

Model Policy For Forfeiture of Assets By Law Enforcement Agencies

I. POLICY STATEMENT

The Kentucky Controlled Substance Act, KRS 218A. 410 et seq, authorizes law enforcement agencies to seize and forfeit any property or contraband article which has been used, is being used, or was intended to be used in violation of any provision of the Act. It is the policy of the law enforcement agencies in this state to utilize the forfeiture provisions to the fullest extent possible in order to impact upon crime, yet protect innocent owners, while providing law enforcement agencies with the maximum amount of economic benefit for the continued enforcement of the Kentucky Controlled Substances Act.

II. PURPOSE

The purpose of this policy is to standardize the law enforcement policies and procedures used in seizing, maintaining, and forfeiting assets pursuant to the provisions of law, and to ensure that seized property is seized and maintained in an efficient and lawful manner. The provisions contained in this policy are intended to serve as guidelines for law enforcement agencies involved in the seizure and forfeiture of property. Substantial compliance will further the goal of uniform practice throughout the State.

III. PROCEDURES

A. SEIZURE OF VESSELS, VEHICLES, AIRCRAFT, CURRENCY, OR OTHER PERSONAL PROPERTY OR CONTRABAND ARTICLES

1. The seizing agency may seize property for forfeiture under the Act without process if it determines that:
 - (a) The seizure is incident to an arrest or a search under a search warrant; or,
 - (b) The property subject to seizure has been the subject of a prior final order of forfeiture; or,
 - (c) The agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or,
 - (d) The agency has probable cause to believe the property is subject to forfeiture pursuant to KRS 218A.410.
2. Probable cause seizures taking place at the time of violations may be made without prior judicial approval.
3. Property not seized at the time of violations presently located on private premises should be seized pursuant to a court order authorizing entry onto the private premises, unless otherwise authorized by law.
4. As soon as practicable following seizure, the agency shall make a diligent effort to determine ownership of the seized property, including the identification of the registered owner (s), title holder (s), and bona fide lien holder (s), if any.
5. The seizing agency shall give notice of the seizure to the owner (s) and/or bona fide lien holder (s), if any, once identified, within twenty-one (21) days after the identification is made. Such notice may be made by certified mail, return receipt requester.
6. Following an agency's determination not to proceed with a forfeiture based upon innocent owner considerations, the agency shall release the seized property to the lawful owner or his legally authorized designee.

7. As soon as practicable after the seizure, the seizing officer, deputy, or agent should complete an offense or seizure report, particularly describing the circumstances attendant to the seizure and forward same to the Commonwealth attorney who will be handling the forfeiture action. Attached as Exhibits I and II are sample suggested forms.

B. SEIZED VESSELS, VEHICLE & AIRCRAFT STORAGE MAINTENANCE

1. At the time of seizure, the agency should have vessels, vehicles, aircrafts, etc. transported or towed to a secure storage facility or other appropriate storage location as may be authorized by the agency. If the law enforcement agency has its own towing service, it should be used whenever possible to minimize costs.
2. A complete inventory of the seized property and all containers, open or closed, found therein shall be completed at the time of the seizure. As soon as practicable after seizure, a seizing agency shall make a good faith attempt to release to the lawful owner all personal property (e.g., clothing) seized with items impounded and not being retained as evidence or for forfeiture. If the owner is unknown, has been arrested, or is otherwise unavailable to take possession of the property, the property shall be placed in a secure location to be released to the owner at a later date.
3. ANY PERSONAL PROPERTY SEIZED AS EVIDENCE SHALL BE PACKAGED AND STORED SEPARATELY AND HANDLED IN ACCORDANCE WITH ESTABLISHED PROCEDURES FOR THE PROCESSING OF EVIDENCE.
4. Reasonable attempts shall be made to maintain the property in time-of-seizure-conditions. Although all rights, interest in and title to seized assets vest immediately in the seizing agency upon seizure, seized items shall not be used for any purpose until the rights, interest in and title to the seized property are perfected by final order of forfeiture. This section does not prohibit use or operation necessary for reasonable maintenance of seized property.
5. If special maintenance is required to maintain seized property in time-of-seizure-condition as may be necessary with aircraft and vessels, the seizing agency shall ensure that such maintenance is provided within a reasonable time after seizure, with such care continuing through the pendency of the forfeiture action. Appropriate agency forms should be maintained with seized property to document special or required maintenance.
6. Agency personnel shall make periodic inspections of all property which has been seized subject to forfeiture to insure continued the time of seizure conditions of the property is being maintained. Such inspections shall be documented appropriately.

