

809A.16 Disposition of property.

1. If notice of pending forfeiture is properly served in an action in rem or in personam in which personal property, having an estimated value of five thousand dollars or less, as established by affidavit provided by the prosecuting attorney, is seized, and no claim opposing forfeiture is filed within thirty days of service of such notice, the prosecuting attorney shall prepare a written declaration of forfeiture of the subject property to the state and allocate the property according to the provisions of section 809A.17.

2. Within one hundred eighty days of the date of a declaration of forfeiture, an owner or interest holder in property declared forfeited pursuant to subsection 1 may petition the court to have the declaration of forfeiture set aside, after making a prima facie showing that the state failed to serve proper notice as provided by section 809A.13. Upon such a showing the court shall allow the state to demonstrate by a preponderance of the evidence that notice was properly served. If the state fails to meet its burden of proof, the court may order the declaration of forfeiture set aside. The state may proceed with judicial proceedings pursuant to this chapter.

3. Except as provided in subsection 1, if a proper claim is not timely filed in an action in rem, or if a proper answer is not timely filed in response to a complaint, the prosecuting attorney may apply for an order of forfeiture and an allocation of forfeited property pursuant to section 809A.17. Under such circumstance and upon a determination by the court that the state's written application established the court's jurisdiction, the giving of proper notice, and facts sufficient to show probable cause for forfeiture, the court shall order the property forfeited to the state.

4. After final disposition of all claims timely filed in an action in rem, or after final judgment and disposition of all claims timely filed in an action in personam, the court shall enter an order that the state has clear title to the forfeited property interest. Title to the forfeited property interest and its proceeds shall be deemed to have vested in the state on the commission of the conduct giving rise to the forfeiture under this chapter.

5. The court, on application of the prosecuting attorney, may release or convey forfeited personal property to a regulated interest holder or interest holder if any of the following applies:

a. The prosecuting attorney, in the attorney's discretion, has recognized in writing that the regulated interest holder or interest holder has an interest in the property and informs the court that the property interest is exempt from forfeiture.

b. The regulated interest holder's or interest holder's interest was acquired in the regular course of business as a regulated interest holder or interest holder.

c. The amount of the regulated interest holder's or interest holder's encumbrance is readily determinable and has been reasonably established by proof made available by the prosecuting attorney to the court.

d. The encumbrance held by the regulated interest holder or interest holder seeking possession is the only interest exempted from forfeiture and the order forfeiting the property to the state transferred all of the rights of the owner prior to forfeiture, including rights to redemption, to the state.

6. After the court's release or conveyance under subsection 5, the regulated interest holder or interest holder shall dispose of the property by a commercially reasonable public sale. Within ten days of disposition the regulated interest holder or interest holder shall tender to the state the amount received at disposition less the amount of the regulated interest holder's or interest holder's encumbrance and reasonable expense incurred by the regulated interest holder or interest holder in connection with the sale or disposal. For the purposes of this section, "*commercially reasonable*" means a sale or disposal that would be commercially reasonable under chapter 554, article 7.

7. On order of the court or declaration of forfeiture forfeiting the subject property, the state may transfer good and sufficient title to any subsequent purchaser or transferee. The title shall be recognized by all courts and agencies of this state, and any political subdivision. On entry of judgment in favor of a person claiming an interest in the property that is subject to forfeiture proceedings under this chapter, the court shall enter an order that the property

or interest in property shall be released or delivered promptly to that person free of liens and encumbrances under this chapter, and that the person's cost bond shall be discharged.

8. Upon motion by the prosecuting attorney, if it appears after a hearing that reasonable cause existed for the seizure for forfeiture or for the filing of the notice of pending forfeiture or complaint, the court shall find all of the following:

a. That reasonable cause existed, or that the action was taken under a reasonable good faith belief that it was proper.

b. That the claimant is not entitled to costs or damages.

c. That the person or seizing agency who made the seizure and the prosecuting attorney are not liable to suit or judgment for the seizure, suit, or prosecution.

96 Acts, ch 1133, §16

Referred to in §809.12A, 809A.8, 809A.13