

* **Disproportionality:** The U.S. Supreme Court has held that forfeitures of property that are grossly disproportionate to the severity of the offense committed are unconstitutional.

* **Statutory defenses:** Each forfeiture statute contains additional defenses which may apply to you. Look at the statute to see what your other defenses are.

Can I get a court-appointed attorney to defend me in my forfeiture case?

Under CAFRA (except in Customs cases), indigent claimants may get a court appointed attorney to defend them in two situations: (1) If your primary residence is being forfeited, you have a right to court appointed counsel. (2) If you have a pending federal criminal case in which you are already represented by a court appointed attorney, the judge has the authority to authorize your court-appointed attorney to represent you in the forfeiture case too.

Those who fall through the cracks in CAFRA's court appointed counsel scheme, may be able to get an attorney on a contingency fee arrangement, or on the expectation of getting a fee award. Under CAFRA if you win your forfeiture case, you are entitled to have your attorney's fees reimbursed. That's true whether you can afford to pay for counsel or not.

If you're forced to represent yourself, you'll need help. We recommend that you purchase FEAR's Asset Forfeiture Defense Manual, which was designed to help forfeiture victims who are defending themselves – as well as forfeiture attorneys. Even seasoned forfeiture lawyers find it to be an essential tool. The manual sells for \$119 plus tax (in CA and DC) and shipping, and can be purchased by mail or from the FEAR website.

The FEAR website is also a very rich source of information. Check out the law library and victim self-help materials. The FEAR Brief Bank, located in a password protected area of the FEAR website, is a valuable source of sample motions, pleadings and briefs. To get the password you'll have to join FEAR (\$35 per year).

Can I get my property back pending trial?

Because of an important Supreme Court decision back in 1993, the government generally can't kick people out of their homes and other real estate pending trial. On the other hand, moveable property such as cars and cash are seized immediately by police and held until the case is over, with one exception. CAFRA allows property to be returned to the owner upon a showing of substantial hardship. This is usually used to get vehicles back pending trial. Unfortunately, that provision does not apply to money. There is also a line of case law that, in some situations, allows a portion of the seized money to be released to pay attorneys fees.

Should I keep up my mortgage payments and insurance?

If you stop making payments on your car note or mortgage, you will ruin your credit. You'll need to keep your credit in good standing in case you need to borrow money to pay a settlement or pay attorney's fees.

If you lose the forfeiture case and the government sells the property, the government has to pay off legitimate liens from the proceeds of sale. As for insurance, check your insurance policy to see if it mentions any exclusion for damages in the event the property is seized by police.

How long does the forfeiture case take?

It takes anywhere from a few months to several years. It's important that you plan for the long haul. Know that your forfeiture case will cost money to litigate, and budget wisely. If you run out of money to pay your forfeiture attorney, you may end up representing yourself. Most forfeiture litigants who are forced to represent themselves lose. Shop around for a forfeiture lawyer you can afford.

As the years drag on, there will be many times when the stress is overwhelming. You don't have to face it alone. If you need moral support contact FEAR's victim support (victims@fear.org). Rose, who handles victim support, is a forfeiture survivor herself, and can give you tips on how to cope with the stress.

How can these procedures be constitutional?

Although these statutes take away virtually every procedural safeguard that citizens normally have in civil cases, and provide far less protection to innocent third parties than criminal defendants have in their criminal cases, they have been upheld over many constitutional challenges. There are some new constitutional challenges that are making promising gains in the lower courts now. Consult FEAR publications and our website for details.

If you think these laws are unfair, write your Congressmen. Tell them that the reforms of CAFRA did not go far enough, and ask them to introduce a bill containing all the reforms of the Hyde bill that passed in the House of Representatives on April 11, 2000 -- by a vote of 375 to 48.

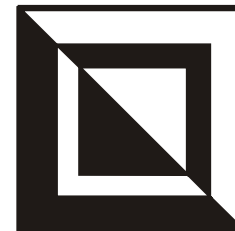
To find out more about F.E.A.R. call or write us:

**Forfeiture Endangers American Rights
20 Sunnyside, Suite A-419,
Mill Valley CA 94941
(415) 389-8551
888-FEAR-001
www.fear.org**

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What To Do When Your Property Has Been Seized By Police



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The police took my property. What do I have to do to get it back?

If your property was seized as evidence of a crime, you should get it back when the case is over, unless it is contraband or held for asset forfeiture. If it is contraband (drugs or other items that are illegal to possess) you can't get it back. If it is being forfeited, you'll have to win the forfeiture case to get it back.

What is forfeiture?

Asset forfeiture is a process that allows the government to take property away from people permanently, without paying for it, if the property or its owner is allegedly involved in certain criminal offenses. Today over 300 federal offenses trigger forfeiture. Any kind of property — cars, boats, airplanes, cash, bank accounts, homes and even businesses — can be forfeited.

If I am found not guilty in my criminal case or they drop the charges, won't I get my property back automatically?

No. If the government decides to "forfeit" it, you have to win the forfeiture case to get it back.

What do I do if they say it is going to be forfeited?

Start by shopping around for a forfeiture lawyer. One source of forfeiture lawyers is FEAR's Attorney Directory, located on the Forfeiture Endangers American Rights website (www.fear.org). Ask the lawyer how many forfeiture cases he or she has defended. Comparison shop. A lawyer who hasn't handled a forfeiture case before may make mistakes that ruin your chances of winning. Forfeiture procedures differ from ordinary civil procedures. Sometimes criminal procedures apply -- as well as admiralty law and quaint "in rem" procedures. Even the best lawyers have a lot to learn when they handle their first forfeiture cases.

