

Memorandum



DATE: March 4, 2008

Supplement to
8(F)1(C)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

FROM: George M. Burgess
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of George M. Burgess.

SUBJECT: Supplemental Report Detailing County Process for Seizure and Forfeiture of Real Property

This supplemental report is provided as a response to questions raised by Board Members at the February 14, 2008 Health and Public Safety Committee regarding the seizure and forfeiture of real property.

The process for seizure and forfeiture of real property is governed by Florida Statute, Chapter 932. In cases where it is determined that the property will be sold, the sale of the property is governed by County policy (Administrative Order 8-4). The MDPD Police Legal Bureau administers compliance with statutory requirements; General Services Administration (GSA) in partnership with MDPD administers compliance with County policy. The following is a summary of statutory and County policy processes:

- Contraband under this statute, is any real property which was used, is being used, or was attempted to be used as an instrument in the commission of, or aiding, or abetting in the commission of any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act;
- Real property may not be seized or restrained other than by notice of action to be filed on the public records (lis pendens), subsequent to a violation of the statute and only after a pre-seizure adversarial preliminary hearing where persons entitled to notice are afforded the opportunity to attend. The purpose of the hearing, which must be noticed by certified mail, is to determine if probable cause exists to believe that the property has been used in violation of the statute;
- The seizing agency, in this case, MDPD, is required to make a diligent effort to notice any person entitled to notice of the seizure. The hearing must be held within 10 days of the filing of the notice of action;
- At the hearing, the court is required to review the verified complaint, any other supporting documents, and take testimony. If the court determines that probable cause exists, the property will be restrained by the least restrictive means to protect against disposal, waste, or continued illegal use of the property pending the disposition of the forfeiture proceedings. The court may order a claimant to post a bond or other adequate security equivalent to the value of the property;
- After the preliminary hearing, a full civil action takes place, including discovery and a jury trial, unless this is waived by the Claimant;
- Real property should be sold in a commercially reasonable manner after appraisal by listing on the market;
- If the property is subject to a lien, proceeds from the sale must be used to satisfy the lien or the lien should be satisfied prior to obtaining final judgment on the real property;

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- Proceeds from the sale of the forfeited property must be disbursed to satisfy lien holders, costs incurred by the seizing agency in connection with storage, maintenance, security and any court costs.
- Remaining proceeds must be deposited into the special law enforcement trust fund and used according to the provisions of the statute for special law enforcement purposes only, and not for normal operating expenses;
- GSA implements necessary actions to sell any real property as the result of seizure after a final judgment of forfeiture is entered. These actions are detailed in Administrative Order 8-4.


Assistant County Manager