

Cherokee Nation Code Annotated

Title 21: Crimes and Punishments

Part VII. Crimes Against Property

Chapter 68: Larceny

§ 1738. Seizure and forfeiture proceedings—Vehicles, airplanes, vessels, etc., used in attempt or commission of certain crimes

Cite as: 21 CNCA § 1738

A. Any commissioned peace officer of this Nation is authorized to seize any equipment, vehicle, airplane, vessel, vehicles or parts of vehicles whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of said property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined, or which is used in the attempt or commission of any armed robbery offense defined in 21 CNCA § 801, used to facilitate the intentional discharge of any kind of firearm in violation of 21 CNCA § 652, used in any act of burglary in the first or second degree, larceny of livestock, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by 21 CNCA § 1431, 21 CNCA § 1435, 21 CNCA § 1716, 21 CNCA § 1719 and 21 CNCA § 1720 or 47 CNCA §§ 4–104 and 4–107, used in the commission of any arson offense defined in 21 CNCA §§ 1401-1404, or used in any manner to facilitate or participate in the commission of any human trafficking offense in violation of 21 CNCA §§ 748 or 866. Said property may be held as evidence until a forfeiture has been declared or are lease ordered.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the Clerk of the Cherokee Nation District Court and shall be given to all owners and parties in interest.

C. Notice shall be given according to one of the following methods:

1. Upon each owner or party in interest whose right, title, or interest is of record in the Oklahoma Tax Commission or the Cherokee Nation Tax Commission, or with the county clerk for filings under the Uniform Commercial Code, served in the manner of service of process in civil cases prescribed by the Federal Rules of Civil Procedure;
2. Upon each owner or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by 12 O.S. § 2004; or
3. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the property forfeited to the Nation, if such fact is proven.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At the hearing the Nation shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection (A) of this section with knowledge by the owner of the property.

H. The claimant of any right, title, or interest in the property may prove his lien, mortgage, or conditional sales contract to be bona fide and that his right, title, or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the Court may order the property released to the bona fide or innocent owner, lien holder, mortgagee, or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the Nation and shall be sold pursuant to judgment of the Court, as on sale upon execution, except as otherwise provided for by law.

K. Property taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General. The Attorney General shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the Attorney General may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property which has not been released by the Attorney General shall be subject to the orders and decrees of the Court or the official having jurisdiction thereof.

L. Neither the Attorney General nor the Nation shall be held civilly liable for having custody of the seized property or proceeding with a forfeiture action as provided for in this section.

M. Attorney fees shall not be assessed against the Nation or the Attorney General for any actions or proceeding pursuant to 21 CNCA § 1701 et seq.

N. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his interest in the property, when the Court declaring the forfeiture orders a distribution to such person;
2. To the payment of the actual reasonable expenses of preserving the property;
3. To the victim of the crime to compensate said victim for any loss he may have incurred as a result of the act for which such property was forfeited; and
4. The balance to the Cherokee Nation Treasurer.

O. If the Court finds that the property was not used in the attempt or commission of an act specified in subsection (A) of this section, the Court shall order the property released to the owner as his right, title, or interest appears on record in the Oklahoma Tax Commission or the Cherokee Nation Tax Commission as of the seizure.

P. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection (A) of this section. No property shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of this Nation.

Historical Data

LA 10–90, eff. November 13, 1990. Amended LA 29-21, eff. June 18, 2021.