



## Forfeiture of Assets

### .01 Policy

It is the policy of the Bladensburg Police Department to utilize Maryland Law to prevent the continued use of real and personal property for criminal purposes, while protecting the rights of innocent owners and lien holders.

Members shall ensure that, in making seizures under color of law they adhere to constitutional principles regarding an individual's right to be free from unreasonable searches and seizures, and refrain from conduct which violates constitutional rights, such as coerced "consent" searches, and searches based solely upon an individual's race or ethnicity.

### .02 Terms

Controlled Dangerous Substances law: Title 5 of the Criminal Law Article.

Final Disposition: A dismissal, entry of a nolle prosequi, the marking of a criminal charge "stet" on the docket, entry of a not guilty verdict, the pronouncement of sentence, or imposition of probation.

Lien: Includes a mortgage, deed of trust, pledge, security interest, encumbrance, or right of setoff.

Lienholder: A person who has a lien or a secured interest on property created before the seizure.

Proceeds: Includes property derived directly or indirectly in connection with or as a result of a crime under the Controlled Dangerous Substances law.

Property includes:

- Real property and anything growing on or attached to real property;
- Tangible and intangible personal property, including:
  - Securities;
  - Negotiable and nonnegotiable instruments;
  - Vehicles and conveyances of any type;
- An item, object, tool, substance, device, or weapon used in connection with a crime under the Controlled Dangerous Substances law; and,

- Money.

Forfeiting authority: The Office of the State's Attorney for Prince George's County.

### .03 Governing Legislation and Reference

Governing Legislation:

Maryland Code, Criminal Procedure Article, Title 12, Controlled Dangerous Substances Violations.

Maryland Code, Criminal Procedure Article, Title 13, Other Forfeitures.

Forms:

Asset Forfeiture Summary Report (Form 626)

Property Log (Form 669)

Reference:

General Order 400, Criminal Investigations.

### .04 Procedure

#### A. General Principles Regarding Seizures of Contraband for Forfeiture.

Police officers may seize personal property as "contraband" when they have probable cause to believe it was used:

- To transport, carry or convey contraband;
- To conceal or possess contraband;
- To facilitate the transportation, concealment, receipt, possession, purchase, sale or distribution of contraband, or,
- To acquire real or personal property by using proceeds obtained in violation of the Maryland Controlled Dangerous Substances law .

Officers considering whether to seize contraband for forfeiture should consider that although only probable cause is required to seize, if a claimant contests the forfeiture, the court is prohibited from forfeiting the property to Bladensburg unless we are able to demonstrate, by clear and convincing evidence, the property seized is a contraband article.

## Forfeiture of Assets

Seized property may not be used for routine purpose until title or ownership to the property is awarded to the department. Seizing agencies shall engage in reasonable efforts to maintain the property, so as to minimize any loss of value. Some use before final forfeiture may, therefore, be required for maintenance purposes. Efforts to maintain the property are to continue throughout the pendency of the forfeiture proceedings.

### B. Property subject to forfeiture (Md. Criminal Procedure § 12-102)

In general, the following are subject to forfeiture:

- Controlled dangerous substances manufactured, distributed, dispensed, acquired, or possessed in violation of the Controlled Dangerous Substances law;
- Raw materials, products, and equipment used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled dangerous substance in violation of the Controlled Dangerous Substances law;
- Property used or intended for use as a container for CDS or raw materials;
- Conveyances, including aircraft, vehicles, or vessels used or intended to be used to transport, or facilitate the transportation, sale, receipt, possession, or concealment of CDS or raw materials;
- Books, records, and research, including formulas, microfilm, tapes, and data used or intended for use in violation of the Controlled Dangerous Substances law;
- Money or weapons used or intended to be used in connection with the unlawful manufacture, distribution, dispensing, or possession of a controlled dangerous substance or controlled paraphernalia;
- Drug paraphernalia under § 5-619 of the Criminal Law Article;
- Controlled paraphernalia under § 5-620 of the Criminal Law Article;
- Real property; and,
- Everything of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Controlled Dangerous Substances law, all proceeds traceable to the exchange, and all negotiable instruments and securities used,

or intended to be used, to facilitate any violation of the Controlled Dangerous Substances law, or,

- Money or weapons that are found in close proximity to a contraband controlled dangerous substance, controlled paraphernalia, or forfeitable records of the importation, manufacture, or distribution of controlled dangerous substances are contraband and presumed to be forfeitable.

