

**FINAL REPORT OF THE JOINT SUBCOMMITTEE
STUDYING**

**THE EFFICIENCY AND
EFFECTIVENESS OF THE
ESCHEATS LAW (HJR 592)**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 72

**COMMONWEALTH OF VIRGINIA
RICHMOND
1996**

MEMBERS OF THE JOINT SUBCOMMITTEE

Delegate James F. Almand, *Chairman*
Senator Joseph B. Benedetti, *Vice Chairman*
Delegate George W. Grayson
Delegate William K. Barlow
Delegate Allen W. Dudley
Senator E.M. Holland
Senator Frederick M. Quayle
Alfred C. Anderson
Daniel Bouton
Eddie Cantor
Suanne Leigh Hardee
Alexander R. Iden
Delmer Wilson, Jr.

STAFF

DIVISION OF LEGISLATIVE SERVICES

Pamela Catania, *Staff Attorney*
C. William Crammé III, *Deputy Director*

DEPARTMENT OF THE TREASURY DIVISION OF UNCLAIMED PROPERTY

Vicki D. Bridgeman, *Director*

HOUSE COMMITTEE OPERATIONS

Anne R. Howard, *Clerk*

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. BACKGROUND	2
III. WORK OF THE JOINT SUBCOMMITTEE	6
A. MEETINGS	6
B. ISSUES.....	6
C. SUGGESTIONS FOR CHANGE	8
IV. FINDINGS AND RECOMMENDATIONS	9
V. CONCLUSION.....	10
VI. APPENDICES	11
A. HOUSE JOINT RESOLUTION NO. 592 (1995)	12
B. ESCHEAT PROCESS TIME TABLE.....	14
C. ESCHEAT PROCESS RESPONSIBILITIES	18
D. HOUSE BILL 1078 (CH. 551, 1996).....	20

**Final Report of the
Joint Subcommittee Studying
the Efficiency and Effectiveness of the Escheats Law**

**To: The Honorable George Allen, Governor of Virginia
and
The General Assembly of Virginia**

**Richmond, Virginia
May, 1996**

I. INTRODUCTION

Adopted by the 1995 Session of the General Assembly, HJR 592 established a joint subcommittee to examine the efficiency and effectiveness of the escheats law. (Appendix A) The resolution provided for a joint subcommittee of thirteen members, including four members of the House of Delegates appointed by the Speaker of the House, three members of the Senate appointed by the Senate Committee on Privileges and Elections, and six members appointed by the Governor as follows: three escheators, one Commonwealth's attorney, one local treasurer and one commissioner of the revenue.

Pursuant to HJR 592, the subcommittee was charged with the following duties:

1. To study the efficiency and effectiveness of current escheats law to identify changes needed to effect maximum benefits for all participants;
2. To examine the need for a separate escheator in each locality;
3. To examine the feasibility of a title search to reduce purchaser refunds and convey warranty of title;
4. To examine methods to increase sales prices;
5. To examine shortening the statute of limitations for those with a claim to the escheated property;
6. To examine the methods of regulating locator fees to protect citizens; and

7. To submit its findings and recommendations to the Governor and the 1996 Session of the General Assembly.

II. BACKGROUND¹

The escheating of property may be defined as the reversion of property to the state in the absence of legal heirs or claimants. In 1659, the General Assembly first determined how and when property would revert when the lands of John Hope, who died intestate, were ordered to be given to New Kent County. The legislature continued to determine how and when property would revert, by special law or order, until 1792 when the original codification of escheats law took place.

The statutes have continued to be modified through the last two centuries. In the 1980's, efforts were made to modify and simplify the process for local officials charged with the responsibility of escheating property and for citizens acquiring it. In 1981, responsibility for administering the escheats law was transferred from the Department of Accounts to the Division of Unclaimed Property within the Department of the Treasury, where responsibility rests today.

The Virginia statutes governing the escheat process are designed to benefit localities by returning the property to the local tax rolls, securing payment of delinquent taxes on the property, and depositing net proceeds of a sale to the Literary Fund.

THE CURRENT ESCHEAT PROCESS

1. Annual Report to the Date of Inquest.

The escheat process begins with the local treasurer who is required to compile an annual escheat report every May containing a list of property eligible to escheat to the Commonwealth.² The guidelines for determining which property is eligible are as follows:

1. Owner has died intestate without any known heirs;
2. No person is known by the local treasurer or commissioner of revenue to be entitled; and
3. The property appears to be abandoned.³

¹ The background material was liberally extracted from the Escheat Handbook prepared by the Division of Unclaimed Property within the Department of Treasury, 1993.

