

WINTER HAVEN POLICE DEPARTMENT

GENERAL ORDER 95.1

Florida Contraband Forfeiture Act to Wit

ACCREDITATION STANDARDS: CFA – 38.01, 38.02; CALEA – 84.1.8

EFFECTIVE DATE: December 31, 1995

RESCINDS: G.O. 95.1, May 27, 2011 and all applicable Amended/Temporary Orders prior to November 20, 2012

LAST REVISED DATE: November 20, 2012

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POLICY

It shall be the policy of the Winter Haven Police Department to utilize the provisions of the Florida Contraband Forfeiture Act (herein after referred to as the 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 the Winter Haven Police Department to use the proceeds collected under the ACT as supplemental funding for authorized purposes.

PURPOSE

The purpose of this General Order is to establish guidelines for the seizure, maintenance, and forfeiture of property under the Florida Contraband Forfeiture Act.

SCOPE

This General Order shall apply to all sworn members.

DISCUSSION

The Florida Contraband Forfeiture Act, Florida Statutes 932.701 through 932.707, authorizes law enforcement agencies to seize real and personal property used in violation of the ACT. The Department can obtain title to the property by obtaining a court order forfeiting the property to the Department. The ACT also protects the rights of innocent owners and lien holders.

Law enforcement is the principle objective of asset forfeiture. The potential for obtaining revenues from forfeitures must not override the fundamental considerations such as public safety, the safety of law enforcement officers, and the investigation and prosecution of criminal activity.

PROCEDURE

I. Seizure of Personal Property

- A.** Winter Haven Police officers may seize personal property when there is probable cause to believe that the property has been used in violation of the ACT; or a violation of the ACT has taken place in, upon, or by means of the property; or the property is a “contraband article”, as defined in F.S. 932.701. Personal property may be seized at the time of violation or at a later time. Some examples of personal property, which may be seized, are:
 - 1.** Currency, which was used, attempted to be used, or intended to be used in a violation of Chapter 893, Florida Statutes (Florida Comprehensive Drug Abuse Prevention and Control Act).
 - 2.** Motor vehicles, vessels, aircraft and other personal property which was used or attempted to be used as an instrumentality in the commission of a felony.
 - 3.** Motor vehicles, vessels and aircraft which contained a felony amount of contraband (i.e., cocaine, more than 20 grams of marijuana).
 - 4.** Any motor vehicle used during the course of committing an offense in violation of F.S. 322.34(9)(a).
- B.** Officers may not seize any property for purposes of forfeiture unless one of the grounds established by the ACT is met.
- C.** A probable cause seizure for personal property that is taking place at the time of the violation of the ACT may be made without prior judicial approval.
- D.** Personal property that is not seized at the time of the violation and located on private premises shall be seized pursuant to a court order authorizing entry onto the private premises, unless otherwise authorized by law.
- E.** A forfeiture suit initiated against currency totaling less than \$500.00 shall require supervisor approval. If currency less than \$500.00 is evidence in a criminal case, the currency may be seized and submitted into evidence.

II. Procedures for Seizure of Personal Property at the time of Violation

- A.** At the time of seizure, the officer initiating the seizure shall have the vessel, vehicle, aircraft, or other personal property transported or towed to the Winter Haven Police

Department Impound Lot or other appropriate secure storage facility. It is preferred that vehicles are transported to the Department by an officer. The keys to such items shall be logged into evidence.

