

Asset Forfeiture: Judicial Forfeitures

September 2021

By Steve Jones

Assistant District Attorney, 30th at Memphis

Steve.Jones@scdag.com

Sources of Forfeiture Procedure:

“Proceeds”	39-11-701 et seq. – Judicial
“Conveyances”	30-33-101 et seq. – Judicial
“Dept. of Safety”	40-33-201 et seq. – Administrative

Proceeds – 39-11-701 et seq.

Scope / Purpose / Legislative Intent / Public Policy – Forfeiture law

- 39-11-717 This law pertaining to the forfeiture of property is remedial and shall be liberally construed to effect its purpose.
- 39-11-701 “Legislative Intent”
- (a) The general assembly finds and declares that an effective means of deterring criminal acts committed for financial gain is through the forfeiture of profits and proceeds acquired and accumulated as a result of such criminal activities.
 - (b) It is the intent of the general assembly to provide the necessary tools to law enforcement agencies and district attorneys general to punish and deter the criminal activities of professional criminals and organized crime through the unitary enforcement of effective forfeiture and penal laws. It is the intent of the general assembly, consistent with due process of law, that all property acquired and accumulated as a result of criminal offenses be forfeited to the state, and that the proceeds be used to fund further law enforcement efforts in this state.
 - (c) It is further the intent of the general assembly to protect bona fide interest holders and innocent owners of property under this part. It is the intent of the general assembly to provide for the forfeiture of illegal profits without unduly interfering with commercially protected interests.

What is subject to seizure and forfeiture?

- 39-11-703 (a) Any property, real or personal, directly or indirectly acquired by or received in violation of any statute or as an inducement to violate any statute, or any property traceable to the proceeds from the violation, is subject to judicial forfeiture, and all right, title, and interest in any such property shall vest in the state upon commission of the act giving rise to forfeiture.
- 39-11-703 (b) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of a violation of the following laws shall be subject to judicial forfeiture:
- (1) A conviction for a violation of § 39-17-417(i) or (j) [A or B felony drugs] or the commission of three (3) or more acts occurring on three (3) or more separate days within a sixty-day period, and each act results in a felony conviction under chapter 17, part 4 of this title; or
 - (2) The commission of three (3) or more acts occurring on three (3) or more separate days within a sixty-day period, and each act results in a conviction for promoting prostitution under chapter 13, part 5 of this title.
- 39-11-703 (b) [virtually all property, including real property that is used in conjunction with or is proceeds of a violation of Involuntary labor servitude; Trafficking for forced labor or services; or Trafficking for commercial sex act.]
- 39-11-708(g) Property subject to forfeiture may be located in any county or state. Upon a finding by the court that the evidence establishes that the property is subject to forfeiture, the judge shall enter a judgment of forfeiture of all property subject to forfeiture and shall order that title to the property be vested in the state of Tennessee from the date that the conduct that gave rise to the forfeiture occurred, subject to any exemptions provided for in this part.

Notice of Seizure

39-11-707

Upon seizure of property for forfeiture under this part the seizing agency “shall cause to be delivered a written receipt and notice of seizure to the possessor, owner and interest holder as determined by public records.”

“The notice shall list and describe generally the property seized, the agency or official responsible for the seizure and shall state the procedure for obtaining return of the property.”

Forfeiture Warrant

39-11-701(c)

“No forfeiture action for personal property may be filed without the issuance of a forfeiture warrant.”

“the seizing agency shall within five (5) working days, apply ex parte for a forfeiture warrant from a judge authorized to issue a search warrant. . . .The warrant shall be based upon proof by affidavit that there is probable cause that the owner's interest in the seized property is subject to forfeiture.”

“In the event a forfeiture warrant is not issued, then the property shall immediately be returned unless the property is to be retained for evidence in a criminal proceeding.”

Where do you file a proceeds forfeiture action?