² Va. Code § 55-171.

³ "Evidence of abandonment" is defined to include the duration of delinquency for real estate taxes or special assessments. Real property is presumed abandoned when the owner fails to pay taxes and assessments for ten years. Va. Code § 55-170.1.

Escheators are appointed by and serve at the pleasure of the Governor for every city and county.⁴ After receiving the annual escheat report prepared by the treasurer, the escheator must hold an inquest within the same calendar year. His duties with regard to the inquest include the following:

1. Post a "Notice of Inquest" at the courthouse, including the date, time and place of the inquest and a list of the properties eligible to escheat;
2. Advertise the "Notice of Inquest" in a newspaper of general circulation within county or city once within a thirty day period but not less than 7 days prior to the inquest;
3. Attempt contact with the last owner of record by first class mail;
4. Coordinate with the Clerk of the Court to summon ten qualified jurors, seven of which must be impaneled as a jury;
5. Contact the Commonwealth Attorney to serve at the inquest; and
6. Send a copy of the "Notice of Inquest" and publication certification to the Division of Unclaimed Property.⁵

The escheator then presides at the inquest, explaining the escheat process to the jury and informing them of their responsibility as it relates to the verdict. The Commonwealth Attorney acts as the attorney in the escheat process and has the responsibility of presenting evidence of abandonment to the jurors.⁶ If the jury returns a verdict for the Commonwealth, the verdict must be recorded in the land records of the Circuit Court within 10 days of the inquest.⁷

When the jury returns a verdict for the Commonwealth, but before the property is sold at auction, any person claiming a legal or equitable interest in the property may petition the court for redress. The petition must be accompanied by a bond to pay the Commonwealth for all past due real estate taxes, penalties and interest. The escheator acts as the sole defendant on behalf of the Commonwealth and shall file an answer stating objections to the claim. If the court returns a judgment in favor of the claimant, he must pay all past due taxes, penalties and interest.⁸

⁴ Va. Code § 55-168.

⁵ Va. Code § 55-172.

⁶ Va. Code § 55-172.

⁷ Va. Code § 55-175.

⁸ Va. Code § 55-176.

2. Inquest to Date of Sale.

Within sixty days of the inquisition, every escheator must send an “escheator’s certificate” to the State Treasurer showing the number of parcels escheated, reputed quantity of each parcel, a description of each parcel, and the names of the persons from whom the land escheated.⁹ The State Treasure must then publish the contents of the certificate once a week for four consecutive weeks in a newspaper of general circulation in the county or city where the proceedings are held.¹⁰

Not less than twelve months after the publication of the escheator’s certificate, the State Treasurer requests an “order of sale” from the Governor.¹¹ The order of sale usually provides a 60-day period in which the escheator can hold the auction. During this period, the escheator has time to receive the order from the Treasurer, advertise the “notice of sale” and make all the necessary preparations for the sale.

The order of sale directs the Escheator to do the following:

1. Advertise the “notice of sale” in a newspaper of general circulation at least seven days but not more than 30 days prior to the date of the auction;
2. Prior to any sale on the day of the auction inform the public of the 120-day period for filing refund requests with the State Treasurer’s office pursuant to Virginia Code § 55-200 (A). Also, provide written information concerning the recovery of the proceeds from the sale of escheated property in accordance with Virginia Code § 55-200 and Virginia Regulation 1 VAC 75-30-90;
3. Inform the public that they should not wait for the land grant before filing for a refund; the “120 day period” begins on the day of the auction;
4. Inform the public that grants will be issued in accordance with Virginia Code § 55-186.1 and are issued without warranty of title; and
5. Require the purchaser to sign an authorization for recordation prior to distribution.

⁹ Va. Code § 55-182.

¹⁰ Va. Code § 55-183.

¹¹ Va. Code § 55-184.1.

