ISSUED: September 15, 2014 **INR-01-30-14**

THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE VIRGIN ISLANDS INSPECTOR GENERAL

INSPECTION REPORT

INSPECTION OF
REAL PROPERTY AUCTIONS HELD BY
THE OFFICE OF THE LIEUTENANT GOVERNOR

ILLEGAL OR WASTEFUL ACTIVITIES SHOULD BE REPORTED TO THE OFFICE OF THE VIRGIN ISLANDS INSPECTOR GENERAL BY:

Calling:	**Sending Written Documents to:**
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EXECUTIVE SUMMARY

The following summarizes the major findings from the Inspection of Real Property Auctions Held by the Office of the Lieutenant Governor (INR-01-30-14).

Finding 1: Bid Manipulation Scheme (pages 6 to 13)

- ✓ Changes to the bidding process allowed individuals to fraudulently manipulate the bidding process to prevent potential bidders from making legitimate bids on properties offered at public auctions.
- ✓ In 16 instances the highest bidder was not awarded the property purchased.

Finding 2: Questionable Recordkeeping (pages 14 to 18)

- ✓ Inaccurate and suspect recording of bid amounts and names of bidders led to questionable awards of auction properties.

Finding 3: Properties Ineligible for Sale (pages 19 to 23)

- ✓ Ten properties were erroneously advertised and sold at public auctions.
- ✓ These sales cost the Government at least $13,700 in advertising fees.

Finding 4: Payment Time Frames (pages 24 to 27)

- ✓ The initial deposit and the final payment for properties auctioned were not made within the times frames established by the Code.

Finding 5: Records Management (pages 28 to 30)

- ✓ Records relating to the attachment and sale of real properties for delinquent property taxes and sewer system user fees were not adequately managed and maintained.
- ✓ Almost ½ of 411 properties advertised for possible auction were missing some form of required documentation necessary to prove that the property owner was properly notified of the pending sale.
- ✓ Twenty-three property files in the St. Thomas/St. John District could not be located.

Finding 6: Assessment and Collection of Fees (pages 31 to 32)

- ✓ At least $276,000 in advertising fees were not assessed nor collected from property owners whose properties were advertised for sale at property auctions.

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September 15, 2014

Honorable John P. de Jongh, Jr.
Governor of the Virgin Islands
Office of the Governor
Kongens Gade
Charlotte Amalie, Virgin Islands 00802

Honorable Shawn Michael Malone
President
30th Legislature
Capital Building
Charlotte Amalie, Virgin Islands 00802

Dear Governor de Jongh and Senator Malone:

This report contains the results of our inspection of the real property auctions held by the Office of the Lieutenant Governor (Lieutenant Governor's Office). The inspection was initiated based on allegations of questionable bids and a lack of compliance with statutory regulations governing real property auctions. The objective of the inspection was to determine if the Lieutenant Governor's Office was conducting real property auctions in accordance with the provisions of Title 33, Chapter 89 of the Code.

We found validity to the allegations of questionable bidding practices and a lack of compliance with statutory regulations governing real property auctions conducted by the Lieutenant Governor's Office. Specifically, we found that as a result of procedural changes made in real property auctions by officials at the Lieutenant Governor's Office; (a) individuals were allowed to manipulate the bidding process, to fraudulently restrict other potential individuals from making legitimate bids on properties offered for auction, (b) questionable and inaccurate bid recording and recordkeeping brought into question several of the reported highest bids for several properties that were sold, (c) properties were not properly researched to ensure that they were eligible for sale, (d) payment time frames established by the Code were not properly adhered to, (e) adequate documentation of the Notice of Attachment process, as required by the Code, was not always maintained to ensure that taxpayers' constitutional right of due process was followed, and (f) auction costs and fees were not assessed and collected once properties were sold or redeemed.

We made several recommendations to address the conditions and causes cited in this report. Our recommendations addressed the following areas; (i) the questionable property sales, (ii) proper adherence to Code established timeframes, and (iii) recordkeeping. An exit conference was held on June 23, 2014, where there was agreement with the findings and recommendations made in the report.

A response to the draft report, dated August 29, 2014, was received indicating agreement with all of the findings and recommendations made in the report. A copy of the response is included as Appendix I beginning on page 33. Additional information needed before the recommendations can be completely closed is detailed in Appendix II beginning on page 47.

If you or your staff requires additional information, please call me at 774-6426.

Sincerely,

Steven van Beverhoudt

Steven van Beverhoudt, CFE, CGFM
V. I. Inspector General

TABLE OF CONTENTS

TABLE OF CONTENTS

Page

APPENDICES

INTRODUCTION

BACKGROUND

The responsibility for the collection of real property taxes was transferred from the Department of Finance to the Office of the Lieutenant Governor (Lieutenant Governor's Office) on December 22, 2007, by Act No. 6976. As part of the Lieutenant Governor's Office attempt to reduce the territory's large delinquency in real property taxes and sewer system user fees, a determination was made to initiate a series of real property auctions as authorized by Title 33, Section 2541, of the Virgin Islands Code (Code). In 2011, the Lieutenant Governor decided to begin the tax collection process by auctioning properties that had delinquent taxes for 10 or more years.

On January 25, 2012, in the St. Thomas/St. John District, the Lieutenant Governor's Office held its' first in a series of real property tax auctions for properties with delinquent taxes of 10 years or more. From this first auction through February 28, 2014, there were 12 auctions held territory-wide (6 in the St. Thomas/St. John District and 6 in the St. Croix District). The following table shows the dates of the 12 auctions and the total number of properties auctioned at each event.

REAL PROPERTY AUCTIONS	
Date	**Number of Properties Auctioned**
St. Thomas/St. John District	
January 25, 2012	7
May 23, 2012	13
August 30, 2012	13
November 20, 2012	20
February 27, 2013	19
June 20, 2013	8
St. Croix District	
January 18, 2012	6
June 5, 2012	21
August 29, 2012	2
November 14, 2012	18
March 6, 2013	21
June 26, 2013	5
Total Properties Auctioned	**153**

For the 12 auctions held during this two-year period, a total of 411 properties were advertised for auction. Of these properties, 258 were not auctioned for various reasons. Some reasons properties were removed from the advertised list included; taxes were paid in full, a taxpayer payment plan was established, and properties were removed at the discretion of the

Lieutenant Governor. In addition, there were 23 properties, in the St. Thomas/St. John District, that were not auctioned, whose files could not be located and no specific basis was documented for the removal. The table below summarizes the properties advertised for action, by district, and their final disposition.

PROPERTIES ADVERTISED, REMOVED, AND AUCTIONED			
Description	**St. Thomas / St. John District**	**St. Croix District**	**Total**
Paid In Full	11	13	24
Payment Plan	38	75	113
Removed	48	50	98
No file found	23	0	23
Auctioned	80	73	153
Advertised	**200**	**211**	**411**

Title 33, Chapter 89, Subchapter III, Sections 2541 through 2554 of the Code addresses the attachment and sale of property for the nonpayment of real property taxes and sewer system user fees. In addition, Title 33, Chapter 89, Subchapter IV, Sections 2581 through 2584 of the Code outlines with the right of the property owner to redeem property once it has been sold at auction. Both subchapters contain numerous specific steps and time frames that must be followed in the attachment, sale, and redemption of real properties auctioned for the nonpayment of real property taxes and sewer system user fees.

Specifically, Title 33, Section 2541 of the Code gives the Lieutenant Governor the authority to attach and sell real property of delinquent taxpayers. It also requires the Lieutenant Governor to prepare a written notice of attachment of the real property for which the taxes are due. Among other things, the notice of attachment must include; (a) the amount of delinquent taxes, sewer system user fees, and interest due, and, (b) a statement that if the required taxes, fees, penalties and costs are not paid within a prescribed time, the property will be sold at a public auction. The notice is also required to include the date of the public auction and the date upon which the period to redeem the delinquent real property expires.

The Code also requires that the notice of attachment be served on the taxpayer or family member of legal age. If the taxpayer or family member cannot be found, the notice can be left with two neighbors willing to be witnesses to the service of the notice. If no witnesses are willing to accept the notices, the notice must be mailed to the taxpayer's last known address and published in a newspaper of general circulation once a week for 4 consecutive weeks, and posted in the nearest post office or the bulletin board of the Superior Court. All attempts to serve the taxpayer must be properly documented for later use.

The Lieutenant Governor is also required to have a certificate attached to the notice and recorded in the real property register, describing the property attached, the name of the delinquent taxpayer (if known), the assessed value of the property, the amount of taxes, fees, penalties and costs, and a description of, the situation of, and the approximate boundaries of the property attached.

Several court decisions have reversed property auctions due to the Virgin Islands Government's (Government) failure to follow and document the required steps as detailed in Section 2541 of the Code.

Title 33, Section 2546 of the Code requires that the property be advertised for sale at least once in a different newspaper of general circulation in each island district, and the cost of the advertising together with a fee of $5.00 for service of the notice be included as part of the costs of the sale.

Title 33, Section 2547 of the Code states that at least three weeks after the advertisement for sales,

> "… the said property shall be sold by the Lieutenant Governor at public auction to the highest bidder. However, no bid shall be accepted for a less amount than the taxes and public sewer system user fees upon said property, together with all costs and penalties thereon, and unless accompanied by a cash deposit of ten percent of the amount bid. The amount deposited shall be forfeited in the event of failure on the part of the purchaser to pay the balance of the purchase money upon delivery or offer of delivery by the Lieutenant Governor of the certificate of purchase, and such delivery or offer of delivery shall be made within ten days from the date of sale."

It further states that the cost of advertising is to be prorated among the taxpayers and the cost be added to the expenses of the property sale. Any remaining funds after the delinquent taxes, sewer system user fees, penalties and costs are deducted, are to be paid to the taxpayer.

Title 33, Section 2549 of the Code establishes penalties for improperly conducting a delinquent tax and sewer system user fees auction. It states that;

> "If the Lieutenant Governor or any person acting on his behalf
>
> **(1)** sells or assists in selling any real property
>
> **(A)** knowing it to be exempt from attachment; or
>
> **(B)** knowing that the taxes for which it is sold have been paid; or
>
> **(2)** knowingly and wilfully sells or assists in selling any real or personal property for taxes to defraud the owner thereof; or
>
> **(3)** in any manner restrains bidders; or

(4) knowingly or wilfully issues a certificate of purchase of real or personal property so sold then the Lieutenant Governor or such person shall pay the injured party all damages sustained thereby, and all such sales shall be void."

