

# STATE OF NEW JERSEY - FORFEITURE PROGRAM ADMINISTRATION STANDARD OPERATING PROCEDURE



# 03

Title: ***County Prosecutor's Office Forfeiture Programs***

Date Issued: **03/01/98**

Applicability: **All Forfeiture Program Administrators**

Supersedes:

## **3:1 Policy Statement:**

It is the policy of the Attorney General that each of the state's twenty-one county prosecutor's shall administer property and funds it receives as a result of seizures and forfeitures brought under the authority of N.J.S.A. 2C:64-1 et seq., (civil forfeiture), N.J.S.A. 2C:41-1 et seq., (racketeering) or from actions brought under N.J.S.A. 2C:21-25 et seq., (financial facilitation of crime), or under any other statute as directed by the Attorney General. A county prosecutor shall administer separately federally forfeited property or proceeds distributed to it by the United States Department of Justice or Treasury through a Federal Equitable Sharing Program Agreement, as outlined under Forfeiture Program Administration Standard Operating Procedure 01.

## **3:2 Establishment of Forfeited and Seized Trust Funds**

### **A. County Prosecutor's Law Enforcement Trust Account, (CLETA)**

1. The county prosecutor through its designated funding entity shall establish a law enforcement trust fund, dedicated for law enforcement purposes and funded by its share of completed forfeiture actions commenced under N.J.S.A. 2C:64-1 et seq., (civil forfeiture), N.J.S.A. 2C:41-1 et seq. (racketeering) or from actions brought under N.J.S.A. 2C:21-25 et seq., (financial facilitation of crime), or under any other statute as directed by the Attorney General. This trust fund shall be known as the (name of County) County Prosecutor's Law Enforcement Trust Account, (CLETA), which shall be an interest-bearing account. Investigations performed by the prosecutor's office, the State Police and the various municipalities within the county are the primary source of funds received from forfeiture actions. All forfeited funds, or proceeds from the sale of forfeited property received by the county prosecutor's office shall be deposited into CLETA. In addition, any interest generated by CLETA funds shall remain in CLETA for the use of the prosecutor's office. CLETA shall be maintained by the county prosecutor's designated funding entity but shall be administered by the county prosecutor.

Because CLETA is a trust account, the funds shall not revert to the county general treasury at the end of a fiscal year, but shall carryover from year to year and shall be used solely for law enforcement purposes at the discretion of the county prosecutor.

2. The county prosecutor shall authorize all disbursements from CLETA. Before funds can be disbursed, the county prosecutor shall notify its funding entity in writing of the intended expenditures. This notification shall include at a minimum: the date, amount of disbursement, description of requested property/funds, purpose/reason of disbursement, person/company/agency receiving the property/funds, an indication of the proposed law enforcement use and the signature of the county prosecutor. All disbursements in excess of \$10,000 shall require the signature of the county prosecutor and the chief administrative officer of the prosecutor's office.

B. Seized Asset Trust Account

1. The county prosecutor through its designated funding entity shall establish a Seized Asset Trust Account. All seized funds not yet forfeited, and not held for evidence in a criminal matter, shall be deposited into the county prosecutor's Seized Asset Trust Account (SATA), which shall be an interest-bearing account. SATA shall be maintained by the funding entity and administered by the county prosecutor. Individual cash seizures shall be placed into SATA where they are managed as one large group but individual records must be maintained on each case. Since this account is a trust account, in which the funds are held by the prosecuting agency pending their final disposition, the funds shall not revert to the county general treasury at the end of the fiscal year, but carryover from year to year.
2. Disbursements from the county prosecutor's SATA shall be limited to the following:
  - a. Transfer of funds to the CLETA of the county's share of a forfeiture distribution after the county prosecutor's office obtains either:
    1. a final judgment by default;
    2. a consent decree/stipulation of settlement/final

judgment;

