

Unsecured Property Tax Collection Manual

Volume III: Seizure and Sale



2009

Division of Accounting and
Reporting

California State Controller's Office

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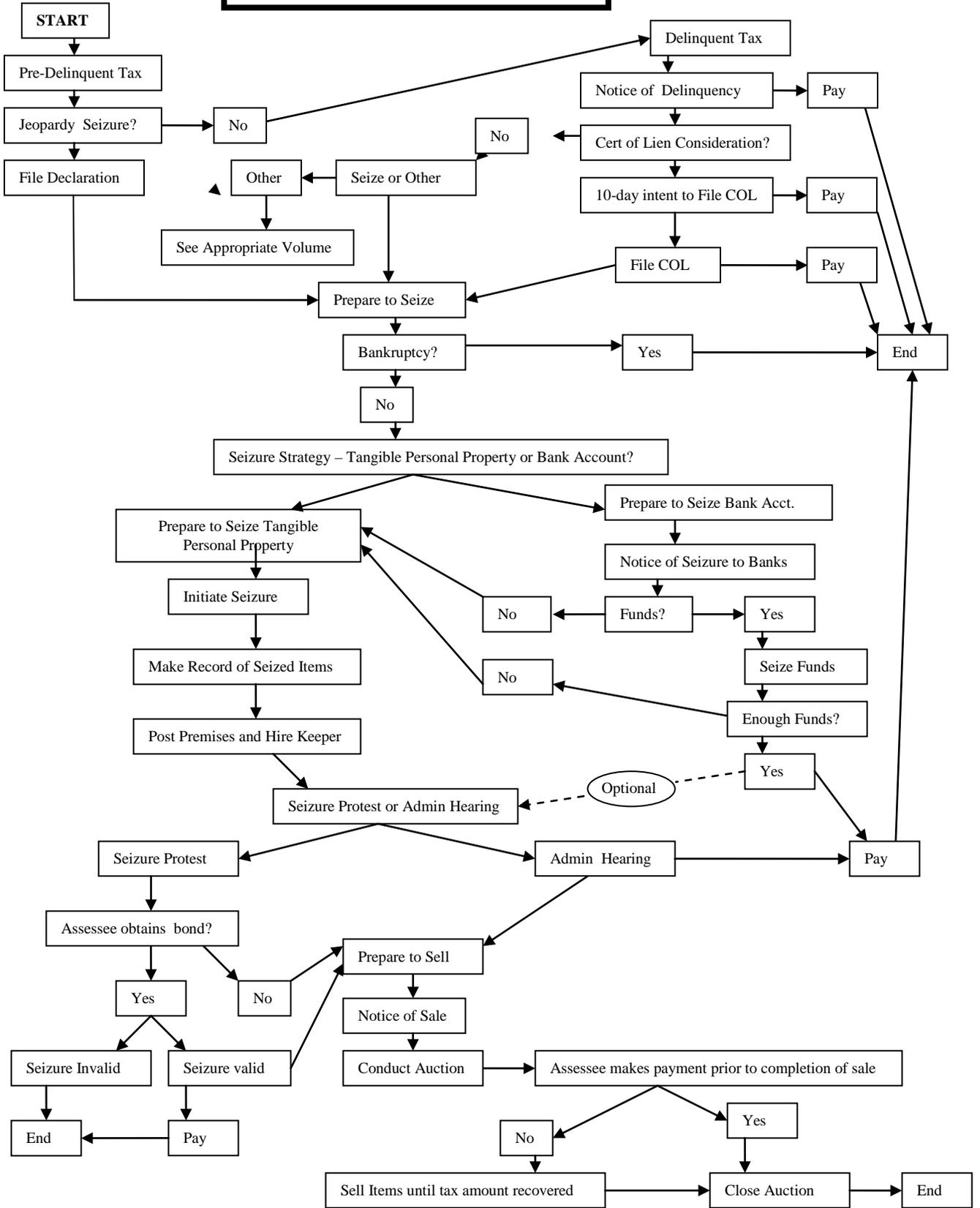
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Seizure and Sale Flow Chart



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Introduction

The 2009 *Unsecured Property Tax Collection Manual for County Tax Collectors* is a multi-volume procedural manual produced by the State Controller's Office, Local Government Policies Section. These manuals provide comprehensive instructions and recommendations on the collection techniques available to County Tax Collectors when dealing with unsecured property taxes.

The information contained in this particular manual outline the more complex collection procedures and techniques related to the seizure and sale of unsecured property. While these procedures and techniques are based upon the statutory provisions of the California Code, they are offered only as recommendations to complement current county unsecured collections procedures and practices.

All statutory references cited are from the Revenue and Taxation Code, unless otherwise stated.

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Chapter 1: Collection Action – Prior to Tax Delinquency

(TIME FRAME: January 1- August 31)

I. Background

While nearly all types of unsecured property may be seized and sold as a means to collect delinquent taxes, the seizure-and-sale technique may not always be the best method for a given property or situation. Additionally, certain conditions can prohibit the seizure and sale of a property.

Nevertheless, physically seizing property effectively removes control of assets from the delinquent taxpayer; thus, this method of collection enforcement provides the strongest payment motivation.

II. Authority

Revenue and Taxation Code section 2951 allows the county tax collector to collect taxes due on unsecured property by way of seizing and selling the property at a public auction.

For a more thorough definition of unsecured property, see Volume I: General Background and Overview.

III. Key Considerations

1) As soon as possible after the taxes on an unsecured property becomes delinquent, it is recommended that you record a Certificate of Tax Lien for Unsecured Property Taxes (Certificate of Lien). The filing of a Certificate of Lien for delinquent taxes constitutes a lien on all personal and real property belonging to the assessee at the time of seizure and any property acquired thereafter.

Note: The Certificate of Lien is not valid for personal property against a bona fide purchaser for value without specific knowledge of the lien.