3. Sale to Grant Distribution.

Upon a sale at auction, the escheator must collect the purchase price and a recording fee from the purchaser.¹² The Treasurer prepares the grants and sends for the Governor's signature, state seal and recording at the state library.¹³ Land grants are forwarded to the circuit court for recordation. After recording the grants, the local clerk sends them back to the escheator who is responsible for notifying the purchasers of the recordation and distribution of the grants.¹⁴

The sale agreement for the purchase of escheat property must include a statement of the buyer's right to claim a refund within 120 days of the sale, pursuant to Virginia Code § 55-200, upon submission to the State Treasurer of satisfactory evidence that the escheat property does not exist or was improperly escheated.¹⁵ If within 120 days, a purchaser submits such satisfactory evidence, the State Treasurer may refund the purchase price, less the expenses of sale and the escheator's fee. Purchaser must then return the grant.¹⁶

At any time prior to a sale, the escheator has the responsibility and authority to remove a parcel from the certificate if there is reason to believe the parcel should not have escheated. If he does decide to remove a parcel, he is responsible for filing a petition with the circuit court to modify the original verdict. The escheator must also file, and the clerk of the court must record, any corrected verdict in the appropriate deed books.¹⁷

If a property owner asserts a claim after the land is escheated and sold, he may recover the net of the sale price less the escheator's commission and any local taxes paid from the proceeds. If the Treasurer rejects a property owner's claim, a petition of recovery may be made against the Commonwealth in the Circuit Court.¹⁸ The Statute of Limitations period for such a petition is five years.¹⁹

The entire escheat process can be reviewed on a timetable located in Appendix B. The responsibilities of the respective parties are enumerated by code section in Appendix C.

¹² Va. Code § 55-186.

¹³ Va. Code § 55-186.2.

¹⁴ Va. Code § 55-186.

¹⁵ Va. Code § 55-184.2.

¹⁶ Va. Code § 55-200.

¹⁷ Va. Code § 55-182.1.

¹⁸ Va. Code § 55-200 (C).

¹⁹ Va. Code § 8.01-255.

III. WORK OF THE JOINT SUBCOMMITTEE

A. Meetings

The joint subcommittee was required by HJR 592 to report its findings and recommendations to the Governor and 1996 Session of the General Assembly. In pursuing its legislative mandate, the joint subcommittee met three times.

- *August 7, 1995; Richmond.* At its organizational meeting, the subcommittee elected Delegate James F. Almand as chairman and Senator Joseph B. Benedetti as vice chairman. The Division of Legislative Services staff briefed the subcommittee on the escheat process. This presentation was followed by a presentation by the Director of Unclaimed Property, Department of the Treasury, on the escheat issues they would like considered by the subcommittee.
- *September 29, 1995; Richmond.* The subcommittee heard once again from the Director of Unclaimed Property, Department of the Treasury regarding their suggestions for changes in the escheats law. A presentation was also made by the general counsel for the Virginia Association of Counties on the judicial sale process.
- *November 17, 1995; Richmond.* The subcommittee met to approve the legislative proposal.

B. Issues

Pursuant to House Joint Resolution 592, the joint subcommittee was called upon to examine the following:

1. The efficiency and effectiveness of current escheats law to identify changes needed to effect maximum benefits for all participants;
2. The need for a separate escheator in each locality;
3. The feasibility of a title search to reduce purchaser refunds and convey warranty of title;
4. Methods to increase sales' prices;
5. Shortening the statute of limitations for those with a claim to the escheated property; and
6. Methods of regulating locator fees to protect citizens.

The Division of Unclaimed Property presented an outline to the subcommittee enumerating items believed to impede the efficiency and effectiveness of the escheats law. The outline included the following:

- Title searches: current law requires no title search by the Commonwealth prior to a sale. However, a title search is a costly process and there is no provision to fund such searches.
- Liability exposure: the Commonwealth risks liability exposure on unattended real estate during the time a parcel is in the escheat process. The Department of the Treasury receives numerous complaints from citizens as well as violation letters from the localities for building and health code infractions. There are no funds available to cover the costs associated with correcting violations until the property is actually sold. If the locality corrects the violation, it must place a lien on the property which may not be paid if the net sale proceeds are insufficient.
- Length of the process: the period between the time an inquest is held escheating the property to the Commonwealth and the time the property is sold is at least fourteen months. In addition, there is a five year statute of limitations during which owners, heirs or creditors can come forward to claim the remaining net proceeds from a sale. Such claims have a negative impact on the Literary Fund where sale proceeds revert after the five year period has run.
- Judicial sale process: the escheat process is used interchangeably with the judicial sale process.²⁰
- Escheators: in some localities it may be difficult to find someone to accept an appointment. Also, escheators may fail to perform their statutory duties, including holding an inquest or sale, filing a petition, checking on reported dangers or submitting required documents. There are insignificant penalties associated with non-performance of duties by an escheator. Finally, the question was raised as to whether it is effective to have one escheator for each locality, 136 in total. Each escheator faces replacement with every new administration and it is a strain on current resources to train new escheators and educate them with regard to their responsibilities.