### C. Motor Vehicles (Md. Criminal Procedure § 12-104)

A motor vehicle used in violation of the Controlled Dangerous Substances law may be seized and forfeiture shall be recommended to the forfeiting authority if:

- Any quantity of a controlled dangerous substance is sold or attempted to be sold in violation of the Controlled Dangerous Substances law or this title;
- An amount of the controlled dangerous substance or paraphernalia is found that reasonably shows that the violator intended to sell the controlled dangerous substance in violation of the Controlled Dangerous Substances law; or
- The total circumstances of the case dictate that seizure and forfeiture are justified.

#### Circumstances of Case

Circumstances to be considered in deciding whether seizure and forfeiture are justified include:

- The possession of controlled dangerous substances;
- An extensive criminal record of the violator;
- A previous conviction of the violator for a controlled dangerous substances crime;
- Evidence that the motor vehicle was acquired by use of proceeds from a transaction involving a controlled dangerous substance;
- Circumstances of the arrest; and,
- The way in which the motor vehicle was used.

### D. Currency

The seizure of currency for purposes of forfeiture must be approved by a supervisor before the seizure actually occurs. Due to the time sensitive nature of forfeitures, the Asset

## Forfeiture of Assets

Forfeiture Summary Report and all reports shall be completed prior to the end of shift. The Forfeiture packet shall be forwarded to the office of the State's Attorney within 72-hours.

Currency does not qualify as "contraband" and may not be seized unless the totality of the facts establish clear probable cause to believe that a nexus exists between the article seized and narcotics activity, i.e., probable cause it was used, attempted to be used, or intended to be used in violation of the Maryland Controlled Dangerous Substances law.

If the only contraband seized from a single individual is currency, the Forfeiting Authority will not typically initiate a forfeiture lawsuit if the total sum seized from a single individual is less than \$500. Currency may, however, be seized and retained as evidence if it qualifies as such.

Members shall count and document the number of bills and their denominations. The seized currency shall be photographed and an inventory recorded on a Property Log form.

Seized currency shall be promptly deposited with the Town Treasurer in a trust fund.

If, however, seized currency may achieve or retains the status of evidence, it is to be promptly deposited as stated, but only after it loses its status as evidence.

### Photographs as Evidence

A photograph taken of seized currency may be substituted for money as evidence in a criminal or forfeiture proceeding.

#### E. Real Estate

Real property can be seized under certain circumstances; however, a court order must be obtained before the seizure occurs. Therefore, officers desiring to seize real property for purposes of forfeiture should confer with the Office of the State's Attorney regarding the requirements for obtaining a court order.

#### F. Conditions Excluding Property from Forfeiture

##### No knowledge of violation

Property may not be forfeited if the owner establishes by a preponderance of the evidence that the violation of the Controlled Dangerous Substances law was committed without the owner's actual knowledge.

##### No consent or privity to violation

A conveyance used as a common carrier or vehicle for hire in the transaction of business as a common carrier or vehicle for hire may not be seized or forfeited unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of the Controlled Dangerous Substances law.

A conveyance may not be forfeited for an act or omission that the owner shows was committed or omitted by a person other than the owner while the person other than the owner possessed the conveyance in criminal violation of federal law or the law of any state.

##### No forfeiture of real property for drug or drug paraphernalia violation

Generally, real property used as the principal family residence may not be forfeited unless one of the owners of the real property was convicted of a violation of §§ 5-602 through 5-609, §§ 5-612 through 5-614, § 5-617, § 5-618, or § 5-628 of the Criminal Law Article or of an attempt or conspiracy to violate Title 5 of the Criminal Law Article.

#### G. Deadlines for Filing Complaint

(Md. Criminal Procedure Code Ann. § 12-304)

##### Currency

A proceeding about money shall be filed within 90 days after the final disposition of criminal proceedings that arise out of the Controlled Dangerous Substances law.