2) Property owners are entitled to an administrative hearing prior to the sale of their seized property. The format of an administrative hearing can be relatively informal (*T.M. Cobb Co. v. County of Los Angeles*, 128 Cal. Rptr. 655; 16 Cal. 3d 606).

3) The seizure-and-sale process:

- Allows a significantly faster process than enforcement through a writ of execution.
- Avoids the posting of costs with the sheriff or marshal where such posting is required.
- Avoids judicial deductions and litigation over possible defenses that would otherwise be permitted by executions of judgments.
- Requires no prior judgment or lien.

Although most seizure actions are initiated *after* tax delinquency, it may be that, after the initial January 1 lien and before mailing the tax bill on July 31, certain assesseees, by virtue of their tax payment history, business type, or other conditions, receive a consideration by the tax collector to initiate seizure actions *prior* to the taxes becoming delinquent. Seizure of property in this manner is known as a Jeopardy Seizure.

Section A. Jeopardy Seizure

Jeopardy Seizure is the taking of property prior to the taxes becoming delinquent (on unsecured property) because the tax collector, in his or her discretion, believes that there is “a great probability that the taxes will not be collectible after the delinquency date” (§2953).

At any time after the January 1 lien date and prior to the August 31 delinquency deadline, the tax collector may determine, under specific criteria, that taxes will not be paid or will not be easily collectible later in the process.

Once he or she determines that early collection action is necessary, the tax collector may initiate a seizure and sale at any time, but only with evidence proving necessity. The tax collector must also file a written declaration regarding the seizure and sale to the clerk of the board of supervisors and provide a copy of that declaration to the assessee.

Section B. Determining Jeopardy Seizure Eligibility

Step 1: Determine whether the property is:

- Currently offered for sale under the provisions of Commercial Code sections 6101 – 6111;
- Scheduled for a public auction; and/or
- Seized for a prior year’s delinquent taxes.

Step 2 1) If the property does not meet any of the conditions above, proceed to Section C: Preparing a Declaration of Intent to Seize Property.

2) If the property meets any of the conditions above, you do not need to file a declaration pursuant to §2953. Proceed to Chapter 3: Preparing for Seizure of Property.

Section C. Preparing a Declaration of Intent to Seize Property

Step 1: Prepare a written declaration enumerating the conditions and rationale necessitating a pre-tax delinquency seizure. Ensure that the declaration includes a with-penalty-of-perjury statement. (See UNS 3-01 for sample form.)

Conditions may include:

- Unstable or tenuous financial condition
- Property can be easily moved or hidden
- Revenue stream is seasonal
- Other suitable reasons

Step 2: Have the tax collector or designated deputy sign the declaration.

Step 3: Make a copy for your records.

Note: If a Jeopardy Seizure is, indeed, carried out, a copy of the declaration must be provided to the assessee at the time of seizure (§2953).

Step 4: File the original declaration with the clerk of the Board of Supervisors.

Step 5: Initiate seizure of property. Proceed to Chapter 4: Seizure of Property.

Note: An administrative hearing may be required when seizing property. There is a prompt in two areas in this manual - Chapter 4: Section C - Step 11 and Chapter 4: Section F - Step 1, both of which deal with the potential necessity of an administrative hearing and related elements.

Those prompts will direct you to the procedures concerning an administrative hearing, if necessary.

DECLARATION OF INTENT TO SEIZE PROPERTY

TAX COLLECTOR'S OFFICE

_____ COUNTY, STATE OF CALIFORNIA

WHEREAS, _____ has failed and neglected to pay unsecured property taxes in the sum of \$____, and I believe the taxes will not be collectible after the delinquency date, due to: (insert reasons)

Insert reasons here

I hereby give notice and declare that in accordance with provisions of §2953 of the California Revenue and Taxation Code, I am proceeding with SEIZURE of personal property, improvements, or possessory interests belonging or assessed to the assessee named above.

Dated _____, _____

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Tax Collector

By _____ Deputy

Section D. Determination of a Jeopardy Seizure Protest

After completing a Jeopardy Seizure of unsecured property pursuant to Revenue and Taxation Code section 2953, the assessee may file a protest to the seizure and request a hearing to dispute the merits of the action (§2954).

Step 1: Determine whether the assessee has filed a protest. Any of the following documents provided by the assessee would suffice for protest pursuant to §2954 (a):

- 1) A petition for a writ of prohibition; or
- 2) A petition for writ of mandate.

Note: Either must be filed in superior court and allege the following pursuant to Revenue and Taxation Code section 2954 (a) (1-3):

- No grounds exist for the seizure
- The tax collector's declaration is untrue or inaccurate
- Sufficient funds will be present to pay taxes prior to the regular delinquency deadline

- Step 2:
- 1) If the assessee has filed a protest that meets the criteria in Step 1 above, proceed to Section E: Obtaining a Bond from the Assessee.
 - 2) If assessee has NOT filed a protest or the protest provided does not meet the criteria in Step 1, proceed to Chapter 5: Sale of Seized Property.

Section E. Obtaining a Bond from the Assessee

Step 1: Respond to the assessee's protest by mailing a request that they file a bond with the tax collector's office, in person, as well as provide proof of such filing to the court. The bond must be the amount sufficient to pay the taxes and all fees and charges covering the seizure action (§2954 (b)).

Step 2: Upon receipt of the bond, release all seized property to the assessee (§2954 (b)).

Section F. Results of Seizure Protest Hearing

- Step 1:
- 1) If the assessee prevails:
 - A. The county must pay all costs, including attorney's fees (§2955).
 - B. The tax collector must bear the costs of the seizure and any other related costs (§2955).
 - 2) If the assessee does not prevail:
 - A. The assessee is liable for all the taxes, penalties, and interest (§2955).
 - B. The assessee is responsible for any other costs incurred by the county as a result of the protest (§2955).

Step 2: Regardless of outcome, the tax collection issue is settled. No further action is necessary.

