

**INSTRUCTIONS FOR FILING
PETITION FOR RETURN OF PROPERTY**

- 1) Fill out the attached form. A copy of 16 Del.C. * 4784 is included, to help you in completing items 7 and 8, which ask you to state the grounds on which you seek return of property.
- 2) The petition must be notarized.
- 3) If you file in New Castle County, a copy of the petition must be served on the Attorney General. That office is located in the Carvel State Building, 820 French Street, on the 7th floor. The Attorney General's Office will stamp the original petition to show service. After service on the Attorney General, the original petition must be filed with the Prothonotary's Office, along with the required \$75.00 filing fee.
- 4) If you file in Kent or Sussex County, you must file the original petition and a copy with the Prothonotary's Office, along with the required \$75.00 filing fee.

To file in New Castle County:

Office of the Prothonotary
500 N. King Street
Suite 500, Lower Level 1
Wilmington, DE 19801-3746

To file in Kent County:

Office of the Prothonotary
38 The Green
Dover, DE 19901

To file in Sussex County:

Office of the Prothonotary
1 The Circle, Suite 2
Georgetown, DE 19947

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

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)	
)	
Petitioner)	C.A. No. _____
)	
vs.)	Jury Trial Demanded:
)	yes___ no__
State of Delaware)	
)	
Respondent)	
)	
)	

PETITION FOR RETURN OF PROPERTY

Pursuant to 16 Del.C. ' 4784 (j) and Superior Court Civil Rule 71.3, Claimant petitions the Court for return of property seized pursuant to 16 Del.C. ' 4784.

1) (a) Name of Claimant _____

(b) Address _____

(c) Telephone Number _____

2) Description of the property sought to be returned:

3) Description of your ownership/interest in the property and how you acquired it:

4) (a) Date you acquired the property: _____

(b) From whom was property acquired: _____

5) The name of the person(s) from whom the property was seized:

6) Date the property was seized: _____

7) Provisions of 16 Del. C. § 4784 relied on in asserting that the property is not subject to forfeiture: (e.g., property was unlawfully seized or used without owner-s consent - See attached statute)

8) Facts supporting response to question 7:

Wherefore, the Petitioner hereby prays that the Court grant this Petition for Return of Property, granting such relief as the Court may deem just and fair under the circumstances.

Signature

Date: _____

VERIFICATION

STATE OF DELAWARE:

SS:

_____COUNTY:

Comes now _____, and having been sworn according to law deposes and says that he/she is the Petitioner in the foregoing Petition for Return of Property and that the matters stated in said Petition are true and correct to the best of his/her knowledge, information and belief.

Signature

Date: _____

Sworn to and subscribed before me this ____ day of _____, _____.

Notary

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

)	
)	
)	
Petitioner)	
)	C.A. No. _____
vs.)	
)	
State of Delaware)	
)	
Respondent)	

ORDER

Now, this ____ day of _____, _____ Petitioner's Petition for Return of Property is granted in the following respects:

Judge

Date: _____

TITLE 16. HEALTH AND SAFETY

PART IV. FOOD AND DRUGS

CHAPTER 47. UNIFORM CONTROLLED SUBSTANCES ACT

SUBCHAPTER VI. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

§§ 4784 Forfeitures.

(a) The following shall be subject to forfeiture to the State and no property rights shall exist in them:

(1) All controlled substances which have been manufactured, distributed, possessed, dispensed or acquired in violation of this chapter;

(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;

(3) Any property which is used, or intended for use, as a container for property described in paragraph (1), (2) or (6) of this subsection;

(4) Any conveyances, including aircraft, vehicles, or vessels which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, trafficking in or possession with intent to deliver property described in paragraph (1) or (2) of this subsection except that:

a. No vehicle 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 the owner or other person in charge of the vehicle is a consenting party or privy to a violation of the Uniform Controlled Substances Act;

b. No vehicle 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;

c. A vehicle is not subject to forfeiture for a violation of §§§§ 4753, 4754, 4757 and

4758 of this title; and

d. A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the secured party if the party neither had knowledge of nor consented to the act or omission;

(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;

(6) All drug paraphernalia as defined in §§ 4701 of this title;

(7) All moneys, negotiable instruments, securities or any other thing of value furnished, or intended to be furnished, in exchange for a controlled substance or drug paraphernalia in violation of this chapter; all profits or proceeds traceable to securities, assets or interest used, or intended to be used, to facilitate any violation of this chapter. However, no property interest or an owner, by reason of any act or omission established by the owner to be committed or omitted without the owner's knowledge or consent shall be forfeited in the items listed in this paragraph:

a. All moneys, negotiable instruments or securities found in close proximity to forfeitable controlled substances, or to forfeitable records of the importation, manufacture or distribution of controlled substances are presumed to be forfeitable under this paragraph. The burden of proof is upon claimant of the property to rebut this presumption.

b. All moneys, negotiable instruments or securities found to have trace amounts of controlled substances on them are presumed to be forfeitable under this paragraph. The burden of proof is upon the claimant of the property to rebut this presumption.