C. SEIZURE AND FORFEITURE OF REAL PROPERTY

1. The agency may seize real property only with process:
 - a. Real property subject to forfeiture may be seized pursuant to final judgment and order of forfeiture by the court with jurisdiction over the forfeiture action; or,
 - b. Real property may be seized prior to final judgment by the agency if it obtains a seizure order from the court following a hearing. Seizure prior to the judgment is only permissible on a showing by the Commonwealth that seizure is necessary to preserve the property pending final judgment.
2. Real property which is seized prior to final judgment must be maintained at time-of-seizure condition. On-going Businesses, including agricultural enterprises, must be continued. For this reason, seizure of real property prior to final judgment of forfeiture is not recommended.

3. Agencies with probable cause to believe that real property is subject to forfeiture will as soon as practicable consult with the appropriate Commonwealth Attorney to perfect the lien created in KRS 218A_____. A lien is preferred over pre-judgment seizure of real property.

D. RELEASE OF SEIZED PROPERTY

1. If at the conclusion of the judicial process the claimant prevails, the seized property shall be released to the lawful owner immediately. Under these circumstances, the seizing agency shall not assess any towing charges, storage fees, administrative costs, maintenance costs, etc. against the claimant, unless so authorized by the appropriate court.
2. In all other instances, if a seized vessel, vehicle, aircraft, etc. is to be released to the lawful owner, the seizing agency may assess against the owner the actual cost of towing, storage, and maintenance of the seized property. Absent settlement, administrative costs which do not reflect actual expenses shall not be assessed.
3. Property which has been seized as having evidentiary value shall be treated accordingly, and shall NOT be released pursuant to this policy.

IV. RETENTION FOR OFFICIAL USE, SALE, AND DISTRIBUTION

A. RETENTION OF VEHICLES

1. Any vehicle seized and subsequently forfeited to a law enforcement agency may be retained by that agency for official use.
2. Any vehicle retained may be sold by the agency. Funds from such sale shall not be considered as funds to be distributed.
3. Proceeds from sale of retained vehicles must be spent on a specific law enforcement purpose. "Specific law enforcement purpose" means any agency activity which materially facilitates enforcement of the law of the Commonwealth of Kentucky.
4. The recipient agency must pay any bona fide perfected security interest on any forfeited vehicle retained for official use.

B. SALE OF FORFEITED PROPERTY

1. All sales of property forfeited pursuant to the controlled Substance Act must be advertised, public sales.
2. The Commonwealth may transfer any forfeited real property sold by deed of general warranty.
3. All bona fide, perfected security interests on forfeited property must be paid from proceeds of sale of such property.
4. Controlled substances which have been forfeited but which have a lawful purpose may be sold to proper buyer as determined by the regulations of the Cabinet for Human Resources.

C. DISTRIBUTION OF SALE PROCEEDS

1. Following deduction of any direct expenses related to the sale of forfeited assets, the agency retains the \$50,000 from sale of assets itemized in any final order of forfeiture. Of that, 10% is paid to the office of the Commonwealth Attorney which handled the forfeiture action.

2. The seizing agency retains 45% of all sale proceeds in excess of direct sale expenses and \$50,000. No portion of these proceeds is required to be shared with a prosecutorial office.
3. All proceeds from sales of forfeited property must be expended for specific law enforcement purposes.
4. All sale proceeds in excess of the above proscribed amounts shall be paid into the Asset Forfeiture Trust fund as managed by the Office for Investment and Debt Management of the Commonwealth of Kentucky.
5. When money or property is seized in a joint operation involving more than one law enforcement agency, the apportionment of funds shall be made among the agencies in such a manner as to reflect the degree of participation of each agency in the law enforcement effort resulting in the forfeiture, taking in to account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based. The trial court shall determine the proper division and include the determination in the final order of forfeiture.

V. REPORTING REQUIREMENTS

A. SEIZURE REPORTS

1. Any agency which seizes property subject to forfeiture without court order shall immediately prepare a report completely describing and inventorying the property so seized. The original of the report shall be included in the criminal case file. Duplicates of the report shall be forwarded to the appropriate prosecutorial office and the Kentucky Justice Cabinet.
2. Any agency which wishes to obtain a court order to seize property shall submit a "Request For Forfeiture" form to the appropriate prosecutorial office. Property seized pursuant to such order should be reported in the same manner as property seized without order. A copy of the Court Order shall be attached to the seizure report.
3. Any agency which wishes to place a lien against forfeitable real property shall submit a "Request for Forfeiture Lien" to the appropriate Commonwealth Attorney. A copy of the forfeiture lien notice shall be maintained in the criminal case file and a copy shall be forwarded to the Kentucky Justice Cabinet.
4. A copy of all final orders of forfeiture shall be forwarded to the Kentucky Justice Cabinet by the appropriate Commonwealth's Attorney.
5. Fiscal reports itemizing costs of sale, proceeds retained by a law enforcement agency, proceeds paid to a local prosecutor, and proceeds paid into the Asset Forfeiture Trust Fund, shall be sent to the Kentucky Justice Cabinet within thirty (30) days after each sale of forfeited property.
6. Agencies shall notify the Kentucky Justice Cabinet of each forfeited vehicle retained for official use or sold for the benefit of the agency.