Title 33, Section 2581, allows the property owner whose property was sold at public auction to redeem the property within one year from the date of sale at the auction, by paying the full amount of the bid accepted, with interest at the rate of 12% per annum, and all outstanding property taxes and sewer system users fees due for the period between the date of the sale and the date the owner redeems the property, together with a $15 fee.

OBJECTIVE, SCOPE, AND METHODOLOGY

We received allegations of questionable bids and a lack of compliance with statutory regulations governing real property auctions conducted by the Lieutenant Governor's Office. Specifically, there were allegations that some bids were suspicious as they appeared to exceed fair market value and procedures to notify property owners and lienholders were not being followed. As a result of these allegations, we performed an inspection of the real property tax auctions conducted by the Lieutenant Governor's Office.

The objective of the inspection was to determine if the Lieutenant Governor's Office was conducting real property auctions in accordance with the provisions of Title 33, Chapter 89 of the Code. Our inspection covered the 12 auctions conducted by the Lieutenant Governor's Office between January 2012 and June 2013.

We performed our inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency "Quality Standards for Inspections" between August 2013 and February 2014. We obtained and reviewed all documents provided to us by officials of the Lieutenant Governor's Office relating to the 12 real property tax auctions. We interviewed various officials and employees of the Lieutenant Governor's Office who assisted in conducting one or more of the 12 auctions. In addition, we interviewed former Government officials who participated in past delinquent real property tax auctions to determine the practices and procedures used. We also interviewed several individuals who attended one or more of the 12 auctions. Finally, we visited some of the properties that were auctioned.

RESULTS

CONCLUSIONS

We found validity to the allegations of questionable bidding practices and a lack of compliance with statutory regulations governing real property auctions conducted by the Lieutenant Governor's Office. Specifically, we found that as a result of procedural changes made in real property auctions by officials at the Lieutenant Governor's Office; (a) individuals were allowed to manipulate the bidding process, to fraudulently restrict other potential individuals from making legitimate bids on properties offered for auction, (b) questionable and inaccurate bid recording and recordkeeping brought into question several of the reported highest bids for several properties that were sold, (c) properties were not properly researched to ensure that they were eligible for sale, (d) payment time frames established by the Code were not properly adhered to, (e) adequate documentation of the Notice of Attachment process, as required by the Code, was not always maintained to ensure that taxpayers' constitutional right of due process was followed, and (f) auction costs and fees were not assessed and collected once properties were sold or redeemed.

These findings are discussed in more detail in the following sections of this report. Certain matters that were found during the course of this inspection were referred for criminal investigation and were not discussed in this report.

FINDING 1: BID MANIPULATION SCHEME

Procedural changes made by officials at the Lieutenant Governor's Office allowed individuals to fraudulently manipulate the bidding process to prevent potential bidders from making legitimate bids on properties offered at public auctions. At least 15 properties at four (4) St. Thomas/St. John auctions were awarded to individuals after the highest bidders, most with artificially inflated high bids, did not make the required 10% deposit amount. There was only 1 instance in the St. Croix District where the highest bidder was not awarded the property purchased.

Background

Title 33, Section 2547 of the Code states that at least three weeks after the advertisement for sales, "… the said property shall be sold by the Lieutenant Governor at public auction to the highest bidder. However, no bid shall be accepted for a less amount than the taxes and public sewer system user fees upon said property, together with all costs and penalties thereon, and unless accompanied by a cash deposit of ten percent of the amount bid." Officials at the Lieutenant Governor's Office consider the cut-off for acceptance of the 10% deposit as 4:00 p.m. on the date of the auction. The time corresponds with the daily closing of the cashier's window at the Lieutenant Governor's Office. This practice has been in effect for many years prior to the Lieutenant Governor's Office being given the responsibility for real property tax collections.

An unwritten policy was developed by officials, sometime in 2012, to record the highest three bids for each property auctioned in the event that the highest bidder failed to meet the 10%)deposit amount requirement of the Code. The new process was to award the property to the second or third highest bidder. Lieutenant Governor's Office officials indicated that they based this change in policy to the concept in use by the Virgin Islands Superior Court Marshal Service at their auctions and in accordance with "best business practices" for public auctions. Although no effective date of this policy change was stated or documented, based on limited documents reviewed of the second auction on May 23, 2012 in the St. Thomas/St. John District, it appears to have started at this time and continued through the fifth auction in the St. Croix District, which was held on March 6, 2013. We identified 15 properties in the St. Thomas/St. John District that were not awarded to the highest bidder, but rather were awarded to the second or the third recorded highest bidder. In contrast, this practice was not prevalent in the St. Croix District, as there was only 1 instance where the second highest bidder was awarded the property.

Bid Manipulation Scheme

As a result of this new policy and the failure of officials at the Lieutenant Governor's Office to adequately monitor the bidding process, individuals were allowed to develop a bid manipulation scheme to prevent potential bidders from making legitimate bids on real property offered at public auctions. This scheme required the cooperation of at least 2 individuals who would bid on a given property, with an extremely inflated bid being placed right after the planned winning bidder, thereby closing off the bidding process for the auctioned property. Some bidders were used solely as plant bidders, while others took turns serving in this capacity, as bidders coordinated their efforts to artificially inflate bid amounts with the intention of not honoring those bids. The highest bidder, and at times the second highest bidder, would not pay the 10% deposit by the required due date, thereby cancelling their bid, resulting in the property being awarded to the next highest bidder. There were instances where the non-responsive highest bidder for one property would be the second or third highest bidder for another property at the same auction, and would end up being the winning bidder for that other property. Interviews with legitimate bidders confirmed that they were frozen out by the inflated bid price, and while unsuspecting of the scheme being perpetrated, were prepared to bid and purchase at amounts higher than was paid. This scheme also denied the original property owners, or their estates, the ability to benefit from the largest possible fair dollar value return after all taxes, fees, and other costs were deducted.

Based on the documents reviewed relating to this scheme and documents reviewed and discussed in other sections of this report, there is also a strong indication that one or more officials from the Lieutenant Governor’s Office either participated in the bid manipulation scheme or were aware of it happening and failed to prevent it from continuing.

The following schedule identifies the 16 instances (15 in the St. Thomas/St. John District and 1 in the St. Croix District) where the highest bidder was not the final winner of the auctioned property. We have identified the properties from 1 to 16, and the bidders from A to BB. Each bidder’s participation in the scheme is referenced from one auction to the other. As can be seen in the schedule, there were instances where an individual bidder was one of the highest three bidders for multiple properties, as well as, on multiple auction dates.

BID MANIPULATION SCHEME

Auction Date	Property	Highest Three Bidders	Bid Amount	Highest Bidder and Amount	Winning Bidder and Amount
Auction 2 5/23/12 (STT)	**1**	**A**	**$34,000**	**A - $34,000**	**B - $33,000**
		B	**33,000**		
		C	**32,000**		
Auction 3 8/30/12 (STT)	**2**	**D**	**$110,000**	**D - $110,000**	**F - $15,423**
		E	**15,500**		
		F	**15,423**		
	3	**G**	**$100,000**	**G - $100,000**	**E - $10,100**
		E	**10,100**		
		F	**9,900**		
	4	**H**	**$75,000**	**H - $75,000**	**D - $10,100**
		G	**42,000**		
		D	**10,100**		
	5	**E**	**$60,000**	**E - $60,000**	**D - $10,200**
		D	**10,200**		
		I	**10,100**		
	6	**J**	**$50,000**	**J - $50,000**	**F - $10,200**
		F	**10,200**		
		-	**-**		
Auction 4 11/20/12 (STT)	**7**	**K**	**$45,000**	**K - $45,000**	**F - $11,000**
		F	**11,000**		
		L	**6,000**		
	8	**M**	**$12,000**	**M - $12,000**	**N - $11,000**
		N	**11,000**		
		O	**5,800**		
Auction 5 2/27/13 (STT)	**9**	**P**	**$40,000**	**P - $40,000**	**E - $5,100**
		E	**5,100**		
		Q	**4,100**		
	10	**E**	**$30,000**	**E - $30,000**	**S - $2,900**
		R	**3,100**		
		S	**2,900**		
	11	**Q**	**$26,000**	**Q - $26,000**	**U - $15,100**
		T	**25,000**		
		U	**15,100**		
	12	**V**	**$25,000**	**V - $25,000**	**E - $10,000**
		E	**10,000**		
		M	**9,100**		
	13	**W**	**$20,000**	**W - $20,000**	**E - $4,000**
		M	**4,100**		
		E	**4,000**		
	14	**M**	**$90,000**	**M - $90,000**	**X - $86,000**
		X	**86,000**		
		Y	**84,000**		
	15	**Y**	**$25,100**	**Y - $25,100**	**Q - $14,200**
		T	**25,000**		
		Q	**14,200**		
Auction 5 3/6/13 (STX)	**16**	**Z**	**$40,000**	**Z - $40,000**	**AA - $37,000**
		AA	**37,000**		
		BB	**28,000**		

Of the 16 property sales scheduled above, there were 12 instances where the bid manipulation scheme appears to have occurred. The following detailed examples depict how this scheme operated.

Auction 2 (STT): May 23, 2012. Based on available records provided to us for review, it appeared that the policy to track and award auctioned property to the highest, second highest, or third highest bidder started with the second auction on May 23, 2012, in the St. Thomas/St. John District. Although the detailed bid tracking sheets, attendance rosters, and other supporting documents were not provided to us, based on a notation in the Lieutenant Governor's Office cashier's auction summary log and a single highest to third highest bidder document, of the 13 properties auctioned, there was only 1 instance where the highest bidder was not awarded the property that was bid on. In that instance, the three highest bids were $1,000 apart, and the three bidders (A, B, and C) did not participate in any of the other bids included in the above schedule. This however was not the case in the third, fourth, and fifth auctions held in the St. Thomas/St. John District.

Auction 3 (STT): August 30, 2012. Of the 13 properties auctioned at the third auction, 5 properties were sold to bidders who were not the highest bidder. We found that for all five properties there was some combination of Bidders D, E, F, and G involved. For example:

- ✓ For auctioned property 2, the opening bid was $15,423. Bidder D was the highest bidder at $110,000; however, that individual did not meet the 10% payment requirement. The second bidder, Bidder E, at $15,500, also failed to meet the 10% payment requirement, therefore; the property eventually went to the third bidder, Bidder F, at $15,423.

- ✓ For auctioned property 3, the opening bid was $8,487. Bidder E, the second highest bidder, at $10,100, was awarded the bid after Bidder G, at $100,000, failed to meet the 10% payment requirement.

