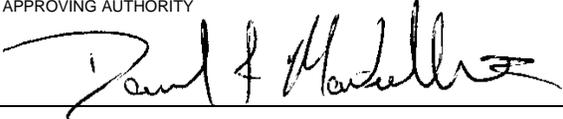


 Corrections and Community Supervision DIRECTIVE	TITLE Inmate Personal Property Claim		NO. 2733
			DATE 7/23/2015
SUPERSEDES DIR #2733 Dtd. 7/24/2014	DISTRIBUTION A B	PAGES PAGE 1 OF 7	DATE LAST REVISED 09/01/2016
REFERENCES (Include but are not limited to) State Finance Law, Sec. 8 (12) Directives #4911, #4912, #4913	APPROVING AUTHORITY 		

- I. DESCRIPTION/OVERVIEW:** This directive sets forth the claim filing and processing procedure for inmates who file claims to recover the value of personal property which has been lost, damaged, or destroyed while they have been under custody of the Department of Corrections and Community Supervision (DOCCS). Such claims may originate from (1) acts of other inmates, or (2) improper acts or omissions of DOCCS employees or agents. An inmate will be required to release New York State from further liability for a specific loss if he or she elects to accept a payment offered under this administrative mechanism.

It is DOCCS policy:

- To pay legitimate claims promptly and in reasonable amounts
- To expeditiously reject claims that are without merit
- To use claims as a management tool to identify problem areas, and take corrective action

II. ADMINISTRATIVE INMATE PERSONAL PROPERTY CLAIM REVIEW PROCESS:

DOCCS has a two-tier system of administrative review for inmate personal property claims. The system is intended to resolve as many claims as equitably and promptly as possible to reduce the number of claims handled by the Court of Claims.

A. Initial Review: All claims are filed with and reviewed by the Deputy Superintendent for Administration (DSA) or functional equivalent. This claim reviewer is responsible to ensure the claim is processed within the guidelines set forth in Sections III, IV, and V. The claim reviewer makes the initial decision to deny or approve the claim and communicates that decision, in writing, to the inmate claimant by completing Part 3 of [Form #1421](#), "Inmate Claim Form."

B. Appeal: If the inmate claimant desires further review, he or she may appeal as follows by completing Part 4 of [Form #1421](#).

- Appeal of Claims up to \$500: The appeal shall be reviewed and decided by the facility Superintendent or designee.
- Appeal of Claims over \$500: The appeal shall be made to the Division of Budget and Finance, Office of Inmate Accounts.

The claim appeal reviewer shall examine the entire record, secure additional information as needed, and render a decision by completing Part 5 of [Form #1421](#). The initial claims decision may be reversed only when principles outlined in Sections II, IV, and V were not completely observed.

No further administrative review is available after appeal. The remaining option is pursuing the claim in the Court of Claims, provided the administrative remedy established by this directive is exhausted and provided such claim is filed and served within 120 days after the date on which the administrative remedy is exhausted, as provided by law.

III. PROCEDURAL GUIDELINES/REFERENCES

- A. Timeframes: The inmate claimant must report the loss as soon as possible after its discovery. The report should be made in writing to the inmate's Block Officer, Area Sergeant, or other area supervisor and noted in the area logbook. Failure to timely report the loss increases the likelihood that the claim will be rejected. Chances of recovery or an accurate determination of the cause of the loss are best when losses are promptly reported. Documentation of the loss report and the recovery efforts will greatly assist claim processing.
1. Within Five (5) Days: The inmate must file [Form #1421](#), "Inmate Claim Form," within five (5) working days after the discovery of loss with the facility DSA or functional equivalent. This time frame should be interpreted with some flexibility. There may be extenuating circumstances which would call for discretion to excuse late filing, including but not limited to:
 - a. The inmate was in transit at the time of the loss, in an outside hospital, enroute to a new facility, or in restricted housing where access to required proof and forms may be limited;
 - b. The inmate was ill or otherwise unable to pursue the claim;
 - c. It was unclear whether a loss had occurred, for example, facility staff indicates it is still checking to find the property in question; or
 - d. Other unusual situations.
 2. Initial Review: The initial review of the claim should be completed within fifteen (15) working days of receipt by the reviewer and include written notification to the inmate on the status of the claim and requests for any information needed from the inmate to continue the claim process.
 3. The claim's status will be reviewed thirty (30) days after the initial review is completed as a follow-up to its progress. The inmate will receive written notification of its status at this time.
 4. Decision: A claim must be disposed within three (3) months.
 5. Appeal: An inmate must file a claim appeal within five (5) working days after disapproval of the claim. Failure to file within this time frame may result in the case being closed. The claim appeal review must be completed within fifteen (15) working days from receipt by the reviewer.
- B. Claim Processing Procedures
1. The facility in which the inmate is housed at the time the claim is filed is responsible for investigating and processing all forms which must be completed in accordance with this directive. In case of transfer, the facility in which the loss occurred must cooperate with the processing facility and provide investigative assistance as requested.