²⁰ Va. Code § 58.1-3965.

- Owners of record: currently, escheators mail notices to the last known owner of record or the last individual responsible for paying taxes according to the local Treasurer's records. Title insurers have raised the issue of whether this is the proper interpretation of who the "owner of record" is since there are also heirs listed in the locality's court records. However, there is no statutory provision requiring research in the court's records prior to sale.

C. Suggestions for Change

After discussing these issues, staff was asked to develop solutions and make suggestions on how to resolve the specific problems raised. Accordingly, at the next meeting the Department of Treasury made its presentation on suggestions for change.

In the opinion of the Department of the Treasury, the escheat process had become a process localities were using to place abandoned properties with delinquent taxes back into an active tax revenue earning status. Treasury also believed that it was in the best interests of all participants, particularly purchasers, to return the escheat process to a "true escheat" process. "True escheat" means properties would only enter the process when the owner either (i) died intestate or (ii) died testate without disposing of his property by will and without leaving any surviving heir, kindred or spouse to inherit the property. Properties not meeting this criteria should be sold by a locality through the judicial sale process.

The rationale for changing the law to adopt this approach is based on the premise that the escheat process was not intended as a means to collect delinquent taxes. In most cases, the parcels that go through the escheat process meet the criteria for a judicial sale. In addition, the escheat process was not designed to handle many types of property that are currently being escheated, such as strips of common areas not conveyed in subdivisions, paper streets, parcels under water, old cemeteries or mineral rights.

With regard to the length of the process, Treasury suggested shortening the statutory period pursuant to Virginia Code § 55-184.1 from no less than 12 months to no more than six months after the publication of the escheator's certificate to allow the State Treasurer to request an "order of sale" from the Governor. The result would be to have escheated property auctioned off significantly sooner. Reducing this period of time indirectly addresses the liability exposure issue as well; by minimizing the amount of time a parcel is in the escheat process, the Commonwealth reduces its risk of liability. Treasury also suggested repealing Virginia Code § 55-200C which allows a remedy to persons who fail to assert their claim prior to the sale of escheated property to recover any remaining net proceeds

or to shorten the five-year statute of limitations for a petition of recovery under the same statute to as little as two years.

To save administrative costs, Treasury suggested considering the appointment of regional escheators rather than having an escheator serving each and every locality.

One of the escheators believed that replacing the jury at the inquest proceeding with a court-appointed three-member panel, similar to condemnation proceedings, would help in that the special panel could provide more understanding or insight into the process than lay people might.

To address the issue of an escheator's failure to perform statutory duties, the subcommittee suggested requiring an annual report to be filed with the Governor listing those escheators who have been negligent. Since escheators serve at the pleasure of the Governor, this may create an incentive for those who wish to remain escheators for the duration of the Governor's administration.

Finally, Treasury requested that the subcommittee clarify Virginia Code § 55-171 with regard to the definition of "last owner of record. As indicated earlier, the confusion relates to whether the term means all heirs listed in the court records or the individual reported by the local Treasurer as the taxpayer in his records. Since a title search is never required during the escheat process, any information in the court records would remain unknown to the escheator. Therefore, a recommendation was made to clarify the statute to mean the individual listed by the Treasurer as the last taxpayer on record.

IV. FINDINGS AND RECOMMENDATIONS

After reviewing the information presented by staff and discussing the various suggestions for change, the joint subcommittee agreed to and recommended the following changes to the current escheats statutes:

1. Return the escheat process to a "true escheat" process whereby property would only enter the escheat process if a person has died (i) intestate and without any known heir or (ii) testate without disposing all property by will and without leaving any surviving heir to inherit the property.
2. Allow an escheator to be appointed to every judicial circuit instead of every city and county. Such escheator would be required to reside within a circuit to which he is appointed.

