



# County Technical Assistance Service

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## Forfeiture Warrant

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Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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## Forfeiture Warrant

**Reference Number:** CTAS-1290

Once personal property is seized pursuant to the applicable provision of law, no forfeiture action can proceed unless a forfeiture warrant is issued in accordance with T.C.A. § 40-33-204 by a judge who is authorized to issue a search warrant. The forfeiture warrant authorizes institution of the forfeiture proceeding. T.C.A. § 40-33-204(a). General sessions judges may authorize magistrates or judicial commissioners to issue forfeiture warrants. However, prior to such authorization, the general sessions judge must train and certify that the magistrates or judicial commissioners understand the procedure and requirements relative to issuing a forfeiture warrant. T.C.A. § 40-33-204(c)(3).

The officer making the seizure must apply for a forfeiture warrant by filing an affidavit within five working days following the property seizure. The forfeiture warrant is based upon proof by affidavit and must have attached to it a copy of the Notice of Seizure. The affidavit in support of the forfeiture warrant must state the legal and factual basis making the property subject to forfeiture. If the owner or co-owner of the property was not the person in possession of the property at the time of seizure and can be determined from public records of title, registrations or other recorded documents, the affidavit must state with particular specificity the officer's probable cause for believing that the owner or co-owner of the property knew that such property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture as well as the legal and factual basis for the forfeiture of such interest. If the interest of a secured party with a duly perfected security interest as reflected in the public records of title, registration or other recorded documents is sought to be forfeited, the affidavit must state with particular specificity the officer's probable cause that the secured party's interest in the property is nevertheless subject to forfeiture as well as the legal and factual basis for the forfeiture of such interest. T.C.A. § 40-33-204(b).

If the seizing officer asserts to the judge that he or she was unable to determine the owner of the seized property or whether the owner's interest is subject to forfeiture within the required five-day period, the judge may grant up to 10 additional days to seek a forfeiture warrant. In order to grant additional time, the judge must find that the seizing officer has exercised due diligence and good faith in attempting to determine the owner of the property or whether the owner's interest is subject to forfeiture and made a factual showing that because of the existence of extraordinary and unusual circumstances an exception to the five-day forfeiture warrant requirement is justified. T.C.A. § 40-33-204(c)(2).

If the person in possession of the property is not the registered owner as determined from public records of titles, registration or other recorded documents, the judge may consider other indicia of ownership that proves that the possessor is nonetheless an owner of the property. Such other indicia of ownership shall include, but is not limited to, the following:

1. How the parties involved regarded ownership of the property in question;
2. The intentions of the parties relative to ownership of the property;
3. Who was responsible for originally purchasing the property;
4. Who pays any insurance, license or fees required to possess or operate the property;
5. Who maintains and repairs the property;
6. Who uses or operates the property;
7. Who has access to use the property; and
8. Who acts as if they have a proprietary interest in the property.

T.C.A. § 40-33-204(d).

The judge will issue the forfeiture warrant if the judge finds that the offered proof establishes probable cause to believe that the property is subject to forfeiture and if the property is owned by one whose interest is described in public records of titles, registrations or other recorded documents, that the owner's interest is subject to forfeiture. T.C.A. § 40-33-204(c)(1). Once the forfeiture warrant has been issued, the officer must, within seven working days, send the warrant, a copy of the affidavit and the notice of seizure to the Department of Safety Legal Division. The sheriff's office must maintain a copy of the notice of seizure for all property seized at its main office. The notices and receipts are public records. T.C.A. § 40-33-204(g). If no forfeiture warrant is issued and the property is not needed for evidence in a criminal proceeding, the sheriff's office must return the property to the owner, as determined from public records of titles, registration or other recorded documents, or if the owner cannot be determined, to the person in possession of the property at the time of seizure. T.C.A. § 40-33-204(f).

Upon receipt of the documents, the legal division will notify any other owner, as may be determined from public records of titles, registration or other recorded documents, or secured party that a forfeiture warrant has been issued. T.C.A. § 40-33-204(g). Any person asserting a claim to the seized property may, within 30 days of being notified by the legal division that a forfeiture warrant has issued, file a written claim requesting a hearing and stating the person's interest in the seized property for which a claim is made. T.C.A. § 40-33-206(a). See T.C.A. § 40-33-205 regarding interests of a secured party. Only the sheriff or the sheriff's designee may be permitted to negotiate or enter into any type of settlement agreement or agreements prior to the forfeiture hearing. In no event may any officer involved in seizing the property be allowed to negotiate or enter into any type of settlement agreement or agreements prior to the forfeiture hearing. All negotiated settlements by the sheriff's office are subject to the approval of the commissioner of safety. T.C.A. § 40-33-212. If a claim or proof of a security interest is not filed with the legal division within the specified time, the seized property will be forfeited and disposed of as provided by law. T.C.A. § 40-33-206(c).

Within 30 days from the day a claim is filed, the legal division will establish a hearing date and set the case on the docket. T.C.A. § 40-33-207(a). At the hearing, if it is determined that the state has carried the burden of proof with regard to all parties claiming an interest in the property and the ruling of the commissioner of safety is adverse to the claimant or claimants, the property will be sold or disposed of as provided by law. T.C.A. § 40-33-210(d). Once property has been forfeited, it is the duty of the sheriff to remove it for disposition in accordance with the law. T.C.A. § 53-11-451(e).

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