Chapter 2: Preliminary Actions After Taxes Become Delinquent

(TIME FRAME: September 1 – October 31)

Section A. Background

Informing the assessee is a mandatory and important step to every collection action such as a seizure and sale. The notification process is designed to satisfy the due process elements pre-empting the government seizure of property. Providing notices also reinforces the impending seizure and can motivate the assessee to pay.

Note: Any unsecured tax bill mailed after July 31 would become delinquent and subject to penalty on the last day of the month following the month the bill was mailed.

Section B. Tax Delinquency Review (September)

Step 1: On September 1, review the tax payment status for all unsecured property.

Step 2: Confirm the delinquency of any properties. Any property that has unpaid property taxes due for a given year is delinquent as of August 31 of that given year.

Section C. Determining Pre-Seizure Enforcement Action

Step 1: Determine the course of action:

- 1) If you plan to provide delinquency notices - which may or may not include the filing of a Certificate of Lien for Unsecured Property Taxes (Certificate of Lien) - prior to any seizure action, proceed to Volume I, Chapter 4 - Section C: Preparing the Notice Delinquent Taxes.

Note: You are not required to provide a notice of impending collection action that includes the filing of a Certificate of Lien. However, because notifying the assessee prior to the seizure of property tends to yield significant tax redemption results with relatively low cost and resource investment, this procedure is highly recommended.

- 2) For any other course of action, proceed to Chapter 3: Preparing for Seizure of Property.

Chapter 3: Preparing For Seizure of Property

Section A. Pre-seizure Review

Any type of property that is not real property may be seized. The following are common property types that may be seized, but are not limited to this list:

- Airplanes
- Bank accounts
- Boats/vessels
- Farm equipment
- Fixtures
- Leased equipment
- Machinery
- Manufactured/ mobile homes
- Office furniture
- Oil/gas leasehold estates
- Third-party payments to assessee

Section B. Pre-seizure Considerations

Step 1: Confirm that the property scheduled for seizure is only being seized to collect delinquent taxes that are outstanding for three years or less.

Note: Unsecured property cannot be seized and sold for the collection of any taxes that are delinquent for more than three years (§2963).

Step 2: If the collection effort is being reinforced by the filing of a Certificate of Lien, confirm that the certificate has been recorded against the assessee of the tax-delinquent property.

- 1) If you wish to file a Certificate of Lien and cannot confirm that one has already been recorded, proceed to Volume I, Chapter 5 - Section A: Preparing to Lien the Property.

Note: Filing a Certificate of Lien is not required, but it is recommended.

- 2) If a Certificate of Lien has been recorded or the tax collector has chosen not to file one, proceed to Chapter 4, Section A: Seizure of Bank Accounts.

Chapter 4: Seizure of Property

Section A. Preparing to Seize Bank Accounts

Before initiating the process of physically seizing a business or tangible property item, it may be prudent, in terms of staff time, resources, and potential public altercations, to consider seizing bank accounts prior to seizing other tangible personal property.

- Step 1:
- 1) If you choose to attempt seizure of the bank account(s), proceed to Section B: Issues Prior to Seizure.
 - 2) If not, proceed to Section D: Preparing to Seize Tangible Personal Property.

Section B. Issues Prior to Seizure

Step 1: Determine whether full payment on the property has been received by your office.

- 1) If so, cease any further collection action.
- 2) If not, proceed to Step 2.

Step 2: Determine whether the assessee has initiated any bankruptcy action.

- 1) If the assessee is in bankruptcy, cease all collection activity and follow your county's procedures pertaining to handling bankruptcies.
- 2) If the assessee is not in bankruptcy, proceed to Section C: Seizing the Bank Account.

Section C. Seizing the Bank Account

Step 1: Determine the location/address of the assessee's unsecured property and his or her residential address.

Note: Researching the tax collector database to locate an assessee's prior payment of taxes using a bank account number may be helpful in obtaining a current account number.

Step 2: You may consider using other locator options to find the addresses:

Statewide Property Ownership Locator Resources

- DataQuick
- Real Quest

Individual Assessee Locator Resources

- Infoquest
- Accurent
- Experian
- Court records
- DMV records – best for ownership records and lienholder information of vessels and boats

Step 3: Research all banks and credit unions within the vicinity of those assessee addresses determined from above.

Step 4: Complete a seizure notice for each bank or credit union you determine may have an account of the assessee. Include the following information (see UNS 3-02 for a sample form):

Pertinent Information

1. Date
2. Assessee Name and Address
3. Demand Statement and Statutory Authority

Billing Breakdown

1. Taxes Owed
2. Initial 10% Penalty Calculation amount
3. Monthly 1.5% Penalty Calculation amount
4. Collection Fee
5. Release Fee
6. Total Taxes Due

Process Explanation Information

1. Right to Assessee Hearing Information
2. Information to show intentions/actions in complying
3. Penalty of Perjury Statement
4. Signature Line and Date

Important Note: Confirm that the named assessee or business name is a signatory on the bank account.

Step 5: Deliver by hand or send out by certified mail seizure notices to all of the bank and credit unions identified.

Step 6: The banks and credit union will respond either:

- 1) No account(s) exist, the account has been inactivated, or there are no funds to seize; or,
- 2) active and funded accounts exist, and they will be frozen.

Step 7: Confirm the amount of funds in the bank account(s) cover the taxes due.

- 1) If the funds cover the taxes due, proceed to Step 8.
- 2) If the funds do not cover the taxes due, still proceed to Step 8 and finish out the bank account seizure, but then also consider seizing tangible personal property owned by the assessee sufficient to cover the remaining taxes due. If you choose this additional seizure option, proceed to Section D: Preparing to Seize Tangible Personal Property after completing the procedures in this section.

Step 8: The bank is required to complete the notification requirements in ten (10) business days or less. In the notification process, the bank sends a notice to the assessee informing him or her that his or her assets have been frozen. Once the ten (10) business days have passed, the bank will release funds to the tax collector.

