



Proposed Ordinance #03-074 - Seizure and Forfeiture

Date: September 12, 2003

To: Jeff Sax – Chairman Law and Justice

CC: Gary Weikel, Commander Pat Slack, Steve Bladek, Ann Good
Cherie Hutchins, Bob Terwilliger and Carolyn Ableman

From: Martin T. Standel

Subject: Proposed Ordinance #03-074 - Seizure and Forfeiture (Real & Personal Property)

This Management Letter is in response to your memo dated July 15, 2003 in which you requested as Chairman of the Law and Justice Committee that the Performance Auditor review the proposed County Ordinance dealing with "Seizure and Forfeiture" of drug related real property.

Your request was presented at the regularly scheduled Performance Audit Committee meeting on July 17, 2003. At that meeting, approval for this review was authorized.

Findings:

The Regional Drug Task Force in their efforts to enforce the laws of the State of Washington have used the power offered under RCW 69.50.505 to seize property from individuals trafficking in illegal drugs. One tool used by the task force is to seize personal and/or real property. The seizure and forfeiture procedure takes place through the judicial process, which provides for protection of citizen's rights. Once the courts forfeit and award the law enforcement agency real property, the current process for its disposal is governed by SCC Chapter 4.46 (Procedures for Management and Disposition of County-Owned Personal and Real Property).

Conflict arises from the inherent different goals for the disposal of real property seized from the Regional Drug Task Force and the disposal of surplus real property owned by the County. If the property is classified as County surplus, Chapter 4.46 outlines the process for its disposal. With respect to forfeited real property, the current disposal process is overly complicated and takes too much time to effectively maximize the potential value of the sale. The goal is to ensure that the County receives a fair market value. Since real property owned by the County and classified surplus may have been off the market for many years, there are no simple comparable properties to determine reasonable market value. In addition, County surplus real property is generally owned outright and the County is not in a subordinate position to the legal title.



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Real property seized by the task force has unique concerns regarding its disposal and the inherent risk associated to a subordinate position. Once the Task Force has received a favorable judgment, the County inherits the requirements to maintain and secure the property. In addition to these requirements, the County will have to maintain all liens ahead of its subordinate position if it wants any chance to realize a gain from its sale. However, these properties do have a better history of market value and should be able to be disposed faster with fewer complications.

The proposed changes to Ordinance #03-074 attempts to speed up the disposal process. However, those proposed changes focus on correcting the results (disposing of the real property in a timely manner) and not the initial cause (implementing a ordinance that deals specifically with real property disposal seized under RCW 69.50.505), of the problem.

Recommendation:

The underlying goal to speed up the disposal process for these properties is correct in concept, but the execution of that concept I believe should be reconsidered.

It is recommended that the County Council reconsider its proposal to amend Snohomish County Code, Chapter 2.10.010 (Executive Functions) and either establish a new Chapter dealing specifically with the disposal of real property seized through drug enforcement, or add a new section to Chapter 4.46. That chapter or section should incorporate SCC 10.46 and include the concepts as outlined in the National Code of Professional Conduct for Asset Forfeiture and establish a strict timeline to minimize the holding period between acquiring the property and its disposal in accordance with RCW 69.50.505.

Having the County incorporate the National Code of Professional Conduct for Asset Forfeiture should resolve the appearance of conflict issues faced by the seizure process in the past.

Attachments:

The following Attachments are included with this Management Letter:

- Attachment 1: Background and response to Council's questions
- Attachment 2: RCW 69.50.505
- Attachment 3: National Code of Professional Conduct for Asset Forfeiture



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BACKGROUND AND RESPONSES TO COUNCIL'S QUESTIONS

Standards:

Snohomish County Code (Chapter 2.700.020) states all performance audits and/or reviews are conducted in accordance with government auditing standards. According to GAO Standards, a finding or set of findings is complete to the extent that the objectives are satisfied and the report clearly relates those objectives to the finding elements. Unlike a financial audit finding, a review finding is a statement that a condition exists. This may not necessarily imply a problem or that some corrective action must be implemented.