The process varies depending on whether the seizure is federal, state or local. You may not know at the beginning which one it will be. Even if the state cops seized your property, they can turn it over to a federal agency for forfeiture and get a kickback of up to 80% of the value of the property, under the "equitable sharing" program.

The procedures described below are those used in federal forfeiture. If you have a state case, get a copy of your state's forfeiture statutes and read them to see how the procedures differ in your state. The state statutes can be found in the FEAR website's Law Library.

For a more detailed description of these procedures, get a copy of FEAR's Asset Forfeiture Defense Manual, available on-line at the FEAR website.

What happens in the forfeiture process?

Federal cases usually start with a notice of forfeiture or a civil (judicial) forfeiture complaint, which may be served by registered mail with a green return receipt card. Or, if there is a criminal prosecution of the property owner, the government may pursue

"criminal forfeiture" in the same case by adding a "forfeiture count" to the indictment.

Until you have received a written notice of administrative forfeiture, or a civil forfeiture complaint, or a criminal forfeiture indictment, all you can do is wait. The forfeiture law prohibits property owners from filing civil suits to get their property back. Instead, the government is supposed to start the forfeiture process within a "reasonable time", and if it doesn't, you can raise the "unreasonable delay" defense later. In the meantime, there's not much you can do to speed up the process except to call or write the police demanding they start the process. It's better to have a lawyer or someone else call them, because anything you say can and will be used against you in court. It's better to write, so they don't get a chance to ask questions -- and keep to the subject of asking about your property. Don't discuss the alleged crime that led to the seizure of the property. Keep copies of your letters -- they can be used later to support a motion to dismiss for undue delay.

Make sure the police know you are claiming the property, and that they have your correct mailing address. And be sure to check your mail frequently.

What do I do once I receive notice?

Federal cases often start with a notice of administrative forfeiture, from the DEA, FBI, or Customs. The notice will tell you the process, but it's often confusing. The notice may offer you the alternatives - file a claim or file a "petition for remission." Beware! The petition for remission process is an inferior remedy. If they make you choose between filing a claim and filing a petition for remission, file a claim! You have to file a claim in order to have the right to any hearing in court to defend your property. There is no court and no hearing in the petition for remission process -- everything is decided by the agency that seized your property, and they almost always choose to keep it.

In customs cases and Patriot Act cases, you may have to post a cost bond to file a claim -- but that is still worth doing if you can afford it, because you don't want to give up your right to a hearing in court. The Civil Asset Forfeiture Reform Act of 2000 (CAFRA) abolished cost bonds in most types of civil forfeiture cases. In cases requiring the cost bond, the bond is usually 10% of the value of your property. The notice will state the amount of the bond. If you are indigent you can request a waiver of the cost bond. The cost bond is not like a bail bond -- paying the cost bond will not get your property released pending trial, and you can't get a bondsman. The bond is to pay for the government's costs in forfeiting your property. If you win your case, you will probably get the entire bond back (it's up to a judge). If you lose the case, you only get back the portion of the bond left over after deductions for storing your property and other expenses.

You only have about a month after receiving the notice to mail in your claim. Check the forfeiture notice for the exact deadline. Your claim must state that you swear it to be true under penalty of perjury, it must identify your interest in the property (owner, co-owner, lienholder, etc.), and it must state that the claim is not frivolous.

Once you file your claim, the United States Attorney's Office reviews the case. If they decide to go ahead with the forfeiture (which they usually do), they will file a civil case in U.S. District Court, and serve you with a Complaint. Under CAFRA, the government has 90 days after receiving your administrative claim to file a judicial forfeiture action. If they miss this deadline, they can't forfeit the property.

After you are served with a Complaint, you have 30 days to file a Verified Claim. A verified claim is a statement under penalty of perjury stating your interest in the property. This is separate from the Administrative Claim you had to file earlier with the seizing agency. Once you file your verified claim, you have 20 days to file an Answer. Your Answer must state whether you "admit", "deny", or "lack sufficient information to admit or deny" each paragraph in the Complaint. Then you list your defenses. The defenses to forfeiture are listed below. Be sure to include a demand for a jury trial in your answer, or you won't get one. In some courts you have to ask for a jury of twelve or you'll get a jury of six.

Be careful what you say in any other documents you file. Anything you say can be used against you in a separate criminal or tax proceeding. If you have a pending criminal case, consult your lawyer before you answer any questions that could be incriminating. You can assert the Fifth Amendment in answer to some questions and still defend your forfeiture case. The best thing to do when you have a criminal case and a civil forfeiture case pending at the same time is to get the civil forfeiture case stayed until the criminal case is resolved. This prevents you from having to answer potentially incriminating interrogatories or being subjected to depositions. Under CAFRA you have an absolute right to a stay if there is a pending criminal case or investigation against you -- but you have to ask for the stay. You can still try to settle while it is stayed.

If your property is being forfeited by a state or D.C. law enforcement agency, the procedures will be different. Read the statute and consult your lawyer to make sure you know your deadlines and the steps you'll have to take to defend your case so you can react promptly.

What are the defenses to forfeiture?

* Innocent Owner defense: Under most forfeiture laws, if you can prove that you didn't know of or consent to the illegal use of your property, you win the forfeiture case. If the forfeiture law does not include an innocent owner defense, the U.S. Constitution does not require one, the Supreme Court held in *Bennis v. Michigan*, 516 U.S. 442 (1996).

* Unreasonable delay defense: When the government delays too long in filing the forfeiture case or in bringing it to trial, you win if you can show that the delay is excessive and not justified, and that it harmed your ability to put on a defense.

* Illegal search & seizure: As in criminal cases, you can move to suppress evidence which is illegally seized. If the judge suppresses the evidence, the government may be unable to prove its case.