Note: The bank may charge fees for any internal-seizure-processing costs.

Step 9: Upon receipt of funds from the bank:

- 1) If the funds have been seized pursuant to Revenue and Taxation Code §2953 (Jeopardy Seizure), proceed to Chapter 1, Section D: Determination of a Jeopardy Seizure Protest.
- 2) If the funds seized are for taxes already delinquent, proceed to Step 10 below.

Note: Retain the receipt-of-mail notices from the bank and assessee in the seizure file folder.

Step 10: You may elect to do either of the following:

- 1) Apply the funds toward the taxes due; or,
- 2) record and hold the funds and offer the assessee an administrative hearing.

Note: An administrative hearing for bank accounts or related monetary instruments seized for delinquent taxes is not required.

- Step 11: 1) If you decide to apply the funds toward the taxes due, the procedure is ended.
- 2) If you decide to offer the assessee an administrative hearing, proceed to Chapter 5: Section A - Preliminary Actions – Scheduling and Noticing.

county letterhead

SEIZURE FOR TAXES

RE:

Assesses Name(s)
Address
City, State, Zip

Acct No.

You are hereby notified that, pursuant to sections 2902, 2903, 2921.5., 2922, and 2951 through 2963 of the Revenue and Taxation Code of California, I hereby seize, on this date, all money, funds, cash, savings, checking accounts, and bank deposits now in your possession and belonging to the above named taxpayer(s).

Note: Penal Code section 428 states: "Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this State are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor."

AS SUCH, PURSUANT TO CALIFORNIA CODE, YOU ARE ORDERED TO TRANSFER FUNDS TO THE DEPUTY FORTHWITH. Please make the check or money order payable to the _____ County Tax Collector. The total amount due, including costs, is stated below:

Base Tax	_____
10% Penalty	_____
1.5 % Monthly Penalty*	_____
Seizure/Collection/Release Fee	_____
Recording Fee	_____
Less Payments	_____
Total Taxes Currently Due	_____

***An additional 1.5% penalty will be added the first day of each month until paid**

RIGHT TO HEARING: All assessees, their agents, and persons appearing of record to have interest in the property seized shall be entitled to an administrative hearing to be held by the County Tax Collector prior to disbursement of funds. This right may be waived by the assessee(s) or his or her agents unless the assessee wishes to contest the seizure.

Enclosed please find check in the amount of \$_____ for payment of the above seizure.

___ No account found ___ No funds to remit ___ Account closed prior to seizure request ___ Other

I hereby certify under penalty of perjury that the foregoing is true and correct.

_____, _____ Phone () _____ Dated _____
Signature and Printed Name Title

UNS 3-02 (10- 08)

Section D. Preparing to Seize Tangible Personal Property

If the seizure of bank accounts does not cover the full taxes due, it may be necessary to seize other tangible personal property. Doing so will require several tasks, outlined below, that must be performed a few days prior to the actual seizure.

As with most collection efforts involving the seizure of tangible personal property, owners of such property may initiate actions (e.g. selling, damaging or concealing the property) just prior to the seizure or sale that can affect the seizure or sale of property.

Section E. Issues Prior to Seizure

Step 1: Determine whether full payment on the property has been recently received by your office.

- 1) If so, cease any further collection action.
- 2) If not, proceed to Step 2.

Step 2: Determine whether the assessee has initiated any bankruptcy action.

- 1) If the assessee is in bankruptcy, cease all collection activity and follow your county's procedures pertaining to handling bankruptcies.
- 2) If the assessee is not in bankruptcy, proceed to Section F: Pre-Seizure Resources and Documentation.

Section F. Pre-Seizure Resources and Documentation

Step 1: 1) If the property is being seized pursuant to Revenue and Taxation Code §2953 (Jeopardy Seizure), a copy of the Declaration of Intent to Seize (UNS 3-01) must be provided to the assessee of the property at the time of the seizure, as well as an opportunity for the assessee to request an administrative hearing on the seizure actions.

- For declaration of seizure procedures, see Chapter 1: Section C – Preparing a Declaration of Intent to Seize Property.
- For administrative hearing procedures, see Chapter 5: Section A – Preliminary Actions – Scheduling and Noticing.

- 2) If the property is being seized and the taxes are currently delinquent, it is not necessary to provide any seizure-intent documentation.

Step 2: Develop a list of items that may be helpful to you in seizing the property.

Checklist of helpful items.

- Painters tape for securing notices to premises or seized items
- Receipt book
- Heavy duty chain and coated lock
- Camera to document seized items and their condition when seized
- Tie downs to secure planes or other movable property

- Pens and pencils
- Clear sheet labels or laminated labels (to prevent ink or color stains on items where notices are attached)
- Bolt cutters
- Key blocks
- Cell phone

Step 3: Develop a contact list of support staff including, but not limited to:

- Tax Collector staff – A minimum of two people for witnesses
- Sheriff or other law enforcement official
- Locksmith

Step 4: Develop a file for the sale (See UNS 3-03 for sample form).

RECORD OF SEIZURE AND SALE

TAX COLLECTOR'S OFFICE

COUNTY, STATE OF CALIFORNIA

Assessee: _____

Assessment No: _____ Value \$ _____ Tax: \$ _____ Tax-Rate Area: _____

Description of property assessed: _____

Location: _____

Written demand made of assessee on: _____, _____
Date Time

Address: _____

Attachments delivered to _____, _____, _____
Date Time

The property seized on _____, _____ is described as follows:
Date Time

Place of sale: _____

Keeper in charge: _____, _____, _____
Name Date Time

Notice posted:

By _____, on _____ at the hour of _____ m.

By _____, on _____ at the hour of _____ m.

By _____, on _____ at the hour of _____ m.

