

Effective 5/13/2014

24-4-105 Criminal forfeiture procedure.

- (1) If a claimant is criminally prosecuted for conduct giving rise to the forfeiture, the prosecuting attorney may elect to seek forfeiture of the claimant's interest in the property through the criminal case.
- (2) If the prosecuting attorney elects to seek forfeiture of the claimant's interest in the property through the criminal case, the information or indictment shall state that the claimant's interest in the property is subject to forfeiture and the basis for the forfeiture.
- (3)
 - (a) Upon application of the prosecuting attorney, the court may enter restraining orders or injunctions, or take other reasonable actions to preserve for forfeiture under this section, any property subject to forfeiture if, after notice to known claimants and claimants who can be identified after due diligence and who are known to have an interest in the property, and after affording those persons an opportunity for a hearing, the court determines that:
 - (i) there is a substantial probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property being sold, transferred, destroyed, or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and
 - (ii) the need to preserve the availability of the property or prevent its sale, transfer, destruction, or removal through the entry of the requested order outweighs the hardship against any party against whom the order is to be entered.
 - (b) A temporary restraining order may be entered ex parte upon application of the prosecuting attorney before or after an information or indictment has been filed with respect to the property, if the prosecuting attorney demonstrates that:
 - (i) there is probable cause to believe that the property with respect to which the order is sought would, in the event of a conviction, be subject to forfeiture under this section; and
 - (ii) provision of notice would jeopardize the availability of the property for forfeiture or would jeopardize an ongoing criminal investigation.
 - (c) The temporary order expires not more than 10 days after entry unless extended for good cause shown or unless the party against whom it is entered consents to an extension.
 - (d) After service of the temporary order upon any claimants known to the prosecuting attorney, a hearing concerning the order entered under this section shall be held as soon as practicable and prior to the expiration of the temporary order.
 - (e) The court is not bound by the Utah Rules of Evidence regarding evidence it may receive and consider at any hearing under this section.
- (4)
 - (a) Upon conviction of a claimant for conduct giving rise to criminal forfeiture, the prosecutor shall ask the finder of fact to make a specific finding as to whether the property or any part of it is subject to forfeiture.
 - (b) A determination of whether property is subject to forfeiture under this section shall be proven beyond a reasonable doubt.
- (5)
 - (a) Upon conviction of a claimant for violating any provision of state law subjecting a claimant's property to forfeiture and a finding by the trier of fact that the property is subject to forfeiture, the court shall enter a judgment and order the property forfeited to the state upon the terms stated by the court in its order.
 - (b) Following the entry of an order declaring property forfeited, the court may, upon application of the prosecuting attorney, enter appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers,

accountants, or trustees, or take any other action to protect the interest of the state in property ordered forfeited.

- (6)
 - (a)
 - (i) After property is ordered forfeited under this section, the seizing agency shall direct the disposition of the property under Section 24-4-115.
 - (ii) Any property right or interest under this Subsection (6)(a) not exercisable by or transferable for value to the state expires and does not revert to the defendant.
 - (iii) The defendant or any person acting in concert with or on behalf of the defendant is not eligible to purchase forfeited property at any sale held by the seizing agency unless approved by the judge.
 - (b) The court may stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that proceeding with the sale or disposition of the property may result in irreparable injury, harm, or loss.
- (7) Except as provided under Subsection (3) or (10), a party claiming an interest in property subject to forfeiture under this section:
 - (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of property under this section; and
 - (b) may not commence an action at law or equity concerning the validity of the party's alleged interests in the property subsequent to the filing of an indictment or an information alleging that the property is subject to forfeiture under this section.
- (8) The district court that has jurisdiction of a case under this part may enter orders under this section without regard to the location of any property that may be subject to forfeiture under this section or that has been ordered forfeited under this section.
- (9) To facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture after the entry of an order declaring property forfeited to the state, the court may, upon application of the prosecuting attorney, order that the testimony of any witness relating to the forfeited property be taken by deposition, and that any book, paper, document, record, recording, or other material shall be produced as provided for depositions and discovery under the Utah Rules of Civil Procedure.
- (10)
 - (a)
 - (i) Following the entry of an order of forfeiture under this section, the prosecuting attorney shall publish notice of the order's intent to dispose of the property by publication. Service by publication shall be by publication of two notices, in two successive weeks, of the forfeiture proceeding:
 - (A) in a newspaper of general circulation in the county in which the seizure occurred; and
 - (B) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).
 - (ii) The prosecuting attorney shall also send written notice to any claimants, other than the defendant, known to the prosecuting attorney to have an interest in the property, at the claimant's known address.
 - (b)
 - (i) Any claimant, other than the defendant, asserting a legal interest in property that has been ordered forfeited to the state under this section may, within 30 days after the notice has been published or the claimant receives the written notice under Subsection (10) (a), whichever is earlier, petition the court for a hearing to adjudicate the validity of the claimant's alleged interest in the property.

- (ii) Any genuine issue of material fact, including issues of standing, may be tried to a jury upon demand of any party.
- (c) The petition shall:
 - (i) be in writing and signed by the claimant under penalty of perjury;
 - (ii) set forth the nature and extent of the claimant's right, title, or interest in the property, the time and circumstances of the claimant's acquisition of the right, title, or interest in the property; and
 - (iii) set forth any additional facts supporting the claimant's claim and the relief sought.
- (d) The trial or hearing on the petition shall be expedited to the extent practicable. The court may consolidate a trial or hearing on the petition and any petition filed by any claimant other than the defendant under this section. The court shall permit the parties to conduct pretrial discovery pursuant to the Utah Rules of Civil Procedure.
- (e)
 - (i) At the trial or hearing, the claimant may testify and present evidence and witnesses on the claimant's own behalf and cross-examine witnesses who appear at the hearing. The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the claim to the property and cross-examine witnesses who appear.
 - (ii) In addition to testimony and evidence presented at the trial or hearing, the court may consider the relevant portion of the record of the criminal case that resulted in the order of forfeiture.
 - (iii) Any trial or hearing shall be conducted pursuant to the Utah Rules of Evidence.
- (f) The court shall amend the order of forfeiture in accordance with its determination, if after the trial or hearing, the court or jury determines that the petitioner has established by a preponderance of the evidence that:
 - (i) the claimant has a legal right, title, or interest in the property, and the right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the claimant rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts or conduct that gave rise to the forfeiture of the property under this section; or
 - (ii) the claimant acquired the right, title, or interest in the property in a bona fide transaction for value, and, at the time of acquisition, the claimant did not know that the property was subject to forfeiture.
- (g) Following the court's disposition of all petitions filed under this Subsection (10), or if no petitions are filed following the expiration of the period provided in Subsection (10)(b) for the filing of petitions, the state has clear title to property subject to the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

Amended by Chapter 112, 2014 General Session