2. Claim Limits/Statutory References/Loss resulting from:
 - a. Actions of another inmate: \$350 limit - See Section 8(12), State Finance Law; or
 - b. Tort of Officer or employee: \$5,000 limit - See Section 8(12-A), State Finance Law.

3. The facility in which the claim was filed is responsible for payment of any approved claim. The inmate shall sign the "Release" section of [Form #1144](#), "Claim and Release Form," upon acceptance of the offer set forth in an approved claim.
 - a. Claims up to \$1,000: All approved claims \$1,000 or under are to be paid from facility appropriations. All support forms, investigation reports, etc., must be retained by the facility for post audit review.
 - b. Claims over \$1,000: All claims approved at the facility level for over \$1,000 must be reviewed and approved in sequence by the Superintendent, Division of Budget and Finance Office of Inmate Accounts, and the Attorney General (AG). After summarizing the investigation in the "Claim" section of [Form #1144](#), the Superintendent shall insert a statement that the replacement costs and damages proposed by the claimant have been examined and found to be reasonable and proper, and then sign the form. The completed [Form #1144](#), and all related documentation, shall then be forwarded to the Division of Budget and Finance Office of Inmate Accounts. Upon approval, the Office of Inmate Accounts will forward the package on to the AG. If the AG approves, the Office of Inmate Accounts will return the package to the facility which will then process the voucher to the Office of the State Comptroller (OSC) for payment.

The following approvals are required:

	Claims		Appeals	
	0-1000	1001-5000	0-500	501-5000
Facility DSA	•	•		
Facility Superintendent		•	•	
Dep. Commissioner Admin. Svcs.		•		•
Department of Law		•		•*
State Comptroller	•	•	•	•

* If over \$1,000.

IV. GENERAL PRINCIPLES: The following principles must be applied to the claim review process:

- A. Requirements: In order to approve payment of a claim for the loss of an inmate's personal property, the reviewer must determine:
 1. That the inmate has made a timely claim;

2. That the inmate has satisfactorily proved ownership or authorized possession of some or all of the property;
 3. That DOCCS or its agents have been negligent and that such negligence caused the loss of some or all of the property;
 4. Whether or not the inmate contributed to the loss of the property; and
 5. What is the proper amount to be paid.
- B. Timeliness Issues: Section III requires the inmate to report the loss as soon as possible after the discovery of the loss and to file the claim within five (5) working days after the discovery of the loss.

This time frame should be interpreted with some flexibility. There may be extenuating circumstances which would call for discretion to excuse late filing, including:

1. The inmate was in transit at the time of the loss, in an outside hospital, enroute to a new facility, in restricted housing where access to required proof and forms may be limited, or the inmate was ill or otherwise unable to pursue the claim;
 2. It was unclear whether a loss has occurred, for example, facility staff indicates it is still checking to find the property in question; or
 3. Other unusual situations.
- C. Ownership or Possession: Ownership or possession of the items claimed must be proved in some reasonable fashion. In this regard copies of the following are acceptable:
1. Package room receipts;
 2. Mailroom receipts;
 3. Commissary receipts; or
 4. [Form #2064](#), "Personal Property Transferred," (see Directive #4913, "Inmate Property") and related records.

Other appropriate proof may be accepted as long as it adequately describes the item and indicates authorized possession by the inmate claimant. The Courts sometimes accept oral proof for good reasons; DOCCS may do so too.

- D. Liability of DOCCS or its Agents: There are two kinds of circumstances in which to evaluate liability: (1) The property was last known to be in the control of the inmate; or (2) The property was last known to be in the control of DOCCS or its agents.
1. Property Last in Control of Inmate: When property is last in the control of the inmate claimant, for example, in the inmate's cell or locker, or on the inmate's person, there is no presumption that its unexplained loss is the fault of DOCCS or its agents. Nonetheless, there may be an explanation which shows that the loss was caused by the negligence of DOCCS or its agents. DOCCS staff would be negligent if it failed to carry out in an acceptable way its responsibility to take reasonable steps to protect the inmate's property.
- Examples of negligence by DOCCS or its agents include, among other things:
- a. Failure to follow required procedures which permit another person to steal, damage, or destroy an inmate's property; or
 - b. Negligently creating a flood, fire, or other accident which causes a loss.

2. Property Last in Control of DOCCS

- a. General: When an inmate's property is last in the control of DOCCS or its agents, and DOCCS fails without good explanation to deliver it to the inmate or the inmate's designee in the same condition as when received by DOCCS, then there is a rebuttable presumption that DOCCS is responsible for the loss. In order to rebut the presumption of responsibility, it must be shown to the reviewer that all DOCCS staff whose duty it was to protect the inmate's property carried out their duties in an acceptable way. If that is not shown or if it is shown that DOCCS staff failed to meet its responsibilities, then DOCCS will be deemed to have been negligent and, therefore, responsible.
- b. Shipment: When an inmate's property is lost in the process of shipment from a DOCCS facility by DOCCS staff there is a rebuttable presumption of negligence by DOCCS. The presumption may be rebutted if the investigation shows, for example:
 - (1) That DOCCS did not receive the property for shipment;
 - (2) That DOCCS received the property but delivered it to a shipper who could reasonably be expected to deliver it in good condition to its intended destination; or
 - (3) That the property was received at its intended destination in the same condition as when received by DOCCS.