Sale will be held on: _____, _____, at the hour of _____ by _____

Description of property sold: _____

Sold to: _____ Address: _____

Amount paid: \$ _____ Receipt No.: _____

Released to keeper on _____, _____
Time Date

Amount of tax and penalties:	_____	\$ _____
Costs: General seizure fee	_____	\$ _____
Mileage: _____ at _____ per mile	_____	\$ _____
Keeper's fee: _____ at _____ per day	_____	\$ _____
Advertised in _____ on _____	_____	\$ _____
	Total	\$ _____

Excess deposited in trust account \$ _____

Section G. Seizing Tangible Property

Step 1: Check the tax records to confirm that the property has not been sold or changed hands from the most current assessee owing tax on the property.

Step 2: Determine whether any of the following applies to the property slated for seizure:

- 1) The property is money from sales transactions. If so, proceed to Volume V, Chapter 5 – Till Tap Seizure.
- 2) The property is personal property associated with a business or situated at a corresponding business location. If so, review Section I-1: Additional Recommended Seizure Procedures for additional elements to consider in the seizure.
- 3) The property has a third-party payment arrangement. If so, review Section I-2: Additional Recommended Seizure Procedures for additional elements to consider in the seizure.
- 4) The property is a vehicle or vessel. If so, review Section I-3: Additional Recommended Seizure Procedures for additional elements to consider in the seizure.

Step 3: If you believe the business you will seize is a place known to have high public traffic, you may consider having law enforcement present.

Step 4: If necessary, contact a locksmith and law enforcement official and schedule them to arrive approximately ten minutes prior to the scheduled time of the seizure of the business.

Step 5: You should bring the following to the seizure:

- Seizure File (Tax Bill documents, etc.)
- Receipt book
- Seizure Notices for posting
- Receptacle to receive and store payments, if collected
- Camera

Step 6: Once all personnel are present, proceed into the business.

Step 7: Ask to speak to the owner of the business whose name appears on the tax bill.

Note: The employee may inquire about the nature of the request. Refrain from divulging details. Inform them that the issue is related to a personal matter concerning the owner.

Step 8: Once the owner is present, you should:

- Provide him or her with a copy of the Declaration of Seizure form.
- State that certified mail has been sent and signed for informing them of the impending seizure.
- State the amount of taxes and penalties owed.
- Explain that you are present to collect the taxes immediately, and if payment cannot be made, that you must seize the business. Explain that seizure entails evacuation of all people on the premises and either changing the locks, key blocking, or chaining the doors (if the entrance is a double door).

Note: If the owner agrees to make payment but needs some time, the recommended allowance is one hour to 90 minutes. The time afforded is at the discretion of the tax collector.

Note: During the seizure, you should not:

- Accept any gifts, food, drink, or service from the business; or
- Engage in any other conversation not pertinent to the seizure.

Step 9: 1) If the owners makes full payment, provide a receipt and inform him or her that the business will not be seized.

2) If payment is not or cannot be made, explain to the owner that:

- The owner and his/her employees, if any, must vacate the premises;
- A locksmith will change the locks; and
- The owner may make payment anytime prior to the sale and at that point, will be given the keys for the new locks.

Step 10: Authorize the locksmith to change the locks on all entrances and exits.

Step 11: Post Seizure Notices at all entrances and exits. Be careful to avoid sticking notices to surfaces that might be damaged by the tape such as painted surfaces.

Step 12: Make a record of all property seized (§2952). The UNS 3-03 form may be used.

Note: You may use photos or video recording as a substitute for a written inventory.

Step 13: If it is necessary to safeguard seized property, place it in the custody of a keeper. The keeper must hold the property until relieved from that duty. See Section H: Keeper Procedures.

Section H. Keeper Procedures

There may be, on occasion, the need to safeguard seized property. For these instances, a third party may be contracted to take custody of the property. This third party is known as a keeper. The following describes the procedures and pertinent information concerning a keeper.

Step 1: Contract with a keeper if the seized property cannot be secured within the business premises alone.

Step 2: Complete an Appointment of Keeper Form (See UNS 3-04 for sample form) and incorporate into the seizure file.

Fee Schedule for various keeper duties:

- \$125 - Opening a safe-deposit box pursuant to Code of Civil Procedure sections 488.460 and 700.150.
- \$120 for every 8-hour period - For keeping and caring for property under a writ of attachment, execution, possession, or sale.
- \$30 per day - Additional fee for maintaining custody of the property for each day that custody is maintained after the first day.

APPOINTMENT OF KEEPER

TAX COLLECTOR'S OFFICE

_____ **COUNTY, STATE OF CALIFORNIA**

In the matter of the collection of (delinquent/current) unsecured property taxes due _____ (County Name _____)
County from _____:
Assessee Name

This is to CERTIFY that I have seized the following property for sale for said taxes for the fiscal year(s) _____

Property:

and that I have appointed officer _____ in my capacity as tax collector of said County, State of California, as the keeper of the property described above, to hold it subject to my order until the taxes are paid or the property is sold in accordance with law.

(signature)

(print name)

Dated _____, _____

KEEPER'S RECEIPT

I hereby acknowledge that I received the above-described property from the tax collector and hereby agree to return the same, and every part thereof, to said tax collector, on his/her written order to demand.

Dated _____, _____

(signature)

(print name)

UNS 3-04 (10-08)

Section I. Additional Recommended Seizure Procedures

The procedures outlined in this section are not standalone procedures. They are a continuation of procedures from Section G. If you were not directed to this section from a procedure contained in Step 2 of Section G, proceed to Chapter 5 – Sale of Seized Property.

- 1) If a seized business is in operation, consider the following:
 - Allow the business to continue to operate, with merchandise and money available for operation.
 - If the assessee does not pay the taxes and fees shortly after a business seizure, the keeper should remove all cash not necessary to operate the business.
 - The cash removed serves as partial payment of taxes.
- 2) If the business operation has a third-party payment arrangement (such as leased equipment) consider doing the following:
 - Have the third-party (e.g. the lessee or renter) act as the keeper.
 - Direct the third party to make the lease payment to the tax collector instead of the lessor.

