to maintain a continuing program for records management and establish standards, procedures, and techniques for effective management of records. Our review of unclaimed property operations and record series information identified improvements were needed with records management. Appropriate record series had not been established. Also, we identified established record series were outdated and contained inaccurate information. For example, a number of record series have been established for records containing confidential and sensitive information. Since the record series did not properly identify confidential and sensitive information, the disposal of the records is inappropriately listed as landfill.

### Recommendation 1-18

We recommend the Department of Trust Lands ensure proper records management series and appropriate disposal of records exist for unclaimed property.

### Management's Response

The Department agrees with the recommendation. The Department will establish policy and procedures regarding records management as prescribed in the findings.

---

### Fulfilling the Mission of Unclaimed Property

The mission of the Unclaimed Property Program is to collect and safeguard property submitted by holders and to return the unclaimed property to the rightful owners or their legal heirs. In the work performed in relation to the audit objective, we conclude the Department is not fulfilling the mission. As identified in this report, improvements are needed to increase the effectiveness of the unclaimed property operations, from ensuring abandoned property is received to how property is maintained and returned to the owner.

The Department has not fulfilled the mission of unclaimed property.

The primary mission of the Department of Trust Lands is to serve as a trustee for the benefit of the common schools (public grades K-12), various institutions of higher education, and certain other state institutions. One of the Department's goals is to maximize distributable income and trust growth. All unclaimed property funds received are to be deposited in the state treasury to the credit of the Common Schools Trust Fund. We conclude operations of unclaimed property may be in conflict with the Department's overall mission of serving as the trustee for the benefit of the common schools. For example, when an unclaimed property claim is paid, funds are removed from the Common Schools Trust Fund. The Department's goal is to grow the Trust Fund. The payment of unclaimed property claims contradicts the goal of the Department. This may impact the effectiveness of the Unclaimed Property Program.

North Dakota is one of two states with unclaimed property functions performed by land department employees.

In a review of the National Association of Unclaimed Property Administrators' website, every U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Quebec, British Columbia, and Alberta have an Unclaimed Property Program. North Dakota is one of only two states (Oregon) where the Unclaimed Property Program is

---

## Chapter 1 Unclaimed Property Division

---

located under a department related to trust/state lands. The Unclaimed Property Program is located under the Treasury Department in 31 states, Department of Revenue in 5 states, and the Office of the Comptroller in 4 states. The remaining states have the program under various departments.

### **Recommendation 1-19**

We recommend the Department of Trust Lands ensure the unclaimed property program operates in an effective manner and the mission of the program is accomplished. If the Department is unable to operate the unclaimed property program in this manner, the Department should take appropriate action to attempt to remove the function from its responsibilities.

### **Management's Response**

The Department agrees in part and disagrees in part with this recommendation. See Appendix C for the Department's complete response.

### **State Auditor's Concluding Remarks**

See Appendix C for State Auditor's concluding remarks.

---

## Audit and Background Information

---

### Purpose and Authority of the Audit

The performance audit of the Department of Trust Lands was conducted by the Office of the State Auditor, pursuant to a motion passed by the Legislative Audit and Fiscal Review Committee. The performance audit was conducted pursuant to authority within North Dakota Century Code Chapter 54-10.

Performance audits are defined as engagements that provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so management and those charged with governance and oversight can use the information to improve performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. The purpose of this report is to provide our analysis, findings, and recommendations regarding our limited review of whether unclaimed property is effectively administered.

---

### Background Information

In 1889, Congress passed the Enabling Act which provided land grants to the State of North Dakota for the support of the common schools as well as colleges, universities, the state capitol, and other public institutions. To manage the assets, Article IX of the North Dakota Constitution created the Board of University and School Lands, more commonly referred to as the Land Board. The Land Board is comprised of the Superintendent of Public Instruction, Governor, Attorney General, Secretary of State, and State Treasurer.

The Department of Trust Lands serves as the administrative agency of the Land Board. The primary responsibility of the Department is to manage the permanent educational trust funds and assets under the Land Board's control as outlined in the North Dakota Constitution. State law also provides the Department the responsibility for managing the Unclaimed Property Division and the Energy Infrastructure and Impact Office, as well as overseeing sovereign mineral acres and several other statutory funds. See Appendix B for additional information related to unclaimed property.

---

### Objective of the Audit

Three objectives were established for this performance audit. A separate audit report is being issued for each of the audit objectives. The objectives of this performance audit were:

“Is unclaimed property effectively administered?”

“Are Energy Infrastructure and Impact Office grants effectively administered?”

“Is the Department of Trust Lands obtaining, accounting for, and using resources efficiently and effectively?”

## Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Audit field work related to unclaimed property was conducted from the beginning of June 2015 to the beginning of January 2016. The audit time period was July 1, 2011 to June 30, 2015. In certain instances, additional information was reviewed. For example, information received from holders prior to the audit time period was reviewed as the Department maintained property submitted.

As part of this audit, we evaluated controls surrounding compliance with significant laws, policies, and procedures. We gained an understanding of internal controls surrounding these areas. Deficiencies identified with internal controls determined to be significant are addressed in Chapter 1 of this audit report. Deficiencies of less significance were communicated in a separate letter to management of the Department of Trust Lands.

As part of completing the unclaimed property objective, we (total numbers reflect the population of items):

- Observed the inventorying of safe deposit box contents in July 2015.
- Reviewed the contents for 17 safe deposit boxes judgmentally selected (1,048 total).
- Contacted two holders who had sent safe deposit box contents to the Department. We requested the holders to send a copy of the inventory sheets sent to the Department for years 2011 to 2014. This amounted to 28 safe deposit box inventory sheets.
- Reviewed information related to 43 claim numbers judgmentally selected (9,186 total).
- Judgmentally selected 8 states to review information. We were able to contact and interview representatives from 6 states (Arizona, Colorado, Minnesota, South Dakota, Wisconsin, and Wyoming). We reviewed information on the web pages for the other two states (Montana and Oregon).

## List of Recommendations and Management Responses

The following information identifies each recommendation and our conclusion as to whether the Department agreed or disagreed with the recommendation. Due to apparent contradictory information in certain management responses, we made a determination as to whether management agreed or disagreed with recommendations taking into consideration the entirety of the response.

	<u>Recommendation</u>	<u>Agree</u>	<u>Not Agree</u>	<u>Mixed</u>
1-1	We recommend the Department of Trust Lands ensure complete and accurate resources are available to those searching for unclaimed property.	<u>X</u>	<u>          </u>	<u>          </u>
1-2	We recommend the Department of Trust Lands: a) Increase efforts to locate owners of unclaimed property. b) Ensure efforts to locate owners are done in a fair and consistent manner.	<u>X</u>	<u>          </u>	<u>          </u>
1-3	We recommend the Department of Trust Lands: a) Monitor abandoned property reporting information from entities in the state. b) Have audits of entities in the state conducted to ensure abandoned property is appropriately turned over to the Department.	<u>X</u>	<u>          </u>	<u>          </u>
1-4	We recommend the Department of Trust Lands provide proper guidance and training on unclaimed property requirements to North Dakota entities.	<u>X</u>	<u>          </u>	<u>          </u>
1-5	We recommend the Department of Trust Lands eliminate language related to negative reporting for unclaimed property or take appropriate action to require negative reports and track holder compliance.	<u>          </u>	<u>X</u>	<u>          </u>
1-6	We recommend the Department of Trust Lands comply with state law requirements and: a) Provide written consent to holders if property is to be submitted to the Department prior to the property being presumed abandoned. b) Ensure property is held until the proper time has passed for property to be presumed abandoned.	<u>X</u>	<u>          </u>	<u>          </u>
1-7	We recommend the Department of Trust Lands ensure unclaimed property data is complete, accurate, and consistently entered.	<u>X</u>	<u>          </u>	<u>          </u>
1-8	We recommend the Department of Trust Lands consistently and appropriately receipt and maintain a complete list of unclaimed property.	<u>X</u>	<u>          </u>	<u>          </u>

**Appendix A**  
**List of Recommendations and Management Responses**

<u>Recommendation</u>	<u>Agree</u>	<u>Not Agree</u>	<u>Mixed</u>
<b>1-9</b> We recommend the Department of Trust Lands ensure unclaimed tangible property received is inventoried/accounted for timely and comply with requirements for publishing notice in the newspaper.	X		
<b>1-10</b> We recommend the Department of Trust Lands: a) Enter owner information into the unclaimed property database when the holder provides adequate owner information regardless of the property value. b) Take appropriate action to lower the aggregate reporting amount.		X	
<b>1-11</b> We recommend the Department of Trust Lands adequately safeguard unclaimed property submitted to the Department.	X		
<b>1-12</b> We recommend the Department of Trust Lands adequately safeguard confidential and sensitive information obtained and maintained by the Department.	X		
<b>1-13</b> We recommend the Department of Trust Lands consistently and appropriately process claims for unclaimed property.		X	
<b>1-14</b> We recommend the Department of Trust Lands not require owners to pay a fee to receive their unclaimed property which has not been sold or liquidated by the Department.		X	
<b>1-15</b> We recommend the Department of Trust Lands comply with state law requirements related to unclaimed property in a state agency's name and: a) Ensure Budget Section is provided a complete list of state agencies not submitting a claim for property after a year of being notified. b) Not provide state agencies the "donation" option. c) No longer publish state agencies in the annual notice of property.	X		
<b>1-16</b> We recommend the Department of Trust Lands conduct periodic sales of unclaimed property and dispose of property with insubstantial commercial value.		X	
<b>1-17</b> We recommend the Department of Trust Lands take appropriate action to establish holder, owner, and Department requirements within Administrative Code for unclaimed property.	X		