c. To the extent that assets, interests, profits and proceeds forfeitable under this paragraph (i) cannot be located, (ii) have been transferred, sold to or deposited with third parties, or (iii) have been placed beyond the jurisdiction of the State, the court, following conviction of the individual charged, may direct forfeiture of such other assets of the defendant as may be available, limited in value to those assets that would otherwise be forfeited under this paragraph. Upon petition of the defendant, the court may authorize redemption of assets forfeited under this paragraph, provided the assets described in this paragraph are surrendered or otherwise remitted by such defendant to the jurisdiction of the court; and

(8) Any real property which is used, or is intended for use, to store, grow, manufacture, compound, process, deliver, import or export any controlled substance in violation of this chapter except that:

a. No real property is subject to forfeiture under this section by reason of any act or omission established by any owner thereof to have been committed or omitted without the owner's knowledge or consent;

b. No real property being leased out by its owner shall be subject to forfeiture under this section unless the owner of the real property is a consenting party or privy to the violation of the Controlled Substances Act;

c. No real property shall be subject to forfeiture for a violation of §§ 4753, §§ 4754, §§ 4754A, §§ 4755, §§ 4757 or §§ 4758 of this title; and

d. A forfeiture of real property encumbered by a bona fide security interest of the secured party if the party neither had knowledge of nor consented to the act or omission.

(b) Notwithstanding any other provisions of the laws of this State or rules of court, the procedures listed in subsections (c)-(j) of this section are applicable to the administrative forfeiture of property subject to forfeiture under this section.

(c) Property subject to forfeiture under this

chapter may be seized by the Secretary upon process issued by any Superior Court having jurisdiction over the property.

Seizure without process may be made if:

(1) The seizure made is pursuant to subchapter I of Chapter 23 of Title 11 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) The Secretary has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The Secretary has probable cause to believe that the property was used or intended to be used in violation of this chapter.

(d) In the event of seizure pursuant to subsection (c) of this section, proceedings under subsections (e) and (j) of this section shall be instituted promptly.

(e) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the Secretary subject only to the orders and decrees of the Superior Court. When property is seized under this chapter, the secretary may:

(1) Place the property under seal;

(2) Remove the property to a place designated by the Secretary; or

(3) Require the Department of Health and Social Services to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(f) When property is forfeited under this chapter, the Secretary may:

(1) Retain it for official use;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;

(3) Allow the arresting agency or any other law enforcement division to use the

property for the purpose of law enforcement provided that any proceeds remaining after the payment of expenses and any other money forfeited or realized from forfeited property shall be deposited to the Special Law Enforcement Assistance Fund for the use of the State for any purpose deemed by the Attorney General to be in the interest of law enforcement;

(4) Require the Department of Health and Social Services to take custody of the property and remove it for disposition in accordance with law; or

(5) Forward it to the Administration for disposition.

(g) Controlled substances listed in Schedule I 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 II, the owners of which are unknown, which are seized or come into the possession of the State are contraband and shall be summarily forfeited to the State.

(h) 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 State.

(i) The failure, upon demand by the Secretary or the Secretary's authorized agent, 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 the person is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(j) Property seized pursuant to this section that is not summarily forfeited pursuant to subsection (f) of this section shall be automatically forfeited to the State upon application to the Superior Court if, within 45 days of notification of seizure to all known parties having possessory interest in the seized property by registered or

certified mail to the last known post-office address of the parties in interest and by publication in a newspaper of general circulation in this State, the person or persons claiming title to the seized property do not institute proceedings in the Superior Court to establish:

(1) That they have the lawful possessory interest in the seized property; and

(2) The property was unlawfully seized or not subject to forfeiture pursuant to this section.

(16 Del. C. 1953, §§ 4769; 58 Del. Laws, c. 424, §§ 1; 62 Del. Laws, c. 250, §§§§ 2, 4; 64 Del. Laws, c. 246, §§§§ 2, 3; 67 Del. Laws, c. 260, §§ 1; 67 Del. Laws, c. 450, §§ 1; 70 Del. Laws, c. 186, §§ 1; 71 Del. Laws, c. 288, §§ 11.)

Effect of amendments. -- 71 Del. Laws, c. 288, effective June 16, 1998, substituted "Administration" for "Bureau" in (f)(5).

Construction. -- This section is modeled closely upon 21 U.S.C. 881; therefore, it is appropriate to apply the civil forfeiture standards as set forth in the federal decisions construing 21 U.S.C. 881. In re One 1987 Toyota, Del. Super. Ct., 621A.2d 796 (1992).

This section is modeled closely upon the parallel federal statute, 21 U.S.C. § 881(a); since Delaware has little case law interpreting this section, Delaware courts have previously looked to the federal courts for guidance. In re One 1985 Mercedes Benz Auto., Del. Super. Ct., 644A.2d 423 (1992).