3. a final judgment confirming forfeiture; or
  4. a consent to forfeiture placed on the record at guilty plea, sentencing or similar dispositional proceeding.
- b. Transfer of funds to AGLEFA, a county or municipal Law Enforcement Trust Account, or an escrow account established for a specific municipal law enforcement agency as defined under Forfeiture Program Administration Standard Operating Procedure 04. These transfers can be made only after the county prosecutor's office obtains either:
1. a final judgment by default;
  2. a consent decree/stipulation of settlement/final judgment;
  3. a final judgment confirming forfeiture; or
  4. a consent to forfeiture placed on the record at guilty plea, sentencing or similar dispositional proceeding.
- c. Return of all, or some portion of, a claimant's seized funds to either the claimant or the claimant's attorney-of-record in the forfeiture litigation if the claimant obtains either:
1. a final judgment by default;
  2. a consent decree/final judgment;
  3. a final judgment confirming the claimant's property right.
- d. For seizures where the county prosecutor or the Division of Criminal Justice decline to file a forfeiture complaint or discontinue a forfeiture action and the seized funds are not held as evidence or covered under the terms of a settlement agreement between the prosecuting agency and the claimant, all seized funds shall be returned to the person from whom the property was seized.
- e. For seizures where: 1) an attempt to return seized funds as outlined in accordance with Section 3:2B.2.d above has been

unsuccessful and; 2) a claimant has not asserted a right over the seized funds and the owner cannot be found; and 3) the seized funds were originally deposited in a SATA the funds shall remain in the SATA for a period of three years from the date of the seizure. At the conclusion of the three year period, the funds shall be disposed of as unclaimed property pursuant to applicable law.

3. The interest from this account shall be transferred periodically by the funding entity to the Asset Maintenance Account (AMA) as outlined under section 3.2C.

C. Asset Maintenance Account

1. All interest or other income generated from SATA shall be transferred periodically into a trust fund maintained by the funding entity and administered by the county prosecutor. This trust fund shall be known as the Asset Maintenance Account (AMA).
2. Expenditures from the AMA shall be made in accordance with Forfeiture Program Administration Standard Operating Procedure 12 only for related forfeiture program administration purposes. Related forfeiture program administration purposes are those costs directly related to the administration or operation of the forfeiture process and the seizure, acquisition, maintenance and preservation of seized property prior to a final judgment of forfeiture. Unless otherwise approved by the Attorney General in a specific case, forfeiture related purposes shall not include the cost of routine maintenance of forfeited property for the use of the agency. Forfeiture related purposes shall include the following:
  - a. The cost of returning seized property to the rightful owner;
  - b. The cost of maintaining an equity interest in the seized property for disposal and;
  - c. The cost of disposing of the seized property whether by sale or destruction either directly after obtaining title through a forfeiture action or after the forfeited property was used by the agency.

Additionally, the AMA may be used by an agency for the cost of disposing of forfeited property or property purchased with forfeiture funds when the agency holds an equity interest in such property and the proceeds from the disposal of the property will be deposited into the agency's Law Enforcement Trust Fund.

Because this account is a trust account, the funds shall not revert to the county general treasury at the end of the fiscal year, but carryover from year to year.

D. Maintenance Expenditures

The funding entity is entitled to the reimbursement of expenses resulting from its administration of CLETA, SATA and AMA. These expenses shall be limited to those approved by the county prosecutor and which are normal, customary and comparable to those charged to other county departments by the funding entity in the performance of similar services.

**3:3 Standards for the Holding Period and Tracking of Forfeiture Property**

- A. Property forfeited to a law enforcement agency, or purchased by a law enforcement agency with funds from CLETA including the AMA, shall be held by the law enforcement agency for law enforcement purposes:
1. if real estate, for as long as the property exists in the form of real property;
  2. if a motor vehicle, for at least two years from the date of forfeiture or purchase with funds from CLETA.
  3. in the case of all other property with a fair market value of five hundred dollars or more, for at least one year from the date of forfeiture or purchase with funds from CLETA.
- B. A law enforcement agency seeking to dispose or transfer property held for less than the periods stated above for the applicable property shall dispose of the property in accordance with all other applicable law and shall obtain reimbursement for the property for full market value of the property on the date of transfer. The proceeds from such disposal or transfer shall be deposited in CLETA.
- C. A law enforcement agency disposing of or transferring property held beyond the periods stated above for the applicable property shall dispose or transfer the property in accordance with all other applicable law. The proceeds from such disposal or transfer shall be distributed in accordance with all other applicable law.

*Peer review*

**AUTHORITY:** \_\_\_\_\_  
**PETER VERNIERO, ATTORNEY GENERAL**