

809A.8 Commencement of forfeiture proceedings — property release requirements.

1. Forfeiture proceedings shall be commenced as follows:

a. Property seized for forfeiture shall be released on the request of an owner or interest holder to the owner's or interest holder's custody, as custodian for the court, pending further proceedings pursuant to this chapter if the prosecuting attorney fails to do either of the following:

(1) File a notice of pending forfeiture against the property within ninety days after seizure.

(2) File a judicial forfeiture proceeding within ninety days after notice of pending forfeiture of property upon which a proper claim has been timely filed pursuant to section 809A.11.

b. Within thirty days after the effective date of the notice of pending forfeiture, an owner of or interest holder in the property may elect to file with the prosecuting attorney any of the following:

(1) A claim pursuant to section 809A.11.

(2) A petition for recognition of exemption pursuant to section 809A.11, except that no petition may be filed after the state commences a court action.

(3) A request for an extension of time in which to file a claim or petition for recognition of exemption.

c. An extension of time for the filing of a claim shall only be granted for good cause shown for mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty.

d. If a petition is timely filed, the prosecuting attorney may delay filing a judicial forfeiture proceeding for one hundred eighty days after the notice of pending forfeiture, and the following procedures shall apply:

(1) The prosecuting attorney shall provide the seizing agency and the petitioning party with a written recognition of exemption and statement of nonexempt interests relating to any or all interests in the property in response to each petitioning party as follows:

(a) Within sixty days after the effective date of the notice of pending forfeiture if the petitioner is a regulated interest holder. The recognition of exemption shall recognize the interest of the petitioner to the extent of documented outstanding principal plus interest at the contract rate until paid.

(b) Within one hundred twenty days after the effective date of the notice of pending forfeiture for all other petitioners.

(2) An owner or interest holder in any property declared nonexempt may file a claim pursuant to section 809A.11 within thirty days after the effective date of the notice of the recognition of exemption and statement of nonexempt interest.

(3) If a petitioning party does not timely file a proper claim under paragraph "b", the recognition of exemption and statement of nonexempt interests becomes final, and the prosecuting attorney shall proceed as provided in sections 809A.16 and 809A.17.

(4) The prosecuting attorney may elect to proceed under this section for judicial forfeiture at any time.

(5) If a judicial forfeiture proceeding follows the application of procedures in this paragraph, the following apply:

(a) A duplicate or repetitive notice is not required. If a proper claim has been timely filed pursuant to subparagraph (2), the claim shall be determined in a judicial forfeiture proceeding after the commencement of such a proceeding under sections 809A.13, 809A.14, and 809A.15.

(b) The proposed recognition of exemption and statement of nonexempt interest responsive to all petitioning parties who subsequently filed claims are void and are regarded as rejected offers to compromise.

e. If a proper petition for recognition of exemption or proper claim is not timely filed, the prosecuting attorney shall proceed as provided in sections 809A.16 and 809A.17.

2. a. Notice of pending forfeiture, service of an in rem complaint, or notice of a recognition of exemption and statement of nonexempt interests required under this chapter shall be given in accordance with one of the following:

(1) If the owner's or interest holder's name and current address are known, by either personal service by any person qualified to serve process or by any law enforcement officer or by mailing a copy of the notice by restricted certified mail to that address.

(2) If the owner's or interest holder's name and address are required by law to be on record with the county recorder, secretary of state, the motor vehicle division of the state department of transportation, or another state or federal agency to perfect an interest in the property, and the owner's or interest holder's current address is not known, by mailing a copy of the notice by restricted certified mail to any address of record with any of the described agencies.

(3) If the owner's or interest holder's address is not known and is not on record as provided in subparagraph (2), or the owner or interest holder's interest is not known, by publication in one issue of a newspaper of general circulation in the county in which the seizure occurred.

b. Notice is effective upon the earlier of personal service, publication, or the mailing of a written notice, except that notice of pending forfeiture of real property is not effective until it is recorded. Notice of pending forfeiture shall include a description of the property, the date and place of seizure, the conduct giving rise to forfeiture or the violation of law alleged, and a summary of procedures and procedural rights applicable to the forfeiture action.

96 Acts, ch 1133, §8

Referred to in §809A.6, 809A.11, 809A.13, 809A.14, 809A.15