3. Define "last owner of record" as the person who appears in the tax records of the local treasurer.
4. Reduce the period of time in which the Treasurer requests an "order of sale" from the Governor from not less than 12 months to not less than six months after publication of the escheator's certificate.
5. Require the State Treasurer to file an annual report with the Governor containing the name of any escheator who fails to perform any duty required by him under the escheats law.

Introduced as House Bill 1078, the legislation appears in Appendix D of this report.

V. CONCLUSION

The Commonwealth's statutes governing escheats law had not been thoroughly reviewed by the legislature since the early 1980s. Participation in this effort not only by legislators, but by escheators, and representatives from the local community, including a commonwealth's attorney, treasurer and commissioner of the revenue has made the study particularly thorough. The members of the subcommittee would especially like to thank the staff of the Division of Unclaimed Property, Department of the Treasury, for its extensive input into this study. The joint subcommittee also extends its gratitude to all interested persons who contributed to its work.

Respectfully submitted,

James F. Almand, *Chairman*
Joseph B. Benedetti, *Vice Chairman*
George W. Grayson
William K. Barlow
Allen W. Dudley
E.M. Holland
Frederick M. Quayle
Eddie Cantor
Suanne Leigh Hardee
Alexander R. Iden
Daniel Bouton
Alfred C. Anderson
Delmer Wilson, Jr.

VI, APPENDICES

APPENDIX A

HOUSE JOINT RESOLUTION NO. 592

Establishing a joint subcommittee to study the efficiency and effectiveness of the escheats law as set out in Chapter 10 of Title 55 of the Code of Virginia.

Agreed to by the House of Delegates, February 23, 1995

Agreed to by the Senate, February 21, 1995

WHEREAS, the current law relating to escheats provides for a sale at public auction of abandoned parcels of real estate, payment to localities of delinquent taxes from sale proceeds, and the return of the parcels to an active tax status within localities; and

WHEREAS, current escheats law is considered archaic and somewhat antiquated; and

WHEREAS, an escheator, appointed by the Governor of Virginia for each locality, is responsible for executing the process; and

WHEREAS, the Department of the Treasury monitors compliance with the escheats law and provides support and liaison functions between localities, escheators, and state government; and

WHEREAS, the escheat process is sometimes used as a substitute for judicial sales pursuant to § 58.1-3965 of the Code of Virginia and for settling estates when heirs cannot agree; and

WHEREAS, land records in the locality are not searched by any local official or the escheator prior to the escheat inquest or sale; and

WHEREAS, the escheated parcels of real estate are sold without warranty as to the size, location, legal description or even existence of the parcel; and

WHEREAS, a land grant signed by the Governor is issued to the purchaser; and

WHEREAS, the escheated parcels appear to be selling at a price less than the assessment, fair market value, or accrued delinquent taxes in some cases; and

WHEREAS, purchasers are not entitled to a refund of 100 percent of the purchase price, as commissions and expenses must be deducted; and

WHEREAS, individuals with a claim to escheated property have five years from the sale of such property by the Commonwealth to assert their claim; and

WHEREAS, potential claimants are not protected from exorbitant fees charged by private locating concerns; and

WHEREAS, the Commonwealth of Virginia risks liability exposure on unattended real estate during the time the parcel is in the escheat process; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the efficiency and effectiveness of current escheats law to identify changes needed to effect maximum benefits for all

participants. The study shall examine among other things: the need for a separate escheator in each locality; the feasibility of a title search to reduce purchaser refunds and convey warranty of title; methods to increase sale prices; shortening the statute of limitations for those with a claim to the escheated property; and methods of regulating locator fees to protect citizens.

The joint subcommittee shall be composed of thirteen members as follows: four members of the House of Delegates to be appointed by the Speaker of the House; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and six members to be appointed by the Governor as follows: three escheators, one Commonwealth's attorney, one local treasurer, and one commissioner of the revenue.

