



STATE OF DELAWARE

DEPARTMENT OF STATE

Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program

SOS VDA Program Guidelines

As of July 20, 2018

The purpose of this document is to provide an overview and outline of the procedures related to the Secretary of State Abandoned or Unclaimed Property Voluntary Disclosure Agreement Program (hereinafter referred to as "SOS VDA Program").

Delaware's overarching goal with respect to the SOS VDA Program is to increase the number of annual abandoned or unclaimed property compliance filings and decrease the number of examinations. The SOS VDA Program has been structured to be user-friendly, efficient and predictable. The SOS VDA Program is administered with the use of outside vendors. Additional information related to the SOS VDA Program can be found on the State's website at www.VDA.Delaware.gov.

The following terms are used throughout this document:

- **Administrator** shall refer to the Department of State and/or its outside vendor and vendor's assignees assisting the Department of State with a review of the SOS VDA Submission packages.
- **Advocate** shall refer to a third-party service provider who represents the Holder in presenting its SOS VDA Submission to Delaware.
- **DOF** shall refer to the Department of Finance.
- **DOS** shall refer to the Department of State.
- **Holder** shall refer to a business entity which may have property reportable to Delaware. Holder may further refer to a Holder and/or its Advocate.
- **SOS VDA Period** shall refer to the report years covered in the SOS VDA Agreement. The SOS VDA Period is generally 10 years plus dormancy from the date the Holder enrolls in the SOS VDA Program.
- **SOS VDA Submission** shall refer to the findings report presented by the Holder to the State.
- **VDA** shall refer to the Delaware Unclaimed Property Voluntary Disclosure Agreement.

FREQUENTLY ASKED QUESTIONS

Who is eligible to enroll in the SOS VDA Program?

The State of Delaware's Abandoned or Unclaimed Property Law is found in Chapter 11, Title 12 of the Delaware Code. Under 12 *Del. C.* § 1173, the Secretary of State is permitted to settle abandoned or unclaimed property voluntary disclosure agreements with Holders. Subject to the exceptions noted in 12 *Del. C.* § 1173(e), the SOS VDA Program is available to any Holder as defined by 12 *Del. C.* § 1130(9) that has possession, custody or control of abandoned or unclaimed property on its books and records which may be reportable to the State of Delaware.

The following are not eligible to enroll in the SOS VDA Program:

- Holders currently completing a VDA with the Department of Finance, although a Holder that enrolled in the Department of Finance VDA program may transfer into the SOS VDA Program with the consent of the Secretary of State and the Secretary of Finance.
- Holders that received an examination notice from the Department of Finance after July 22, 2015.
- Holders that previously enrolled in but withdrew from the SOS VDA Program.
- Holders that have been dismissed from the SOS VDA Program by the Secretary of State for failure to work in good faith to complete the SOS VDA.

What are the benefits of the SOS VDA Program?

As detailed in 12 *Del. C.* § 1173, benefits for Holders that enroll in the SOS VDA Program include the following:

- The SOS VDA Program was designed to be a business friendly and efficient means of coming into compliance with a company's unclaimed property reporting obligations. Unlike under an examination, Holders and the State work together to reach an agreement of the quantification methodology and the amount which will be reported by the Holder.
- The SOS VDA Program is faster and less expensive than an examination. Unlike under an examination, the Holder manages the SOS VDA process by conducting a detailed self-review of the entities and property types the Holder determines to be in scope. In addition, all penalties and interest are waived by the Secretary of State for Holders completing the SOS VDA Program in good faith.
- The SOS VDA Program provides certainty for Holders that complete the process. As part of the final settlement, the State will release and discharge the Holder from any and all liability related to that property. If another state or person shall make a claim on the property reported in the SOS VDA Program, the State will defend the Holder against the claim and indemnify the Holder against any liability on the claim. Unlike most other state VDA programs, for Holders that complete the SOS VDA

Program, the State waives its right to examine the Holder related to the entities, years, and property types included in the SOS VDA. This waiver is effective as long as the Holder fulfills its future annual reporting requirements for the three subsequent reporting cycles after the completion of the SOS VDA.

Why enroll in the SOS VDA Program?

