

**Effective 5/5/2021**

**Superseded 5/4/2022**

**24-4-105 Criminal forfeiture procedure.**

- (1) As used in this section, "defendant" means a claimant who is criminally prosecuted for the offense subjecting the property to forfeiture under Subsection 24-4-102(1).
- (2) A prosecuting attorney may seek forfeiture of the defendant's interest in seized property through the criminal case.
- (3) If the prosecuting attorney seeks forfeiture of a defendant's interest in seized property through the criminal case, the prosecuting attorney shall state in the information or indictment the grounds for which the agency seeks to forfeit the property.
- (4)
  - (a)
    - (i) A court may enter a restraining order or injunction or take any other reasonable action to preserve property being forfeited under this section.
    - (ii) Before a court's decision under Subsection (4)(a)(i), a known claimant, who can be identified after due diligence, shall be:
      - (A) provided notice; and
      - (B) given an opportunity for a hearing.
    - (iii) A court shall grant an order under Subsection (4)(a)(i) if:
      - (A) 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
      - (B) the need to preserve the availability of the property or prevent the property's sale, transfer, destruction, or removal through the entry of the requested order outweighs the hardship against a claimant against which the order is to be entered.
  - (b) A court may enter a temporary restraining order ex parte upon application of the prosecuting attorney or a federal prosecutor before or after an information or indictment has been filed, with respect to the property, if the prosecuting attorney or federal prosecutor 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 forfeited under this section; and
    - (ii) providing notice to a claimant would jeopardize the availability of the property for forfeiture or would jeopardize an ongoing criminal investigation.
  - (c) The temporary order expires no more than 10 days after the day on which the order is entered unless extended for good cause shown or unless the claimant against whom the temporary order is entered consents to an extension.
  - (d) After service of the temporary order upon a claimant known to the prosecuting attorney or federal prosecutor, the court shall hold a hearing on the order as soon as practicable and before the expiration of the temporary order.
  - (e) The court is not bound by the Utah Rules of Evidence regarding evidence the court may receive and consider at a hearing under this section.
- (5) Upon conviction of a defendant for the offense subjecting the property to forfeiture, a court or jury shall find property forfeited to the agency if the prosecuting attorney establishes, beyond a reasonable doubt, that:
  - (a) the defendant:
    - (i) committed the offense subjecting the property to forfeiture under Subsection 24-4-102(1);
    - (ii) knew of the offense subjecting the property to forfeiture under Subsection 24-4-102(1) and allowed the property to be used in furtherance of the offense; or

- (iii) acquired the property at the time of the offense subjecting the property to forfeiture under Subsection 24-4-102(1), or within a reasonable time after the offense occurred; or
  - (b) there is no likely source for the purchase or acquisition of the property other than the commission of the offense subjecting the property to forfeiture under Subsection 24-4-102(1).
- (6)
- (a) Upon conviction of a defendant for the offense subjecting the property to forfeiture and a finding by a court or jury that the property is forfeited, the court shall enter a judgment and order the property forfeited to the agency upon the terms stated by the court in the court's order.
  - (b) Following the entry of an order declaring the property forfeited under Subsection (6)(a), and upon application by the prosecuting attorney, the court may:
    - (i) enter a restraining order or injunction;
    - (ii) require the execution of satisfactory performance bonds;
    - (iii) appoint a receiver, conservator, appraiser, accountant, or trustee; or
    - (iv) take any other action to protect the the agency's interest in property ordered forfeited.
- (7)
- (a)
    - (i) After property is ordered forfeited under this section, the agency shall direct the disposition of the property under Section 24-4-115.
    - (ii) If property under Subsection (7)(a)(i) is not transferrable for value to the agency, or the agency is not able to exercise an ownership interest in the property, the property may not revert to the defendant.
    - (iii) A defendant, or a person acting in concert with or on behalf of the defendant, is not eligible to purchase forfeited property at any sale held by the agency unless approved by the judge.
  - (b) A court may stay the sale or disposition of the property pending the conclusion of any appeal of the offense subjecting the property to forfeiture if the claimant demonstrates that proceeding with the sale or disposition of the property may result in irreparable injury, harm, or loss.
- (8) If a defendant is acquitted of the offense subjecting the property to forfeiture under this section on the merits:
- (a)
    - (i) the property for which forfeiture is sought shall be returned to the claimant; or
    - (ii) the open market value of the property for the property for which forfeiture is sought shall be awarded to the claimant if the property has been disposed of under Section 24-4-103.3; and
  - (b) any payment requirement under this chapter related to the holding of property shall be paid to the claimant.
- (9) Except as provided under Subsection (4) or (12), a claimant claiming an interest in property that is being forfeited under this section:
- (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of the property; and
  - (b) may not commence an action at law or equity concerning the validity of the claimant's alleged interests in the property subsequent to the filing of an indictment or an information alleging that the property is being forfeited under this section.
- (10) A 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 is or has been ordered forfeited under this section.
- (11) To facilitate the identification or location of property forfeited under this section, and to facilitate the disposition of a petition for remission or mitigation of forfeiture after the entry of