The direct costs of this study shall not exceed \$8,350. The Department of the Treasury and the Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request. Input from escheators and local officials shall be requested by the joint subcommittee.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1996 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

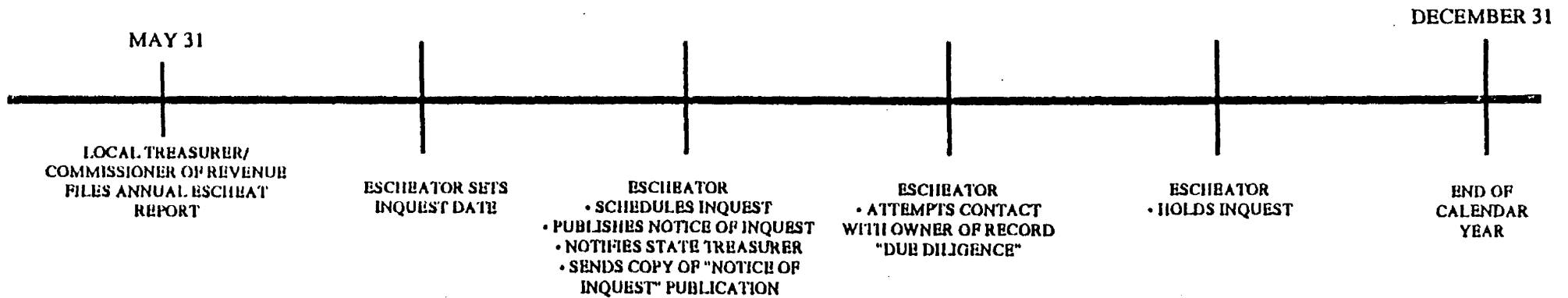
Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

#

APPENDIX B

ESCHEAT PROCESS

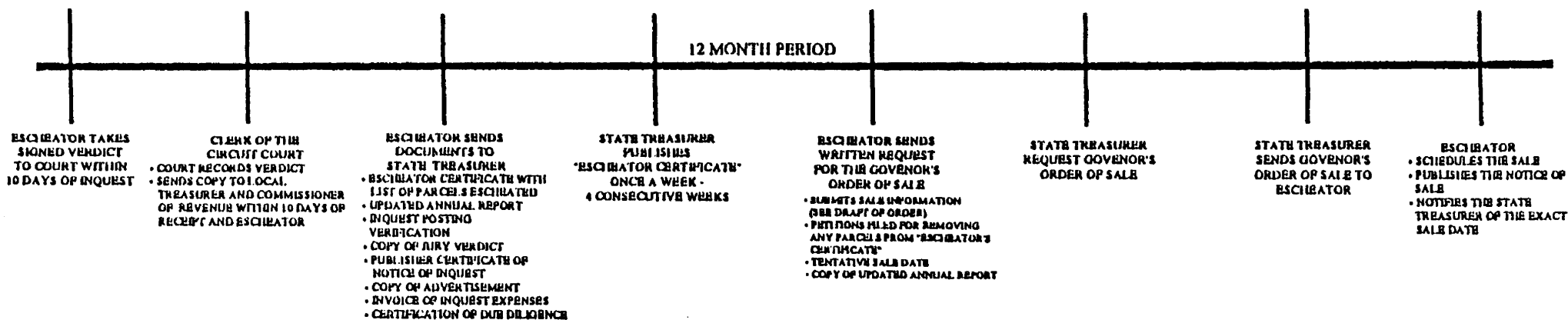
ANNUAL REPORT TO DATE OF INQUEST



Source: Escheat Handbook prepared by the Division of Unclaimed Property within the Department of Treasury, 1993.

ESCHEAT PROCESS

INQUEST TO DATE OF SALE



Source: Escheat Handbook prepared by the Division of Unclaimed Property within the Department of Treasury, 1993.

ESCHEAT PROCESS

SALE TO GRANT DISTRIBUTION

ESCHEATOR
HOLDS
SALE

ESCHEATOR SENDS TO
STATE TREASURER

- CHECK FOR SALE RECEIPTS AND RECORDING FEES WITHIN 10 BANKING DAYS OF SALE
- COMPLETED ANNUAL REPORT FORM
- DOCUMENTATION FOR PARCELS NOT SOLD OR REMOVED
- INVOICE FOR ESCHATOR'S EXPENSES OF SALE
- INCLUDING PUBLISHER'S CERTIFICATE AND COPY OF SALE NOTICE

STATE TREASURER

- PREPARES GRANTS AND SENDS FOR THE GOVERNOR'S SIGNATURE, STATE SEAL, AND RECORDING AT STATE LIBRARY
- PROCESSES PURCHASER REFUNDS