- ✓ For auctioned property 4, the opening bid was $6,442. Bidder D, the third highest bidder, at $10,100, was awarded the bid after Bidder H, at $75,000 and Bidder G, at $42,000, failed to meet the 10% payment requirement. There were other issues concerning this particular auctioned property that supports the existence of the bid manipulation scheme and the possible involvement of officials from the Lieutenant Governor's Office. Issues that will be discussed in greater detail in the second finding, but are briefly summarized here. Detailed bid tracking records show that the second highest bidder, Bidder G, did not bid on the property, and the eventual winning bidder's bid amount was substantially higher than the $10,100 that was recorded as the eventual winning bid. The property however was eventually sold to an individual not registered as a bidder for $10,000. In addition, within one month of the eventual transfer of the property, after the one-year redemption period had expired, the property was transferred to a business associate of Bidder H, the highest bidder who had failed to pay the inflated highest bid amount of $75,000.

- ✓ For auctioned property 5, the opening bid was $6,375. Bidder D, the second highest bidder, at $10,200, was awarded the bid after Bidder E, at $60,000, failed to meet the 10% payment requirement.

- ✓ Finally, for auctioned property 6, the opening bid was $6,597. Bidder F, the second highest bidder, at $10,200, was awarded the bid after Bidder J, at $50,000, failed to meet the 10% payment requirement.

As seen in the examples above, Bidder E was either the highest bidder ($60,000 for auctioned property 5) or the second highest bidder ($15,000 and $10,100 for auctioned properties 2 and 3 respectively); eventually being awarded auctioned property 3. This bidder was also, heavily involved in a similar bid manipulation scheme at Auction 5, discussed later in this Finding.

In addition, Bidder F was the second or third highest bidder for 3 auctioned properties (property 2, 3 and 6), and was awarded properties 2 and 6. This bidder was also the second highest and awarded bidder for an auctioned property in Auction 4, discussed later in this Finding.

Auction 4 (STT): November 20, 2012. There were 20 properties auctioned at the fourth St. Thomas/St. John auction. Of those 20 properties, there were 2 instances where the highest bidder was not the winning bidder. In one case, the difference between the highest bidder and the awarded bidder was $1,000. However, in the other instance (property 7) the difference between the highest bidder and the awarded bidder was $34,000. We found that Bidder F suspected of participating in the bid manipulation scheme at the third auction, benefited using similar tactics at this auction.

For auctioned property 7, the opening bid was $3,678. Bidder F, the second highest bidder, at $11,000, was awarded the bid after Bidder K, at $45,000, failed to meet the 10% payment requirement.

Auction 5 (STT): February 27, 2013. In the final auction in the St. Thomas/St. John District where the bid manipulation scheme occurred, there were 19 properties auctioned. Of that total, there were 7 instances where the highest bidder was not the winning bidder. In all of the instances, the same bid manipulation scheme that occurred at the third auction was played out again. At this auction, the range between the highest bidder and the winning bidder was from $3,000 to $34,900. Although, most of the players were different, Bidder E, discussed in Auction 3 above, was involved in 4 of the questionable property auctions this time. For example:

- ✓ For properties 9 and 12, with opening bids of $4,046 and $9,006 respectively, Bidder E was the second highest bidder for both properties, bidding $5,100 and $10,000. The highest bids for the 2 properties were $40,000 and $25,000 respectively. Bidder E was eventually awarded both properties.

- ✓ For auctioned property 10, opening with a bid of $2,900, Bidder E was the highest bidder at $30,000; however, the individual did not meet the 10% deposit requirement and the property eventually went to Bidder S, the third highest bidder at $2,900.

- ✓ For auctioned property 13, opening with a bid of $3,199, Bidder E was the third highest and awarded bidder at $4,000 while the highest bidder, Bidder W and second highest bidder, Bidder M at $20,000 and $4,100 respectively both failed to meet the 10% deposit requirement.

- ✓ Finally, for property 11, Bidder Q was the highest bidder at $26,000, but did not meet the 10% deposit requirement. The property was eventually awarded to the third highest bidder, Bidder U, at $15,100. However, for another property at the same auction, property 15, Bidder Q was the third highest bidder and was awarded the property with a bid of $14,200, after the first 2 higher bidders, Bidder Y and Bidder T, failed to meet the 10% deposit requirement.

Auction 5 (STX): March 6, 2013. At this auction, there were 21 properties auctioned, and there was only 1 instance in the St. Croix District where the highest bidder was not the winning bidder. In that instance, the difference between the highest bidder and the winning bidder was $3,000.

There were other issues with some of the auctioned properties in each of the 5 auctions previously discussed. These issues will be discussed in the other findings in this report.

During the preliminary stage of our inspection, the Lieutenant Governor informed us of a letter dated April 12, 2013, ceasing the practice of awarding auctioned properties to other than the highest bidder.

Of the 16 auctioned properties for which the highest bidder was not the winning bidder, 2 were redeemed by the property owners. The other 14 were transferred to the awarded bidders, and these transactions were illegal. In our opinion, these 14 illegal property auctions clearly violated the Code and the sale of them should be cancelled. Title 33 Section 2549(2) and (3) of the Code, provides penalties for such violations by stating that, "If the Lieutenant Governor or any person acting on his behalf… **(2)** knowingly and willfully sells or assists in selling any real or personal property for taxes to defraud the owner thereof; or **(3)** in any manner restrains bidders; … then the Lieutenant Governor or such person shall pay the injured party all damages sustained thereby, and all such sales shall be void."

Recommendations

We recommend that the Lieutenant Governor of the Virgin Islands:

1. Review the 14auctioned properties that were transferred, where the winning bidder was not the highest bidder, and void the property auctions in accordance with Title 33 Section 2549 of the Code.

2. Ensure that the provision of Title 33 Section 2547 of the Code is followed awarding auctioned property to the highest bidder. If the highest bidder fails to meet the payment requirements, the property should be re-advertised and auctioned at a later date.

Governor's Response

In the Governor's response dated August 29, 2014, the Lieutenant Governor's Office indicated agreement with the 6 findings and 10 recommendations made in the report.

Regarding the first recommendation, that transfers be voided for auctioned properties where the winning bidder was not to the highest bidder, the Lieutenant Governor's Office agreed with the recommendation. It was further stated that an Advisory Opinion was requested and received from the Attorney General, dated August 28, 2014. It further stated that with the guidance of the Attorney General, transfers "will be voided if practicable and adherence to VI Code Title 33 Section 2549 will be strictly enforced."

There was agreement with the second recommendation, to adhere to Title 33 Section 2547 of the Code by awarding auctioned property to the highest bidder, and if the bidder fails to meet the payment requirements, re-advertise and auction the property at a later date. The response indicated that the Lieutenant Governor's Office staff was notified of the enforcement of the highest bidder requirement.

V. I. Inspector General's Comments

Although the response indicated agreement with the two recommendations made in this section of the report, we do have some concerns with the action plan for the first recommendation dealing with the voiding of the transfers for the auctioned properties where the winning bidder was not the highest bidder. In particular, we are concerned with the statement that, "Properties that are determined to be voidable by the Attorney General will be voided **if practicable (emphasis added)** and adherence to VI Code Title 33 Section 2549 will be strictly enforced."

The Advisory Opinion from the Attorney General does not give the option of voiding or not voiding an illegal transaction. In fact, it clearly states that; "Recognizing the dire impact of tax sale laws and the implementation thereof on an individual's property rights requires strict adherence to said laws. The tax sales laws must be strictly construed in favor of the owner of the land." Throughout the Advisory Opinion, the Attorney General states that violating the statutory requirements of the tax sale laws "raises significant Fourteenth Amendment due process concerns." In the conclusion, the Attorney General states, "Further, it is our opinion that the Virgin Islands law as presently written does not permit an award of a bid to the second highest bidder in a tax sale property auction."

Accordingly, we will consider the first recommendation resolved, but not yet implemented. We will monitor the disposition of each of the properties that were illegally awarded to a bidder other than the winning bidder.

Regarding the second recommendation, to ensure that the provision of the Code relating to the awarding of auctioned property to the highest bidder is followed, the response is sufficient for us to consider it resolved with no further action needed.

FINDING 2: QUESTIONABLE RECORDKEEPING

In addition to the bid manipulation scheme discussed in the previous finding, inaccurate and suspect recording of bid amounts and names of bidders, led to questionable awards of auctioned properties. There were instances where recorded bid amounts did not match the detailed bidder tracking records and bidders identified as the highest three bidders did not match with detailed bidder tracking records. Some instances were found where the winning bidder did not attend the auction or did not bid as claimed. There were also many instances where detailed bid tracking records were not provided.

Background

As part of the auction management process, prospective bidders were required to register on the day of the auction, providing the bidder's name, address, and contact phone number. The bidder was then given a sequentially numbered card to be used when bidding on a property. In order to maintain a record of the various bids on a given property, 3 to 4 Lieutenant Governor's Office employees were given bidder tracking sheets, usually in intervals of 10 numbers to correspond with the number of bidders attending the auction. Each employee was responsible to keep track of the bids made by the numbered bidder on their respective bidder tracking sheet. At the completion of the auction, the three highest bidders were identified based on their registration and the information was recorded onto a highest bidders list. This list was to have been used to identify the prospective winning bidder when collecting the required 10% deposit and final payment for the auctioned property. It was also to have been used as the basis for contacting the next highest bidder if the prospective winner failed to pay the ten 10% deposit.

Bidder Tracking Sheet and Highest Bidder List

We requested all bidder tracking sheets and highest bidder lists from the 12 auctions held by the Lieutenant Governor's Office. Although several bidder tracking sheets and highest bidder lists were not provided, our review of those records that were obtained revealed several significant discrepancies that resulted in questionable bids for several of the auctioned properties. We found instances where;

- ✓ The bid amounts identified on the bidder tracking sheets did not match the bid amounts recorded on the highest bidder list,
- ✓ The bidder identified on the bidder tracking sheets and the highest bidder list did not match,
- ✓ The awarded winning bidder was not on the bidder tracking sheets or the highest bidder list,
- ✓ Bidders identified on the highest bidder list did not bid on the auctioned property, and,

- ✓ Data on the bidder tracking sheets suggested that individual bidders competed against themselves in increasing their own bids.

  The following examples detail the five different instances identified above.