an order declaring property forfeited to the agency, the court may, upon application of the prosecuting attorney, order:

- (a) the testimony of any witness relating to the forfeited property be taken by deposition; and
- (b) any book, paper, document, record, recording, or other material is produced in accordance with the Utah Rules of Civil Procedure.

(12)

- (a) If a court orders property forfeited under this section, the prosecuting attorney shall publish notice of the intent to dispose of the property.
- (b) Service by publication shall be by publication of two notices, in two successive weeks, of the forfeiture proceeding:
  - (i) in a newspaper of general circulation in the county in which the seizure of the property occurred; and
  - (ii) on Utah's Public Legal Notice Website established in Subsection 45-1-101(2)(b).
- (c) 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.

(13)

- (a) A claimant, other than the defendant, may petition the court for a hearing to adjudicate the validity of the claimant's alleged interest in property forfeited under this section.
- (b) A claimant shall file a petition within 30 days after the earlier of the day on which a notice is published or the day on which the claimant receives written notice under Subsection (12)(a).

(14) The petition under Subsection (13) shall:

- (a) be in writing and signed by the claimant under penalty of perjury;
- (b) 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
- (c) set forth any additional facts supporting the claimant's claim and the relief sought.

(15)

- (a) The court shall expedite the trial or hearing under this Subsection (15) to the extent practicable.
- (b) Any party may request a jury to decide any genuine issue of material fact.
- (c) The court may consolidate a trial or hearing on the petition under Subsection (11)(b) and any other petition filed by a claimant, other than the defendant, under this section.
- (d) For a petition under this section, the court shall permit the parties to conduct pretrial discovery in accordance with 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.
- (ii) 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.
- (f) 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.
- (g) A trial or hearing shall be conducted in accordance with the Utah Rules of Evidence.

(16) The court shall amend the order of forfeiture in accordance with the court's determination, if after the trial or hearing under Subsection (15), the court or jury determines that the claimant has established, by a preponderance of the evidence, that:

(a)

- (i) the claimant has a legal right, title, or interest in the property; and

- (ii) the claimant's 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 offense subjecting the property to forfeiture under Subsection 24-4-102(1); or
  - (b) 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 could be forfeited under this chapter.
- (17) An agency has clear title to the property and may transfer title to a purchaser or transferee if:
- (a) the court issued a disposition on all petitions under Subsection (13) denying any claimant's right, title, or interest to the property; or
  - (b) a petition was not filed under the timelines provided in Subsection (13)(b).
- (18) If the prosecuting attorney seeks to discontinue a forfeiture proceeding under this section and transfer the action to another state or federal agency that has initiated a civil or criminal proceeding involving the same property, the prosecuting attorney shall file a petition to transfer the property in accordance with Section 24-2-105.