

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 16: Judgment and Execution

§ 991A-11. Seizure of property—Forfeiture for sale—Notice of proceedings—Answer and claim to property—Hearing—Proof of claim—Sale under judgment—Distribution of proceeds

Cite as: 22 CNCA § 991A-11

A. Any peace officer of this Nation shall seize any property, except property exempt under 31 O.S. § 1, to be held until a forfeiture for sale has been declared or release ordered.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the Clerk of the District Court for the county in which the property is seized and shall be given all owners and parties in interest.

C. Notice shall be given by the party seeking forfeiture and sale according to one of the following methods:

1. Upon each owner or party in interest whose right, title or interest is of record at the Oklahoma Tax Commission, by mailing a copy of the notice by certified mail to the address shown upon the records of the Oklahoma Tax Commission;

2. Upon each owner or party in interest whose name and address is known to the attorney or the party seeking the action to recover unpaid restitution, 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 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.

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 exemption under 31 O.S. § 1, and shall order the property forfeited and sold to pay restitution, if such property is not proved exempt.

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

G. At a hearing on the forfeiture the evidence of ownership and exemption under 31 O.S. § 1 shall be satisfied 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 ownership interest.

I. In the event of such proof, the Court shall order the property released to the bona fide owner, lienholder, 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 offender.

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 and sold under judgment of the Court, as on sale upon execution.

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

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

1. To the bona fide 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 storing the property;
3. To the payment of court costs and costs of the Marshal or Sheriff in conducting the sale;
4. To the payment of restitution to the victim; and
5. The balance of the proceeds of such sale shall be paid to the defendant.

M. If the Court finds that the party seeking the forfeiture failed to satisfy the requirements provided for in subsection (G) of this section, the Court shall order the property released to the owner or owners.

Historical Data

LA 10–90, eff. November 13, 1990.