39-11-705

Jurisdiction:

general sessions, chancery, circuit court and criminal courts

Venue:

The judicial district in which part of the property is found or
The judicial district in which a criminal prosecution could be maintained
against the owner for the conduct giving rise to the forfeiture.

39-11-708

(f) Property subject to forfeiture may be located in any county or state.

Statute of Limitations – defense motions

39-11-708

The forfeiture action shall be commenced within five (5) years after the conduct giving rise to forfeiture terminates or the cause of action accrues, whichever is later.

The Complaint

39-11-708

The complaint shall state a description of the property to be forfeited and the reasons for forfeiture under this part.

If personal property is sought to be forfeited, the complaint shall state the date the forfeiture warrant was issued. However, no complaint shall be dismissed for defects or insufficiencies in the forfeiture warrant.

Notwithstanding any other law, no other claims, pendent claims or counterclaims may be filed in an action for forfeiture under this part.

Service of the Complaint

39-11-708

The complaint shall be served by registered mail at the last known address of the owner, if known, or the person in possession at the time of seizure. . . . An interest holder shall, however, be served with the complaint for forfeiture prior to any disposition of the property.

Who are the parties to a forfeiture case?

39-11-708(a) If real or personal property is subject to forfeiture under this part, the attorney general may initiate an *in rem* forfeiture proceeding. . . .

“*In rem*” *A lawsuit against an item of property, not against a person (in personam). An action in rem is a proceeding that takes no notice of the owner of the property but determines rights in the property that are conclusive against all the world.*

39-11-702: “Owner” means a person, other than an interest holder, who has an interest in property.

“Interest holder” means secured party....a mortgagee, lien creditor,

The Claim / Answer

39-11-709(a) Only an owner or interest holder may make a claim for return of property seized for forfeiture or otherwise contest the forfeiture under this part.

Default Order

39-11-708(b) In the event the owner or possessor of the property does not answer the complaint, the state may move for a default judgment.

Forfeiture Order [after hearing]

39-11-708(f) Upon a finding by the court that the evidence establishes that the property is subject to forfeiture, the judge shall enter a judgment of forfeiture of all property subject to forfeiture and shall order that title to the property be vested in the state of Tennessee from the date that the conduct that gave rise to the forfeiture occurred, subject to any exemptions provided for in this part.

39-11-708(g) Upon entry of the judgment of forfeiture and the recording of the judgment in the county and state where the property is located, title to the property shall vest in the state and shall thereafter be disposed of as provided for in §§ 39-11-713 and 39-11-714.

If the property cannot be located or is beyond the jurisdiction of the court, the court shall enter a judgment against the owner equal to the value of the

property ordered to be forfeited. The court may use its contempt powers to enforce any orders of forfeiture of property located beyond the jurisdiction of the court, and other orders in furtherance of the purpose of this part.

39-11-705 Any court with jurisdiction pursuant to this section may issue and cause to be served in any other judicial district such process as may be required to bring before the court the property that is the subject of the forfeiture action.

The Hearing: Burden of Proof

39-11-708 (c)The state shall have the burden to prove by a preponderance of the evidence that the property is subject to forfeiture under this part....

Order of Forfeiture

39-11-708(g) the judge shall enter a judgment of forfeiture of all property subject to forfeiture and shall order that title to the property be vested in the state of Tennessee...

Criminal Procedure

39-11-708(d) If real or personal property of a criminal defendant is to be forfeited as part of a criminal prosecution, the indictment or information must contain notice in a separate count that the state will seek forfeiture of property under this part and all property subject to forfeiture must be generally described within the separate count.

By agreement of the state and the defendant, a general sessions court may enter upon the judgment of the case that the property is to be forfeited or returned.

CONVEYANCES: 40-33-101 et seq.

