

60-4116. Judicial disposition of property. (a) If no proper claims are timely filed in an action in rem, or if no proper answer is timely filed in response to a complaint, the plaintiff's attorney may apply for an order of forfeiture and allocation of forfeited property pursuant to K.S.A. 60-4117, and amendments thereto. Upon a determination by the court that the seizing agency's written application established the court's jurisdiction, the giving of proper notice, and facts sufficient to show probable cause for forfeiture, the court shall order the property forfeited to the seizing agency.

(b) After final disposition of all claims timely filed in an action in rem, or after final judgment and disposition of all claims timely filed in an action in personam, the court shall enter an order that the seizing agency has clear title to the forfeited property interest. Title to the forfeited property interest and such property's proceeds shall be deemed to have vested in the seizing agency on the commission of the conduct giving rise to forfeiture under this act.

(c) If, in the discretion of the plaintiff's attorney, such plaintiff's attorney has recognized in writing that an interest holder has an interest that is exempt from forfeiture, the court, on application of the plaintiff's attorney, may release or convey forfeited personal property to a regulated interest holder on all of the following conditions:

(1) The interest holder has an interest which was acquired in the regular course of business as an interest holder.

(2) The amount of the interest holder's encumbrance is readily determinable and the amount has been reasonably established by proof made available by the plaintiff's attorney to the court.

(3) The encumbrance held by the interest holder seeking possession is the only interest exempted from forfeiture and the order forfeiting the property to the seizing agency transferred all of the rights of the owner prior to forfeiture, including rights of redemption to the seizing agency.

(4) After the court's release or conveyance, the interest holder shall dispose of the property by a commercially reasonable public sale, and within 14 days of disposition shall tender to the seizing agency the amount received at disposition less the amount of the interest holder's encumbrance and reasonable expense incurred by the interest holder in connection with the sale or disposal.

(d) On order of the court forfeiting the subject property, the seizing agency may transfer good and sufficient title to any subsequent purchaser or transferee, unless satisfied and released earlier, subject to all mortgages, deeds of trust, financing statements or security agreements of record prior to the forfeiture held by an interest holder and the title shall be recognized by all courts, by this state, and by all agencies of and any political subdivision. Likewise on entry of judgment in favor of a person claiming an interest in the property that is subject to proceedings to forfeit property under this act, the court shall enter an order that the property or interest in property shall be released or delivered promptly to that person free of liens and encumbrances under this act and the person's cost bond shall be discharged.

(e) Upon motion by the plaintiff's attorney, if it appears after a hearing there was reasonable cause for the seizure for forfeiture or for the filing of the notice of pending forfeiture or complaint, the court shall cause a finding to be entered that reasonable cause existed, or that any such action was taken under a reasonable good faith belief that it was proper, and the claimant is not entitled to costs or damages, and the person or seizing agency who made the seizure, and the plaintiff's attorney, are not liable to suit or judgment on account of the seizure, suit or prosecution.

(f) The court shall order a claimant who fails to establish that a substantial portion of the claimant's interest is exempt from forfeiture under K.S.A. 60-4105, and amendments thereto, to pay the reasonable costs and expenses of any claimant who established such claimant's interest is exempt from forfeiture under K.S.A. 60-4105, and amendments thereto, and to pay the reasonable costs and expenses of the seizing agency for the investigation and litigation of the matter, including reasonable attorney fees, in connection with that claimant.

(g) If more than one law enforcement agency is substantially involved in effecting a forfeiture pursuant to this act, and no interagency agreement exists, the court shall equitably distribute the proceeds among such agencies.

(h) Notwithstanding any other provision of law, upon the request of the intellectual property owner, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition. If the intellectual property owner does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the intellectual property owner consents to another disposition.

History: L. 1994, ch. 339, § 16; L. 2000, ch. 62, § 4; L. 2010, ch. 135, § 195; July 1.