Note: This may include trust deed payments where the property was sold before the tax bill was issued.

- Research the chain of title in the Recorder’s Office. The next document after the deed of transfer may disclose evidence that the new owner is paying the former owner on a second or other deed of trust.
 - Direct the new owner to make the payment to the tax collector instead of the old owner.
- 3) If the property being seized is a vehicle, vessel, or airplane:
 - Contact local law enforcement officials before securing the property as a means to prevent any potential altercations should the owner of the property be present.
 - Take pictures to record the condition of the property prior to any action.
 - For vehicles, if towing is required, have it done by a professional towing service and secure the vehicle in an impound yard or storage building.

Chapter 5. Sale of Seized Property

Section A. Preliminary Actions – Scheduling and Noticing

Before the property is sold, the assessee must be offered an administrative hearing with the tax collector.

However, when the property seized is a bank account, an administrative hearing may be offered to the assessee as a courtesy, but is not required.

Note: It is unconstitutional to sell seized property (material) without affording the owner an administrative hearing (*T.M. Cobb Co. v. County of Los Angeles*, 128 Cal. Rptr. 655; 16 Cal. 3d 606).

The purpose and scope of the administrative hearing determines whether:

- 1) The taxes were validly levied against the assessee;
- 2) the taxes are still unpaid;
- 3) the assessee has an interest in the seized property; and,
- 4) there is a valid reason as to why the property should not be sold for taxes due.

Note: Issues pertaining to over-valuation of the assessment on which the taxes have been levied are not within the scope of the hearing.

Finally, the hearing may be conducted by the tax collector or his or her staff, officers from other county departments, or any other third party the tax collector deems appropriate.

Step 1: Determine whether full payment on the property has recently been received by your office.

- 1) If so, cease any further collection action
- 2) If not, proceed to Step 2.

Step 2: Determine whether the assessee has initiated any bankruptcy action.

- 1) If the assessee is in bankruptcy, cease all collection activity and follow your county procedures pertaining to handling bankruptcies.
- 2) If the assessee is not in bankruptcy, proceed to Step 3.

Step 3: Determine which of the following scenarios apply:

- 1) If the administrative hearing has already occurred, proceed to Section B: Notice of Sale of Unsecured Property.
- 2) If the seizure has been made pursuant to §2953, the assessee has a right to *protest* the seizure rather than *contest* through an administrative hearing.

Thus, if the assessee chooses to protest the seizure, the administration hearing procedures under this section would not apply. Rather, you would need to confirm that the assessee has notified the tax collector that he or she has filed a protest of the seizure under Revenue and Taxation Code §2954, and proceed to Chapter 1, Section D: Determination of a Jeopardy Seizure Protest.

- 3) If neither of the above scenarios apply, proceed to Step 4.

Step 4: Notify the assessee that he or she has a right to an administrative hearing prior to the sale of the seized property. A sample Notice to Request for an Administrative Hearing—Form UNS 3-05—is provided on the next page

Note: You should give the assessee a deadline by which to exercise his or her right to request a hearing. Ten (10) days from receipt of notice is the recommended deadline.

Step 5: 1) If the assessee responds and requests a hearing within the deadline, proceed to Step 6.
2) If the assessee does not respond within the prescribed deadline or waives his or her right to a hearing, proceed to Section B: Notice of Sale.

Step 6: Send an Administrative Hearing Notice to the assessee. The notice should contain the date and location of the hearing, and should be sent within ten (10) days of receipt of the hearing request letter from the assessee. (See UNS 3-06 for a sample form.)

Note: The hearing may be conducted at the tax collector's office.

Step 7: Conduct the hearing. The law does not provide for any formal content or format requirements, so the particulars of the hearing format may be set by the tax collector, if not already set forth by county ordinance. Following are some recommended hearing format particulars:

- 1) Arrange a private meeting room.
- 2) Ensure that at least two staff members are present to serve as moderators/witnesses.
- 3) Announce to the assessee that the hearing will be electronically recorded.
- 4) Provide written documents outlining the details of the seizure actions, including:
 - Collection procedures and notices provided prior to seizure
 - The Code sections authorizing the seizure action
 - The Code sections providing for an administrative hearing
 - Outline of seizure actions taken and intended sale proceedings
 - The amount of taxes due, with calculations
 - Any other pertinent information
- 5) Inform the assessee that the tax collector will render a determination of the proceedings. Advise the assessee that he or she will be notified by letter and the time frame by which he or she should expect to receive the information. It is recommended that determination and notification be completed within five business days.

Step 8: Within five business days of the conclusion of the hearing, send a first-class letter to the assessee describing the determination.

- 1) If payment was arranged and completed following the meeting, cease all sale actions and release the property to the assessee.
- 2) If payment is still outstanding or disputed, proceed to Section B: Notice of Sale.

TREASURER AND TAX COLLECTOR
COUNTY OF _____, STATE OF CALIFORNIA

Date: _____
Name: _____
Attention: _____
Address: _____
City: _____

NOTICE!
A public auction will be held on _____ at _____ to sell property seized by the _____ County Treasurer and Tax Collector to satisfy delinquent taxes owed by _____

REQUEST FOR ADMINISTRATIVE HEARING

You are hereby notified that you have a right to an administrative hearing prior to the above referenced auction to contest the sale of the following property for delinquent taxes:

Description: _____

If you wish to avail yourself of this right, you must contact this office in writing or by returning this form, signed, with the appropriate box checked below no later than _____. Failure to do so by the aforementioned date will be considered a waiver of your right to a hearing and the property described above will be sold without further notice to you. Should you request a hearing, you will be notified by Certified Mail of the date, time and location of the hearing.