---

**Appendix A**  
**List of Recommendations and Management Responses**

---

<u>Recommendation</u>	<u>Agree</u>	<u>Not Agree</u>	<u>Mixed</u>
<b>1-18</b> We recommend the Department of Trust Lands ensure proper records management series and appropriate disposal of records exist for unclaimed property.	X		
<b>1-19</b> We recommend the Department of Trust Lands ensure the unclaimed property program operates in an effective manner and the mission of the program is accomplished. If the Department is unable to operate the unclaimed property program in this manner, the Department should take appropriate action to attempt to remove the function from its responsibilities.		X	
<b>Total</b>	<b>13</b>	<b>6</b>	



## Unclaimed Property Information

Since 1975, the Unclaimed Property Division of the Department of Trust Lands (Department) has been responsible for reuniting individuals with property presumed abandoned. The Administrator of the Division oversees the operations of unclaimed property. The Division acts as custodian of the unclaimed property received from holders. The property is held in trust in perpetuity by the state and invested in the Common Schools Trust Fund. The 1981 Uniform Unclaimed Property Act, created by the national Uniform Law Commission, was adopted by the state in 1985.

Definitions related to unclaimed property include:

- Unclaimed property includes intangible and tangible property held by a holder when contact with the owner has exceeded a time period set in law. Unclaimed property can include contents of safe deposit boxes, checks, deposits, dividends, income, security deposits, stocks, amounts due and payable under the terms of insurance policies, and amounts distributable from mineral interests in land. For purposes of this audit, abandoned property is the term typically used for property in the possession of the holder. Unclaimed property is used to reference property in the possession of the Unclaimed Property Division.
- A holder is a person, wherever organized or domiciled, who is in possession of property belonging to another, a trustee, or indebted to another on an obligation. Holders can include banks, insurance companies, hospitals, utility companies, retailers, local governments, etc.
- An owner is a depositor in the case of a deposit; a beneficiary in the case of a trust other than a deposit in trust; a creditor, claimant, or payee in the case of other intangible property; or a person having a legal or equitable interest in property subject to the unclaimed property law or a person's legal representative.

North Dakota Century Code Chapter 47-30.1 includes the requirements related to unclaimed property. Examples of property types and time periods established before the property is presumed abandoned are identified in the following table.

<b>Examples of Property Types and Time Periods Established before Property is Presumed Abandoned</b> (per NDCC Chapter 47-30.1)						
Property Type	Time Period					
	1 Year	2 Years	3 Years	5 Years	7 Years	15 Years
Checking & Savings Accounts				X		
Corporate Money Orders					X	
Life Insurance Policies/Benefits	X					
Mineral Proceeds			X			
Safe Deposit Boxes			X			
Security Deposits/Refunds	X					
Stock Shares			X			
Traveler's Checks						X
Uncashed Checks		X				
Wages		X				

Insurance companies are required to report abandoned property to the Department by May 1<sup>st</sup> each year for property presumed abandoned by the preceding December 31<sup>st</sup>. All other holders are required to report the abandoned property to the Department by November 1<sup>st</sup> for property presumed abandoned by the preceding June 30<sup>th</sup>. Holders are required to perform due diligence no more than 120 days prior to the date of the report. The due diligence requires holders to provide written notice to the apparent owner, using the owner's

---

## Appendix B Unclaimed Property Information

---

last known address, informing the owner the holder is in possession of property. Information submitted by a holder on an unclaimed property report contain the following (if applicable): a property code (describes the type of property), name, last known address, social security number, amount/quantity due, account number, check number, and date of last transaction or legal dormancy date.

According to NDCC Section 47-30.1-23, the Administrator of the Unclaimed Property Division is to promptly deposit in the state treasury, to the credit of the Common Schools Trust Fund, all funds received. The Department has a continuing appropriation for the amounts necessary to pay all expense deductions associated with unclaimed property. Annually, the Administrator publishes the names and last-known addresses of the owners who have been reported during the last reporting period in the newspaper of general circulation in the county of the owners' last-known address. The Department has a search function available on the Department's website for individuals to search for unclaimed property. The Administrator may have a public sale of unclaimed property not less than three years after receiving the property.

The Department and 44 other states allow in-state holders to report abandoned property to the Unclaimed Property Division. The Department will then forward the property and information to the entitled state (the state where property should be remitted based on the owner's last known address).