This project is not considered a formal performance audit, however, we still conducted our review in accordance with generally accepted auditing standards and the Government Auditing Standards issued by the Comptroller General of the United States (2003 Revision).

Background:

We contacted Pat Slack, Commander of Snohomish Regional Drug Task Force and set a meeting to discuss the process and rationale why the proposed ordinance changes. In attendance, and/or contacted by telephone or e-mail were:

- Commander Pat Slack
- A/Lt. David Fudge
- Sgt. James Duffy
- Det. Fred Helfers
- Alfred Gehri, Deputy Prosecutor

We also contacted Cherie Hutchins, Property Officer, to understand Snohomish County's current process of disposing of surplus real property.

Public Information:

This management letter is intended to provide information to the County Council. The report is a matter of public record, and with the exception of disclosure exemptions, (RCW 42.17.310) distribution should not be limited. Information extracted from this report may also serve as a method to disseminate information to the public as a reporting tool to help citizens assess government operations. Responsible officials review all audit division reports internally and their formal written responses are incorporated into final reports as a policy of the Performance Audit Committee and government auditing standards (GAO Standard 7.38).

In that context, the Council listed the following questions:



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Answers to Council's Questions:

In your request, you asked that we review the proposed new process for the following:

1. Adequate internal controls to show fiscal propriety
2. Checks and balances between those doing the arresting, and those benefiting from the civil forfeitures
3. Compliance with appropriate rules and regulations for property disposal
4. Uniformity with national and peer processes
5. Consistency with good governmental practices
6. Identification of appearance issues, and to identify all departments and types of property transactions the new process would affect prior to Council action on the proposed ordinance
7. Identification of any risk management issues for the county

Question 1: Are There Adequate Internal Controls To Show Fiscal Propriety?

Snohomish County participates in the Snohomish Regional Drug Task Force. The task force policies and procedures are based on RCW 69.50.505 (Seizure and Forfeiture). The process Snohomish County uses as outlined in RCW 69.50.505 is depicted in Exhibit 1.