Disproportionate fines held unconstitutional. -- The imposition of in rem civil forfeiture pursuant to this section implicates the excessive fines clause of the Eighth Amendment to the U.S. Constitution. Accordingly, a forfeiture will be deemed excessive where the deprivation of property in question is clearly disproportionate to the conduct which occasions its imposition. In re 1982 Honda, Del. Supr., 681A.2d 1035 (1996).

Double jeopardy not implicated. -- The imposition of in rem civil forfeiture pursuant to this section, either prior to or subsequent to a criminal proceeding involving the same party and the same subject matter, does not offend the double jeopardy provisions of either the state or federal constitutions. In re 1982 Honda, Del. Supr., 681 A.2d 1035 (1996).

"Probable cause." -- Generally, probable cause in a forfeiture action is a reasonable ground for belief of guilt supported by less than prima facie proof, but more than mere suspicion; therefore, the State must prove that a reasonable ground exists for the belief that the property was used to facilitate the sale, transportation or delivery of an illegal substance. In re One 1985 Mercedes Benz Auto., Del. Super. Ct., 644 A.2d 423 (1992).

Requirement of probable cause implicit. -- While subsection (a) does not specifically indicate the requirement of probable cause, such requirement is clearly implicit from the General Assembly's virtually verbatim adoption of 21 U.S.C. 881. In re One 1987 Toyota, Del. Super. Ct., 621 A.2d 796 (1992).

The test for forfeiture of an automobile is whether there was a reasonable ground for belief that the use of the automobile made the sale less difficult and allowed it to remain more or less free from obstruction or hindrance. In re One 1987 Toyota, Del. Super. Ct., 621 A.2d 796 (1992).

Forfeiture is not limited to those situations where drugs are found in the vehicle itself; rather, it is sufficient if the vehicle is used to facilitate the purchase, sale or transportation of a controlled substance or if it is intended to be so used. In re One 1985 Mercedes Benz Auto., Del. Super. Ct., 644 A.2d 423 (1992).

Where the vehicle confiscated was used by the defendant to get to the meeting place,

the purpose of which was to consummate the sale of cocaine, the vehicle thus provided shelter and privacy for this phase of the transaction and was subject to forfeiture. In re One 1985 Mercedes Benz Auto., Del. Super. Ct., 644 A.2d 423 (1992).

State's burden of proof. -- The state has the initial burden of proving probable cause in a forfeiture action; if this burden is met, the petitioner has the burden of rebutting the presumption of forfeiture. Brown v. State, Del. Supr., 721 A.2d 1263 (1998).

Claimant's burden of proof. -- Where it has been determined that the State demonstrated probable cause to have initiated the forfeiture proceeding, the burden then falls on claimant to prove by a preponderance of the evidence that the vehicle was unlawfully seized or that it is not subject to forfeiture. In re One 1985 Mercedes Benz Auto., Del. Super. Ct., 644 A.2d 423 (1992).

To establish ownership under subparagraph (a)(4)b, claimant must demonstrate an ownership interest in the res with the attendant characteristics of dominion and control. Certificate of title to a motor vehicle is generally presumptive evidence of ownership; however, the possession of bare title to the res may be insufficient to establish ownership. In re One 1985 Mercedes Benz Auto., Del. Super. Ct., 644 A.2d 423 (1992).

Although the vehicle and the motor vehicle registration card were in claimant's name, there was sufficient evidence adduced at trial that the defendant actually controlled the vehicle; this rebutted the presumption invoked by claimant of ownership based on the certificate of title and other documents bearing claimant's name for the purpose of avoiding forfeiture as an innocent owner. In re One 1985 Mercedes Benz Auto., Del. Super. Ct., 644 A.2d 423 (1992).

Return of property. -- Evidence held

insufficient to support a petition for the return of property. In re \$5,662 United States Currency, Del. Super. Ct., 714 A.2d 106 (1998).

Innocent co-owner defense.-- The innocent owner defense provided by this section applies equally to an innocent co-owner of property to the extent of the co-owner's interest in the property. Where an ownership interest is partial, in devising a method of distributing the forfeited property, the trial court can either allow the State to retain the vehicle but order the State to pay the co-owner fair consideration, or order the State to return the vehicle and require the co-owner to pay the fair value of the forfeited interest. In re One 1986 Pontiac Firebird, Del. Supr., 687 A.2d 190 (1997).

Proof of knowledge of illegal activity can imply consent in the appropriate circumstances; thus, where petitioner failed to take any reasonable steps, given her knowledge of her son's drug-related history, to prevent his illegal use of vehicle, petitioner did not establish innocent ownership of the vehicle. In re One 1984 Chevrolet Blazer, Del. Super. Ct., -- A.2d -- (July 24, 2000).

Forfeiture held proper. --A convict's motion for the return of \$ 1,800.00 seized during a drug investigation was denied, given that: all moneys found in close proximity to forfeitable controlled substances were presumed to be forfeitable; the money was found in close proximity to drugs and paraphernalia; and the convict's claim that he won the money while gambling failed to rebut the presumption for forfeitability. In re \$1,800.00 in U.S. Currency, Del. Super. Ct., -- A.2d -- (Mar. 13, 2002).