Thank you for your participation in the Delaware Secretary of State's Voluntary Disclosure Agreement (VDA) program. As you know, our VDA program was put in place to respond to concerns about Delaware's ongoing audit program, and to encourage more companies to come into compliance with their legal responsibilities as they relate to abandoned property. Companies that have completed the VDA program have told me the process is rigorous but fair. This is evidenced by the more than 800 companies that have enrolled in the VDA program, and the more than 400 VDAs settled to date.

In light of the memorandum opinion issued on June 28, 2016 in the case of *Temple-Inland, Inc. v. Cook*, and the subsequent settlement and voluntary dismissal of the case, I thought it was important to address some of the questions current VDA enrollees have asked regarding the impact of the court's opinion on the VDA program.

The Court's ruling in *Temple-Inland* is limited to the specific facts and circumstances of the unclaimed property audit at issue in the case. The decision was critical of several specific executive actions taken by the State Escheator during the course of that audit that in combination the Court deemed to be procedurally unfair. The actions taken by the State Escheator in the Temple-Inland audit bear little, if any, resemblance to the administration of the VDA program. We designed the VDA program with procedural safeguards in place to ensure that Companies who voluntarily step forward and enroll would be treated fairly.

Still, while the Court's decision does not have any direct impact on how we administer the VDA program, I do not want to ignore the seriousness of some of the issues raised by the Court. The VDA program is, after all, a voluntary compliance program, and we want to continue to encourage companies to comply.

The key question my team has encountered since the opinion was issued is whether the Court's decision will change how Delaware estimates unclaimed property in the VDA?

As outlined in our Implementing Guidelines, we expect holders to "reasonably estimate" liabilities for periods in which the holder's records are unavailable or insufficient to prepare a report of presumed past due unclaimed property liability. There is no estimation involved for non-Delaware domiciled entities, and all estimated unclaimed property for the period a holder determines it does not have available records would be reportable to the holder's state of incorporation or formation.

This rule is a bright line between what is owed to Delaware and what is owed to any other state to ensure that a holder does not pay twice for the same unclaimed property. Most if not all

states estimate past due unclaimed property liability for holders domiciled in their state the same way as Delaware. Unclaimed property paid to another state during the estimated period will not be assessed twice. When entering into a VDA settlement agreement, a holder is provided a release and the state agrees to indemnify the holder for all future claims by another state on the estimated unclaimed property that was reported. As a result, there is no risk of paying twice based on how the VDA analysis is conducted in combination with the settlement and release agreement entered into by the holder.

We continue to believe that our VDA program's approach to estimation is the best business practice for all involved. In our discussions with holders, this bright line rule benefits holders as compared to the alternative of performing potentially 50 separate estimations based off of 50 different state standards and then entering into 50 different VDAs or audits to come into legal compliance.

Other parts of the opinion raise concerns that I know have been voiced previously by holders and holder advocates. Over the past several years, the State has adopted several amendments to its unclaimed property statute in order to address these concerns. Besides creating the Secretary of State VDA program in 2012, Delaware shortened the look-back period for audits, and issued draft regulations regarding how unclaimed property audits would be conducted. Last year, Delaware amended the law so that no new unclaimed property audits would be conducted without a company first being offered the opportunity to enter into a VDA.

When the Delaware General Assembly returns in January, my office and the Department of Finance will propose additional common sense changes to Delaware's unclaimed property law. This would include a further reduction in the VDA look back period that is in accord with most states' look back periods, as well as addressing some of the issues specifically raised by the Court in the *Temple-Inland* opinion, namely a record retention provision for unclaimed property reports tied to the current statute of limitations, and possibly a negative reporting requirement.

While some of these changes cannot be made until our legislature reconvenes in January 2017, the look back period can be addressed now, and so VDAs will from this point forward be settled based on a look back period of 10 years plus dormancy from the date a holder enrolled.

In conclusion, I believe the VDA program continues to be the same procedurally fair and business-friendly program that we set out to create together in 2012 – offering enrollees the opportunity to voluntarily "catch-up" on past due unclaimed property obligations, get into a regular cycle of compliance, and significantly reduce their liability, all at the same time. I hope you agree and urge you to contact me or my team if you have any questions or concerns.

Sincerely,

Jeffrey W. Bullock
Secretary of State