



SOUTH MIAMI POLICE DEPARTMENT

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CFA STANDARD: 30 SUBJECT: <i>Legal Process –</i> PROPERTY FORFEITURE	NEW () RESCINDS (X) AMENDS (x) OTHER ()	By Order Of:  Rene Landa, CHIEF OF POLICE	

CFA STANDARD: 30.01, 30.02M, 30.03M

SECTION:

32.4.1 Accounting; Disposition of Asset Forfeiture

RESCINDS: All existing orders in conflict.

PURPOSE: To promote the standardization of law enforcement procedures and policies used when seizing and maintaining forfeited assets pursuant to the provision of the Florida Contraband Forfeiture Act (hereinafter referred to as FCFA, and to ensure that property is seized and maintained in an efficient and lawful manner. shared monies and property because of any federal equitable sharing programs.

SCOPE: All departmental personnel.

POLICY: The FCFA (932.701-932.7062 Florida Statutes, authorizes law enforcement agencies to seize and forfeit qualifying property which has been used, is being used, was intended to be used, or was acquired with proceeds in violation of any provision of the Act.

PROCEDURE:

32.4.1 Seizure of Monetary Instruments pursuant to the FCFA:

1. The Department may seize monetary instruments (US currency, foreign currency, checks, money orders, gift cards, or prepaid or stored value cards or other devices that are the equivalent of money) for forfeiture under the FCFA if it determines there is probable cause to believe that:

- a) The monetary instrument was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony;
- b) The monetary instrument was acquired by proceeds obtained as a result of a violation of the FCFA;
- c) The monetary instrument was used, was attempted, or intended to be used in violation of the gambling laws of this state

2. In cases where the monetary instrument was acquired by defrauding a third party and the Department can reasonably identify the innocent owner of the subject monetary instrument, that property shall be seized as evidence/restitution, but not seized for forfeiture.

32.4.2 Seizure of Personal Property (Non-Monetary Instruments)

1) Personal property (vehicles, vessels, aircraft, and other contraband articles) and/or real property may only be seized for forfeiture under FCFA if that item is a “contraband article” (an item that has been used, is being used, or was acquired with proceeds during the commission of a felony and/or in violation of any provision of the FCFA) and one or more of the below criteria exist:

- a) The owner of the property is arrested for a criminal offense that forms the basis for the nexus to the contraband article personal property that is subject to seizure;
- b) The owner of the contraband article cannot be identified after a diligent search; or the person in possession of the contraband article denies ownership and the owner of the property cannot be identified by means that are available to the officer at the time of seizure; The owner of the contraband article is a fugitive from justice or is deceased; A motor vehicle owned by the driver is being driven by a person under the influence of alcohol or drugs in violation of FS 316.193 and at the time of the offense, the person’s driver’s license is suspended, revoked, or cancelled as a result of a prior conviction for driving under the influence.
 - 1) When a vehicle is seized under these circumstances, 30 percent of the net proceeds from the sale of the motor vehicle shall be retained by the Department and the remaining 70 percent shall be applied to payment of court costs and the remainder deposited into the General revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program.
- c) An individual who does not own the contraband article is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under the FCFA and the Department can prove the owner of the property had actual knowledge of his/her property being used as an instrument of the criminal activity.
- d) When an owner received written notification from a law enforcement agency that the seized asset had been used in violation of the FCFA on a prior occasion by the arrestee and the owner acknowledged receipt of that notification in writing, this evidence may be used to establish knowledge.

34.2.3 Additional Criteria

1) Specific criteria must be met before US currency or other property is seized for forfeiture. A clear nexus between the property(s) seized and the violation of the FCFA shall exist before any seizure occurs.

- a) A vehicle shall have a minimum value of \$8000.00, shall not be more than six (6) years old, and shall not have a co-owner that is not linked to the criminal activity unless there is clear proof that the co-owner knew that the vehicle was being used as an instrument in criminal activity. The determination of value shall include an evaluation of equity beyond any lien amount on the vehicle.

2) The total value of other non-vehicle property (including US currency) seized shall have an aggregate value of at least \$4000.00. Lesser amounts of US currency or other contraband articles may be considered when seized in conjunction with a vehicle or other personal property.

