

60-4108. Same; management and preservation. (a) Property seized for forfeiture under this act is not subject to alienation, conveyance, sequestration, or attachment, nor is the property subject to a motion or order under K.S.A. 22-2512, and amendments thereto. The seizing agency may release the property if forfeiture or retention is unnecessary, may transfer the property to any other city, county, state or federal agency or may transfer the action to another plaintiff's attorney by discontinuing forfeiture proceedings in favor of forfeiture proceedings initiated by the other agency.

(b) An owner of property seized pursuant to this act may obtain release of the property by posting with the plaintiff's attorney or district court a surety bond or cash in the amount equal to the full fair market value of the property as determined by the plaintiff's attorney. The seizing agency may refuse to release the property if the bond tendered is inadequate or if the property is retained as contraband or as evidence or if it is particularly altered or designed for use in conduct giving rise to forfeiture. If a surety bond or cash is posted and the property is forfeited, the court shall forfeit the surety bond or cash and any accrued interest in lieu of the property. On motion of either party, the adequacy of the bond or cash tendered may be reviewed by the court.

(c) If property is seized under this act, the seizing agency may, subject to any need to retain the property as evidence, do any of the following:

- (1) Remove the property to an appropriate place designated by the court;
- (2) place the property under constructive seizure;
- (3) remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest-bearing special trust account; or
- (4) provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain and operate it as reasonably necessary to maintain the property's value, in any appropriate location within the jurisdiction of the court.

(d) As soon as practicable after seizure for forfeiture, the seizing agency shall conduct a written inventory and estimate the value of the property seized.

(e) The court may order property which has been seized for forfeiture sold, leased, rented or operated to satisfy a specified interest of any interest holder, or to preserve the interests of any party on motion of such party. Sale may be ordered when the property is liable to perish, to waste, or to be foreclosed or significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the property's value. The court may enter orders under this subsection after notice to persons known to have an interest in the property, and an opportunity for a hearing, on all of the following conditions:

- (1) That the interest holder has:
 - (A) Timely filed a proper claim; or
 - (B) an interest which the plaintiff's attorney has stipulated is exempt from forfeiture;
- (2) that if a sale is necessary, a third party designated by the court shall dispose of the property by commercially reasonable public sale and apply the proceeds to the reasonable expenses incurred in connection with the sale or disposal and then for the satisfaction of exempt interests in the order of their priority; and
- (3) that the balance of the proceeds, if any, be preserved in the actual or constructive custody of the court, in an interest-bearing account, subject to further proceedings under this act.

History: L. 1994, ch. 339, § 8; July 1.