3. **Illegal search & seizure** — Just as in criminal cases you can move to suppress evidence that is illegally seized. If the judge suppresses the evidence, the government may be unable to prove its case.

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

5. **Disproportionality** — The U.S. Supreme Court decided in Austin v. United States, 113 S.Ct. 2801 (1993) that forfeitures of property that are disproportionate to the offense committed are unconstitutional. Austin also held that civil forfeiture is punishment.

Can I get a court-appointed attorney to defend me in my forfeiture case?
It's not likely. Criminal defendants are entitled to a court appointed attorney paid for by the government, but, so far, this has rarely been extended to civil forfeiture victims. A few courts are starting to change their minds about this, however.

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" — in other words "buy back your house." 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. Any mortgage payments you made while the case is pending is just more money the government won't have to pay from the proceeds of sale. Still, it's better to keep the payments current if you can. You don't want to face a foreclosure and a forfeiture at the same time. 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.
Build a support network of friends and family members sympathetic to your plight, and turn to them for moral support. If you need more moral support than they can give — or if they're just not sympathetic enough — contact FEAR's victim support committee (victims@fear.org) This committee has several members who were forfeiture victims themselves, who can tell you how they coped with the stress and overcame the obstacles.

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. The U.S. Supreme Court decided in 1996 that forfeiture is not punishment for double jeopardy purposes, and that there's nothing unconstitutional about forfeiting the property of a truly innocent person. We can't depend on the Supreme Court to correct the abuses of these horrible laws.
If you think these laws are unfair, write your Congressman and ask that the laws be changed. Representative Henry Hyde has introduced forfeiture reform legislation that will improve the procedures somewhat. Urge your Senators and Congressman to support the "Civil Asset Forfeiture Reform Act of 1999", now in the legislative process.

If you are a victim of asset forfeiture or would like to join with some people who have been victimized by harsh forfeiture laws in rallying for reform, there is a national organization to reform forfeiture laws called F.E.A.R. ("Forfeiture Endangers American Rights"). To find out more about F.E.A.R. call or write us:

Forfeiture Endangers American Rights
P. O. Box 15421
Washington D.C. 20003
(202) 546-4381

http://www.fear.org

What To Do When Your Property Has Been Seized

Forfeiture Endangers American Rights Foundation

F. E. A. R.

The police took my property. What do I 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 forfeiture. If it is contraband (drugs, illegal weapons, etc.) you can't get it back. If it is being forfeited, you 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 involved in certain criminal offenses, such as drug offenses or gambling. 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. That would mean a separate civil trial.

What do I do if they say it is going to be forfeited?
Start by shopping around for a forfeiture lawyer. Ask the lawyer how many forfeiture cases he or she has defended. Select with care for the lawyer who hasn't handled a forfeiture case before may make mistakes that ruin your chances of winning. Forfeiture procedure is not like ordinary civil procedure, and it shares a few features of criminal law, as well as admiralty law and quaint "in rem" procedures. Check the FEAR Attorney Directory (on the FEAR website at http://www.fear.orgl) which may have a few attorneys offering support. However, as of this writing, only a few lawyers have signed up.

The process you'll have to undergo depends a lot on whether the seizure will be federal or state. Often you won't know at the beginning which it will be.

Even if the state cops seized your property, they can turn it over to the federal government for forfeiture and get a kickback of up to 80% of the value of the property forfeited, under the "equitable sharing" program. The procedures described below are those used in federal forfeiture. You should get a copy of your state's forfeiture statutes and read them to see how the procedures differ in your state. Some of the state statutes can be found in the FEAR website's Law Library. If your state's statute is not there, you'll need to go to the nearest law library (there's probably one in your nearest large courthouse or college library) to get it. Please send us a copy to add to our collection.

Federal cases start with a notice of forfeiture being mailed out. If you haven't received a notice of forfeiture or any court documents 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. If you call them, be careful what you say — everything 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 address. Watch your mail for a "notice of forfeiture," or a "forfeiture complaint" (sometimes called a "libel of information") — they sometimes arrive by certified mail, so pick up your mail promptly.

Be sure you file your responses within the deadlines or you will lose your case.

What do I do once I receive notice?

In federal cases, you will get a Notice of Forfeiture from the DEA or FBI. The notice will tell you the process, but it's sometimes confusing. The important thing to remember is this: In order to have the right to a hearing in court, you have to file an Administrative Claim and pay a Cost Bond of 10% of the value of your property (the amount of the cost bond will be listed on your notice) or request waiver of the bond because you are indigent. You only have 20 or 30 days after receiving the notice to file the claim and pay the cost bond. Check the notice to find the exact deadline. 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.

If you can't afford to pay the cost bond, you can file an "In Forma Pauperis" ("IFP") form, asking the government to waive the cost bond. You have to give detailed information about your finances, and it has to be sworn. The DEA and FBI each have their own forms for this. Call them to get the form. It's up to the seizing agency to determine whether you qualify. In some cases there is a procedure for asking for release of your property pending trial — it's called a Petition for Expedited Release. Currently, it only applies to seizures of vehicles for minor drug possession offenses. If the agency thinks you might qualify for expedited release, they will send you a notice explaining how to apply for it.

The notice of forfeiture will also tell you that, instead of paying the cost bond and filing the claim, you can file a Petition for Remission or Mitigation. Beware of that option! Petitions for Remission are decided by the FBI or DEA, and they almost never decide to return the property. You don't get a hearing, and you can't appeal their decision. The agency has unreviewable discretion, and their decision is almost always "no, you don't get your property back."

Once you file your claim and cost bond, 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. When vehicles (cars, planes and boats) are seized in drug cases, the government must file the civil forfeiture complaint within 60 days of the date they receive your administrative claim and cost bond. After you are served with a Complaint, you have ten 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. You have 30 days after service of the complaint to file an Answer. Your Answer must state whether you "admit", "deny", or "don't have enough information to admit or deny" each allegation 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. 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 keep your forfeiture case alive, but you will have difficulty defending your forfeiture case if you take the Fifth as to everything. 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. You can still try to settle it in the meantime, but answering civil discovery questions is not a good idea with a criminal case pending.

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. If you cannot afford a lawyer, contact FEAR's victim support committee (victims@fear.org) and we'll try to help you find a lawyer.

What are the defenses to forfeiture?

1. **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 imply one, the Supreme Court held in Bennis v. Michigan.

2. **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.

[For additional copies of this brochure or other information, please contact:
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[Revised 7/1/1999 by Leon Felkins – Email: leonf@magnolia.net]