Holders may enroll in the SOS VDA Program for the following reasons, among others:

- A Holder has never before reported and remitted abandoned or unclaimed property to the State of Delaware.
- A Holder with a prior filing history neglected to report certain abandoned or unclaimed property through inadvertence or mistake.
- A Holder with a prior filing history wishes to come forward to conduct a review of its books and records to determine whether it may have neglected to report certain abandoned or unclaimed property and to avoid an examination.
- A Holder acquired the abandoned or unclaimed property liability of another entity in a merger or acquisition.
- A Holder completed a prior VDA and has had a lapse in annual reporting or may have filed incomplete annual reports since the completion of its prior VDA.
- A Holder has completed a prior abandoned or unclaimed property examination and has had a lapse in annual reporting or may have filed incomplete annual reports since.
- A Holder is a trust or other entity holding property due to another.

What are examples of Abandoned or Unclaimed Property?

Abandoned or unclaimed property subject to being reported and remitted to Delaware pursuant to the Abandoned or Unclaimed Property Law includes tangible property described in 12 *Del. C.* § 1134, or a fixed and certain interest in intangible property held, issued, or owed in the course of a Holder's business or by a government, governmental subdivision, agency, or instrumentality. The term includes, but is not limited to, the following:

1. Money, interest, dividend, check, draft, or deposit.
2. A credit balance, customer's overpayment, gift card, stored-value card, security deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, pari-mutuel ticket, mineral proceeds, or unidentified remittance.
3. A security, bond, debenture, note, or other evidence of indebtedness.
4. Money deposited to redeem a security, make a distribution, or pay a dividend.
5. An amount due and payable under the terms of an annuity contract or insurance policy.

6. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit-sharing, employee-savings, supplemental-unemployment insurance, or similar benefits.

Note: This list represents the most common examples of general ledger related to abandoned or unclaimed property and does not address securities, equity, or insurance related property types.

Where can additional information be found about the SOS VDA Program?

Additional information can be found on the SOS VDA website at www.VDA.Delaware.gov.

Where can questions be directed?

Questions may be directed via email to SOS.VDA@state.de.us or 302-739-4111.

ENROLLMENT PROCESS

A Holder enrolls in the SOS VDA Program by executing **Form VDA-1 - Notice of Intent to Voluntarily Comply with Abandoned or Unclaimed Property Law** (hereinafter referred to as “**Form VDA-1**”). **Form VDA-1** must be signed by an authorized person, entity representative, or officer of the company. **Form VDA-1** may be submitted electronically or by mail to the following:

Secretary of State, State of Delaware
ATTN: SOS VDA Program
Townsend Building
401 Federal Street, Suite 3
Dover, DE 19901
SOS.VDA@state.de.us
(302) 739-4111

Form VDA-1 can be found on the SOS VDA website at www.VDA.Delaware.gov under the section entitled “Steps to VDA” or on the Forms page which can be accessed via a link at the top of the homepage. **Appendix A**, which can be found on page 18 of this document, details the forms and tools available to the Holder which are posted on the SOS VDA website.

Upon receipt of **Form VDA-1**, DOS will confirm the applicant’s eligibility to enroll in the SOS VDA Program. Once eligibility is confirmed, the Secretary of State shall indicate acceptance of the Holder into the SOS VDA Program by signing and returning **Form VDA-1** to the Holder. Thereafter, the Holder will be contacted by the Administrator to commence the SOS VDA process.

Use of a Third Party Advocate

While a Holder is not required to retain an Advocate to assist with its SOS VDA Submission, consulting with a professional service firm specializing in unclaimed property consulting is encouraged. Such firms often make the SOS VDA process more efficient because of their knowledge of and familiarity with the process and the submission requirements.

If an Advocate will be used, the Administrator must obtain written permission from the Holder to communicate directly with the Advocate. Permission may be granted when the Holder completes **Form VDA-1**. At that time, the Holder has the option of identifying an assigned Advocate who will assist the Holder with the VDA. By noting the Advocate on the **Form VDA-1**, the Holder is providing permission for the Administrator and its assignees to communicate with the Advocate.

If a Holder’s Advocate is changed or added after enrollment, written confirmation must be provided by the Holder to the Administrator via email or other written means.