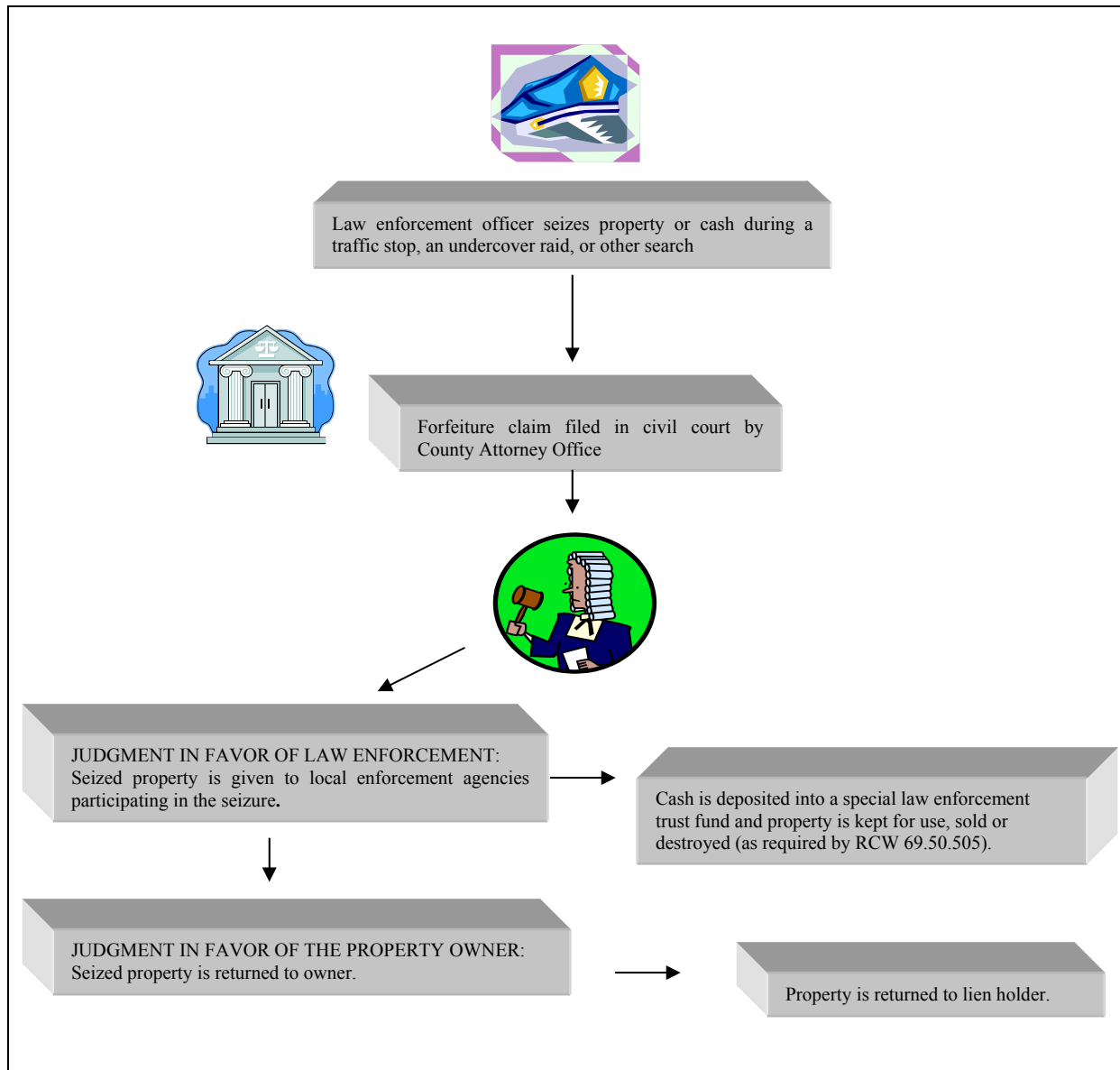
This pictogram identifies the process used should a property be seized and the internal control methods which protect the property owner's rights. The essential control is the requirement of the County's Law Enforcement agency to receive a favorable judgment in court to proceed with any property forfeiture or settlement agreement. (See Attachment 2 - RCW 69.50.505).



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Exhibit 1: Seized and Forfeited Real Property



During 2003, RCW 69.50.505 received several revisions. These revisions resulted from technical changes and or clarification of the process used in seizure and forfeiture. In SB 5758 submitted by Senators Stevens, Hargrove and Kline the bill stated: *“The legislature intends by this act to reorganize criminal provisions*



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throughout the Revised Code of Washington to clarify and simplify the identification and referencing of crimes. It is not intended that this act effectuate any substantive change to any criminal provision in the Revised Code of Washington."

The State of Washington process for seizure and forfeiture (RCW 69.50.505) follows the pattern of several other states and is based on federal regulations.

Question 2: Are There Checks And Balances Between Those Doing The Arresting, And Those Benefiting From The Civil Forfeitures?

In RCW 69.50.505 Section (8) (i), the code states: *"No property may be forfeited pursuant to this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent."*

The code further states in Section (8) (b): *"Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later."*

Section (8) (c) (4) states: *"The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property."*

Once the courts allow the foreclosure of real property resulting from forfeiture, the code allows the seized property to be retained for official use, or sold if not required to be destroyed by law. However, the agency must keep records of the prior owner, value, and amount of proceeds for a period of at least seven years. (RCW 69.50.505, Section (g) (1) (2) and Section (h) (2)).

The law enforcement agency must report to the state on a quarterly basis and remit to the state 10% of net proceeds. (RCW 69.50.505, Section (h) (3) (4)).