Owners or their heirs can submit a claim for property being held by the Department. The type of documentation required to be submitted by the owner along with the claim form is dependent upon the type of property being claimed and what information is submitted by the holder. Documentation required from the owner may include a copy of a driver's license, copy of a social security card, proof of address submitted by the holder, or proof of association with the holder.

According to the Department's 2013-2015 Biennial Report the following amounts were collected in unclaimed property and paid in claims (no audit work performed on the accuracy of the amounts):

<b>Biennium</b>	<b>2007-09</b>	<b>2009-11</b>	<b>2011-13</b>	<b>2013-15</b>
<b>Collected</b>	\$8.9 million	\$9.3 million	\$10.1 million	\$15.7 million
<b>Claimed</b>	\$3.6 million	\$3.3 million	\$4 million	\$4.9 million

---

## Supplemental Responses & Concluding Remarks

---

**Recommendation 1-13** We recommend the Department of Trust Lands consistently and appropriately process claims for unclaimed property.

**Management's Response** The Department agrees in part and disagrees in part with this recommendation. The Department agrees that claims should be processed "appropriately". The Department disagrees that claims can be processed "consistently".

The Department applies baseline standards of documentation to all claims; however it will continue to utilize different verification processes required for unique owner claims. There is significant variability in property types received, such as uncashed checks, closed bank accounts, stocks, bonds, or safe deposit box contents. Different property types require different kinds of documentation. Similarly, claimant status varies too, as owners may be living or deceased and claimants may be guardians, powers-of-attorney, executors, etc. Thus, the Department will continue to use professional experience in determining the techniques best suited to matching unique personal information reported by the holder with unique documentation provided by the owner. Additional information will continue to be requested if staff is unable to verify ownership based on the available documentation.

Contact with owners relating to claims is often verbal and the Department will work to improve the process of documenting contacts.

**State Auditor's Concluding Remarks** We conclude consistency in how claims are processed can and should exist. The recommendation is related to processes used in approving or denying a claim and is not specifically regarding the types of documentation. We identified the Department was inconsistent in denying claims by issuing a denial letter in certain situations and in others, would return to the claimant all documentation submitted with no denial letter. Certain claim files reviewed did not include all information as was included in other claim files. One claim file selected for review was unable to be located by the Department. Also, claim forms printed online would contain less information than if a claim form was sent from the Department to an individual.

---

**Recommendation 1-19** We recommend the Department of Trust Lands ensure the unclaimed property program operates in an effective manner and the mission of the program is accomplished. If the Department is unable to operate the unclaimed property program in this manner, the Department should take appropriate action to attempt to remove the function from its responsibilities.

**Management's Response** The Department agrees in part and disagrees in part with this recommendation. The Department agrees that the unclaimed property program should be administered in an effective manner and that the mission of the program should be accomplished, but the Department disagrees that the mission is not being accomplished.

---

## Appendix C Supplemental Responses & Concluding Remarks

---

As trustees for the permanent trust funds, the Department staff and Land Board are keenly aware of their responsibility as a fiduciary for multiple beneficiaries. This applies to management of the permanent trusts and to the interests of abandoned and unclaimed property owners. We believe that the Legislature entrusted unclaimed property administration to the Department because of its responsibility to the Common Schools Trust Fund, not in spite of it.

The Department will continue to exceed legislative requirements to reconnect property with the rightful owners, while it continues to take steps to improve holder compliance and ensure the integrity of the data in the unclaimed property system. Since the year 2000, the Department has returned \$30 million of previously lost property to rightful owners; this represents 39% of the \$77.1 million of assets it has collected and holds on behalf of owners.

Unless directed to do so by the Board of University and School Lands, the Department will not initiate or seek legislative action to remove the unclaimed property functions from the Department of Trust Lands to another agency.

### State Auditor's Concluding Remarks

Due to the number of necessary improvements recommended for the unclaimed property program, we identified sufficient evidence to conclude the mission was not being accomplished.

We never state the Department staff or the Land Board are not keenly aware of their fiduciary responsibility. We identify operations of unclaimed property may be in conflict with the Department's overall mission. This conflict could impact how priorities are established or decisions are made.

The Department's response related to continuing to exceed legislative requirements is misleading. We identify instances of the Department not following state law requirements. In addition, we identify instances impacting an owner's ability to be reunited with their property due to apparently only doing what the law requires.

The Department's response related to dollar amounts dating back to 2000 is misleading. While we did not audit the numbers provided in the response, we did identify the amounts match neither the amounts included in audited financial statements nor in the Department's biennial reports. Also, we conclude the \$77.1 million of assets collected and held on behalf of owners is not accurate as the Department would not be holding the entire amount collected.