THE SOS VDA PROCESS

While the SOS VDA Program is not an examination, a Holder is expected to conduct a comprehensive and detailed self-review of its books and records to determine whether the Holder has past-due abandoned or unclaimed property reportable to Delaware. The SOS VDA Process is delineated into four phases:

Phase 1 – Scoping the SOS VDA

Phase 2 – Quantification of Abandoned or Unclaimed Property Reportable to Delaware

Phase 3 – SOS VDA Submission and Validation

Phase 4 – Closing Process and Documentation

The following provides an overview of each phase of the SOS VDA, the expectations of the Holder and Administrator/State, and the associated deliverables for each party.

Note: Please be aware that the information below is a guideline, and that every Holder enrolled in the SOS VDA Program is unique. Consequently, the processes outlined below may be tailored to a specific Holder's facts and circumstances.

Phase 1 - Scoping the SOS VDA

The purpose of this phase is for the Holder to perform an analysis of the Holder's organizational history (e.g., entity or corporate history), accounting functions, and records to determine areas of potential exposure and underreporting which may require quantification in future phases.

The following items should be considered by a Holder during the scoping phase.

Entity or Corporate Activity

Holders can acquire abandoned or unclaimed property liabilities in a merger or acquisition, and may transfer liabilities during a divestiture. It is expected that a summary of the Holder's merger, acquisition, and divestiture history be provided along with an analysis describing the treatment of potential abandoned or unclaimed property liabilities related to such. There should be a separate analysis for each acquired entity. If unclaimed property was acquired, the Holder may be required to estimate any potential unclaimed property liability for periods the acquired entity does not have complete and researchable records. Relevant excerpts of stock or asset purchase/sale agreements should be available, as they may be requested by the Administrator during ***Phase 3***.

If a Holder, or an entity within the Holder's organizational structure, is claiming that no abandoned or unclaimed property is reportable due to the fact that the liability was discharged as part of a bankruptcy proceeding, documentation related to such should be provided. This should include relevant documents

from any court decisions or opinions and should specifically address the liabilities (e.g., property types) and date ranges which have been discharged pursuant to the bankruptcy.

Compliance History

A Holder's compliance history should be presented in the SOS VDA Submission and will be taken into consideration by the Holder when quantifying amounts which may be reportable to Delaware.

- **Annual Compliance** – The Holder should obtain an understanding of its prior reporting history and any changes to this history for each of the legal entities, property types and years included in the SOS VDA. The Holder should be able to provide support that reports were filed and payment was made by each legal entity.
- **Examination and VDA** – The Holder should also ascertain and document its examine and VDA history for each legal entity included in the SOS VDA. This information would include legal entities, years and property types.

Accounting Records

Trial balances, financial statements and other accounting records may need to be reviewed to understand the nature of accounts and the associated accounting transactions which may generate abandoned or unclaimed property reportable to Delaware. A Holder may need to document general ledger packages utilized and any changes in these packages and limitations on data availability. This analysis may also include that of sub-ledgers where detailed accounting records may be maintained. This analysis is helpful in determining record availability.

Record Availability

During **Phase 1**, a Holder determines for what periods complete and researchable records are available by legal entity and property type for each of the years included in the SOS VDA.

Complete Records shall reconcile to the general ledger with the understanding that immaterial differences may occur. Complete records include, but are not limited to, business tax returns, quarterly bank statements, and bank reconciliations including outstanding checklists, complete void lists for each year, detailed accounts receivable aging reports, and general ledgers.

Researchable Records are those records which can be researched by the entity or company to determine the resolution or remediation of such item.

The expectation is that a Holder, at a minimum, may have complete and researchable records for a period that would cover seven to eight (7-8) years from the date the Holder enrolled in the SOS VDA Program. Availability of records will impact a Holder's methodology for the quantification of its abandoned or unclaimed property liabilities and whether estimation may be warranted.

Information concerning general ledger conversions, mergers and acquisitions, changes in personnel, use of sub-ledgers, availability of supporting documentation, and access to prior period financial statements, general ledgers, and trial balances, etc. may impact record availability. The Scoping Worksheet, available on the SOS VDA website, is a good tool for documenting record availability by legal entity, property type, and year: <http://vda.delaware.gov/steps-to-vda/>.