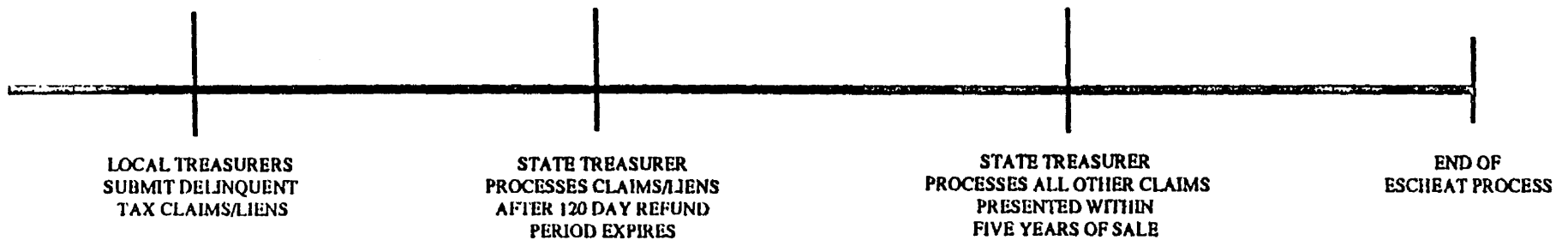
STATE TREASURER SENDS
GRANTS TO CLERK OF THE
CIRCUIT COURT WITH
RECORDING FEE

CLERK OF THE
CIRCUIT COURT
RECORDS GRANTS AND
FORWARDS THEM TO
THE ESCHATOR FOR
DISTRIBUTION

Source: Escheat Handbook prepared by the Division of Unclaimed Property within the Department of Treasury, 1993.

ESCHEAT PROCESS

CLAIMS AGAINST SALE PROCEEDS



Source: Escheat Handbook prepared by the Division of Unclaimed Property within the Department of Treasury, 1993.

APPENDIX C

RESPONSIBILITIES

LOCAL TREASURER

- PREPARES ANNUAL ESCHEAT REPORT
55-171 and 1 VAC 75-30-40
- REQUESTS DELINQUENT TAXES
55-200 B

COMMISSIONER

- CERTIFIES ANNUAL ESCHEAT REPORT
55-171 AND 1 VAC 75-30-40
- CERTIFIES IMPROPER ESCHEAT
55-200 A

ESCHEATOR

- HOLD INQUESTS
55-172
- CERTIFIES FINDINGS
55-182
- AUCTIONS PROPERTIES
55-184.1
- FILES SALE REPORTS
55-186 and 1 VAC 75-30-70
- FILES ANNUAL ACTIVITY REPORT
1 VAC 75-30-50

COMMONWEALTH ATTORNEY

- SERVES AS ATTORNEY AT INQUEST
55-172

CLERK

- RECORDS VERDICT
55-175
- RECORDS GRANTS
55-186

Source: Escheat Handbook prepared by the Division of Unclaimed Property within the Department of Treasury, 1993.

RESPONSIBILITIES

STATE TREASURER

- PUBLISHES ESCHEATOR'S CERTIFICATE
55-183
- REQUESTS ORDER OF SALE
55-184.1
- PREPARES GRANTS
55-186
55-186.1
55-191
- PAYS REFUNDS/EXPENSES/
CLAIMS
55-200 A,C and 1 VAC 75-30-10
& 11
- PAYS DELINQUENT TAXES
55-200 B
- REQUESTS ANNUAL ESCHEAT
REPORT
55-171 and 1 VAC 75-30-40
- REQUESTS ESCHEATOR'S
ACTIVITY REPORT
1 VAC 75-30-50

GOVERNOR

- ISSUES ORDER OF SALE
55-184.1
- SIGNS GRANTS
55-186.2

SECRETARY OF THE COMMONWEALTH AND STATE LIBRARIAN

- SEALS GRANTS
55-186.2
- RECORDS GRANTS
55-186.2

Source: Escheat Handbook prepared by the Division of Unclaimed Property within the Department of Treasury, 1993.

APPENDIX D

CHAPTER 551

An Act to amend and reenact §§ 55-168, 55-170.1, 55-171, 55-172, 55-173, 55-184.1, and 55-190 of the Code of Virginia, relating to escheats law.

[H 1078]

Approved April 3, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-168, 55-170.1, 55-171, 55-172, 55-173, 55-184.1, and 55-190 of the Code of Virginia are amended and reenacted as follows:

§ 55-168. Appointment of escheators.

