

ASSET FORFEITURE

Attorney General's Guidelines for Forfeiture

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(1) Seizure of Residences

When a prosecuting agency seeks to forfeit real property in residential use, the least intrusive means that will preserve the property for forfeiture shall be employed. A notice of lis pendens or an order restraining alienation should suffice to preserve the government's interest in forfeiture pending final judicial determination of the forfeiture action. This policy recognizes that immediate dispossession from a residence may affect innocent individuals, that dispossession is not always required to preserve the property for forfeiture, and that the home is afforded special significance in American jurisprudence. In cases in which public health, safety or welfare is at risk, full seizure may be accomplished upon obtaining judicial sanction.

(2) Court Approval Required for Forfeiture of Certain Property

In all cases in which real property or in which property having a value of \$10,000 or more is the subject of a forfeiture, such forfeiture action shall proceed by a complaint filed in Superior Court as authorized by N.J.S.A. 2C:64-3. This policy will ensure that a public record is established for property having significant value, when that property is subject to a forfeiture. Further, a Superior Court Judge, as a neutral judicial officer, can adjudicate claims by parties asserting an interest in the property and must sanction any final disposition of the forfeiture complaint.

(3) Forfeiture and The Underlying Criminal Offense

Forfeiture is a remedy that seeks to take unlawfully obtained proceeds of criminal activity and to take instrumentalities used to aid in criminal activities. In the case of proceeds, the limit of the forfeiture remedy is defined by the prosecuting agency's ability to prove the nexus between instrumentalities, the degree to which the instrumentality is employed in any criminal transaction or enterprise, the importance of the instrumentality to accomplishing the illegal end and the nature and seriousness of the illegal activities should all be evaluated in determining whether the forfeiture remedy should be employed to its full limit.

(4) Disposition of Forfeiture and Criminal Charges Not Dependent

It is legitimate to negotiate a forfeiture settlement when negotiating a criminal disposition. However, a reasonable disposition of possible or pending criminal charges should not be comprised to obtain a greater forfeiture of property.