At the conclusion of **Phase 1**, Holders will determine what is deemed to be in-scope for purposes of the SOS VDA. Property types and entities may be excluded from the scope of review at the Holder's option. However, at the conclusion of the SOS VDA, the Secretary of State will only provide a release of liability for what has been determined to be in-scope. Consequently, any property types and/or entities excluded from the SOS VDA could be subject to examination by DOF.

Phase 1 - Deliverables

The following details the deliverables expected by each party at the end of Phase 1.

At the conclusion of **Phase 1**, the Administrator and the Holder will confirm the scope of the Holder's analysis and agree on due dates for deliverables in the other phases

Holder:

- Prepares the Scoping Worksheet and Information Request (which can be found on the SOS VDA Website) and submits to the Administrator.
- Determines the entities and property types to be included in the SOS VDA as a result of the Holder's review.

Administrator:

- Answers the Holder's questions about the process and the completion of the scoping documents (e.g., Scoping Worksheet, Information Request, etc.).
- Reviews the Scoping Worksheet and Information Request completed by the Holder and addresses any questions with the Holder.

DOS:

- Communicates with the Administrator regarding the status of the Holder's SOS VDA.
- Available to address any questions or concerns.

Phase 2 - Quantification of Abandoned or Unclaimed Property Reportable to Delaware

During **Phase 2**, the Holder will review its books and records to identify/quantify past-due abandoned or unclaimed property reportable to Delaware for the in-scope entities and property types.

A Holder's methodology for the quantification of amounts due to Delaware will generally be based upon whether or not an entity is domiciled in the State of Delaware and the record availability for each entity and property type.

Entities Domiciled in a Jurisdiction other than Delaware

For entities domiciled in a jurisdiction other than Delaware, with no merger and acquisition history associated with a Delaware domiciled entity, abandoned or unclaimed property reportable to Delaware is generally limited to items for which the owner's, as defined in 12 *Del. C.* 1130(16), last known address was in Delaware. There is no estimation involved for non-Delaware domiciled entities. A Holder only reports items with a Delaware address which cannot be resolved through research and/or remediation. Property types and periods without records or names and address would not be reportable to Delaware for non-Delaware domiciled entities.

Delaware Domiciled Entities

For legal entities in the Holder's organizational structure that were domiciled in Delaware at any point during the look-back period, including any Delaware domiciled entities acquired during the look-back period, reportable property would include any unaddressed or unknown property, including estimated property (for periods with incomplete records as detailed below), foreign-addressed property, or Delaware-addressed property.

Complete and Researchable Records

For those property types and periods of time for which a Holder has records, the Holder's review should be conducted as follows:

- Holder should identify items for the particular property type with Delaware, foreign, or unknown addresses.
- Each item would be reportable to Delaware unless resolved through remediation.
- Holder has the opportunity to research and remediate items as abandoned or unclaimed property.
- For items not remediated, Holder would perform due diligence.
- Items identified above and not remediated would be reportable to Delaware.

Incomplete Records

For the entities, property types, and years for which an in-scope Delaware Domiciled Holder does not have complete and researchable records, the Holder may be required to estimate abandoned or unclaimed property liabilities reportable to Delaware. DOS has issued regulations for estimation which can be found on the SOS VDA website: <http://vda.delaware.gov/laws-guidelines/>.

If a Holder is deviating from the guidelines as presented in this document and the SOS VDA Program Regulations, the Holder should discuss its proposal for estimation with the Administrator prior to commencement.

The following items should be considered for each property type and legal entity prior to quantification:

Population

During the Scoping phase, the Holder has determined for what periods complete and researchable records are available by legal entity and property type. The entire population of potentially dormant items for each specific property type for the periods where complete and researchable records are available should be scheduled. When available, this schedule should include owner/payee name, address, amount due, date of transaction, and other information pertinent to the item. It may also include accounting and other codes used by the Holder.

Remediation

The Holder has the opportunity to research each of the items to determine whether the items are truly owed. If the population is too large a statistically valid sample may be researched. Documentation supporting the resolution of an item as unclaimed property, referred to as remediation, should be retained. The Administrator will request copies of remediation support during **Phase 3 – SOS VDA Submission and Validation**.