34.3.4 Seizure Procedures

- 1) The seizing officer shall notify his/her immediate supervisor prior to any seizure. The supervisor shall see the City Attorney receives notification of the seizure within twenty-four hours, excluding weekends and holidays
- 2) Property not seized at the time of the violation of the FCFA and later located on private premises shall not be seized without a court order, unless otherwise authorized by law. In this circumstance, contact will be made through proper channels with the City Attorney to obtain a proper court order prior to seizure. However the contraband property may be seized if the property is later moved to a public place, as permitted by law.
- 3) It shall be the policy of the Department that it comply with and utilize the provisions of the Florida Contraband Forfeiture Act to deter and prevent the continued use of contraband articles for criminal purposes while protecting the proprietary interests of innocent owners and lien-holders and to authorize such law enforcement agencies to use the proceeds collected under the Act as supplemental funding for authorized purposes. [CFA30.01]
- 4) The potential for obtaining revenues from the forfeitures must not override fundamental consideration such as public safety, the safety of law enforcement officers, or the investigation and prosecution of criminal activity. The employment, salary, promotion or other compensation of a law enforcement officer or attorney should not depend on obtaining a quota of seizures.
- 5) It is also the policy of this state that law enforcement agencies ensure that, in all seizures made under the Act, their officers adhere to federal and state constitutional limitations regarding an individual's right to be free from unreasonable searches and seizures, including, but not limited to, the illegal use of stops based on a pretext, coercive consent searches, or a search based solely upon an individual's race or ethnicity.”

The Act provides procedural safeguards for those claiming or having an interest in the seized property, including bona fide lien-holders, lessors, and innocent co-owners. The Act complements the other options available to Florida law enforcement agencies in addressing criminal activity, and being a valuable tool of law enforcement to be used by Florida law enforcement agencies to assist their law enforcement mission. The Act is to be preserved and wisely used as a valuable weapon in Florida's law enforcement arsenal.

A. Confiscated Property:

This includes vehicles, vessels, miscellaneous equipment, U.S. currency, derived assets, substituted assets, real property, and the personal property as defined by the Florida

Contraband Forfeiture Act, which are currently in or are being evaluated for forfeiture litigation.

1. When property is seized for forfeiture, the probable cause supporting the seizure shall be reviewed by the CID Lieutenant, within forty-eight (48) hours of the property being seized, who is not directly involved in making the seizure. [CFA30.02M]

This supervisor shall be the assigned forfeiture supervisor. The determination of whether to seize currency must be made by supervisory personnel, not line-level personnel. The City Attorney or a specially assigned forfeiture attorney must be notified as soon as possible of all seizures.

2. Anyone claiming an ownership interest in the personal property shall receive notice at the time of the seizure by the Police Department or by certified mail, return receipt requested, that there exists a right to an adversarial preliminary hearing after the seizure to determine whether probable cause existed to believe that such property has been or is being used in violation of the Florida Contraband Forfeiture Act. [CFA30.02M]

Such notice shall be provided by certified mail within five (5) working days after the seizure and must state that a person entitled to notice may request an adversarial preliminary hearing within fifteen (15) days after receiving such notice. Departmental personnel who are to attend the hearing will be determined by the City Attorney and the Chief of Police.

3. Upon confiscation by the Police Department, the City Attorney or a specially assigned forfeiture attorney will evaluate the case from all aspects of proceeding with a forfeiture action.
 - a. All confiscated property shall be evaluated by the Chief of Police or his/her designee for condition, value, sale, and usability. Generally, unless a motor vehicle has a free title or equity in excess of \$2,000.00 as compared to its book value and is in good condition, it will not meet the departmental criterion for forfeiture. If it is the decision of the Chief of Police in consultation with the City Attorney, to either file a forfeiture action or attempt to negotiate an out of court settlement, then said property shall be properly maintained and stored.
 - b. The Police Department shall not use the seized property for any purpose until the rights to, interest in, and title to the seized property are perfected in accordance with the Act. This does not prohibit the use or operation necessary for reasonable maintenance of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value.