If a complaint is not filed within the allotted time, seized money shall be returned to the owner on request of the owner.

If the owner fails to ask for the return of the money within 1 year after the final disposition of criminal proceedings, the money shall revert to the Town.

##### Motor Vehicle

A complaint for the forfeiture of a motor vehicle shall be filed within 45 days after the motor vehicle is seized.

#### H. Processing Requests for Forfeiture

The case officer, in consultation with the Office of the State's Attorney, will identify those cases that warrant the filing of a forfeiture lawsuit, determine those cases in which a negotiated settlement is in the best interest of the Department and seek such a settlement, and

## Forfeiture of Assets

determine those cases in which the property should be returned, due to innocent owner or other considerations. This initial review will include the identification of registered owner(s), title-holder(s), and bona fide lien holder(s), if any.

The case officer will coordinate a case review with the Office of the State's Attorney for Prince George's County to determine the course of action that should be taken in all forfeiture cases.

If it is determined that forfeiture is not warranted based upon innocent owner or other considerations, the case officer will notify the owner and arrange for the release of the property. "Other considerations" include, but are not limited to, the fact that the property is in such poor condition that forfeiture is not an economical use of resources.

Should it be determined that forfeiture is warranted, the case will be forwarded to the Office of the State's Attorney to determine whether to proceed with a forfeiture lawsuit. The Office of the State's Attorney shall file a complaint and attempt to obtain a court order, or negotiate a settlement, in a manner that is timely with regard to the facts, law and a strategy reasonable to each specific case.

### I. Release of Seized Property

As soon as practical after seizure, a good faith attempt will be made to release all personal property to the lawful owner that was not included in a forfeiture lawsuit, or was not to be retained as evidence to the lawful owner.

In those instances where there is probable cause to believe that a vehicle, vessel, aircraft, or other personal property was used in violation of the Controlled Dangerous Substances law, but the vehicle is to be released to an innocent owner, the Department may assess an administrative fee against the owner not to exceed the actual incurred costs of towing, storage, and maintenance of the seized property.

In those instances where a seized vehicle, vessel, aircraft, or other personal property is to be released to the owner pursuant to a negotiated settlement, the Department may assess an administrative fee in an amount to be negotiated with the owner.

If at the conclusion of the judicial process the owner prevails, the seized property will be released to the owner immediately. Under

these circumstances, the Department will not assess any towing charge, storage fee, administrative fee, or maintenance costs against the owner.

Upon the release of any seized property, the member supervising the release must obtain the signature of the recipient on a release form.

### J. Other Forfeitures

(Md. Criminal Procedure Code Ann. § 13-102)

Money is prima facie contraband if an officer seizes the money in connection with an arrest for:

- Unlawfully playing or operating a bookmaking scheme;
- Unlawfully betting on a horse race, athletic event, lottery, or game; or,
- Using an unlawful gaming table or gaming device.

### K. Disposition of Forfeited Property

Whenever property is forfeited, the Department may:

- Keep the property for official use;
- Destroy or otherwise dispose of it; or,
- Sell the property if:
  - the law does not require the property to be destroyed; and,
  - the property is not harmful to the public.

The proceeds of a sale shall first be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs.

Forfeited currency or proceeds from a sale of forfeited property under shall be deposited to General Fund.

Vehicles, vessels, aircraft, and other titled property awarded to the Department will have title applied for by the Department.

Funds and or property received from the Department of Justice or the Department of Treasury in relation to the Federal Equitable Sharing Agreement are deposited into a separate revenue account within a separate fund and are not commingled with other state and local forfeitures. Expenditures out of this fund are in accordance with the statutes and guidelines that govern equitable sharing.

## Forfeiture of Assets

---

HISTORY: Adopted July 1, 2014

This General Order supersedes all other orders and memoranda in conflict therewith.

Authority:

A handwritten signature in black ink, appearing to read "Charles L. Owens". The signature is written in a cursive style with large, looping letters.

Charles L. Owens  
Chief of Police