Different Bid Amounts. There were several instances where the bid amounts on the bidder tracking sheets did not match the data on the highest bidder list. The following were some of the egregious instances:

- ✓ For auctioned property 4, discussed in the first finding, the highest bidder list shows the three highest bids at $75,000, $42,000, and $10,100. However, the bidder tracking sheets showed only two bidders with highest bids of $75,000 and $60,000. A detailed review of the records showed that the recorded third highest and winning bidder, whose recorded bid on the highest bidder list was $10,100, was actually the second highest bidder on the bidder tracking sheet, with a recorded bid of $60,000. There was no documented explanation for the discrepancy.

- ✓ The highest bidder sheet and the bidder tracking sheets for another auctioned property showed the highest and winning bid amount of $37,000, with the second and third highest bidders bidding $34,000 and $33,000, respectively. However, this property was sold to the highest bidder at $34,000, a reduction of $3,000. No justification for the reduction in payment was provided.

- ✓ For auctioned property 6, discussed in the first finding, the bidder tracking sheet showed the second and eventual winning bidder's bid amount as $8,200; however, the highest bidder list showed the bid amount as $10,200. The $10,200 was the amount that was paid by the individual.

- ✓ The highest bidder list for another auctioned property showed only two bids of $19,100 and $19,000 respectively. However, the bidder tracking sheets showed three bidders at $19,100, $18,800 and $18,200. Although the property was sold to the highest bidder at $19,100, the second highest bidder with a bid of $19,000 on the highest bidder list was actually the third highest bidder with a bid of $18,200, as listed on the bidder tracking sheets.

Different Bidders. We found other instances where the bidders listed on the highest bidder sheet did not match the three highest bidders on the bidder tracking sheets. The following were some examples:

- ✓ For auctioned property 2, discussed in the first finding, the highest bidder sheet listed the three highest bid amounts at $100,000, $10,100 and $9,900. The property was eventually sold to the individual recorded as the second highest bidder at $10,100. However, a review of the bidder tracking sheets showed that the actual second highest bidder, whose bid was $11,000, was by-passed and not given an opportunity to accept the property when the highest bidder did not pay the required 10% deposit.

- ✓ For auctioned property 11, discussed in the first finding, the highest bidder sheet listed the three highest bid amounts at $26,000, $25,000 and $15,100. The third highest bidder was eventually awarded the property. However, a review of the bid tracking sheets showed that the individual who was awarded the property did not actually bid $15,100 as the third highest bidder, but was actually the fifth highest bidder with a high bid of $5,000. The individual who actually bid the $15,100 was not included in the highest bidder sheet and thus not given the opportunity to claim the property.

<u>Different Awarded Buyers</u>. There were also instances where properties were sold to individuals not listed on the highest bidder list or the bidder tracking sheets. The following were examples of these instances:

- ✓ For auctioned property 4, discussed in the first finding, as previously indicated, the highest bid on the property was $75,000. The awarded winning bid amount was $10,100; however, another individual, not registered as a bidder, ultimately paid $10,000 for the property.

- ✓ For auctioned property 11 discussed in the first finding, as previously indicated, the highest bid on the property was $26,000 and the winning bid amount was $15,100. The property was sold to another individual not registered as a bidder for $15,100.

- ✓ Records for another auctioned property showed the 3 highest bids of $12,300, $12,100, and $10,600. These 3 amounts and the individuals who were recorded as making the bids were identified on the highest bidder sheet and the bid tracking sheets. However, the property was sold to the fifth highest bidder for $12,300. Records show that this individual's highest recorded bid was actually $10,200.

<u>Non-Bidders</u>. We also identified instances where individuals listed on the highest bidder list did not bid on the particular auctioned property. The following were examples:

- ✓ For auctioned property 4, discussed in the first finding, the highest bidder list showed the three highest bids at $75,000, $42,000, and $10,100. However, a review of the bid tracking sheet showed that the alleged second highest bidder was not recorded as having bid on the property. In addition, the recorded third highest bidder was actually the second highest recorded bidder with a bid of $60,000, not the awarded amount of $10,000.

- ✓ We contacted an individual recorded as a bidder on the highest bidder list for an auctioned property at the second auction to determine if they had bid on the given property. This individual indicated that they were at the auction as an observer. However, the individual did not bid on any of the properties.

- ✓ We also contacted several individuals listed as the second or third bidders on the various highest bidder lists to determine if they were contacted and offered the auctioned property if the higher bidder before them failed to meet the ten percent 10% deposit amount. Several of them indicated that they were never contacted.

Bidder Raised Own Bids. Finally, there were instances where the records showed a bidder basically bidding against themselves. This seemed highly unlikely, and further supported the fact that the inaccurate and suspect recordkeeping brought the entire auction process into question. The following were examples of bidders raising their own bids:

- ✓ Bid tracking sheets for an auctioned property showed 1 bidder bidding $3,600 then $3,800, and $3,900 then $4,000 on an auctioned property, eventually bidding $4,400 then $5,000 for the property.

- ✓ Bid tracking sheets for another auctioned property showed 3 bidders raising their own bids without a challenge from another bidder accordingly;

    - One bidder bid $4,100 then $4,300,
    - Another bidder bid $10,300 then $11,000,
    - A third bidder bid $11,100 then $12,000.

- ✓ Finally, bid tracking sheets for another auctioned property showed a bidder raising their own bids at 3 different times as follows;

    - From $6,200 to $6,500,
    - Then $7,000 to $7,100,
    - Finally from $7,300 to $7,500 to $7,600 to $7,700.

These various scenarios highlight only some of the inaccuracies and suspect recordkeeping activities caused by the decision to record the first, second, and third highest bidders and awarding the auctioned properties to individuals other than the legitimate highest bidder. If the winning bidder failed to meet the 10% deposit requirement, the sale should have been voided and the property included in a later auction.

As a result of these highly irregular and questionable practices, it is our opinion that all auctioned properties that were not awarded to the highest bidders should be voided and re-auctioned at a later date.

Recommendations

We recommend that the Lieutenant Governor of the Virgin Islands:

1. Void all auctioned properties where the highest bidder did not win the auctioned property and re-auction them at a later date.

Governor’s Response

Similar to the response to the first recommendation in Finding 1, it was indicated that properties that are determined to be voidable will be voided if practicable and record keeping will be strictly monitored.

V. I. Inspector General’s Comments

Our concern with the action plan for this recommendation is the same as our concern with the action plan for the first recommendation of Finding 1. As stated in this finding, in addition to the 14 instances where the bidding process was manipulated, there were other instances where properties were not awarded to the highest bidder on record, but rather to another individual who did not bid on a property or were not even registered at the particular auction to bid. As stated by the Attorney General’s Advisory Opinion, there is no option to void an illegal transaction “where practicable.” The courts have ruled that the property owner must be given the benefit of due process rights afforded by the Fourteenth Amendment. Accordingly, all illegal transfers must be voided and the properties re-auctioned in strict accordance with the provisions of the Code.

Similar to our comments in the first finding, we will consider the recommendation resolved, but not yet implemented. We will monitor the disposition of each of the properties that were illegally awarded to a bidder other than the winning bidder.

FINDING 3: PROPERTIES INELIGIBLE FOR SALE

Officials at the Lieutenant Governor's Office advertised and sold 7 unusable properties and at least 1 other property that was in probate. In addition, a property that was sold was not properly identified when advertised and another was not included in the advertised listing. These errors caused the sale of at least 7 properties in the St. Thomas/St. John District and 3 properties in the St. Croix District that should not have been advertised and sold. As a result, payments had to be refunded, with interest, to purchasers for properties that were incorrectly sold. In addition, funds used to advertise these 10 properties were wasted. These errors cost the Government at least $13,723.

Background

Title 33, Section 2541 of the Code, gave the Lieutenant Governor the authority to attach and sell real property of delinquent taxpayers. It also required the Lieutenant Governor to prepare a written notice of attachment of the real property for which the taxes are due. Among other things, the notice of attachment must include; (a) the amount of delinquent taxes, sewer system user fees, and interest due, and, (b) a statement that if the required taxes, fees, penalties and costs are not paid within a prescribed time, the property will be sold at a public auction. The notice is also required to include the date of the public auction and the date upon which the period to redeem the delinquent real property expires.

The Code also required that the notice of attachment be served on the taxpayer or family member of legal age. If the taxpayer or family member cannot be found, the notice can be left with two neighbors willing to be witnesses to the service of the notice. If no witnesses are willing to accept the notices, the notice must be mailed to the taxpayer's last known address and published in a newspaper of general circulation once a week for four consecutive weeks, and posted in the nearest post office or the bulletin board of the Superior Court. All attempts to serve the taxpayer must be properly documented for the record.

The Lieutenant Governor is also required to have a certificate attached to the notice and recorded in the real property register, describing the property being attached, the name of the delinquent taxpayer (if known), the assessed value of the property, the amount of taxes, fees, penalties and costs, and a legal description of the property including the situation of and approximate boundaries of the property attached.

Several court decisions have reversed property auctions due to the Government's failure to follow and document the required steps to attach and sell a property as detailed in Section 2541 of the Code.

Title 33, Section 2546 of the Code required that the property be advertised for sale at least once in a different newspaper of general circulation in each island district, and the cost of the advertising together with a fee of $5.00 for service of the notice be included as part of the costs of the sale.

Properties Erroneously Sold

Officials of the Lieutenant Governor's Office advertised and sold properties that were unusable, in probate, incorrectly identified, and not advertised. If adequate research had been conducted prior to the sale of at least 7 properties in the St. Thomas/St. John District and 3 properties in the St. Croix District, those properties would not have been advertised and sold at auction.

We found that the vetting of properties to ensure their eligibility for attachment and sale was not done uniformly throughout the territory. Notably, the St. Croix District engaged the Cadastral Section of the Lieutenant Governor's Office early on in the vetting process. This was not done in the St. Thomas/St. John District. As a result, fewer property identification errors were noted in the St. Croix District. Officials in the St. Thomas/St. John District acknowledge that initially a thorough vetting process was not done.

Officials primarily relied on information gathered from their computer billing system known as the CAVU System and the GSI mapping system. However, the information found in the CAVU System is only as good as what is registered with the Office of the Recorder of Deeds and subsequently entered by employees into the system. Regarding the GSI mapping system, it is primarily used for identifying locations and providing general information. The GSI mapping system creates some challenges when specifically identifying dimensions. As a result, it is necessary to visit each property site to ensure that the information, as recorded in the system, is correct. Officials in the St. Thomas/St. John District acknowledge that this was not always done. This lack of research created unnecessary cost to the Government in advertising fees and unnecessary interest paid to reimburse persons for sold properties that were unusable.