- c. Settlement of any forfeiture action shall be consistent with the mandates of Section 932.704 (7) of the Act and in compliance with Police Department policies or directives.
4. If the City does not file a forfeiture action, then all confiscated property shall be returned to the owner or his/her agent, or a valid lien-holder, for actual costs as provided by the Model Policy. In cases where the City does not pursue a forfeiture action, no property related to the confiscation or arrest shall be used.
 - a. To help assure that property is not wrongfully held after seizure, all asserted claims of interest in seized property are to be promptly reviewed by the City Attorney or a specially assigned forfeiture attorney for potential validity.
 - b. A complete inventory of the seized property and all contents found therein shall be completed at the time of seizure. As soon as practical after seizure, officers shall make a good faith effort to release to the lawful owner all personal property (clothing, etc.) seized with items impounded, pursuant to the Act, and not being retained as evidence or for forfeiture.

If the owner is unknown, has been arrested, or is otherwise unavailable to take possession of the property, it shall be placed in the Property Room under a separate property receipt to be released to the owner at a later date.

B. Forfeited Property:

This includes vehicles, vessels, aircraft, miscellaneous equipment, U.S. Currency, derived assets, substituted assets, real property, and other personal property as defined by the Act, which through court order or negotiation have become titled in the City.

1. U.S. Currency must be used for law enforcement purposes for use as required by law, with approval from the Chief of Police and the City Manager;
2. The Police Department shall not anticipate future forfeitures or proceeds in consideration upon recommending fiscal budgets for said department;
3. Vehicles and other equipment suitable for law enforcement purposes may be used with approval of the Chief of Police;

4. Vehicles may be replaced on an as needed basis. Vehicles no longer in use will be turned over to the control of the City Manager for disposal at auction;
5. All forfeited property retained for law enforcement use shall be maintained and utilized in accordance with the Act. Such property shall be subject to the same controls with regard to property acquired through the department's normal appropriations process.

C. Care and Maintenance of Confiscated and Forfeited Property:

1. The Police Department's Services Supervisor will monitor the cost of repair and condition of those vehicles in use that have been forfeited. All forfeited property will be under the control and supervision of the Administration Bureau Captain.
2. The care and maintenance of vehicles and all other property that have been confiscated and pending litigation are also the responsibility of the Administrations Bureau Captain.

D. Additional Policies:

The following policies will apply to the seizure of any vehicle, vessel, aircraft, currency, weapons, jewelry, or other personal property, confiscated under the authority of the Florida Contraband Forfeiture Act. All seizures shall be based upon probable cause as required by law.

1. Aircraft - The Property Supervisor shall respond to the scene if on duty. He/she will respond and take charge of the aircraft and all contents except evidence. The Administration Bureau Captain or his designee will make arrangements for proper storage, maintenance, and insurance.
2. Currency - All monies shall be placed in Evidence following established police department policies. The officer placing the monies in Evidence shall contact the Services Supervisor on the next working day. The Administration Bureau Captain shall arrange to have the money promptly counted, photographed and deposited into the interest bearing Law Enforcement Trust Fund as required by law. Following the completion of the forfeiture procedure, currency shall be expended in compliance with Florida Statutes and as appropriated in the City budget.
3. Miscellaneous Property - All property including jewelry, furniture, tools, electronics, etc., shall be placed in Evidence and marked "Hold for Confiscation". In a case where items may be too large or numerous that storage in Evidence is not practical, the Services Supervisor will be

notified and he/she will make the necessary arrangements for proper storage, maintenance and insurance.

4. Real Property - Because of the uniqueness and special statutory requirements and care taking needs of real property, contemplation of seizure of such property shall require approval of the Chief of Police and consultation with the City Attorney or specially assigned forfeiture attorney. The following additional factors shall be considered prior to any seizure of real property. Pre-seizure planning issues to consider:
 - a. Cost of maintenance (i.e. insurance, electric, phone, pool, lawn, mortgage payments, security, etc.);
 - b. Feasibility of occupancy agreements;
 - c. Impact of seizure on persons other than those with a legal interest (i.e. wife, children, ailing family members, renters, etc.);
 - d. Impact of seizure on the public health, safety and welfare;
 - e. Impact of any deed restrictions;
 - f. Impact of seizure on targets of a criminal investigation;
 - g. The availability of alternative methods of forfeiture such as joint or adaptive forfeiture with a federal agency;
 - h. If property is residential, a determination should be made as to how title is held and whether the property has been designated homestead.

5. Substituted or Derived Assets - Because of the uniqueness, special needs and legal complexities of said properties, any contemplation of seizure of such properties shall require consultation with the City Attorney or specially assigned forfeiture attorney.

