

CHAPTER FORTY-SIX

SEIZURE AND FORFEITURE OF PROPERTY

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SEIZURE AND FORFEITURE OF PROPERTY

I. PURPOSE

The purpose of this chapter is to establish policies and procedures with specific provisions relating to the seizure and forfeiture of real and personal property.

II. DISCUSSION

The Monroe County Sheriff's Office is authorized to seize and forfeit real and personal property pursuant to Sections 932.701-705, Florida Statutes, and Section 893.12, Florida Statutes. It is the policy of the Monroe County Sheriff's Office to utilize these forfeiture provisions to the fullest extent possible in order to make an impact upon crime, yet protect innocent owners, while providing the maximum amount of economic benefit available under these provisions.

III. POLICY AND PROCEDURE

A. Goals

1. To impose an economic penalty thereby rendering illegal behavior unprofitable.
2. To deter criminal activity by taking away items used in criminal activity.
3. To deter criminal activity by taking away the proceeds of criminal activity.

B. Authority

Florida Contraband Forfeiture Act, Florida Statute 932.701-704 This Act provides for the seizure and forfeiture of:

1. Any motor vehicle, aircraft, vessel, currency, or other personal property, as well as non-homestead real property, which was used or attempted to be used in the commission of any felony, or to aid or abet in the commission of any felony.
2. Any property acquired by proceeds obtained in violation of the Act.
3. Any controlled substance as defined in Chapter 893.
4. Any substance, device, paraphernalia, or currency or other means of exchange that was used, attempted to be used, or was intended to be used in violation of any provision of Chapter 893 if a nexus can be clearly demonstrated between the article(s) seized and the narcotics activity, whether or not the use of the contraband article(s) can be traced to a specific narcotics transaction.
5. Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange, which was used or attempted to be used in violation of the gambling laws of the state.
6. Any equipment, liquid, or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.
7. Property in possession of any person who takes aquaculture products in violation of 812.014(2).
8. Any motor vehicle offered for sale in violation of s.320.28.
9. Any motor vehicle driven by a person under the influence of alcohol or drugs in violation of s. 316.193 if at the time of the offense the person's driver's license is suspended, revoked, or cancelled as a result of a prior conviction for driving under the influence.

Florida Statute 893.12(2) This statute authorizes forfeiture of any non-homestead property and any improvements on real estate which is used or intended to be used in any manner or part to commit or to facilitate the commission of a violation of Florida Statute 893.03(1) or (2), or acquired with proceeds obtained in violation of that section. This type of forfeiture is different from the forfeiture described under Florida Statute 932.701, which is limited to forfeiture of property which has been or is being used to facilitate the commission of a felony.

Under Florida Statute 893.12(2), non-homestead real property may be forfeited if it was used or intended to be used in violation of any drug law involving a Schedule I or II drug. **NOTE: Homesteaded real property may not be forfeited in Florida.**

Florida Statute 329.10 and Florida Statute 329.11 authorize the forfeiture of any aircraft which have improper registration or tail identification numbers. Such aircraft need not have been used to facilitate the commission of any crime nor acquired with proceeds from criminal activity.

Florida Statute 812.16 authorizes forfeiture of any motor vehicles, components, wreckers, tools, or machinery used or discovered at the site of a "chop shop" operated for the purpose of concealing, altering, or dismantling stolen vehicles.

Florida Statute 843.18 authorizes forfeiture of a boat used to flee or attempt to elude a law enforcement officer.

Florida Statute 316.80 (3) All conveyances or vehicles, fuel tanks, related fuel, and other equipment described in subsection (1) shall be subject to seizure and forfeiture as provided by the Florida Contraband Forfeiture Act.

C. Burden of Proof

Probable Cause is required for the seizure of contraband. Clear and convincing evidence is required to sustain the forfeiture in Court.

D. Exceptions

1. Property may not be forfeited unless the agency can establish by a preponderance of the evidence that the owner knew or should have known after a reasonable inquiry that the property was being employed or was likely to be employed in criminal activity.
2. Bona fide lien holder's interests are protected under the Act.
3. Property titled or registered between husband and/or wife jointly may not be forfeited unless the agency can establish by a preponderance of the evidence that the co owner knew or should have known after a reasonable inquiry that the property was being employed or was likely to be employed in criminal activity.
4. Property owned jointly by non-married persons may only be forfeited to the extent of the culpable owner's interest in the property, unless the agency can establish by a preponderance of the evidence that the co owner knew or should have known after a reasonable inquiry that the property was being employed or was likely to be employed in criminal activity.
5. A vehicle that is rented or leased from a rental or leasing company may not be forfeited unless the agency can establish by a preponderance of the evidence that the rentor or lessor had actual knowledge at the time the vehicle was rented or leased that the vehicle was being employed or was likely to be employed in criminal activity.

IV. Procedure for Implementing Seizure and Forfeiture of Vessels, Vehicles, Aircraft, Currency, or other Personal Property

1. The case officer, upon determining that an item of personal property is subject to seizure should seize personal property by physically taking the property into custody. Personal property may be seized for forfeiture without a warrant if it is located in a public area or an area not protected by the Fourth Amendment. If it is necessary to enter private property to seize the item, a warrant is generally necessary. Once a vehicle is seized for forfeiture, its contents may be searched without obtaining a warrant. The officer shall then follow the guidelines listed below:
 - a. The officer will complete a Notice of Seizure of Property Form (NSPF) This will be signed by the subject and, if refused, witnessed by another officer. A separate NSPF will be completed for the arrestee and any other parties on the scene who hold an interest in the property (co owners or lien holders).