The following details the 10 instances where properties should not have been sold:

- ✓ At the January 25, 2012 St. Thomas/St. John auction, a property that was sold for $111,000 was later discovered to be in probate. The full bid price was paid and the Government was required to reimburse the purchaser the full price plus interest. As of January 2014, 24 months after the sale, no refund had been processed for this purchase. Based on other similar refunds processed, the Government has been paying interest at the rate of 1% per month.

- ✓ At the same auction, a second property sold for $111,000 and it was later discovered to be an unusable piece of land. The required 10% deposit was paid, and in a letter dated February 1, 2012, the purchaser stated that they were applying this deposit to the balance on other purchased properties.

- ✓ At the August 30, 2012 auction in the St. Thomas/St. John District, three properties were erroneously sold. Two of the properties were later discovered to be roads and the other property's address was incorrectly advertised.

- One property that was sold for $21,700 was later discovered to be a road. The bidder paid the required deposit of $2,170 on August 30, 2012, and an additional $8,000 on September 7, 2012. In a letter dated November 20, 2012, to the Commissioner of Finance, the Lieutenant Governor's Office Collection Division requested a refund of $10,170. Although, this refund was requested 2 months after payment was made, no interest cost was added as was done in other similar circumstances. On December 6, 2012, the Department of Finance issued a check for $10,170 as a refund for the error.

- Another property that was sold for $95,000 was also later discovered to be a road. This property had been subdivided a number of times and the only remaining land was a roadway. We saw no evidence that payments were made on this property.

- Finally, a property was sold after an incorrect address was advertised. An incorrectly advertised address could be construed to be misleading and exposes the Government to the potential liability of not meeting Code requirements for proper notification. Other questionable issues where detailed about this property, which we identify as auction property 4, in the first two findings of this report.

✓ At the November 20, 2012 auction, in the St. Thomas/St. John District, a property that was sold for $19,000 was later reported to be a pond site. The purchaser paid the required 10% deposit and this payment was later applied toward the purchase of another unrelated property offered to the individual for which the bidder did not bid on. This matter was discussed in greater detail in the second finding of this report.

✓ At the June 20, 2013 auction, a property that sold for $12,000 was not included in the local newspaper "Notice of Property Sale" advertisement. We were provided with copies of 3 advertisements dated May 30, June 3, and June 10, 2013. Twenty-one properties were advertised, however, this property was not included in any of the 3 advertised lists. A review of the Lieutenant Governor's Office file revealed that a "Notice of Attachment" was sent by certified mail and was returned unclaimed. Also, on May 20, 2013, the "Notice of Attachment" letter was published in a local newspaper. However, as required by the Code, the property was not listed in the "Notice of Property Sale" when advertised.

✓ In the District of St. Croix, we identified 3 properties that were erroneously sold. Two properties were later determined to be roads and 1 property's address was incorrectly advertised.

- At the January 18, 2012 auction, a property was sold for $65,100. After full payment was made, it was discovered that this property was previously subdivided, and the subdivisions sold. The only remaining land was a road. On March 8, 2013, fourteen months after the sale, the Lieutenant Governor's Office requested a refund. Interest was paid at the rate of 1% per month. On March 25, 2013, the Department of Finance issued a refund check in the amount of $72,912. This error resulted in the Government being forced to pay $7,812 in interest.

- At the June 5, 2012 auction, a property was sold for $17,700. This property was later found to be a road. This error was caught before any payments were made on the purchase. We were informed that the Lieutenant Governor suspended 2 management officials for the error in the identification and subsequent sale of this property. However, we note that no such disciplinary actions occurred in the St. Thomas/St. John District for similar occurrences in that district.

- Finally, at the June 5, 2012 auction, a property address was incorrectly advertised in the "Notice of Property Sale" as "ABCD" when it should have been "ABCB". It was sold for $4,625.54. The purchaser requested and was granted a refund of the deposit paid based on the property's incorrect identification. This property's legal description was corrected and it was offered for sale at a later auction.

These 10 instances cost the Government at least $13,723 in interest and advertising fees. Proper identification and vetting of the properties before they are assessed and auctioned should be the common practice.

Recommendations

We recommend that the Lieutenant Governor of the Virgin Islands:

1. Ensure that procedures are established to properly identify and vet potential properties to be auctioned before they are advertised.

2. Ensure that if refunds are to be made, they are done expeditiously to reduce the amount of interest that is required.

Governor's Response

Regarding the two recommendations made in this section of the report, the response indicated that personnel will be retrained on standard operating procedures and legal requirements, and the law as stated in Title 33 of the Code will be followed.

V. I. Inspector General's Comments

Although there was agreement with the finding and recommendations made in this section of the report, the action plans given for the two recommendations are inconclusive as to the exact plan of action.

For the first recommendation, we recommended that procedures be established to ensure the proper identification and vetting of potential properties to be auctioned. This should be done before they are advertised to ensure that ineligible properties are not sold. The response made no mention of the establishment of procedures to identify and vet the potential properties. There was mention of the retraining of staff; however, there was no indication on how the training is to be carried out, who will do the training, and when it will be done. As a result, we will consider the first recommendation resolved but not implemented pending the receipt of approved procedures in identifying and vetting potential properties to be auctioned and evidence that formal training was done.

Regarding the second recommendation to ensure that refunds are done on a timely basis in order that interest costs to the Government are reduced, again no policies and procedures were identified in meeting this recommendation. Approved procedures should be established to ensure the timely payment of refunds. In addition, all pending refunds identified by the inspection should have been made. This recommendation is also being considered resolved but not yet implemented pending receipt of evidence that all outstanding refunds have been made and approved procedures have been established to ensure the timely payment of refunds.

FINDING 4: PAYMENT TIME FRAMES

Final payments for many properties auctioned were not made within the time frames established by the Code. This occurred for several reasons. First, the final payment time period of 10 days, as required by the Code, was changed to 30 business days. Second, some purchasers were allowed to make the 10% deposit after the required date. Third, others were allowed to pay the final amounts in installments beyond the newly changed 30 business day period.

Background

Title 33, Section 2547 of the Code states that, "… the said property shall be sold by the Lieutenant Governor at public auction to the highest bidder. However, **no bid shall be accepted for a less amount than the taxes and public sewer system user fees upon said property, together with all costs and penalties thereon, and unless accompanied by a cash deposit of ten percent of the amount bid**." [bold added] Officials at the Lieutenant Governor's Office consider the cut-off for acceptance of the 10% deposit as 4:00 pm on the date of the auction. The time corresponds with the daily closing of the cashier's window at the Lieutenant Governor's Office. This practice has been in effect for many years prior to the Lieutenant Governor's Office being given the responsibility for real property tax collections.

The section of the Code further states that, "The amount deposited shall be forfeited in the event of failure on the part of the purchaser to pay the balance of the purchase money upon delivery or offer of delivery by the Lieutenant Governor of the certificate of purchase, and **such delivery or offer of delivery shall be made within ten days from the date of sale**." [bold added] Although the Code specified that the final payment for an auctioned property was due within 10 days from the date of the sale, Lieutenant Governor's Office officials indicated that at some time before the first auction in 2012, the Lieutenant Governor changed the final payment due date to30 business days. There was no written documentation to show exactly when this was done. However, at each auction, written procedures and requirements were prepared and given to each of the prospective bidders. This document indicated that there was a 30 business day window to make the final payment on an auctioned property.

10% Deposit and Final Payment

Although, the 10% deposit was due on the day of the auction, and according to the Code, the final payment was due within 10 days of the date of sale, not the 30 business days decided to by the Lieutenant Governor, we found several instances where the 10% deposit was made after the auction date and the final payment was accepted after the 30 business day window.

All of the instances, except for 1, occurred in the St. Thomas/St. John District. In 3 of the 6 auctions held in the St. Thomas/St. John District, there were instances where 1 or both of these Code requirements were violated. The following were examples of these violations.

- ✓ At Auction 2, held on May 23, 2012, 1 bidder won 3 properties at a consolidated price of \$93,900. The 10% deposit for the 3 properties was \$9,390. The 10% deposit was not made until the day after on May 24, 2012. In addition, although the balance was due on July 9, 2012, the same individual was allowed to make 3 instalment payments on July 12, 2012, July 31, 2012, and August 2, 2012.

- ✓ At the same Auction 2, 2 other bidders were allowed to make their final payments after the July 9, 2012 due date; 1 on July 19, 2012, and the other in 2 payments on June 13, 2012, and August 10, 1012.

- ✓ At Auction 4, held on November 20, 2012, 1 bidder was allowed to pay the 10% deposit of \$1,700 on November 23, 2012, 2 business days after the auction.

- ✓ At the same Auction 4, there were 4 bidders who were allowed to make their final payments, of a consolidated \$78,400, after the 30 business day due date of January 8, 2013. One bidder made 2 payments on January 8, 2013, and January 14, 2012. Another bidder made the payment on January 14, 2013, and 2 other bidders made their payments on January 15, 2013.

- ✓ At Auction 5, held on February 27, 2013, a bidder was allowed to make the, \$1,800, 10% deposit 1 day later, on February 28, 2013.

- ✓ At the same Auction 5, 4 bidders were allowed to make their final payments after the 30 business day window of April 2, 2013. The consolidated balance from the 4 individuals was \$40,050. One payment was a day later, on April 3, 2013. Two others were 4 days late, on April 8, 2013. The final bidder was 6 days late, on April 10, 2013.

- ✓ Of the 6 auctions held in the St. Croix District, there were no instances where winning bidders failed to make the 10% deposit by the due date, and only1 instance where the final payment was accepted after the 30 business day due date. That occurred at auction 4, held on November 11, 2012. A successful bidder on 4 properties was allowed to make the final payment of a consolidated \$137,070, on January 14, 2013, 7 business days after the due date of December 28, 2012.

As shown by the examples cited above the St. Thomas/St. John District did not adhere to the requirements of the Code relating to the payment of the 10% deposit. In addition, there were several instances where bidders were allowed to make final payments after the changed due date, and in some instances payments were made in installments. On the other hand, all 10% deposits made in the St. Croix District were timely, and in only 1 instance did a bidder make the final payment after the due date.

Recommendations

We recommend that the Lieutenant Governor of the Virgin Islands:

1. Ensure that the provision of the Code relating to the payment of the 10% deposit and the 10 day due date for the final payment are adhered to by both the St. Thomas/St. John and the St. Croix districts.

2. Review all of the instances cited in this finding relating to the late payment of the 10% deposit and the final payment. Request an opinion from the Attorney General to determine whether the sales are valid and not in violation of the Code.

Governor's Response

Regarding the two recommendations made in this section of the report, the response indicated that there was agreement with both recommendations. It was further indicated that payment time frames as required by the Code will be enforced, and an opinion was requested from the Attorney General regarding the validity of sales made outside of the time frames established by the Code.