Estimation

If the Holder does not have complete and researchable records for the entire look-back period, then estimation for the in-scope Delaware legal entities will be necessary. The SOS VDA Program Regulations should be consulted for information concerning the State's expectations for estimation. This document can be found on www.VDA.Delaware.gov under the section entitled "Laws & Guidelines."

In order to estimate, an error ratio is calculated using the results after remediation. Holders must select a base period of at least the two oldest continuous years (typically dormant years) when complete and researchable records are available.

If the population in the base period is too large, a sample may be selected for research and remediation. The sample should be selected from the entire population which includes both Delaware and non-Delaware addressed items. The sample should be randomly selected and statistically valid. The Holder should be able to provide supporting documentation confirming the total population (e.g., a tie-out to the general ledger balance). The standard used for determining a statistically valid sample is 90% Confidence Level and 10% Margin of Error.

An error ratio is calculated using all of the identified reportable unclaimed property (Delaware and non-Delaware items) in the base period, which is then divided by some agreed-upon known figure (e.g., total revenue for accounts receivable, total payroll for payroll, and total cash disbursements for all accounts payable, etc.). That error ratio is then applied to the same denominator used in calculating the error ratio for the period the Holder does not have complete and researchable records, which creates an estimated liability.

The application of the error ratio to periods where complete and researchable records do not exist will result in the estimated amount reportable to Delaware.

Phase 2 - Deliverables

Holder and Administrator:

- Communicate during this Phase to ensure that the Holder's deadlines can be reached.
- Schedule periodic status updates, which can be accomplished via conference calls, meetings, and/or emails.

Holder:

- Presents any questions to the Administrator, who should be available to address any questions or concerns which may arise during the course of the Holder's review.
- Presents any preliminary quantification schedules and/or other documentation for review by the Administrator.

Administrator:

- Reviews documentation provided by Holder and provides feedback.

DOS:

- Communicates with the Administrator regarding the status of the Holder's SOS VDA.
- Available to address any questions or concerns.

Phase 3 - SOS VDA Submission and Validation

The purpose of this phase is for the Administrator to review the work performed and the conclusions reached by the Holder, with the goal of the Holder and the Administrator coming to a settlement agreement with regard to the amount determined to be reportable to Delaware. The Administrator will then present the SOS VDA Submission to the Secretary of State for review and approval.

Holder Narrative

The Holder presents its SOS VDA Submission to the Administrator. The SOS VDA Submission should include the following, some of which should be included in a narrative form:

- Entity or Company background information (in narrative form)
- Summary of the work performed (in narrative form)
- Summary of findings (in narrative form)
- Supporting schedules
- Supporting documents
- Other applicable documentation (e.g., legal opinions, management representation letters, etc.)

See ***Appendix B*** for a sample table of contents for the Holder's narrative.

Quantification Schedules

The Holder is required to provide schedules quantifying the amounts reportable to Delaware. The following should be noted:

- A schedule should be provided detailing the total population for each property type. This schedule should have a reconciliation which ties the total on the spreadsheet to the general ledger account balance of the applicable trial balance. This analysis should be performed and presented to confirm completeness.
- A schedule should be provided detailing the population or sample selected and the results of the research and remediation with a reference to the supporting documentation which may clear an item as unclaimed property.
- Information should be provided and visible concerning the quantification of the error ratio (i.e., calculations should not be embedded in a cell). When the error ratio is calculated, the error should be presented by year along with the associated base for that period (i.e., the total error should not be included in one consolidated amount, as this makes it difficult to verify and review).
- An extrapolation schedule should be prepared showing the quantification of the estimated amount by year.

- A summary schedule should be prepared which details the amounts reportable by legal entity and property type. References to the sub-schedules would be appreciated.
- A schedule should also be prepared of the line item detail which will be reported. This should consolidate all of the items being reported as unclaimed property in a readable format (e.g., excel), similar to the information to be uploaded via the NAUPA file. NAUPA file will be discussed in greater detail in **Phase 4**.

Other items which should be noted include the following:

- Schedules should be provided in an unprotected spreadsheet format for Administrator review.
- Extraneous schedules, which are not pertinent to the Delaware SOS VDA, should not be provided.