- B.** A complete inventory of the seized property and all containers found therein shall be completed at the time of seizure.
- C.** As soon as practical following the seizure, the Department shall make a diligent effort to determine the ownership of the seized property, including the identification of those who may have an interest in the seized property, to include but is not limited to:
 - 1.** The registered owner(s);
 - 2.** Title holder(s); and
 - 3.** Bona fide lien holder(s).
- D.** The investigating officer shall provide within five (5) working days of a seizure written notice to all identified and entitled persons of their right to request a post seizure adversarial preliminary hearing. This written notice shall be accomplished with a Notice of Adversarial Preliminary Hearing Form (WHPD-119). This written notice should be provided at the time of the violation and/or seizure.
- E.** The original Notice of Adversarial Preliminary Hearing Form shall be issued to the person from whom the property is being seized.
- F.** A copy of the Notice of Adversarial Preliminary Hearing Form and a copy of any arrest report associated with the seizure shall be forwarded to the Department's Forfeiture Officer within twenty-four (24) hours of the seizure.
- G.** The seizing officer shall complete a case report detailing the circumstances and probable cause for the seizure. A copy of this case report shall be forwarded to the Forfeiture Officer.
- H.** As soon as practicable after the seizure, the Department shall make a good faith attempt to release to the lawful owner all personal property (i.e., clothing), which was seized along with the property sought to be forfeited pursuant to the ACT, and which is not being retained as evidence or for forfeiture. If the owner is unknown, has been arrested, or is otherwise unavailable to assume possession of the property, the property shall be logged into evidence to be released to the owner at a later date.
- I.** Any personal property seized as evidence shall be packaged and stored separately in accordance with General Orders 83.1 and 84.1.
- J.** Seized property may not be used for any purpose until title to the property is awarded to the Department under the ACT. Use or operation of the property which is necessary for reasonable maintenance is permitted. Reasonable efforts should be made to maintain the property, so as to minimize any loss of value. If special maintenance is required to maintain seized property, the Department shall ensure that such maintenance is provided within a reasonable time after seizure and with such care continuing throughout the pendency of the forfeiture proceedings.

III. Seizure of Real Property

- A.** Officers may initiate seizure proceedings of real property to be forfeited under the ACT if it is determined there is probable cause to believe that the real property:
 - 1.** Is a contraband article as defined in Section 932.701(2)(a), or is deemed to be a contraband article pursuant to Section 932.703 (4) Florida Statutes; or
 - 2.** The property subject to seizure was used, attempted to be used, was intended to be used or was acquired by proceeds obtained as a result of a violation of the ACT; or
 - 3.** The real property was used in violation of any provision of the ACT, or a violation of any provision of the ACT occurred in, upon, or by means of the seized property.
- B.** Real property may not be seized without prior judicial approval. On determining the existence of probable cause, the Department by and through the City Attorney may file a lis pendens against the real property, which places the public on notice that an action against the real property is pending.
- C.** On filing the lis pendens, the Department shall make a diligent effort to notify all persons entitled to their right to a pre-seizure adversarial preliminary hearing.
- D.** As soon as practical, the Department shall make a diligent effort to determine the identity of those persons who are unknown and who may have an interest in the seized property, including the identification of the record owner(s), title holder(s), and bona fide lien holder(s) if any.
- E.** Reasonable efforts shall be made to maintain seized real property in such a manner as to minimize loss of value.

IV. Forfeiture Officer Duties

- A.** The Forfeiture Officer shall review all reports and documentation of seized property. As soon as practical after review of such reports, the Forfeiture Officer shall make a recommendation for or against civil forfeiture proceedings to the Chief of Police and/or Uniform Services Bureau Commander. The Forfeiture Officer may recommend:
 - 1.** Initiate civil forfeiture action;
 - 2.** Initiate a settlement agreement;
 - 3.** Wave forfeiture rights and collect administrative fees; or
 - 4.** Forfeit forfeiture rights and return property.
- B.** If approved for the initiation of civil forfeiture action, the Forfeiture Officer shall ensure that all necessary documentation is forwarded to the City Attorney for further review. The City Attorney shall make an independent evaluation of the circumstances and decide to proceed with the forfeiture or to release the seized property to the lawful owner.
- C.** If approved, the Forfeiture Officer may initiate settlement agreements with the owner of the seized property. The Forfeiture Officer shall use the Settlement Agreement Forms as prepared and approved by the City Attorney. Settle agreements initiated and

completed by the Forfeiture Officer do not require review by the City Attorney. Property obtained through a settlement agreement shall be handled according to Section VI, A and VII, A of this general order.