_____, Treasurer and Tax Collector
Name of Tax Collector

By: _____, Deputy

I REQUEST / DECLINE A HEARING

I the undersigned, hereby Request _____ Decline _____ an administrative hearing as explained above. I understand that failure to request an administrative hearing will be considered a waiver of my right to dispute the sale of my property. I further understand that failure to attend a requested administrative hearing, without substantial and significant reason, will result in the sale of the subject property without further notice to me.

Return this notice to the _____ County Tax Collector's Office.

Dated: _____ Signed: _____

UNS 3-05 (10-08)

County Letterhead

TREASURER AND TAX COLLECTOR
COUNTY OF _____, STATE OF CALIFORNIA

Date: _____

Name: _____

Attention: _____

Address: _____

City: _____

NOTICE!
A public auction will be held on
_____ at _____ to sell property
seized by the _____ County Treasurer
and Tax Collector to satisfy delinquent taxes
owed by _____

ADMINISTRATIVE HEARING NOTICE

Hearing Date: _____

Time: _____

You are hereby notified that an administrative hearing will be held on the date and time noted
above at the _____ County Treasurer and Tax Collector's office, located at
_____, _____, California _____ to
determine if there is any reason why the following described property should not be sold at
public auction.

Description:

Your failure to attend the scheduled administrative hearing without notifying the _____
County Treasurer and Tax Collector prior to the hearing will result in the sale of the subject
property without further notice to you. The circumstance(s) of any reported inability to appear
must be substantial and significant.

_____, TREASURER AND TAX COLLECTOR

By: _____, DEPUTY

UNS 3-06 (10-08)

Section B: Notice of Sale

Step 1: Prepare a notice for the sale of the seized property (Notice of Sale) and circulate (See UNS 3-07 for a sample form.). Circulation includes:

- 1) A posting of the Notice of Sale. It is recommended that the posted notice include a “DO NOT REMOVE” statement. (See sample statement at the top of the UNS 3-07 form)
- 2) A published Notice of Sale. (Optional)

Step 2: Post the Notice of Sale on the property premises. Be sure to post on all entryways with a secure adhesive.

Note: The notices should be posted on glass, where possible, to avoid any paint or other texture damage.

Step 3: Post the Notice of Sale in three public places at least one week prior to the date of the sale (§2957).

Note: If you believe the assessee will not redeem the property, then you may elect to expand the notice opportunity by publishing a Notice of Sale at least one week prior to the date of sale (§2957).

Whether posting or publishing, include the following in the notice:

- The date and time of the sale (§2957)
- The location of the sale (§2957)
- That the property may be redeemed by the owner up to just prior to being sold at auction (§2959)

Note: In *Gentillalli v. San Diego County (1966)*, 240 Cal. App. 2d 456, the court ruled that the owner had the right to redeem property up to the point just prior to the time of payment of the price bid for the property sold and delivery thereof to the buyer, along with a bill of sale.

Step 4: Calculate the amount of proceeds necessary to cover the taxes, penalties, and all actual costs incurred by the county (§§2922(e) and 2958). This includes, but is not limited to:

- Advertising
- Mileage and keeper’s fees
- A fee not exceeding \$15 for each seizure

Step 5: Inventory the property items and determine how they might be offered.

- 1) Each item may be offered as a separate article; or,
- 2) One or more items, or all of the items, may be offered as a collective article.

Step 6: Set the opening bids for the items such that they will sell and that the amounts collected will have a strong likelihood of covering the taxes due.

Note: You are not required to have seized assets appraised or to obtain a minimum bid for each item. However, in cases where the property is encumbered, it may be appropriate to establish a minimum bid.

DO NOT REMOVE THIS NOTICE

Penal Code Section 428 States: "Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this State are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor."

(This statement above for posted notice only)

NOTICE OF PUBLIC AUCTION OF SEIZED PROPERTY

Made pursuant to Section 2957, Revenue and Taxation Code

_____ COUNTY TAX COLLECTOR'S OFFICE

STATE OF CALIFORNIA

By reason of the failure to pay unsecured taxes levied to _____ and duly assessed for the years _____ in the sum of \$_____, notice is given that the _____ County tax collector will sell at public auction all or a portion of the property described as follows:

PROPERTY TO BE SOLD:

DATE AND TIME OF SALE:

LOCATION OF SALE:

MINIMUM BID: (optional)

TERMS OF SALE: (cash, money order, cashier's check, etc.)

INSPECTION OPPORTUNITY:

THE ASSESSEE'S RIGHT TO PAY THE AMOUNT DUE TO PREVENT THE SALE TERMINATES ONCE THE HIGH BID IS RECEIVED. IF THE PROPERTY IS NOT SOLD, THE RIGHT OF REDEMPTION IS REVIVED.

The property will be awarded to the highest bidder.

The county tax collector will transfer said property to the purchaser, with a bill of sale, upon receipt of payment of the amount of the bid. Title shall thereupon vest in the purchaser, subject to the rights of any prior lienholders of record. Any costs of handling, storage or transportation of the purchased property after the time of sale will be borne wholly by the purchaser, and no warranty of the property's condition or utility is made or implied by the county. The title to the property being sold by the tax collector, as well as the right of possession, may be subject to the rights of any prior lienholders of record.

After satisfaction of all taxes and related charges, including costs of conducting the auction, any remaining proceeds will be deposited in the county treasury, subject to claim by the person who owned the property just prior to its auction or his/her successor in interest. Any such excess not claimed within three years from the date of the sale becomes the property of the county.

