

personal property under this title.

(7) "Constructive seizure" means a seizure of property where the property is left in the control of the owner and the seizing agency posts the property with a notice of intent to seek forfeiture.

(8) (a) "Contraband" means any property, item, or substance that is unlawful to produce or to possess under state or federal law.

(b) All controlled substances that are possessed, transferred, distributed, or offered for distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act, are contraband.

(9) "Innocent owner" means a claimant who:

(a) held an ownership interest in property at the time the conduct subjecting the property to forfeiture occurred, and:

(i) did not have actual knowledge of the conduct subjecting the property to forfeiture; or

(ii) upon learning of the conduct subjecting the property to forfeiture, took reasonable steps to prohibit the illegal use of the property; or

(b) acquired an ownership interest in the property and ~~who~~ had no knowledge that the illegal conduct subjecting the property to forfeiture had occurred or that the property had been seized for forfeiture, and:

(i) acquired the property in a bona fide transaction for value;

(ii) was a person, including a minor child, who acquired an interest in the property through probate or inheritance; or

(iii) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

(10) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a

**party with a right-of-offset, a**

mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value.

(b) "Interest holder" does not mean a person who holds property for the benefit of or as an agent or nominee for another person, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to

(6) Property is presumed to be subject to forfeiture under this chapter if the prosecuting attorney establishes that:

- (a) the claimant has engaged in conduct giving cause for forfeiture;
- (b) the property was acquired by the claimant during that period of the conduct giving cause for forfeiture or within a reasonable time after that period; and
- (c) there was no likely source for the purchase or acquisition of the property other than the conduct giving cause for forfeiture.

(7) A finding that property is the proceeds of conduct giving cause for forfeiture does not require proof that the property was the proceeds of any particular exchange or transaction.

(8) (a) ~~Ĥ→ [An innocent owner]~~ A claimant ~~←Ĥ~~ may recover possession of seized property that is subject to

forfeiture by contacting the seizing agency or prosecuting attorney ~~Ĥ→ prior to the commencement of a civil asset forfeiture proceeding, or~~ ~~←Ĥ~~ within 30 days of the seizure ~~Ĥ→ , whichever is longer,~~ ~~←Ĥ~~

and providing to the seizing agency or prosecuting attorney:

- (i) evidence that establishes proof of ownership; and
- (ii) a brief description of the date, time, and place that the ~~Ĥ→ [innocent owner]~~ claimant ~~←Ĥ~~ mislaid or relinquished possession of the seized property.

(b) A seizing agency or prosecuting attorney who receives a claim from a ~~Ĥ→ [potentially innocent owner]~~ claimant ~~←Ĥ~~ utilizing the procedure in Subsection (8)(a) shall issue a

written response to that claim within 30 days of receipt, indicating whether the claim has been granted, denied on the merits, or denied for failure to provide the information required by statute subject to the following:

(i) if the claim is denied for failure to provide the information required by statute, the ~~Ĥ→ [potentially innocent owner]~~ claimant ~~←Ĥ~~ has 15 days from the date of denial to submit additional information

before the prosecuting attorney may commence a civil action seeking to forfeit the property; and

(ii) if the seizing agency or prosecuting attorney fails to issue a written response within 30 days the property shall be returned.

(c) Any property returned under Subsection (8)(b), either because the claim was granted or because the seizing agency or prosecuting attorney failed to respond within 30 days may not include any expenses, costs, or attorney fees.

(d) A claimant who utilizes the procedures in Subsection (8)(a) and whose claim is denied on the merits by the seizing agency or prosecuting attorney, but who is later determined

by a court of competent jurisdiction in a civil forfeiture action to be an innocent owner within the meaning of Section 24-4-107, may collect reasonable attorney fees and court costs from the date on which the seizing agency or prosecuting attorney denied the claim. Legal costs and attorney fees collected pursuant to this Subsection are not subject to the 50% cap set forth in Subsection 24-4-110(2).

(e) All communications between ~~H~~→ or evidence provided to ←~~H~~ the parties in connection with a claim submitted pursuant to Subsection (8) are subject to the Utah Rules of Evidence, Rules 408 and 410.

Section 6. Section **24-4-110** is amended to read:

**24-4-110. Attorney fees and costs.**

(1) In any forfeiture proceeding under this chapter, the court shall award a prevailing ~~H~~→ [property owner] claimant ←~~H~~ reasonable:

(a) legal costs; and

(b) attorney fees.

(2) The legal costs and attorney fees awarded by the court to the prevailing party may not exceed ~~[20%]~~ 50% of the value of the seized property.

(3) A ~~[property owner that]~~ claimant who prevails only in part is entitled to recover reasonable legal costs and attorney fees only on those issues on which the party prevailed, as determined by the court.