

60-4113. In rem proceedings. (a) A judicial in rem forfeiture proceeding brought by the plaintiff's attorney pursuant to a notice of pending forfeiture or verified petition for forfeiture is also subject to the provisions of this section. If a forfeiture is authorized by this act, it shall be ordered by the court in the in rem action.

(b) An action in rem may be brought by the plaintiff's attorney in addition to, or in lieu of, civil in personam forfeiture procedures. The seizing agency may serve the complaint in the manner provided by subsection (a)(3) of K.S.A. 60-4109, and amendments thereto, or as provided by the rules of civil procedure.

(c) Only an owner of or an interest holder in the property who has timely filed a proper claim may file an answer in an action in rem. For the purposes of this section, an owner of or interest holder in property who has filed a claim and answer shall be referred to as a claimant.

(d) The answer shall be in affidavit form, signed by the claimant under oath, and sworn to by the affiant before one who has authority to administer the oath, under penalty of perjury, K.S.A. 2016 Supp. 21-5903, and amendments thereto, or making a false writing, K.S.A. 2016 Supp. 21-5824, and amendments thereto, and shall otherwise be in accordance with the rules of civil procedure on answers and shall also set forth all of the following:

(1) The caption of the proceedings and identifying number, if any, as set forth on the notice of pending forfeiture or complaint and the name of the claimant.

(2) The address where the claimant will accept mail.

(3) The nature and extent of the claimant's interest in the property.

(4) The date, the identity of the transferor, and the detailed description of the circumstances of the claimant's acquisition of the interest in the property.

(5) The specific provision of this act relied on in asserting that such property is not subject to forfeiture.

(6) All essential facts supporting each assertion.

(7) The specific relief sought.

(e) The answer shall be filed within 21 days after service of the civil in rem complaint.

(f) The seizing agency and any claimant who has timely answered the complaint, at the time of filing such agency's pleadings, or at any other time not less than 30 days prior to the hearing, may serve discovery requests on any other party, the answers or response to which shall be due within 21 days of service. Discovery may include deposition of any person at any time after the expiration of 14 days after the filing and service of the complaint. Any party may move for a summary judgment at any time after an answer or responsive pleading is served and not less than 30 days prior to the hearing.

(g) The issue shall be determined by the court alone, and the hearing on the claim shall be held within 60 days after service of the petition unless continued for good cause. The plaintiff's attorney shall have the initial burden of proving the interest in the property is subject to forfeiture by a preponderance of the evidence. If the state proves the interest in the property is subject to forfeiture, the claimant has the burden of showing by a preponderance of the evidence that the claimant has an interest in the property which is not subject to forfeiture.

(h) If the plaintiff's attorney fails to meet the burden of proof for forfeiture, or a claimant establishes by a preponderance of the evidence that the claimant has an interest that is exempt under the provisions of K.S.A. 60-4106, and amendments thereto, the court shall order the interest in the property returned or conveyed to the claimant. The court shall order all other property forfeited to the seizing agency and conduct further proceedings pursuant to the provision of K.S.A. 60-4116 and 60-4117, and amendments thereto.

History: L. 1994, ch. 339, § 13; L. 2010, ch. 135, § 194; L. 2011, ch. 30, § 226; July 1.