6. Vehicles - Any vehicle, if used in violation of the Act, shall be seized regardless of lien, lease or ownership, and driven to the station when possible. If driving the vehicle back to the station is not possible, the vehicle will be towed to the station or designated towing service lot.
 - a. The keys of any seized vehicle shall be left in Police Property for the Administration Bureau Captain or his/her designee. The vehicle will be locked after being parked. If no vehicle keys are available, the vehicle shall remain unlocked and the on-duty shift Supervisor shall be responsible for securing the vehicle. Valuable property and evidence will be removed, inventoried and placed in Evidence.
 - b. All documents relating to ownership status of the vehicle shall be given to the Administration Bureau Captain or his/her designee. The Administration Bureau Captain, or his/her designee, will determine the status of lien-holders, innocent owners, etc., arrange for the release of the vehicle when deemed necessary, or file a complaint for forfeiture.

The Administration Bureau Captain, or his/her designee, will inventory and arrange for the prompt return of personal property not related to the seizure when forfeiture procedures are initiated. The Administration Bureau Captain or his designee will make arrangements for proper storage and maintenance of all seized property.

7. Vessels - Seized vessels will be secured on trailers at the police parking lot when possible, and the on-duty shift Supervisor shall respond to the scene immediately. He/she will respond and take charge of the vessel and all contents, including evidence. The Administration Bureau Captain, or his/her designee, will make arrangements for proper storage, maintenance, and insurance.
8. Weapons - Seized weapons will be placed in Evidence following established police department policies, and a hold for the Administration Bureau Captain shall be noted on the Evidence/Property Receipt.
9. Release of Property - Confiscated funds or property that are maintained in Evidence shall only be released/returned to the owner. The owner must sign the Evidence/Property Receipt prior to release of said confiscated funds or property. Upon release to the owner, the owner shall be required to sign a General Release in favor of the City.
10. Law Enforcement Trust Fund - The Police Department shall maintain its forfeiture proceeds and accrued interest thereon in a Law Enforcement Trust Fund as required by law. Such fund shall be subject to normal accounting controls and financial audits of all deposits and expenditures. The proceeds and interest thereon may not be used to meet normal operating expenses of the law enforcement agency. The department shall file financial reports as required by the Act.
11. Joint Investigations - Federal Sharing is the result of joint investigations, where federal agencies work with state or local law enforcement to enforce violation of law. When assets are seized in a joint law enforcement venture with federal agencies, the following guides will be consulted: [CFA30.03M(a), (b)]
 - a. For forfeitures shared with agencies of the U.S. Department of Justice: "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies."
 - b. For forfeitures shared with agencies of the U.S. Department of the Treasury: "Guide to Equitable Sharing for Foreign Countries and Federal, State and Local Law Enforcement Agencies." Copies of guides are maintained in the offices of the Administration Bureau Captain and the City Finance Director.

- c. When asset sharing is anticipated, the CID Lieutenant will ensure the proper forms are to be completed and that the name, address, and telephone numbers of the federal agent and the responsible federal agency are to be included on the forms.
 - d. The CID Lieutenant will also ensure that all requested shared forfeitures are logged and maintained in a separate filing system.
12. Periodic Review - The Police Department shall periodically review seizures of property, as well as settlements and forfeiture proceedings initiated by the department to determine whether such seizures, settlements and forfeitures comply with the Act and the Uniform Standards.

Such review will occur annually, supervised by the Administration Bureau Captain. If the review suggests deficiencies, the department shall promptly move to ensure compliance with the Florida Contraband Forfeiture Act and Standards.

The Police Department shall avoid the appearance of impropriety in the acquisition, sale, retention, or transfer of any forfeited property or proceeds derived from such property.

E. Management and Supervisory Personnel:

Management will ensure that provisions of this policy are strictly adhered to. All personnel are reminded to consult with a supervisor or, via the chain of command, with the City Attorney or specially assigned forfeiture attorney if any problems arise with the seizure or anticipated seizure of any property.

F. Offense Reports and Other Necessary Documents:

All required seizure forms and offense reports shall be promptly completed and immediately thereafter forwarded to the City Attorney or specially assigned forfeiture attorney, through the chain-of-command. All items that were seized shall be clearly identified in these reports. All required affidavits, statements, and other necessary documents will be completed by the date requested. Failure to return these items may result in the dismissal of a forfeiture case.