

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



**06**

Title: ***Seized and Forfeited Property Management***

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

Applicability: **All Forfeiture Program Administrators**

Supersedes:

**6:1 Policy Statement**

The Attorney General recognizes that in the course of investigations conducted by law enforcement agencies within the state, pursuant to N.J.S.A. 2C:64-1 et seq., (civil forfeiture), N.J.S.A. 2C:41-1 et seq., (racketeering), or under any other statute as directed by the Attorney General, property will be seized and at some point forfeited to said agency or returned to the owner of record ("owner"). This property may be used by the law enforcement agency, prior to forfeiture, upon obtaining a Use Order from the Superior Court, retained for future use, sale and distribution of proceeds or returned to the owner. Once property has been seized, the seizing agency must maintain the property in a manner to preserve its value and assure that any use will be solely for law enforcement purposes.

**6:2 Maintenance and Use of Seized Property by County and Municipal Law Enforcement Agencies**

- A. Property seized by county prosecutors or municipal law enforcement agencies which is not retained for evidence pending a criminal prosecution, shall be maintained in a manner to preserve its value by the county prosecutor pending distribution, sale or return to the owner. The county prosecutor or agency executive of a municipal law enforcement agency shall determine the existence of other owners, lessors or a persons holding a perfected security interest in seized property.
1. Property held by a lessor in the ordinary course of business or held by a person holding a perfected security interest shall not be affected by seizure unless it shall appear that such person had knowledge of or consented to any act or omission upon which the right of forfeiture is based. The county treasurer, at the direction of the county prosecutor, may make payment from the County Law Enforcement Trust Account to lessors or persons holding a perfected security interest for their interest in seized property.

2. Property in which the owner establishes by a preponderance of the evidence that the owner was not involved in, or aware of the unlawful activity and that the owner had done all that could reasonably be expected to prevent proscribed use of the property by an agent, shall not be subject to forfeiture.
  3. Property in which the owner has entrusted to a person for repairs, restoration or other services to be performed on the property, and that person, without the owner's knowledge or consent, uses the property for unlawful purposes, shall not be subject to forfeiture.
- B. A county prosecutor upon the filing of a forfeiture complaint with the Superior Court and obtaining approval from the county treasurer, or an agency executive upon obtaining approval from the county prosecutor may apply to the Superior Court for an order permitting use of seized property ("Use Order"), pending the disposition of the forfeiture action provided, however, that such property shall be used solely for law enforcement purposes.<sup>1</sup>
- C. The Superior Court may appoint a trustee to protect the interest of all parties involved for property which is of such nature that substantial difficulty may result in preserving its value while awaiting forfeiture action.

### **6:3 Maintenance and Use of Seized Property by State Law Enforcement Agencies**

- A. Property seized by any state law enforcement agency which is not retained for evidence pending a criminal prosecution, shall be maintained in a manner to preserve its value pending distribution, sale or return to the owner. The state law enforcement agency shall determine the existence of other owners, lessors or a persons holding a perfected security interest in seized property.
1. Property held by a lessor in the ordinary course of business or held by a person holding a perfected security interest shall not be affected by seizure unless it shall appear that such person had knowledge of or consented to any act or omission upon which the right of forfeiture is based. The Director, D.C.J., or his designee, may make payment from either the Asset Maintenance Account or AGLEFA to lessors or persons holding a perfected security interest for their interest in seized property.
  2. Property in which the owner establishes by a preponderance of the evidence that the owner was not involved in, or aware of the unlawful activity and that the owner had done all that could reasonably be expected to prevent proscribed use of the property by an agent, shall

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<sup>1</sup> For a complete definition of Law Enforcement Purpose, see SOP 12

not be subject to forfeiture.

3. Property in which the owner has entrusted to a person for repairs, restoration or other services to be performed on the property, and that person, without the owner's knowledge or consent, uses the property for unlawful purposes, shall not be subject to forfeiture.
- B. A prosecuting agency upon the filing of a forfeiture complaint with the Superior Court and obtaining approval from its funding entity may apply to the Superior Court for an order permitting use of seized property ("Use Order"), pending the disposition of the forfeiture action provided, however, that such property shall be used solely for law enforcement purposes.<sup>2</sup>
  - C. The Superior Court may appoint a trustee to protect the interest of all parties involved for property which is of such nature that substantial difficulty may result in preserving its value while awaiting forfeiture action.

#### **6:4 Forfeited Property**

- A. Transfer of Ownership
  1. Upon the completion of a forfeiture action, the Attorney General or the county prosecutor shall direct the state or county treasurer to vest title in property which has been previously seized. The vesting of title shall be performed within five business days of a completed forfeiture action by filing necessary documents with a state motor vehicle agency or county clerk.
  2. At the discretion of the Attorney General or county prosecutor, a law enforcement agency that participated in an investigation which resulted in the forfeiture shall receive title in property which has been previously seized. The agency executive shall direct its designated funding entity to vest title in this property within five business days of receiving an acknowledgment of a completed forfeiture action by the prosecuting agency by filing necessary documents with a state motor vehicle agency or county clerk.
  3. If property cannot be divided among agencies that have participated in an investigation which resulted in a forfeiture, the Attorney General or county prosecutor shall cause such property to be sold at public auction, unless otherwise directed by the Attorney General. The proceeds from these sales shall be distributed to any agency which participated in an investigation resulting in forfeiture, at the discretion

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<sup>2</sup> For a complete definition of Law Enforcement Purpose, see SOP 12

of the Attorney General or the county prosecutor.

4. No office-holder, employee or other agent of any law enforcement agency shall purchase forfeited property, nor shall their spouses or dependent children purchase or otherwise acquire through sale title to forfeited property.

**6:5 Maintenance Expenditures**

The funding agency is entitled to charge expenses resulting from its securing a perfected interest in or clear title to forfeited property. These expenses shall be limited to those which are normal, customary and comparable to those charged to other governmental departments which the funding entity performs similar services.

**6:6 Statute of Limitations on Claims**

Any person who could not with due diligence have discovered that property which they own was seized as contraband may file a claim for its return or the value thereof at the time of seizure within three, (3) years of the seizure if they can demonstrate that they did not consent to, and no knowledge of its unlawful use. If the property has been sold, the claimant will receive a claim against proceeds.

*Peter Verniero*

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