There does not appear to be any provision within RCW 69.50.505 that specifically deals with checks and balances between those arresting and those benefiting from the civil forfeiture. The requirement for this check and balance can be found in the National Code of Professional Conduct for Asset Forfeiture and should be included in any new process developed by the County (See Attachment 3 for entire Code of Conduct).



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The Code of Professional Conduct has 10 statements of which number 10 states: *“Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property”*.

Question 3: Is There Compliance With Appropriate Rules And Regulations For Property Disposal?

The rules and regulations for surplus real property disposal are covered under Snohomish County Code (SCC) Chapter 4.46 – Procedures for Management and Disposition of County-Owned Personal and Real Property. This ordinance was last revised December 22, 1993.

These rules establish the process the County uses in the disposal of all property including real property after they have been classified as surplus. Currently this same process is being used for real property obtained through RCW 69.50.505. The County currently does not distinguish between real property surplus by the County and real property seized. The process is time consuming and is intended to assure the County is obtaining maximum value of its surplus real property which can be in direct conflict with the need to sell seized real property in a manner which allows the County to realize any potential benefits.

Question 4: Is Our Process Uniform With National And Peer Processes?

King, Pierce, Spokane and Skagit Counties were contacted to determine their process and to see if there were any common traits.

Exhibit 2: Individual County History of Seized Real Property

SNOHOMISH COUNTY REGIONAL DRUG TASK FORCE AND SHERIFF'S OFFICE – CONTACT COMMANDER PAT SACK 425.357.7634

- Seizures and forfeitures are handled by the Prosecutor's Office, currently by a Deputy with extensive criminal and civil legal experience. Decisions are made about which real property is to be forfeited after thorough investigation of the criminal case and evaluation of the equity owned by the persons engaged in criminal activity in the property. Thus, not all real property associated with illegal drug activity is sought to be forfeited.
- Negotiation with those involved in illegal drug activity over real property forfeitures is rare, as only in very solid cases is forfeiture sought. The property is either subject to forfeiture or is not, pursuant to RCW 69.50.505.
- The interest of innocent owners is protected by RCW 69.50.505, and by practice, cooperation with innocent owners is the norm.



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- The Task Force has one methamphetamine property forfeiture case pending. That property has been partially evaluated by the Health District for environmental issues, which are not thought to be significant.
- Most of the real property in which seizure and forfeiture is sought involves large marijuana grow conspiracy cases. The primary goal of the forfeiture action is to make this activity unprofitable, not to fill Task Force coffers. However, RCW 69.50.505 recognizes the impact of forfeitures in curbing illegal drug activity.

KING COUNTY SHERIFF'S OFFICE – DRUG ENFORCEMENT - CONTACT SGT. GROUT 206.296.4226 (Do not have a Drug Unit)

- Decision to seize properties is made by the drug office.
- They do not seize any meth properties whatsoever. (Not worth it, too much cost).
- They have problems with the condition of properties changing from the time the property is seized to the time of actual ownership. If the properties become too badly destroyed during this time period, they will let the property go back to the owner or let the bank have the property if they have a lien hold on the property. (Sometimes they will go through the expense of hiring someone to clean up the property and then selling, if it is profitable to do so, otherwise they do not take possession.) They are very cautious in what properties they take.
- The properties are sold in "As Is" and "Where Is" condition.
- The drug office interviews three real estate agents and makes a selection of an agent.
- The Chief of Criminal Investigation has signature authority for all transactions to sell the properties.
- There is an average of one to two properties seized and forfeited annually by the drug office.

PIERCE COUNTY - SHERIFF'S OFFICE DRUG TASK FORCE - CONTACT DET. CRAWFORD 253-798-6150

- Decision to seize properties is made by the drug task force office.
- They do not seize any meth properties whatsoever. (Not worth it, too much cost).
- If they have problems with the condition of properties, or if the properties become too badly destroyed during this time period, they will not proceed and the property goes back to the owner or the bank with the lien. They are cautious in what properties they take, as it can take over two years from seizure to sale. Cost to carry is a major concern.
- The properties are sold in "As Is" and "Where Is" condition.
- Their Facilities Management Group is responsible for the sale of the property.
- Final authority to sell the property falls under the jurisdiction of the County Executive.
- To date, they have not seized any properties.