In the course of review of the SOS VDA Submission, the Administrator may require the Holder to submit additional materials or documentation. Examples of the documentation required to support the SOS VDA Submission are provided in **Appendix C**.

Note: Settlement agreements are negotiated between the Secretary of State and a Holder based upon the facts and circumstances as presented in the SOS VDA Submission. Consequently, settlements should not be viewed as confirmation of Delaware's position in the future with regard to any issue or matter.

Phase 3 - Deliverables

The following details the deliverables expected by each party at the end of **Phase 3**.

Holder:

- Submits the SOS VDA Submission to the Administrator for review. The SOS VDA Submission should include a narrative identifying key issues related to the Holder's background, the analysis performed and the conclusions reached. This narrative should be accompanied by quantification schedules.
- Responds to the Administrator's questions, which may include written documentation related to a matter, providing supporting documentation to answer a question and/or edits and updates to calculation spreadsheets.
- Preparation of a management representation letter by Holder's CFO (or other authorized officer) describing what records are available for which property types and what years.
- Communicates with Administrator in person or via email and/or conference call.

Administrator:

- Reviews the Holder's SOS VDA Submission.
- Presents questions and follow-up items to the Holder.
- Communicates in person or via email and/or conference call with Holder.
- Makes recommendations to the Secretary of State for closing of the VDA.

DOS:

- Reviews the Holder’s SOS VDA Submission and the recommendations made by the Administrator (the State’s vendor).
- Communicates with the Administrator regarding the status of the Holder’s SOS VDA.
- Available to address any questions or concerns.

Phase 4 - Closing Process and Documentation

The purpose of this section is to outline the closing process and to identify the relevant documents required as attachments to **Form VDA-2 – Voluntary Self-Disclosure Agreement (“Form VDA-2”)** when finalizing a Delaware VDA with the State.

Once the executed **Form VDA-2** has been received along with the associated exhibits, the Secretary of State will countersign the **Form VDA-2** and a Demand Letter will be issued via email to the Holder Contact identified on the **Form VDA-2**.

The Holder will have 10 days to make payment of the amount due. Payment can be made via check or electronic transfer (ACH or wire). Information related to specific payment methods will be provided in the Demand Letter.

Attachments to the VDA-2

The following documents are required attachments to **Form VDA-2**:

- **Exhibit A – List of Entities** – All entities included in the SOS VDA should be listed along with each entity’s federal employee identification number (FEIN). Date of incorporation and state of incorporation are optional but highly recommended. Sample of Exhibit A is provided.
- **Exhibit B.1 – Summary of Amounts Due** – Exhibit B.1 provides a table for use by the Holder to summarize the amounts reportable under the SOS VDA by property type. The total should tie to the amounts detailed in the SOS VDA Submission and associated supporting schedules. This table can be used or replaced by a Holder-prepared summary spreadsheet.
- **Exhibit B.2 – Line Item Owner** – Line item detail should be provided in a printed, readable format for all property included in the SOS VDA. This data should replicate the name, address, property type, and amount that will be included in the National Association of Unclaimed Property Administrators (“NAUPA”) Standard Electronic File format (“NAUPA file”). The NAUPA file will be uploaded by the Holder/Advocate directly to the DOF website once a Demand Letter is issued. See “Processing of the NAUPA File” below for additional details.

- **Exhibit C – SOS VDA Submission** – This attachment may consist of many documents and should include, but not be limited to, the following: (i) narrative written by Holder and/or Advocate summarizing the VDA analysis (required); (ii) summary and detailed schedules prepared to quantify amounts (required); (iii) copy of VDA-1 and any applicable amendments (required); (iv) management representation/records availability letter (printed on company letterhead, signed by an authorized entity representative or officer of the company and notarized (required); (v) legal opinions/memoranda related to the VDA (if applicable); and (vi) any other relevant documents and/or attachments to the narrative (if applicable).

Note: The date on each of the attachments should pre-date the officer’s signature of the VDA-2.

