

809.5 Disposition of seized property.

1. Seized property shall be returned to the owner if the property is no longer required as evidence or the property has been photographed and the photograph will be used as evidence in lieu of the property, if the property is no longer required for use in an investigation, if the owner's possession is not prohibited by law, and if a forfeiture claim has not been filed on behalf of the state.

a. If the aggregate fair market value of the property is greater than five hundred dollars, the seizing agency shall serve notice by personal service or by sending the notice by restricted certified mail, return receipt requested, to the last known address of any person having an ownership or possessory right in the property. Refusal of restricted certified mail, return receipt requested, shall be construed as receipt of the notice.

b. If the aggregate fair market value of the property is equal to or less than five hundred dollars, the seizing agency shall serve notice by personal service or by sending the notice by regular mail to the last known address of any person having an ownership or possessory right in the property.

c. A person having an ownership or possessory right in the property must file a written claim for the property with the seizing agency within thirty days from the date of receipt of the notice and must take possession of the property within thirty days of the expiration of the period of time for filing a written claim. If no written claim is filed within thirty days from the date of receipt of the notice or if a written claim is filed but the claimant does not take possession of the property within thirty days of the expiration of the period of time for filing the written claim, the property shall be deemed abandoned and shall be disposed of accordingly.

d. The notice served or sent pursuant to this subsection shall inform the recipient of the filing and possession requirements of paragraph "c".

e. The seizing agency shall not release the property to any party until the expiration of the date for filing claims. In the event that there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of court and the clerk shall proceed as if such claims were filed by the parties under section 809.3.

f. In the event that the owner is unable to be located or the property is deemed abandoned the following shall apply:

(1) If the aggregate fair market value of the property is greater than five hundred dollars, forfeiture proceedings shall be initiated pursuant to the provisions of chapter 809A. If the court does not order the property forfeited to the state in the forfeiture proceedings pursuant to chapter 809A, the seizing agency shall become the owner of the property and may dispose of it in any reasonable manner.

(2) If the aggregate fair market value of the property is equal to or less than five hundred dollars, the seizing agency shall become the owner of the property and may dispose of it in any reasonable manner.

(3) Notwithstanding subparagraph (2), firearms or ammunition with an aggregate fair market value equal to or less than five hundred dollars shall be deposited with the department of public safety. The firearms or ammunition may be held by the department of public safety and be used for law enforcement, testing, or comparisons by the criminalistics laboratory, or may be destroyed or disposed of by the department of public safety in accordance with section 809.21.

2. Upon the filing of a claim and following hearing by the court, property which has been seized shall be returned to the person who demonstrates a right to possession, unless one or more of the following is true:

a. The possession of the property by the claimant is prohibited by law.

b. There is a forfeiture notice on file and not disposed of in favor of the claimant prior to or in the same hearing.

c. The state has demonstrated that the evidence is needed in a criminal investigation or prosecution.

3. The court shall, subject to any unresolved forfeiture hearing, make orders appropriate

to the final disposition of the property including, but not limited to, the destruction of contraband once it is no longer needed in an investigation or prosecution.

86 Acts, ch 1140, §7; 2007 Acts, ch 107, §1; 2008 Acts, ch 1153, §1, 2

Referred to in §714.26