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SPOKANE COUNTY – SHERIFF'S OFFICE - CONTACT SGT. GEORGE WIGEN 509.477.6904

- They have used the State Attorney General's Office – Fred Caruso (360.586.3246) to help in the seizing and forfeiting process.
- They also have a civil prosecuting attorney who works with the department to handle seized property and who works with the State Attorney General's office.
- They usually put a lien on the property and negotiate a settlement with the criminal who refinances the property and pays the Sheriff's office.
- The State Attorney General's office gets a percentage of the amount negotiated in the settlement.
- They have only sold one property and that went through the Prosecuting Attorney and the property was sold to a neighbor.

SKAGIT COUNTY TASK FORCE - 360.848.1165

- They have not yet seized any real property.
- They may want to talk with Snohomish Regional Drug Task Force to see how they process properties and consider working with them.

All Counties, Cities and the State of Washington comply with process set forth in RCW 69.50.505 when dealing with seizure and forfeiture of real property.

Question 5: Is The Proposed Process Consistent With Good Governmental Practices?

One definition of good government practices is a strategy, an approach, a method, a tool or a technique that is effective in enabling the organization to achieve its objectives efficiently, be useful throughout the organization and reflect modern administrative values.

Based on this definition, the process the State of Washington follows under the RCW 69.50.505 does follow good governmental practices.

While the RCW is an excellent outline on the mechanics on how to seize forfeiture real property due to drug enforcement, the code does not incorporate the National Code of Professional Conduct for Asset Forfeiture.



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Question 6: Does The Proposed Ordinance Deal With Appearance Of Conflict Issues, Identify Affected Departments And Identify Types Of Property Transactions The New Process Would Affect?

- The proposed ordinance does deal with the issue of conflict of appearance. The proposal state *“No interest in civil forfeiture property leased , sold, or otherwise disposed of under this section may be sold, leased or otherwise transferred, directly or indirectly, to an employee of Snohomish County...”*
- The proposed ordinance impacts the Council and the Executive Offices.
- Snohomish County Code, Chapter 10.46 (Civil Forfeiture Actions) does identify the types of property transactions which would be affected.

Question 7: What Are The Risk Management Issues For The County?

The risk issues for Snohomish County do not relate to RCW 69.50.505. The state code is well written, follows federal guidelines, and is mutually exclusive from the main risk issues facing the County. The issue that needs to be addressed is not the process of seizure and forfeiture of real property, but the maintenance, supervision and disposal of that property once the courts make a favorable judgment for the law enforcement agency. The proposed changes to Ordinance #03-074, would not correct this problem.

The issue is using Chapter 4.46 in its present form to govern the method of timely disposal of real property seized by the Regional Drug Task Force. The changes as proposed will not correct this underlying concern which prompted this change request in the first place.



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RCW 69.50.505 – SEIZURE AND FORFEITURE

RCW 69.50.505

Seizure and forfeiture.

(a) The following are subject to seizure and forfeiture and no property right exists in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter [69.41](#) or [69.52](#) RCW, and all hazardous chemicals, as defined in RCW [64.44.010](#), used or intended to be used in the manufacture of controlled substances;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter [69.41](#) or [69.52](#) RCW;

(3) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in paragraphs (1) or (2), except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter [69.41](#) or [69.52](#) RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW [69.50.401](#)(e);

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter [69.41](#) or [69.52](#) RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;



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(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter [69.41](#) or [69.52](#) RCW;

(6) All drug paraphernalia;

(7) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter [69.41](#) or [69.52](#) RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter [69.41](#) or [69.52](#) RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter [69.41](#) or [69.52](#) RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(8) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter [69.41](#) or [69.52](#) RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence,



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including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(b) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in



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charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter [62A.9A](#) RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(d) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW [34.12.020](#)(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter [34.12](#) RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW [4.28.080](#) or [4.92.020](#), within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be



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removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW [3.66.020](#). A hearing before the seizing agency and any appeal therefrom shall be under Title [34](#) RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

(f) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(g) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(1) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(3) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(4) Forward it to the drug enforcement administration for disposition.