V. I. Inspector General's Comments

Although there was agreement with the recommendations made in this section of the report, the response did not indicate an action plan to address the recommendations.

As it relates to the first recommendation, to ensure that the payment time frame requirements of the Code are adhered to, there was no indication on how the requirements will be enforced. Written approved procedures should be issued and a written directive given to the staff reminding them of the Code requirements. We will consider the first recommendation resolved but not yet implemented, pending additional written documentation showing how this recommendation is to be enforced.

Regarding the second recommendation relating to the legality of the property sales where payments were not made in accordance with the Code, the Advisory Opinion by the Attorney General results in the questioning of all of the property sales where the winning bidders' payments were not made within the time frames established by the Code.

The Advisory Opinion confirms the Code requirement that the wining bidder must make a 10% deposit on the date of the auction and pay the balance due within 10 days of the auction. It further states that; "LGO's [Lieutenant Governor's Office] failure to conform its behavior in accordance with law jeopardized the property owner's rights, other bidders' expectations, and the financial opportunities that may have been afforded the Government of the Virgin Islands pursuant to law."

The Advisory Opinion concludes;

> "It is our opinion that the LGO procedure alleged by the IG [Inspector General] to have occurred, if true, violated the law. Virgin Islands law does not permit the type conduct described. Nor is there any published rules or regulations that allow the procedures described by the IG. Even if there were rules and regulations that authorized the conduct described by the IG, it would violate Virgin Islands statutory law as rules and regulations cannot supersede the weight of legislative enactments. It is our opinion that the conduct alleged by the IG in the Draft Inspection Report, if true, is invalid and may be voided."

As a result of this Advisory Opinion, in addition to the illegal property transfers where the highest bidders were not awarded the auctioned properties, as described in the first finding of the report, auctioned properties where the 10% deposit and the final payment by the 10 day due date are also illegal. Accordingly, of 153 properties sold during the 12 auctions reviewed, 98 of them were illegal and in violation of the Code.

We will consider this recommendation as resolved but not yet implemented. We will monitor the status of the disposition of each of the properties.

FINDING 5: RECORDS MANAGEMENT

Records relating to the attachment and sale of real property for delinquent real property taxes and sewer system user fees were not adequately managed and maintained. Of 411 properties advertised for possible auction, almost half were missing some form of required documentation necessary to prove that the property owners were properly notified of the pending property sale. In addition, 23 property files, in the St. Thomas/St. John District, could not be located for review.

Background

Title 33, Sections 2541, 2546, and 2547 of the Code sets forth the laws requiring the Lieutenant Governor's Office to issue a Notice of Attachment; affix a Certificate to the Notice to be recorded with the Recorder of Deeds office; notify existing lienholders; advertise and assess such cost; and preserve copies of Notices and newspapers in which advertisements appeared.

Documents generated from this process were necessary to serve as evidence that taxpayers were duly served and that auctions were conducted in a fair and impartial manner. These documents included but were not limited to the following:

- ✓ Notice of Attachment (personally served or sent by certified mail),
- ✓ Certificate of Attachment,
- ✓ Title and Encumbrance,
- ✓ Advertisement.

In addition, there were numerous court cases where properties sold at public auctions had been retuned to the original owners because the Government failed to document the fact that the original owner was adequately notified and their due process rights protected.

Auctioned Property Files

To verify that proper procedures were followed, we requested access to the files for 411 properties advertised for auction territory-wide; 200 in the St. Thomas/St. John District and 211 in the St. Croix District. We were informed that 23 of the 200 files in the St. Thomas/St. John District could not be located. Additionally, based on files reviewed, we found that copies of the required documents were not always maintained.

The following schedule details by district, the required documents missing from files.

Documents Missing From Property Files

District	Number of Files	Notice of Attachment	Percent	Personal Service or Certified Mail	Percent	Certificate of Attachment	Percent	Title and Encumbrance	Percent
St. Thomas/ St. John	200*	73	37%	66	33%	73	37%	83	42%
St. Croix	211	57	27%	101	48%	42	20%	46	22%
	* There were 23 property files that could not be located for review.								

Notice of Attachment. The Code requires that the Lieutenant Governor's Office prepare, serve and maintain a record of the Notice of Attachment. Upon inspection of all files advertised for auction, we found that in the St. Thomas/St. John District, evidence of 73 of Notices of Attachment were missing from property files. In addition, we found that in the St. Croix District, evidence of 57 of Notices of Attachment was missing from their files. Most notable, we found that in the St. Thomas/St. John District, copies of all Notices of Attachment were not on file for 22 properties advertised for the June 20, 2013, auction. In addition, in the St. Croix District, copies of 19 of 32 Notices of Attachment were not on file for the August 29, 2012, auction.

Personal Service or Certified Mail. When a property owner is not personally served a Notice of Attachment, the Notice is required to be sent by certified mail to the taxpayer's last known address. We verified that evidence existed of either a mailed Notice of Attachment, a returned signature card, or returned undelivered notices from the postal service. We found that in the St. Thomas/St. John District 66 and in the St. Croix District 101 of files inspected were missing evidence that notices were sent by certified mail.

Certificate of Attachment. After the levy of the Notice of Attachment, the Lieutenant Governor is required to affix to the Notice of Attachment, a Certificate of Attachment to be recorded with the Office of the Recorder of Deeds. In the St. Thomas/St. John District, 73 and in the St. Croix District, 42 of properties inspected were missing evidence that Certificates of Attachment were recorded in the real property register at the Office of the Recorder of Deeds.

Title and Encumbrance. The Title and Encumbrance document identifies the existence of lienholders to ensure their adequate notification of the property's impending sale. In the St. Thomas/St. John District, 83 and in the St. Croix District, 46 of files inspected were missing evidence of a Title and Encumbrance document.

Advertising. The Code states that the advertisement is required to be published at least once in a different newspaper of general circulation in each island district, and a copy is to be maintained at the Lieutenant Governor's Office as proof of the advertisement. We found that in the St. Thomas/St. John District, only 1 of 6 auctions' newspaper advertisements was on file for inspection. Although we were later provided with copies for 4 other advertised auctions, officials at the Lieutenant Governor's Office were unable to provide a copy of the January 25, 2012 auction's notice of sale advertisement. In the St. Croix District, all copies of the newspaper advertisements were on file for inspection.

Copies of required documents missing from the property files exposed the Government to potential legal challenges since these documents serve as evidence that the original property owners' due process rights were protected.

Recommendations

We recommend that the Lieutenant Governor of the Virgin Islands:

1. Ensure that all documents required by the Code are maintained for each property advertised for possible sale at public auction.

Governor's Response

In response to the recommendation, it was indicated that the Tax Collector was instructed to maintain the records as required by law and employees have been told that they will be held responsible.

V. I. Inspector General's Comments

Although the recommendation was agreed to, there is no documentation to show that there are policies and procedures for the maintenance and retention of the required records. We have been informed that the most recent Tax Collector has retired, and the position is currently vacant. Accordingly, we will consider the recommendation resolved but not implemented pending some type of approved policies and procedures.

FINDING 6: ASSESSMENT AND COLLECTION OF FEES

At least $276,046 in advertising fees were not assessed, nor collected from delinquent property owners whose properties were advertised for delinquent property taxes and sewer system user fees in preparation for the 12 auctions held territory-wide. Officials from the Lieutenant Governor's Office accepted payments, approved payment plans, and auctioned and transferred properties without assessing and collecting from the property owners the expenses associated with advertising and auctioning these properties.

Background

Title 33, Section 2546 of the Code requires the cost of advertising together with a service fee of $5.00 to be collected as part of the cost of an auction sale. Also, Title 33, Section 2547(4) of the Code requires that the cost of the publication of the notice of sale be prorated among the number of properties advertised and be added to the expenses of the sale.

Assessment and Collection

Based on records maintained by the Lieutenant Governor's Office, we found that the cost of each property's Notice of Attachment averaged $711 and $680 in the St. Thomas/St. John and St. Croix districts, respectively. However, for the first four auctions in each district, or eight of the twelve auctions held territory-wide, only $140 in advertising cost was assessed to each property. We did note that starting with the fifth auction in each district, a $750 advertising fee was assessed to each property.

As of February 14, 2014, of $296,068 in advertising fees paid by the Lieutenant Governor's Office, only $20,022 had been collected from auctioned properties. In addition, we found that a portion of this cost could have been avoided had properties been adequately researched and vetted, as discussed in Finding 3 of this report.

The ability to recoup advertising costs was also compromised in those instances where the Lieutenant Governor used his discretion to remove properties from the list; the advertising costs were under assessed; costs were simply not assessed; and ineligible properties were advertised to be sold. We identified at least $97,967 in lost advertising cost reimbursements attributable to the under assessment of those costs, and at least $77,278 in lost cost reimbursements for properties that were removed from the advertised list.

Recommendations

We recommend that the Lieutenant Governor of the Virgin Islands:

1. Ensure that procedures are in place to properly assess and collect all costs associated with the advertising and sale of real properties for delinquent property taxes and sewer system user fees.

2. Ensure that properties are properly researched and vetted before they are advertised for sale.

Governor's Response

Regarding the two recommendations made in this section of the report, the response indicated that set fees for advertising will be established in accordance with the Code, and collection office employees will be trained on title search procedures and property vetting will be enforced.

V. I. Inspector General's Comments

The two recommendations made will be considered resolved but not yet implemented pending the receipt of an approved fee structure. In addition, evidence that written approved procedures have been established to ensure properties are properly vetted should be provided.

GOVERNOR'S RESPONSE

THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE

Charlotte Amalie, V.I. 00802
340-774-0001

August 29, 2014

Mr. Steven van Beverhoudt
V.I. Inspector General
Office of the Virgin Islands Inspector General
2315 Kronprindsens Gade #75
St. Thomas, Virgin Islands 00802-6468

RE: ***Response by the Government Virgin Islands to the Draft Inspection Report of Real Property Auctions held by the Office of the Lieutenant Governor (LGO) (Report No. INR-01-30-14, June 27, 2014)***

Dear Inspector General van Beverhoudt:

This letter acknowledges receipt of the above-referenced draft Inspection Report that was transmitted with correspondence dated June 27, 2014 to the Lieutenant Governor's Office. The Government of the Virgin Islands is appreciative of the audit work and procedures conducted by the Office of the Inspector General ("OIG") which continues to foster strengthening of existing internal controls coupled with standardization across government entities.