- D. If approved, the Forfeiture Officer may notify the lawful owner of the seized property that the Department has decided to waive its right to forfeiture of the seized property. The owner of the property shall be notified that the Department has not waived its right to forfeiture because of lack of probable cause. The owner shall be notified that they shall be required to pay the Department an administrative fee for the forfeiture. The Forfeiture Officer shall complete a Waiver of Right to Forfeiture Form as prepared and approved by the City Attorney and collect the administrative fee. The administrative fee shall be deposited into an administrative account. A waiver of right to forfeiture does not require review of the City Attorney.
- E. Decisions to file or not file for civil action of forfeiture should not be delayed as the lawful owner of the seized property may request an adversarial preliminary hearing fifteen (15) days after the seizure.
- F. The Forfeiture Officer shall maintain a file on all forfeiture cases, pending and closed. The Forfeiture Officer shall monitor the progress of all pending cases.

V. City Attorney Responsibilities

- A. When a seizure case has been forwarded to the City Attorney, the City Attorney shall determine as soon as practical whether to proceed with forfeiture action or release the property to the lawful owner.
- B. If the City Attorney makes a determination not to proceed with a forfeiture action, absent evidentiary value to a pending criminal case, and absent any settlement agreement to the contrary, the Chief of Police and/or Forfeiture Officer shall be informed that the seized property should be released within a reasonable length of time to the lawful owner or designee.
- C. If the City Attorney determines to proceed with the forfeiture, the forfeiture process shall be coordinated with the Forfeiture Officer or other pertinent Department members as needed.

VI. Judicial Disposition of Seized Property (CALEA 84.1.8)

- A. Once the Department has obtained a Final Order of Forfeiture issued by a court, said property shall be turned over to the evidence/property custodian for proper entry into inventory and subsequent assignment or disposition as directed by the Chief of Police. Any assignment or disposition of property shall be in accordance with the ACT.
- B. If at the conclusion of the judicial process the claimant should prevail, the seized property shall be released to the lawful owner pursuant to court order unless advised otherwise by the Chief of Police, their authorized designee or the City Attorney that an appeal is pending. If the claimant prevails and no appeal is forthcoming, the Department shall not assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant.
- C. In all other instances, if a vessel, vehicle, aircraft, or other personal property previously seized by the Department is to be released to the lawful owner, the Department may

assess against the owner the actual costs of towing, storage and maintenance of the seized property. Absent settlement, administrative costs which do not reflect actual expenses shall not be assessed.

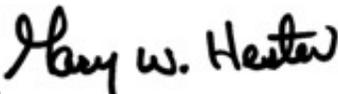
- D. In all other instances, if seized real property is to be released to the lawful owner, the Department may assess against the owner the actual costs incurred in the seizure and maintenance of the property or in the preparation for and conducting of the forfeiture proceeding. Absent settlement, administrative costs which do not reflect actual expenses shall not be assessed.
- E. On release of any seized property, the Department must obtain from the lawful owner or designee a signed receipt indicating receipt of the property.

VII. Disposition of Awarded Assets

- A. All administrative fees, cash settlements, and monies awarded by the court are to be promptly deposited into the Department's law enforcement trust fund in accordance with applicable regulations.
- B. It is the responsibility of the Forfeiture Officer to apply for title on vehicles, vessels, aircraft, and other titled property awarded to the Department.

VIII. Training

- A. All sworn officers and any other Department members involved with seizure of property for forfeiture shall receive training as required by the ACT. Training for officers may be through in-service training or during the Field Training and Evaluation Program. Training for the Forfeiture Officer shall be through a recognized and certified training program for forfeiture.

APPROVED 

Gary W Hester
CHIEF OF POLICE