Preparation of the NAUPA File

The NAUPA file is used to process the SOS VDA payment. The NAUPA file must adhere to the following DOF formatting guidelines:

- **Aggregate Amounts** – These should only be utilized when all account information and any owner detail are truly unknown.
- **Estimated Amounts** – A separate line item in the NAUPA file should be provided for each property type for each year (e.g., Accounts Payable Estimate 2000, Accounts Payable Estimate 2001, Payroll Estimate 2000).
- **Gift Cards, Stored Value Cards, Customer Credits, etc.** – A separate line should be provided for each gift card, etc. even if the owner is unknown. Each line item should include any identifying number (e.g., gift card number) along with the outstanding amount and any reduction taken.
- **Owner Unknown/Address Unknown (including estimated amounts)** – If information is truly unknown, name and address fields should have the word “unknown” input into those fields.

For additional information concerning the NAUPA file, see the DOF’s Delaware Reporting Handbook:

https://delaware.findyourunclaimedproperty.com/docs/Escheat%20Holder%20Reporting%20Handbook_Rewrite_022018.pdf

Processing of the NAUPA File

After **Form VDA-2** with attachments has been signed by both the Holder and the Secretary of State, a Demand Letter will be issued by DOS. The Demand Letter will request payment and provide instructions for payment and for uploading the NAUPA file via DOF’s secure website. This alleviates the need for the Holder/Advocate to provide DOS with the NAUPA file via disk or any other means. The following website should be used to upload the NAUPA file directly to DOF’s website:

<https://delaware.findyourunclaimedproperty.com/>

A confirmation will be provided to the Holder by DOF when the NAUPA file is successfully uploaded (hereinafter referred to as “NAUPA Upload Confirmation”). A copy of the NAUPA Upload Confirmation should be retained and must be provided to DOS as detailed below in the “Processing of the Payment” section.

Processing of the Payment

Once the demand for payment is made, the Holder should alert DOS as to how and when payment will be made pursuant to the instructions in the Demand Letter (e.g., check, wire, or ACH). At the time payment is made, the NAUPA file should also be uploaded to DOF’s website (see “Processing of the NAUPA File” above). A copy of NAUPA Upload Confirmation must be provided to DOS (preferably via email as instructed in the Demand Letter and Email) along with the payment details.

Phase 4 - Deliverables

The following details the deliverables expected by each party at the end of ***Phase 4***.

Holder:

- **Form VDA-2** executed by an authorized representative or officer of the company with attachments as described above.
- After **Form VDA-2** is countersigned by the Secretary of State and returned to the Holder with the Demand Letter, the following is required of the Holder:
 - NAUPA file uploaded to the DOF website.
 - NAUPA Upload Confirmation sent via email to DOS.
 - Payment of amounts reportable to Delaware.

DOS:

- **Form VDA-2** signed by the Secretary of State.
- Demand Letter sent via email to the Holder requesting payment of amount reportable to Delaware.
- Answer Holder questions concerning processing of VDA payments and post VDA compliance.

Post VDA Compliance

Pursuant to the terms of **Form VDA-2**, the Holder is required to file unclaimed property reports with DOF for the next three report years. The reports should be filed according to the instructions provided by DOF for each of the entities included in the VDA and/or its successor entity(ies).

DOF requires that all reports be filed electronically. DOF no longer accepts paper reports. Negative reports can be filed online to satisfy the three-year annual compliance requirement pursuant to the terms

of **Form VDA-2**. Negative reports are those reports which a Holder claims no abandoned or unclaimed property is due.

Post VDA Compliance - Deliverables

The following details the deliverables expected during ***Post VDA Compliance***.

Holder:

- Annual Unclaimed Property report.

State:

- Reminder emails sent at the beginning of each calendar year reminding the Holder of its annual three-year compliance obligation pursuant to the terms of **Form VDA-2**.

Legal Disclaimer: The materials contained herein are intended to provide information in regard to the subject matter covered. The Delaware Department of State is not engaged in rendering legal, accounting, or other professional services. If legal advice or other professional assistance is required, the services of a qualified professional should be sought.

**SOS VDA Program
Forms and Tools**

A list of the SOS VDA Program Forms and Tools are provided below. These forms can be found on the SOS VDA website, www.VDA.Delaware.gov.