E. Comparative Liability of the Inmate Claimant: If investigation reveals there was negligence both by DOCCS or its agents and the inmate claimant which contributed to the loss, the claim reviewer must determine "comparative fault" and use that percentage in calculating the proper amount to be paid. For example, if the investigation reveals that the inmate contributed 75% to the loss and DOCCS 25%, then the reviewer should approve payment of no more than 25% of the amount which would otherwise be approved.

F. Valuation and Proper Amount to be Paid

1. General: The value of property is a reasonable level of compensation, taking into consideration the age, condition, original cost, and market value of the items. In the case of damaged property, the value is the lower of: (1) The cost to repair or restore the property to its condition at the time of loss; or (2) The cost to replace the property considering its age and condition. If DOCCS replaces an item, the old item will be confiscated and disposed of as indicated on [Form #2068](#), "Authorization for Disposal of Personal Property," (see Directive #4913).

The proper amount to be paid must be no more than the reasonable value of the property. There are circumstances when the proper amount to be paid should be less than the value of the property.

If the value of an item which the inmate was permitted to possess exceeds the limitations of Directives #4911, #4912, or #4913 then the proper amount to be paid for that item is no more than the amount of the applicable limitation. If such an item is in DOCCS control because the inmate is not permitted to possess it, then the amount to be paid for the loss of the item may exceed the limitations of the directives.

- Refer to Directive #4911, "Packages & Articles Sent or Brought to Facilities," Directive #4912, "Maintenance of Living Quarters," and Directive #4913, "Inmate Property." These directives should be uniformly enforced to limit cost and the amount of inmate personal property in the facility.
2. **Items of Sentimental or Artistic Value:** It is not possible to evaluate the "sentimental value" of items such as personal photographs, writings, or mementos or the "artistic value" of personal artwork or handicrafts. Such items can only be evaluated for their intrinsic value unless there is some proof of actual market value, such as an appraisal of a painting.
 3. **Lost Legal Papers:** If the lost legal papers can still be used in a pending or future legal proceeding, then the loss may be compensated by either replacing the papers or paying the reasonable cost to reproduce them. If an inmate claims that there is a cost to reproduce the lost papers, then the inmate should produce an estimate for the cost to reproduce the lost papers, which normally should not exceed the cost shown in the bill for the original papers.
 4. **Payment:** The amount to be paid on a claim for personal property damaged or destroyed by another inmate of a DOCCS institution shall not exceed \$350 (see State Finance Law Section 8(12)).

The amount to be paid on a claim for loss, damage, or destruction of personal property caused by the tort of a DOCCS Officer or employee while acting as such Officer or employee shall not exceed \$5,000 (see State Finance Law Section 8(12-a)).

The amount to be paid should not exceed the amount requested by the inmate. However, the reviewer may approve payment of an amount less than that requested by the inmate. If the inmate accepts an offer of a lesser amount, the claim will be processed for that amount. If the inmate does not respond to the offer within fourteen (14) days, it will be deemed a rejection of the offer and the claim will be considered closed.

The amount of any claim payment must be reduced from the value of the property by the amount of any insurance payment or other compensation received from other sources.

The proper amount to be paid as so limited or so reduced must be further reduced to take account of any comparative liability of the inmate claimant (see Section IV-E).

Claim payments to inmates will be deposited to their ICAS account by using ICAS Code 304 – Transfer Funds.

- V. INVESTIGATION REPORT:** Investigations are the key to the entire system of inmate personal property claims review. [Form #1422](#), "Claim Investigation Report," must be filled out completely.
- A. The object of the claims investigation is an impartial and thorough determination of facts. It must:
 1. Thoroughly and impartially examine the inmate's assertions;
 2. Determine whether the inmate's statements are wholly or partially supported by any other evidence;

3. Question all persons who could reasonably have information pertinent to the determination of facts;
4. Obtain signed and dated statements of all individuals questioned and include the statements in the record;
5. Determine whether the inmate secured the personal property appropriately and whether the inmate contributed to the loss in any way (see also Section IV-E);
6. Find out where the property was at the time of loss and who was responsible for the property at the time. Get a signed statement from the individual who was responsible for the property and include the statement in the record;
7. Ensure that the claim was filed in a timely manner;
8. Verify that the inmate adequately proved ownership of the property; and
9. Determine what is a reasonable level of compensation.

It is the responsibility of the claims reviewer to review the investigation report to ensure its completeness. Incomplete investigation reports must be returned for further information.

- B. At the second tier appeal stage, the lack of a complete investigation report is reasonable grounds for supporting the original claim. It is, therefore, critical that such investigation reports are done correctly at the initial claims review stage.

VI. ANNUAL REPORT - INMATE PROPERTY CLAIMS: Facilities are required to provide annual reports of inmate property claims to the Division of Budget and Finance, Office of Inmate Accounts. The annual report will reflect the period of April 1 through March 31 and will be due each year on April 15. The report will include the information on each claim as outlined on [Form #2733D](#), "Claims Log."