

2020 Kansas Statutes

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 K.S.A. 60-4109(a)(3), 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 signed by the claimant under penalty of perjury, K.S.A. 2020 Supp. 21-5903, and amendments thereto, shall otherwise be in accordance with the rules of civil procedure on answers and shall also set forth 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; and
- (4) a detailed description of when and how the claimant obtained an interest in the property.

(e) Substantial compliance with subsection (d) shall be deemed sufficient.

(f) It is permissible to assert the right against self-incrimination in an answer. If a claimant asserts the right, the court, in the court's discretion, may draw an adverse inference from the assertion against the claimant. The adverse inference shall not, by itself, be the basis of a judgment against the claimant.

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

(h) The issue shall be determined by the court alone. 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.

(i) 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 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; L. 2018, ch. 26, § 10; July 1.