The Inspection Report addresses allegations of questionable bidding practices and lack of compliance with statutory regulations governing real property auctions conducted by the Lieutenant Governor's Office. The Lieutenant Governor's Office concurs with all six (6) findings and has already implemented eight (8) of the ten (10) recommendations made by the OIG. The Lieutenant Governor's Office also sought and received an Advisory Opinion from the Attorney General of the Virgin Islands (Exhibits III and IV) concerning the fourteen (14) property sales that the OIG draft audit report identified and recommended that should be voided and/or reversed. The Lieutenant Governor's Office has been advised by the Attorney General that those fourteen property sales are voidable and the Lieutenant Governor's Office will be guided by the Attorney General with respect to this matter to the extent practicable.

GOVERNOR'S RESPONSE

Mr. Steven van Beverhoudt
V.I. Inspector General
Re: Response by the Government Virgin Islands to the Draft Inspection Report of Real Property Auctions held by the Office of the Lieutenant Governor (LGO)
(Report No. INR-01-30-14, June 27, 2014)
August 29, 2014
Page 2

Thank you for the opportunity afforded the Office of the Governor to provide comments to the OIG's Draft Inspection Report and the courtesies extended.

Sincerely,

John P. de Jongh, Jr.
Governor

Attachments

GOVERNOR'S RESPONSE

Exhibit I

Government of the Virgin Islands
Response to the Draft Inspection Report
of Real Property Auctions Held by the Office of the Lieutenant Governor (LGO)
(Report No. INR-01-30-14, June 27, 2014)

Finding Number 1: Bid Manipulation Scheme

Procedural changes made by officials at the Lieutenant Governor's Office allowed individuals to fraudulently manipulate the bidding process to prevent potential bidders from making legitimate bids on properties offered at public auctions.

Recommendations (Lieutenant Governor of the Virgin Islands):

1. Review the fourteen (14) auctioned properties that were transferred, where the winning bidder was not the highest bidder, and void the property auctions in accordance with Title 33 Section 2549 of the Code.

2. Ensure that the provision of Title 33 Section 2547 of the Code is followed awarding auctioned property to the highest bidder. If the highest bidder fails to meet the payment requirements, the property should be re-advertised and auctioned at a later date.

Government's Response

Recommendation No. 1

The Lieutenant Governor's Office (LGO) concurs with this finding.

Action Plan

The Lieutenant Governor's Office has requested an opinion from the Attorney General of the Virgin Islands and received an Advisory Opinion from the Attorney General dated August 28, 2014 labeled as Exhibit IV. Properties that are determined to be voidable by the Attorney General will be voided if practicable and adherence to VI Code Title 33 Section 2549 will be strictly enforced. With respect to voiding property sales, the Lieutenant Governor's Office will be guided by the Attorney General of the Virgin Islands.

Implementation Date: Ninety (90) days after the determination is received from the Attorney General.

Responsible Party: Tax Collector - **LGO**

GOVERNOR'S RESPONSE

Recommendation No. 2

The Office of the Lieutenant (LT.) Governor concurs.

Action Plan

The Lt. Governor's Office will immediately enforce the highest bidder requirement in accordance with the Virgin Islands (V.I.) Code. By memorandum dated April 12, 2013, (Attachment II) the Office of the Lieutenant Governor's staff has been notified of this.

Implementation Date: April 12, 2013 and on-going.

Responsible Party: Tax Collector – **LGO**

Finding Number 2: Questionable Recordkeeping

Inaccurate and suspect recording of bid amounts and names of bidders led to questionable awards of auctioned properties.

Recommendation No. 1

Void all auctioned properties where the highest bidder did not win the auctioned property and re-auction them at a later date.

Government's Response

Recommendation No. 1

The Lieutenant Governor's Office concurs with this finding.

Action Plan

The LGO has requested an opinion from the Attorney General of the Virgin Islands and received an Advisory Opinion from the Attorney General dated August 28, 2014 labeled as Exhibit IV. Properties that are determined to be voidable by the Attorney General will be voided if practicable and record keeping will be strictly monitored. With respect to voiding property sales, the Lieutenant Governor's Office will be guided by the Attorney General of the Virgin Islands.

Implementation Date: Ninety (90) days after the determination is received from the Attorney General.

Responsible Party: Tax Collector - **LGO**

Finding Number 3: Properties Ineligible for Sale

GOVERNOR'S RESPONSE

Officials at Lieutenant Governor's Office advertised and sold seven (7) unusable properties and at least one (1) other property that was in probate. In addition, a property that was sold was not properly identified when advertised; while another was not included in the advertised listing.

Recommendations (Lieutenant Governor of the Virgin Islands):

1. Ensure that procedures are established to properly identify and vet potential properties to be auctioned before they are advertised.

2. Ensure that if refunds are to be made, they are done expeditiously to reduce the amount of interest that is required.

Government's Response

Recommendation No. 1

The Lieutenant Governor's Office concurs with this finding.

Action Plan

The Lieutenant Governor's Office will retrain personnel on standard operations procedures and legal requirements.

Due Date: October 1, 2014

Responsible Party: Tax Collector - **LGO**

Government's Response

Recommendation No. 2

The Lieutenant Governor's Office concurs with this finding.

Action Plan

The Lieutenant Governor's Office will follow the law as stated in the V.I. Code Title 33.

Implementation Date: Immediately

Responsible Party: Tax Collector - **LGO**

Finding Number 4: Payment Time Frames

Final payments for many properties auctioned were not made within the time frames established by the Code. (Title 33, Section 2547).

GOVERNOR'S RESPONSE

Recommendations (Lieutenant Governor of the Virgin Islands):

1. Ensure that the provision of the Code relating to the payment of the ten percent (10%) deposit and the ten (10) day due date for the final payment are adhered to by both St. Thomas/St. John and the St. Croix districts.

2. Review all of the instances cited in this finding relation to the late payment of the ten percent (10%) deposit and the final payment. Request an opinion from the Attorney General to determine whether the sales are valid and not in violation of the Code.

Government's Response

Recommendation No. 1

The Lieutenant Governor's Office concurs with this finding.

Action Plan

The Lieutenant Governor's Office will enforce payment time frames in accordance with the V.I. Code.

Implementation Date: Immediately

Responsible Party: Tax Collector - **LGO**

Government's Response

Recommendation No. 2

The Lieutenant Governor's Office concurs with this finding.

Action Plan

The Lieutenant Governor's Office has requested the Attorney General (AG) opinion (see attached letter).

Implementation Date: August 8, 2014

Responsible Party: Lieutenant Governor **- LGO**

Finding Number 5: Records Management

Records relating to the attachment and sale of real property for delinquent real property taxes and sewer system user fees were not adequately managed and maintained.

GOVERNOR'S RESPONSE

Recommendation (Lieutenant Governor of the Virgin Islands):

1. Ensures that all documents as required by the Code are maintained for each property advertised for possible sale at public auction.

Government's Response

Recommendation No. 1

The Lieutenant Governor's Office concurs with this finding.

Action Plan

The Office of the Lieutenant Governor will ensure that all property files are complete. The Tax Collector was instructed to maintain the records as required by law and the employees in the Lieutenant Governor's Office have been warned that they will be held responsible if they do not adhere to the law with respect to the maintenance of records.

Implementation Date: Immediately

Responsible Party: Tax Collector - **LGO**

Finding Number 6: Assessment and Collection of Fees

At least two hundred seventy six thousand and forty-six dollars ($276,046) in advertising fees were not assessed, nor collected from delinquent property owners whose properties were advertised for delinquent property taxes and sewer system user fees in preparation for the twelve (12) auctions held territory-wide.

Recommendation (Lieutenant Governor of the Virgin Islands):

1. Ensure that procedures are in place to properly assess and collect all costs associated with the advertising and sale of real properties for delinquent property taxes and sewer system user fees.
2. Ensure that properties are properly researched and vetted before they are advertised for sale.

Government's Response

Recommendation No. 1

The Lieutenant Governor's Office concurs with this finding.

GOVERNOR'S RESPONSE

Action Plan

The Lieutenant Governor's Office will dispense with set fees for advertising and will set fees pursuant to V.I. Code, which call for proration based on cost and number of properties being advertised.

Implementation Date: Immediately

Responsible Party: Tax Collector - **LGO**

Government's Response

Recommendation No. 2

The Lieutenant Governor's Office concurs with this finding.

Action Plan

The Lieutenant Governor's Office will enforce vetting and train all collection office employees on title search procedures.

Due Date: December 21, 2014

Responsible Party: Tax Collector - **LGO**

GOVERNOR'S RESPONSE

Exhibit II

OFFICE OF THE LIEUTENANT GOVERNOR
UNITED STATES VIRGIN ISLANDS

GREGORY R. FRANCIS
LIEUTENANT GOVERNOR

COMMISSIONER OF INSURANCE
CHAIRMAN, V.I. BANKING BOARD

Memorandum

TO: Raymond Williams, Chief of Staff
Delbert Hewitt, Deputy Chief of Staff
Dwayne Henry, General Counsel
Sonia Boyce, Senior Policy Counsel
Valencio Jackson, Tax Collector
Calford Charleswell, Chief Enforcement Officer
Shawna Richards, Director of Communications

FROM: Gregory R. Francis, Lieutenant Governor

SUBJECT: Bidders Option

DATE: April 12, 2013

In order to curtail any possibilities of fraud or abuse of sales of properties that are delinquent that are being auctioned, effective immediately, the process of continuing bids to include a second highest bidder option will cease at any and all public property auctions held by the Office of the Lieutenant Governor.

The highest bidder will be responsible to meet their commitment and obligations according to their bids on the same date of the auction as required by law. If such commitment is not met, the property will be brought back to auction at the next property sale event, and the high bidders who failed to meet their obligations will not be allowed and will be banned from bidding at any and all future auctions.

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No. 18 Kongens Gade, Charlotte Amalie, St. Thomas, VI 00802 • Tel.: 340-774-2991 • Fax: 340-774-6953
WWW.LTG.GOV.VI

GOVERNOR'S RESPONSE

Exhibit III

OFFICE OF THE LIEUTENANT GOVERNOR
UNITED STATES VIRGIN ISLANDS

GREGORY R. FRANCIS
LIEUTENANT GOVERNOR

COMMISSIONER OF INSURANCE
CHAIRMAN, V.I. BANKING BOARD

July 9, 2014

OMB RECEIVED JUL 30 '14

Vincent F. Frazer
Attorney General of the Virgin Islands
34-38 Kronprindsens Gade, GERS Bldg., 2nd Floor
Charlotte Amalie, VI 00802

Dear Attorney General Frazer,

The Inspector General of the Virgin Islands(IG), Mr. Steven Van Beverhout, recently completed an audit of the Lieutenant Governor's Delinquent Property tax Sales pursuant to Title 33, Section 2546, 2547, 2548 and 2550 of the Virgin Islands Code, Annotated(the Code). The IG has recommended that fourteen (14) sales be "voided and/or reversed". I am asking you for an Attorney General's opinion regarding the following:

1. The authority to reverse a sale; and if so, should we notify the purchaser not to invest or do any improvements on the property until further notice.