- b. Complete the Seizure Report.
- c. Complete any other Monroe County Sheriff's Office reports required.
- d. Fax a copy of the NSPF and Seizure Report to the Special Investigation Division's Forfeiture Unit at the time of the seizure.
- e. Send a complete copy of the case report via courier by the next business day.
- f. Make arrangements to have the items stored. The property must be maintained in time of seizure conditions. If the property requires special maintenance, such as a vessel or aircraft, arrangements must be made with a vendor or property manager for maintenance. All property shall be inventoried and any contents which are not subject to forfeiture should be released to the owner or otherwise appropriately disposed of.
- g. The property shall be maintained in a secure area, such as:
 - evidence room
 - safe deposit box
 - department impound or storage facility
 - with private vendor under contract.

2. The Forfeiture Unit/Legal Counsel

- a. The Forfeiture Unit will research the case to determine any owners or lien holders of the item.
- b. Forfeiture Unit Legal Counsel will review the case and determine whether the case is sufficient to proceed with the forfeiture action.
- c. The reasonable value and equity in seized property must be determined. For personal property, blue book value, loan value, or evidence of similar market price may be used. For specialty items such as jewelry, coins, art, or antiques, an expert appraisal may be required.
- d. A NSPF will be sent, via certified mail (return receipt requested) to any subject or company holding a financial interest in the item. This will be postmarked no later than five (5) calendar days after the date of the seizure.
- e. Attempt to contact the owner of the property and negotiate an early settlement, if appropriate.
- f. If forfeiture action is determined, the Forfeiture Unit Legal Counsel will file the civil case within guidelines established in civil proceedings.

V. Procedures for the Seizure of Real Property

- 1. Prior to seizing any real property the case officer, in conjunction with the Monroe County Sheriff's Office General Counsel, must determine whether there is probable cause to believe that the real property was used in violation of, or acquired with proceeds obtained in violation of, Sections 932.701-705 of the Florida Statutes, known as the Florida Contraband Forfeiture Act, or Section 893.12, Florida Statutes. Once probable cause has been determined, the following factors should be considered prior to any final decision to seize real property:
 - a. the potential for successful forfeiture action

- b. the cost of pre-seizure planning and maintenance of property pending final disposition
- c. the impact of forfeiture on targets of a criminal investigation
- d. the impact of forfeiture on innocent owners, lien holders, or other persons not involved in criminal activity
- e. the impact of forfeiture on the public health, safety, and welfare, particularly environmentally sensitive land
- f. whether the seizure / forfeiture is cost-effective or, if not, serves other law enforcement objectives.

2. The Forfeiture Unit / Case Officer shall:

- a. Provide information to and consult with the Monroe County Sheriff's Office General Counsel regarding the investigation, seizure, and management of real property under consideration for seizure
- b. Determine, in conjunction with the Monroe County Sheriff's Office General Counsel, whether probable cause exists to support a real estate forfeiture and assess potential case difficulties
- c. Assess likely impact(s) of successful vs. unsuccessful real estate forfeiture on:
 - 1) the criminal case
 - 2) the subject(s) of the investigation
 - 3) the property owner(s)
 - 4) party(ies) with legal interest in the real estate
 - 5) possible innocent individuals associated with the real estate
 - 6) any underlying crime problem
 - 7) the community
 - 8) the Monroe County Sheriff's Office
 - 9) other agencies / organizations
 - 10) environmentally sensitive or protected lands
- d. determine whether proposed real estate forfeiture is financially feasible based on pre-seizure investigation and consideration factors such as:
 - 1) strength of the case
 - 2) property value and equity
 - 3) percentage of forfeiture proceeds due to Monroe County Sheriff's Office
 - 4) percentage of forfeiture proceeds due to other agencies
 - 5) status of the deed
 - 6) mortgage(s)
 - 7) lien(s)
 - 8) property's condition
 - 9) local real estate market
 - 10) hazards
 - 11) property's location
 - 12) necessary repairs
 - 13) cost of security
 - 14) cost of maintenance
 - 15) cost of insurance
 - 16) cost of litigation
 - 17) cost of property appraisals
 - 18) cost of business operation, if appropriate, taking into account whether illicit funds have been utilized in supporting the operation.
- e. Accomplish necessary forfeiture investigation and research regarding the subject real estate or assist in compiling such information if information is developed by other sources

- f.** Complete necessary departmental, court-related, and other paperwork relative to forfeiture, including a legal description of the property. If applicable, identification numbers must be listed.
- g.** Forward paperwork and recommendation for forfeiture to the Forfeiture Unit and Monroe County Sheriff's Office General Counsel
- h.** Effect constructive "seizure" of real estate and other enforcement duties with respect to the subject real estate.
- i.** Upon recommendation of the Case Officer, Forfeiture Unit, and Monroe County Sheriff's Office General Counsel, the Sheriff or his/her designee shall make the final decision as to whether proceed with the seizure and forfeiture.