Form Name	Purpose of Form
Form VDA-1 — Disclosure and Notice of Intent to Voluntarily Comply with Abandoned or Unclaimed Property Law pursuant to 12 <i>Del. C.</i> § 1173	Form to enroll Holders in the SOS VDA Program.
Holder Sample Timeline	Sample timeline providing an estimate of due dates for each of the phases during the SOS VDA Process.
Holder Sample Work Plan	Sample Work Plan demonstrating the State's expectation of the SOS VDA Process.
Information Request	Questionnaire seeking responses for an overview of the Holder's organization, operations, compliance history, and other relevant information for the SOS VDA process. To be used during <i>Phase 1 - Scoping</i> .
Scoping Worksheet	Worksheet is used to document Holder's record available by legal entity and property type. To be used during <i>Phase 1 – Scoping</i> to document the Holder's record availability by legal entity, property type, and years.
Form VDA-2 — Voluntary Self Disclosure Agreement	Form VDA-2, executed by an officer of the company, finalizes the Voluntary Self Disclosure Agreement between the Holder and the State. Form VDA-2 will be countersigned by the Secretary of State.
Advocate List	List of Advocates that have represented Holders in the SOS VDA Program.
SOS VDA Program Regulations	SOS VDA Program Regulations became effective on July 11, 2017. Regulations provide an overview of the estimation methodology expected under the SOS VDA Program and other VDA matters.
SOS VDA Program Guidelines	The SOS VDA Program Guidelines define the expectations of the SOS VDA Program.

Sample Table of Contents for Holder’s SOS VDA Narrative

- I. Holder Background
 - a. Date, state of incorporation, and EIN for each entity
 - b. Description of the various lines of business of the organization for each of the legal entities
 - c. Acquisition and divestiture history
 - d. Bankruptcies and impact on periods reported
 - e. Types of unclaimed property (“UP”) generated by each line of business
 - f. Accounting issues (including whether accounting departments are decentralized vs. centralized, and/or bank accounts utilized by more than one legal entity)
 - g. Past UP reporting, examination, and/or VDA history

- II. Scope of the SOS VDA
 - a. Entities included
 - b. Property types included and excluded, including reasons for exclusion
 - c. Record availability for each in-scope legal entity and property type

- III. Quantification – this section should be completed for each applicable property type
 - a. Base periods used to estimate liabilities for any period for which there are incomplete records
 - b. Explanation of whether the Holder tested the entire population of available records or a sample in calculating the UP liability, including a description of sample techniques
 - c. Summary of remediation efforts
 - d. Due diligence efforts utilized to reunite identified unclaimed property with rightful owners, including a sample due diligence letter
 - e. Detail of assumptions used in estimation calculations
 - f. Description any identified unclaimed property amounts excluded from estimation “error rate” calculations – for example, any exemptions and legal positions taken
 - g. Definition of the denominator used in estimation calculations for each property type (e.g., total revenues obtained from business tax returns)
 - h. Definition of the basis of the cost of goods sold percentage applied to merchandise gift cards/gift certificates
 - i. If applicable, discussion of the process of netting past customer bad debt write-offs and/or debits at other Holder divisions against outstanding customer A/R credits

- IV. Attachments
 - a. Revenues by Legal Entity and Year
 - b. Legal Opinions
 - c. Management Representation Letter

- V. Summary of the Total Presumed Liability
 - a. Detailed by property type – maybe used as Exhibit B.1 as an attachment to Form VDA-2

**Administrator Review
Sample Document Request**

During the course of the Administrator’s review, the Administrator may request various supporting documentation during its review of the Holder’s submission. The following list contains common documents requested, but is not exhaustive.

- Information concerning various accounting transactions
- Copies of journal entries
- Copies of trial balances, financial statements, etc.
- All unclaimed property identified and disposition of such items through due diligence and mitigation
- Summary of all items identified as escheatable
- Detailed computation of the “error rate” for use in computing estimated exposure
- Details of records reviewed and analysis performed on such records and results of such analysis
- Copies of remediation support
- Support for any assumptions or key values relied upon (e.g., cost of goods sold percentage applied to escheatable gift cards)
- Demonstrations of methodologies utilized
- Affidavits signed by management, legal counsel, or advocates regarding the scope of the SOS VDA and record availability
- Legal research and/or regulatory position memoranda