(Signed)

Date: _____

_____ County Tax Collector

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Section C. Conducting the Sale

- Step 1: The sale must be conducted in a public auction format and held at the time and location described in the Notice of Sale.
- Step 2: Read a sale preamble covering the various elements of the sale prior to opening the items for bid. (See Form UNS 3-08)
- Step 3: Announce the following pursuant to Revenue and Taxation Code §2958:
- That the sale shall be by public auction;
 - That the sale will terminate upon acceptance of the highest bid;
 - That the property may be redeemed by the owner any time prior to sale of the property—the sale of property defined as the bid price being paid and the property being delivered with the bill of sale (§2959 and *Gentillalli v. San Diego County*, 240 Cal. App. 2d 456); and,
 - The acceptable forms of payment.
- Step 4: Announce the item up for bid, the opening bid amount, and the bidding increments.
- Step 5: Each bid shall be confirmed with the audience and offered to raise it.
- Note:** Opening and subsequent bids are only "received," whereas the final bid is "accepted."
- Step 6: The last, highest bid will be announced as the winner.
- Step 7: The property is sold when the final bid is accepted by the auctioneer and the payment has been completed (§2959).
- Note:** At any time prior to sale of an item, including prior to actual payment by the winning bidder, the assessee may produce funds to redeem the item and the auction/sale will be terminated (§2959).
- Step 8: Prior to termination of sale, payment must be completed by the bid winner(s). To ensure good funds, it is recommended that you accept only cash, cashier's checks, money orders, or a combination of any of these, as indicated in the Notice of Sale.
- Note:** If payment is accepted by personal check, it is recommended that the bill of sale not be executed and delivered until the check has cleared the bank.
- Step 9: Provide the winning bidder with a bill of sale. (See UNS 3-09 for a sample form.)
- Step 10: The sale terminates upon completion of payment and title vests with the purchaser (§2960).

UNSECURED PROPERTY TAX SALE PREAMBLE

TAX COLLECTOR
COUNTY OF _____, STATE OF CALIFORNIA

Sale of:

Date

ATTENTION ALL PROSPECTIVE BIDDERS! THE TREASURER AND TAX COLLECTOR WILL NOT TRANSFER THE SUBJECT PROPERTY OR ISSUE A BILL OF SALE UNTIL THE UNSECURED SALE PREAMBLE IS AGREED TO AND SIGNED BY THE SUCCESSFUL BIDDER (PURCHASER)

THE ASSESSEE’S/OWNER’S RIGHT TO REDEEM THE PROPERTY TERMINATES WHEN THE BILL OF SALE, TRANSFERRING TITLE, IS ISSUED BY THE TAX COLLECTOR TO THE SUCCESSFUL BIDDER. IF THE SUBJECT PROPERTY IS NOT SOLD, THE RIGHT OF REDEMPTION IS REVIVED.

The subject property will be awarded to the highest bidder for cash in lawful money of the United States, cashier’s check or money order.

The tax collector will transfer title and possession of said property to the successful bidder, with a bill of sale, upon receipt of payment of the amount of the bid. The *rights, title, and interest* of the assessee shall thereupon vest in the successful bidder, *subject to the rights of any prior lien holders of record*. Any costs of handling, storage or transportation of the purchased property after the time of sale will be borne wholly by the successful bidder. **NO WARRANTY OF THE PROPERTY’S CONDITION OR UTILITY IS MADE OR IMPLIED BY THE COUNTY. PROPERTY IS SOLD “AS IS.”**

After satisfaction of all taxes, penalties, and related charges, including costs of conducting the auction, any excess proceeds will be deposited into the county treasury, subject to claim by the person or entity who owned the property just prior to the auction or his/her successor in interest. Any such excess not claimed within three years from the date of the sale becomes the property of the county (§2961).

I, the undersigned, state that I have read the above Treasurer and Tax Collector’s “Unsecured Sale Preamble” and do understand and accept its provisions.

Purchaser Name or Business Name (Print)

Signature of Purchaser/Representative and Title

Dated

I, the undersigned, state that I am a _____ (title) _____ for the _____ County Treasurer and Tax Collector’s Office and that I have read aloud the “Unsecured Sale Preamble” prior to the Unsecured Tax Sale of the property in question, and that the above successful bidder was present at the time of that reading.

Signature

Dated

Signature of Witness/Title

UNS 3-08 (10-08)

BILL OF SALE

TAX COLLECTOR'S OFFICE

_____ **COUNTY, STATE OF CALIFORNIA**

For the sum of \$_____, receipt of which is hereby acknowledged, I, as tax collector of _____ County, hereby sell and convey the following property to:

Name:

Address:

the rights, title, and interest, subject to the rights of any prior lien holders of record, of:

in the property described below:

The purchaser named above was the highest bidder at a public auction held on: _____ in accordance with the seizure and sale provisions of section 2951 et seq. of the California Revenue and Taxation Code.

NO WARRANTY OF THE PROPERTY'S CONDITION OR UTILITY IS MADE OR IMPLIED BY THE COUNTY. PROPERTY IS SOLD "AS IS."

Executed on:

_____ County Tax Collector

By _____, Deputy

Section D. Post-Sale Actions

Step 1: If any unsold property remains, the property owner should be notified in order to safeguard or reclaim the property.

Note: The unsold portion of any seized property may be left at the place of sale at the risk of the owner (§2962).

Step 2: Deposit the sale proceeds in the following manner:

- 1) The portion representing taxes and penalties should be apportioned like other receipts on the unsecured roll.
- 2) That portion of the costs representing keeper's fees should be credited to a trust fund, against which warrants may be drawn for paying keepers.
- 3) The balance of the costs specified in §2958 should be deposited in the county general fund.

Step 3: Contact the County Assessor and supply all of the updated assessee information related to the property sold.

Step 4: Process the excess proceeds accordingly:

- 1) Proceeds of the sale in excess of taxes, penalties, and costs should be credited to the property owner and deposited in the county treasury.
- 2) Send a notice to claim excess proceeds (Notice of Exceed Proceeds) to the party(ies) that was/were owner(s) of record prior to the seizure and sale. (See UNS 3-10 for a sample form.)
- 3) If not claimed within three years after the date of sale, unclaimed excess proceeds revert to the county (§2961).

Index of Volume III Forms

Following is a list of SCO forms relevant to the preparation and execution of preliminary unsecured collection processes as detailed in this manual.

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