The Governor shall appoint one escheator for every city and for every county judicial circuit as set forth in § 17-119.1:1, to serve at the pleasure of the Governor. *Such escheator shall reside within a circuit to which he is appointed.*

§ 55-170.1. Definition.

As used in this chapter, unless the context otherwise requires:

~~"Evidence of abandonment" shall include, but not be limited to, the duration of delinquency for real estate taxes or special assessments, unsuccessful efforts by the commissioner of revenue or real estate assessor to communicate with any person listed in his records as owner, and any other evidence which may be relevant to indicate abandonment. Real property on which the treasurer certifies that taxes or special assessments have not been paid for ten years shall be presumed abandoned.~~

"Knowledge" in terms of a "known owner" shall include inspection of tax records and any other inquiry deemed to be reasonable. It need not include inspection of the premises or inspection of title records in the clerk's office in the county or city in which the land is located.

§ 55-171. Annual report to escheator; lands not liable.

Each treasurer shall, every May, furnish to the escheator of his county or city a list of all lands within his district ~~(i) of which any person shall have~~ *has* died seised of an estate of inheritance *(i) intestate and without any known heir, or (ii) to which no person is known by the treasurer to be entitled, or (iii) which appear to have been abandoned* *testate without disposing of all property by will and without leaving any surviving heir to inherit the property.* No land shall be liable to escheat which for fifteen years has been held under adverse possession as at common law by the person claiming the same, or those under whom he holds, but only if taxes were paid throughout that period by the claimant or those under whom he holds.

§ 55-172. Escheator to hold inquest; notice thereof.

On receiving such list, or upon information from any person, in writing and under oath, that any of the conditions described in § 55-171 exists, the escheator shall proceed to hold his inquest to determine whether any land mentioned has escheated to the Commonwealth. He shall give notice of the time of taking such

inquest, by advertisement, at the front door of the courthouse, for thirty days, and in a newspaper of general circulation within the county or city once, not more than thirty nor less than seven days, prior to the inquest. Notice shall also be mailed to the last owner of record, if any, *as it appears in the tax records of the local treasurer*. The escheator shall send a copy of the newspaper advertisement to the State Treasurer prior to the date of inquest. The inquest shall be held the same calendar year as the list or information is received by the escheator. The attorney for the Commonwealth shall act as attorney for this proceeding.

§ 55-173. Jury of inquest, how summoned, etc.; evidence, how given.

For this inquest there shall be summoned and returned by the sheriff of the county or sergeant of the city ten qualified jurors, of whom at least seven shall be impaneled as a jury. They shall meet at the courthouse and sit in public and may be adjourned by the escheator from day to day. Every person competent to testify as a witness shall be required to give evidence openly in the presence of the jurors. ~~The jury shall consider evidence of abandonment as defined in § 55-170.1.~~

§ 55-184.1. Order of sale by Governor.

Not less than ~~twelve~~ six months after the publication of the escheator's certificate, the State Treasurer shall lay before the Governor the escheator's certificate, and proof of publication, and, if claim has not been made as aforesaid, or, if made, has been decided in favor of the Commonwealth, the Governor shall order the escheated land to be sold upon such terms, at such time, and at such place within the county or city wherein the lands lie as he may think proper. The order of sale shall be delivered to the State Treasurer, to be transmitted to the escheator, who shall proceed to sell according to such order.

§ 55-190. Reports by State Treasurer to the Governor; penalty on escheators for failure of duty.

The State Treasurer shall, every May 1, file a report with the Governor containing the name of any escheator who fails to perform any duty required of him by this chapter. If any escheator ~~fail-fails~~ to report to and account with the State Treasurer, or ~~fail-fails~~ to pay into the state treasury the proceeds of any sale made by him, or any such rents and profits, in the manner and within the time prescribed by law, he shall be fined ~~not exceeding no more than~~ \$200 for every sixty days such failure ~~shall continue continues~~. ~~And~~ If any escheator ~~fail-fails~~ to perform any other duty required of him by this chapter, for the failure of which no specific penalty is provided, he shall be fined therefor ~~not exceeding no more than~~ fifty dollars. ~~And~~ Any action or motion for any fine under this chapter may be instituted or made, at the discretion of the State Treasurer, or of the Attorney General, in the Circuit Court of the City of Richmond, after fifteen days' notice, in the case of such motion.

2. That an emergency exists and this act is in force from its passage.

#