40-33-101

(a) Except as provided in subsection (b), where there is a final judgment of conviction, in the discretion of the court, conveyances, including vehicles, aircraft or vessels, are subject to forfeiture if used in the commission of:

- (1) Any offense under title 39, chapter 13, part 5 [Sexual Offenses];
- (2) Any robbery offense under title 39, chapter 13, part 4;
- (3) A burglary, aggravated burglary, or especially aggravated burglary offense under title 39, chapter 14, part 4; or
- (4) A felony theft offense under title 39, chapter 14, part 1.

40-33-103

In the event of seizure pursuant to § 40-33-102, proceedings under §§ 40-33-104 and 40-33-107 shall be instituted promptly.

40-33-104

(a) A conveyance taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, internal affairs director or internal affairs special agent of the department of correction, or constable subject only to the orders and decrees of the circuit or criminal court.

(b) When a conveyance is seized under this part, the seizing authority may:

- (1) Place the conveyance under seal;
- (2) Remove the conveyance to a place designated by the court having jurisdiction over the property; and/or
- (3) Require the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, internal affairs director or internal affairs special agent of the department of correction, or constable to take custody of the conveyance and remove it to an appropriate location for disposition in accordance with law.

40-33-107

In all cases of seizure of any conveyance subject to forfeiture under this part, the procedure shall be as follows:

(1) The officer or other person making the seizure shall deliver to the person, if any found in possession of the seized conveyance, a receipt. The receipt shall state a general description of the seized conveyance, the reasons for the seizure, the procedure by which recovery of the conveyance may be sought, including the time period in which a claim for recovery must be presented, and the consequences of failing to file within the time period. If the person found in possession of the conveyance is not the sole unencumbered owner of the conveyance, the court having jurisdiction over the property shall make a reasonable effort to notify the owner or lienholder or both of the seizure by furnishing all parties known to have an interest in the conveyance with a copy of the receipt. A copy of the receipt shall be filed with the clerk of the court having jurisdiction over the property and shall be open to the public for inspection;

....

(3) Any person claiming any conveyance so seized may, **within fifteen (15) days after receipt of notification of seizure**, file with the court a claim in writing, requesting a hearing and stating the person's interest in the conveyance seized. The claimant shall also file with the claimant's claim a cost bond with one (1) or

more good and solvent sureties in the sum of two hundred fifty dollars (\$250), the bond being made payable to the state. An indigent person may file the indigent's claim in forma pauperis by filing with the indigent's claim affidavit stating that the indigent is unable to bear the cost of the proceeding;

40-33-108

(a) Whenever in any proceeding under this part, a claim is filed for any conveyance, the court shall not allow the claim unless the claimant proves that:

(1) The claimant has an interest in the conveyance, as owner or otherwise, which the claimant acquired in good faith; and

(2) The claimant never had knowledge or reason to believe that the conveyance was used in the commission of a robbery offense under title 39, chapter 13, part 4, or felony theft under title 39, chapter 14, part 1.

(b) Pending any proceeding to recover a conveyance seized under this part, the court may order delivery thereof to any claimant who shall establish the claimant's right to immediate possession thereof, and who shall execute, with one (1) or more sureties approved by the court, and deliver to the clerk of the court, a bond in favor of the state and for the payment of a sum double the appraised value thereof as of the time of the hearing, and conditioned further that, if the conveyance is not returned at the time of hearing, the bond shall stand in lieu of and be forfeited in the same manner as the conveyance.

(c) Within the discretion of the court, the claimant may be awarded possession of the confiscated conveyance pending an appeal of any adverse decision; provided, that the claimant shall be required to execute a bond payable to the state in an amount double the value of the property seized, the sureties to be approved by the court. The condition of the bond shall be that the obligors shall pay to the state, through the court, the full value of the conveyance seized, unless upon an appeal the decision of the court shall be reversed and the property awarded to the claimant.

40-33-109

If no claim is interposed, the conveyance shall be forfeited without further proceedings and the conveyance shall be sold or disposed of as provided in this part. The procedure in § 40-33-108 is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas or in any other manner.