2. The propriety of awarding a property to the second highest bidder once the highest bidder has not met all requirements for consummation of the sale pursuant to Section 2547 of the above mentioned title of the Code.

Attached is a spreadsheet with the financial information such as bids, sales price, etc. for the relevant properties. I look forward to your prompt attention to this important matter.

Sincerely,

Gregory R. Francis
Lieutenant Governor

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NO. 18 KONGENS GADE, CHARLOTTE AMALIE, ST. THOMAS, VI 00802 • TEL.: 340-774-2991 • FAX: 340-774-6953
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GOVERNOR'S RESPONSE

Exhibit IV

THE UNITED STATES VIRGIN ISLANDS
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

VINCENT F. FRAZER, ESQUIRE
ATTORNEY GENERAL

August 28, 2014

Honorable Gregory R. Francis
Lieutenant Governor
Office of the Lieutenant Governor
No. 18 Kongens Gade
St. Thomas, Virgin Islands 00802

Re: Advisory Opinion: Consequence of Real Property Auctions and Sale for Tax Delinquency When Process Not Performed in Strict Compliance with Law

Dear Lt. Governor Francis:

By letter of July 29, 2014, you sought my advice subsequent to Mr. Steven Van Beverhoudt's, Inspector General, recommendation that an Attorney General Opinion be requested to determine whether the public auction and sale of real property in 2012 and 2013 by the Office of Lieutenant Governor to satisfy delinquent tax payments which sale process did not conform to the notice and timelines of the statutory language and procedures is valid. The issue, as we understand it, and posed by you follows:

Issue: Whether the Office of Lt. Governor's extension of the statutory time period to make final payment on the successful bid and/or extending the period for successful bid purchasers to make their initial ten percent (10%) deposit is a valid exercise of authority?

Answer: No.

Discussion: We are informed that the Virgin Islands Inspector General ("IG") initiated an inspection of the real property auctions held by the Office of Lieutenant Governor ("LGO") after having received allegations of questionable bids and failure of the LGO to comply with statutory regulations pursuant to Title 33, Chapter 89, Virgin Islands Code which governs said auctions. In particular the IG's investigation revealed that in several occasions, at auctions that took place in 2012 and 2013, the ten percent (10%) deposit to be made by the successful bidder was not made on the day of the auction. Further, IG investigation found that the final payment of the successful bid amount was not made within the ten days of the date of sale. In fact the LGO gave the successful bidders thirty (30) business days to make final payment.

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GOVERNOR'S RESPONSE

Pursuant to Title 33, Section 2547 (a) of the Virgin Islands Code:

> The time and place at which the auction sale shall take place shall be plainly stated in the advertisement and notice required by section 2546 of this title. At the expiration of the three weeks or as soon thereafter as may be practicable, the said property shall be *sold by the Lieutenant Governor at public auction to the highest bidder*. However, no bid shall be accepted for a less amount than the taxes and public sewer system user fees upon said property, together with all costs and penalties thereon, and unless *accompanied by a cash deposit of ten percent of the amount bid*. The *amount deposited shall be forfeited in the event of failure on the part of the purchaser to pay the* balance of the purchase money upon delivery or offer of delivery by the Lieutenant Governor of the certificate of purchase, and such delivery or offer of delivery shall be made *within ten days from the date of sale*. Emphasis added.

The initial process of statutory interpretation is to look at the language of the statute itself. The meaning of any statute is informed by its context. "Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language..." 1 V.I.C. §42. If the text of the statute speaks with clarity to an issue, judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is ended. It is our opinion that the law cited above, as related to the questionable conduct described, is clear in its language and the context used.

It is a general rule of statutory construction that where the legislature has clearly stated its intent in the language of a statute, a court should not inquire further. A statute is not unconstitutionally vague where it is set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with. Recognizing the dire impact of tax sale laws and the implementation thereof on an individual's property rights requires strict adherence to said laws. The tax sale laws must be strictly construed in favor of the owner of the land. See Shree Ram Naya Sabha, Inc. vs. Hendricks, 19 V.I. 216 (DVI 1982).

We are advised by the IG's Draft Inspection Report that the LGO did not strictly exercise its duties at certain tax sale auctions in conformity with statutory obligations and procedures at the sale of delinquent tax payers' property, to wit: it failed to demand and receive payment of 10% of the successful bid amount on the day of the auction. Further, it failed to demand and receive full payment of the bid amount within 10 days of the successful bid. LGO's failure to conform its behavior in accordance with law jeopardized the property owner's rights, other bidders' expectations, and the financial opportunities that may have been afforded the Government of the Virgin Islands pursuant to law.

Your letter did not advise that the IG's factual description of what is alleged to have transpired in 2012 and 2013 is incorrect. If it is true what the IG has described, there is no rule or regulation which authorizes the LGO to engage in the bidding process used at the time. Assuming, without conceding, that the LGO's conduct was arguably permissible, the lack of sufficient notice to the

GOVERNOR'S RESPONSE

delinquent property owner, relevant and legally interested parties, and the public that the tax sale would not strictly conform to the statutory requirements raises significant Fourteenth Amendment due process concerns with respect to notice, opportunity to be heard and deprivation of property rights. Id., Shree Ram Naya Sabha at p. 221. Where property is sold at a public auction so that the government can collect delinquent taxes, the Government's failure to strictly adhere to proper notice as required by law has been held to void the public sale and to be sufficiently egregious to invalidate or set aside the passing of title. See Benoit v. Panthaky, 20 V.I. 28, 1983 V.I. LEXIS 46 (V.I. Terr. Ct. 1983). As a *caveat:* one has to be mindful, of course, that the successful bidder(s) or present owner(s) would have a due process right to challenge the notice of invalidation or voiding of the tax sale.

[We note for your information that a court proceeding to set aside the sale of real property for non-payment of real property taxes has a two (2) year statute of limitations. 4 V.I.C. §31 (5) (A)]; Dougherty v. Hassell, 162 Fed. Appx. 178 United States Court of Appeals for the Third Circuit, December 5, 2005, Argued ; January 12, 2006, Filed No. 05-1459 Reporter: 162 Fed. Appx. 178 2006 U.S. App. LEXIS 969].

The prospect of invalidation or voiding the initial bidding process raises a question as whether the second highest bidder may be awarded the bid under the circumstances described above. As we noted above, the process for public auction due to tax payment delinquency must strictly adhere to law. Virgin Islands law clearly provides that the sale must go to the "highest bidder" – presumably the highest lawful bidder. *Supra*, §2547(a). Virgin Islands law does not provide for an award of the bid to the second highest bidder. It is a bedrock principle of statutory interpretation that statutory analysis begins with the language of the statute. Nevertheless if Virgin Islands statute did allow for an award of a tax sale bid to the second highest bidder, the facts made known to us militates against awarding the bid to the second highest bidder in this instance because such bidder(s) may well have been involved with the alleged illegal scheme described by the IG. That being the case, the due process rights of the delinquent taxpayer and the notice to the public would seemingly have been compromised. Tax sale laws are construed strictly in favor of the delinquent taxpayer/owner of the land. Kelley v. Gov't of the Virgin Islands, 59 V.I. 742 Supreme Court of the Virgin Islands, June 11, 2013, Argued; September 17, 2013, Decided; September 17, 2013, Filed, S. Ct. Civil No. 2013-0012, Reporter: 59 V.I. 742 2013 V.I. Supreme LEXIS 59 2013 WL 5211949. An errant bidder may not avail himself/herself with the protection of the law and thereby become unjustly enriched at the expense of an innocent taxpayer/owner of property or the public.

Conclusion: It is our opinion that the LGO procedure alleged by the IG to have occurred, if true, violated the law. Virgin Islands law does not permit the type conduct described. Nor is there any published rules or regulations that allow the procedures described by the IG. Even if there were rules and regulations that authorized the conduct described by the IG, it would violate Virgin Islands statutory law as rules and regulations cannot supersede the weight of legislative enactments. It is our opinion that the conduct alleged by the IG in the Draft Inspection Report, if true, is invalid and may be voided.

Further, it is our opinion that the Virgin Islands law as presently written does not permit an award of a bid to the second highest bidder in a tax sale property auction. This is particularly true

GOVERNOR'S RESPONSE

where there is evidence to suggest the second highest bidder was complicit in an illegal bidding scheme.

Thank you for your attention. Should you have any further questions or comments, please do not hesitate to contact me.

Very truly yours,

Vincent F. Frazer, Esq.
Attorney General

VFF/BMV/mp

ADDITIONAL INFORMATION NEEDED TO CLOSE RECOMMENDATIONS

Recommendation Number and Status	Additional Information Needed
Finding 1:	
1-1 Resolved/Not Implemented	Provide a copy of documentation showing the disposition of each of the auctioned properties that were illegally transferred to bidders other than the highest bidder.
1-2 Resolved	No additional information needed.
Finding 2:	
2-1 Resolved/Not Implemented	Provide a copy of documentation showing the disposition of each of the auctioned properties that were illegally transferred to bidders other than the highest bidder.
Finding 3:	
3-1 Resolved/Not Implemented	Provide a copy of approved procedures to identify and vet potential properties to be auctioned and evidence that formal training was done.
3-2 Resolved/Not Implemented	Provide evidence to show that all outstanding refunds have been made and approved procedures have been established to ensure the timely payment of refunds.
Finding 4:	
4-1 Resolved/Not Implemented	Provide a copy of written documentation showing how this recommendation is to be enforced.
4-1 Resolved/Not Implemented	Provide documentation showing the disposition of each of the auctioned properties that were illegally transferred in violation of the provisions of the Code.

ADDITIONAL INFORMATION NEEDED TO CLOSE RECOMMENDATIONS

Recommendation Number and Status	Additional Information Needed
Finding 5:	
5-1 Resolved/Not Implemented	Provide a copy of approved policies and procedures.
Finding 6:	
6-1 Resolved/Not Implemented	Provide a copy of a fee structure.
6-2 Resolved/Not Implemented	Provide a copy of approved policies and procedures.

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