

Cherokee Nation Code Annotated

Title 21: Crimes and Punishments

Part VIII. Controlled Dangerous Substances

Chapter 75: Uniform Controlled Dangerous Substances Act

Article V. Enforcement and Administrative Provisions

§ 2506. Seizure of property—Notice of seizure and intended forfeiture proceeding—Verified answer and claim to property—Hearing—Evidence and proof—Proceeds of sale

Cite as: 21 CNCA § 2506

A. Any peace officer of this Nation shall seize the following property:

1. Any property described in 21 CNCA § 2503(A). Such property shall be held as evidence until a forfeiture has been declared or release ordered, except for property described in paragraphs 1, 2 and 3 of 21 CNCA § 2503(A), or in the case of money, coins, and currency, deposited as provided in 21 CNCA § 2503(E); provided, any money, coins and currency taken or detained pursuant to this section may be deposited in an interest-bearing account by or at the direction of the Attorney General in the office of the Treasurer if the Attorney General determines the currency is not to be held as evidence. All interest earned on such monies shall be returned to the claimant or forfeited with the money, coins and currency which was taken or detained as provided by law;
2. Any property described in 21 CNCA § 2503(B); or
3. Any property described in 21 CNCA § 2503(C).

B. Notice of seizure and intended forfeiture proceeding shall be filed in the Office of the Court Clerk of the Cherokee Nation District Court and shall be given 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 Cherokee Nation Tax Commission, by mailing a copy of the notice by certified mail to the address as given upon the records of the Tax Commission;
2. Upon each owner or party in interest whose name and address is known to the Prosecuting Attorney of the Cherokee Nation District Court, by mailing a copy of the notice by registered mail to the last-known address; or
3. Upon all other owners or interested parties, 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 Nation.

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 shall order the property forfeited to the state, if such fact is proved.

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

G. At a hearing in a proceeding against property described in 21 CNCA § 2503(A)(4) or (6) or (B) or (C), the requirements set forth in said paragraph or subsection, respectively, shall be satisfied by the Nation by a preponderance of the evidence.

H. The claimant of any right, title or interest in the property may prove his lien, mortgage or conditional sales contract to be a bona fide or innocent ownership interest 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 shall 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 sold under judgment of the court, as on sale upon execution, except as otherwise provided for in 21 CNCA § 2503.

K. Property taken or detained under this section shall not be replevable, but shall be deemed to be in the custody of the Office of the Prosecuting Attorney of the Cherokee Nation District Court, subject only to the orders and decrees of the Court or the official having jurisdiction thereof.

L. The proceeds of the sale of any property not taken or detained by Cherokee Nation 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 expenses of preserving the property; and

3. The balance to the Narcotics Revolving Fund.

M. Whenever any vehicle, airplane or vessel is forfeited under this act, the Cherokee Nation District Court may order that the vehicle, airplane or vessel seized may be retained by the law enforcement agency which seized the vehicle, airplane or vessel for its official use.

N. If the Court finds that the Nation failed to satisfy the required showing provided for in subsection (G) of this section, the Court shall order the property released to the owner or owners.

Historical Data

LA 03–91, eff. February 9, 1991. Amended LA 29-21, eff. June 18, 2021.

Renumbered from 63 CNCA § 2–506.