(h)(1) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(2) Each seizing agency shall retain records of forfeited property for at least seven years.

(3) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.



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(4) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(i)(1) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the violence reduction and drug enforcement account under RCW [69.50.520](#).

(2) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (o) of this section.

(3) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(j) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(k) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(l) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.



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(m) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(n) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(o) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (g)(2) of this section, only if:

(1) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(2) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter [59.18](#) RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (2) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(3) For any claim filed under (2) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:



ATTACHMENT 2

RCW 69.50.505 – SEIZURE AND FORFEITURE

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter [69.41](#) or [69.52](#) RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW [59.18.075](#), within seven days of receipt of notification of the illegal activity.

(p) The landlord's claim for damages under subsection (o) of this section may not include a claim for loss of business and is limited to:

(1) Damage to tangible property and clean-up costs;

(2) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(3) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (g)(2) of this section; and

(4) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (i)(2) of this section.

(q) Subsections (o) and (p) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (o) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

[2001 c 168 § 1; 1993 c 487 § 1; 1992 c 211 § 1. Prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); 1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15; prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § [69.50.505](#).]

NOTES:

Severability -- 2001 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 168 § 5.]

Effective date -- 1990 c 213 §§ 2 and 12: See note following RCW [64.44.010](#).

Severability -- 1990 c 213: See RCW [64.44.901](#).



ATTACHMENT 2

RCW 69.50.505 – SEIZURE AND FORFEITURE

Findings -- 1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability -- 1989 c 271: See note following RCW [9.94A.510](#).

Severability -- 1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 282 § 3.]

Court Improvement Act of 1984 -- Effective dates -- Severability -- Short title -- 1984 c 258: See notes following RCW [3.30.010](#).

Intent -- 1984 c 258: See note following RCW [3.46.120](#).

Severability -- 1983 c 2: See note following RCW [18.71.030](#).

Effective date -- 1982 c 189: See note following RCW [34.12.020](#).

Severability -- Effective date -- 1982 c 171: See RCW [69.52.900](#) and [69.52.901](#).

Severability -- 1981 c 48: See note following RCW [69.50.102](#).



ATTACHMENT 3

NATIONAL CODE OF PROFESSIONAL CONDUCT FOR ASSET FORFEITURE

1. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.
2. No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.
3. Whenever practicable, and in all cases involving real property, a judicial finding of probable cause shall be secured when property is seized for forfeiture. Seizing agencies shall strictly comply with all applicable legal requirements governing seizure practice and procedure. (Property can only be seized upon a court judgment in favor of the law enforcement agency in the State of Washington).
4. If no judicial finding of probable cause is secured the seizure shall be approved in writing by a prosecuting or agency attorney or by a supervisory-level official. (Not applicable in State of Washington, as real property can only be seized upon a court judgment).
5. Seizing entities shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures. (In the State of Washington, RCW 69.50.505 governs the process of Seizure and Forfeiture).
6. The manual shall include procedures for prompt notice to interest holders, the expeditious release of seized property where appropriate, and the prompt resolution of claims of innocent ownership.
7. Seizing entities retaining forfeited property for official law enforcement use shall ensure that the property is subject to internal controls consistent with those applicable to property acquired through the normal appropriations processes of that entity. (This process is covered under SCC 4.46 – Procedures for Management and Disposition of County-Owned Personal and Real Property).
8. Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.
9. Seizing agencies shall strive to ensure that seized property is protected and its value preserved.
10. Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.