



## ASSET FORFEITURE

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### 13.3 Real Property

#### A. SCOPE

1. **Background:** This section describes the policies and procedures for the management and disposal of real property subject to forfeiture. It is intended to guide all U.S. Marshals Service (USMS) personnel involved in the asset forfeiture program (including employees of district U.S. Marshal Offices [USMOs]) and provide information regarding the roles of the U.S. Attorney's Office (USAO) and the investigative agencies in the forfeiture process.

#### B. PERFORMANCE MANAGEMENT

1. **Program Goals:** The objectives of the program are as follows:
  - a. Monitor real property subject to forfeiture to ensure its security and availability upon forfeiture.
  - b. Maintain the value of real property while in custody.
  - c. Through commercial sales, dispose of the real property following forfeiture within the time periods called for in the performance standards.
  - d. Achieve maximum sales revenue consistent with the law enforcement objectives of the program.
  - e. Transfer or release real property that is forfeited to an innocent party or to a lienholder.
  - f. Transfer real property to a Federal, State, or local agency when such transfer is authorized by the Attorney General.
  - g. Transfer real property to private entities through Department of Justice-sanctioned programs.
2. **Delivery Standards:** All real property is to be sold at no less than [redacted] of the appraised market value, except when approved through a Policy Authorization Review decision package, and disposed of within 12 months following its availability for sale. b2,  
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Generally, real property will be available for sale when the USMO receives a civil order of forfeiture, or a final order of forfeiture in a criminal case. However, title issues or contamination of real property may make the property unavailable for sale even after receipt by the USMO of the civil order of forfeiture or the final order of forfeiture. In such instances, the real property will be disposed of within 12 months of the resolution of the pertinent issues.

3. **USMS Responsibilities:** The following table lists the responsibilities of the Asset Forfeiture Office (AFO) and the 94 district USMOs:

Office	Is Responsible For
AFO	Overseeing the asset forfeiture program
AFO	Providing policy and procedure to govern the pre-seizure, posting, seizure, acceptance, management, and disposal of real property
AFO	Providing asset forfeiture assistance, technical advice, financial management assistance, contracting assistance, and property support to USMOs.
USMOs and AFO	Coordinating with USAOs, seizing agencies, vendors, subcontractors
USMOs	Coordinating, accepting, managing, and disposing of all property.

4. **Policy Authorization Review (PAR)<sup>1</sup> Decision Procedure:** This decision procedure provides a mechanism through which USMOs can obtain approval of a management or disposal action from the AFO. It supercedes the Significant Seized Property Decisions procedure [also referred to as Significant Property Decisions in the Department of Justice (DOJ) *Asset Forfeiture Policy Manual* (AFPM)]. When a PAR is required, it is prepared by the USMO and submitted to the AFO for approval. Except in emergencies that are beyond the control of a USMO, PARs are to be submitted to the AFO at least 7 working days before a response is required. In emergencies, the AFO should be notified immediately by telephone or e-mail.

**Contents of PAR<sup>2</sup>.** Each PAR decision package will contain the following:

- a. Relevant case and net equity information, including:
- (1) The Consolidated Asset Tracking System (CATS) number and the case number
  - (2) A description of the real property, including the legal description and address
  - (3) The type of forfeiture (civil or criminal)
  - (4) Relevant court orders that have been issued in the forfeiture case
  - (5) Date of posting or seizure
  - (6) Date of forfeiture or an estimate of the time until forfeiture
  - (7) Appraisal date
  - (8) Market value appraisals
  - (9) Outstanding liens
  - (10) USMS expenses
  - (11) Net equity
  - (12) Offer(s), if any
  - (13) Income, if any

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(14) Equitable sharing information

(15) Recent publicity concerning the property

(16) The name and telephone number of the Assistant U.S. Attorney (AUSA) responsible for the forfeiture action and the identity of the investigative agency involved

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- b. A clear statement of the approval that is required of the AFO
- c. Any additional information regarding the case that may be useful to the decision making process (e.g., the condition of the real property, its type, whether it is occupied)
- d. The signature of the U.S. Marshal or the Chief Deputy U.S. Marshal

### C. BACKGROUND

1. **Purpose of Forfeiture of Real Property:** The primary purpose of forfeiture is to confiscate real property that was used to violate the law or to remove the profits of illegal activity that may have been invested in real property. The forfeiture action may be civil in nature, may be directed against the property, or may be part of a criminal prosecution.
2. **Regulations that Govern the Forfeiture of Assets**
  - a. 21 Code of Federal Regulations § 1316 et seq
  - b. 28 Code of Federal Regulations § 0.111(i)
  - c. 28 Code of Federal Regulations § 0.156
  - d. 28 Code of Federal Regulations Part 9.
3. **Policies Governing DOJ Asset Forfeiture Program**
  - a. Attorney General's Guidelines on Seized and Forfeited Property (1990)
  - b. A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies (1994)
  - c. Asset Forfeiture Policy Manual (AFPM) (July 1996) published by the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, DOJ
  - d. Criminal Division Policy Directive 97-1 (March 17, 1997)
4. **Investigative Agencies that Support Forfeiture Actions Against Real Property**
  - a. Drug Enforcement Administration
  - b. Federal Bureau of Investigation
  - c. Bureau of Alcohol, Tobacco and Firearms
  - d. Food and Drug Administration
  - e. U.S. Park Police

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D. PROCEDURES

1. PRE-SEIZURE PLANNING

- a. **Description:** Pre-seizure planning is critical both in civil forfeitures and in criminal prosecutions that include forfeiture counts against the defendants' interests in real property. Pre-seizure planning describes the planning process prior to the United States undertaking forfeiture action against property and decisions that must be made before forfeiture may occur.
- b. **Role of Federal Officials:** Pre-seizure planning involves a team of Federal officials addressing critical financial, property management, and disposal issues in a coordinated manner. In any individual instance, this team includes the AUSA prosecuting the case, representatives of the investigative agency and representatives of the USMO.

The relevant issues must be addressed and resolved by this team before the decision is made to begin forfeiture proceedings.

- c. **Conditions for Seizure:** Generally, real property will not be seized prior to forfeiture. DOJ policy (based on the Supreme Court's decision in *United States v. James Daniel Good Real Property*)<sup>3</sup> provides that, in general, forfeiture actions commence with the posting of the real property rather than with its seizure.

Regardless of this provision, the same considerations applicable to pre-seizure planning of other types of property exist for real property, even though the actual seizure of the real property may not take place until after forfeiture.

- d. **Goals:** The goals of pre-seizure planning are to:

- (1) Determine if the net equity in the real property targeted for forfeiture meets DOJ value thresholds.
- (2) Determine the compelling law enforcement purpose that is served by proceeding with the forfeiture if the net equity does not meet DOJ value thresholds.
- (3) Clarify the role and responsibilities of each member of the government's team
- (4) Determine if adequate resources are available to the USMO to address the property management and disposal requirements relating to the forfeiture of the real property.
- (5) Determine whether the real property is contaminated with hazardous material.
- (6) Determine alternatives to forfeiture that may be considered.

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- e. **DOJ Pre-seizure Planning Policy Guidelines:**<sup>4</sup> These guidelines are intended to encourage practices that minimize or avoid unnecessarily difficult or insurmountable problems in the management and disposition of seized and forfeited assets. In particular, they are meant to ensure that the USMO is consulted prior to the seizure (or, in the case of real property, prior to the posting) and forfeiture of assets. These guidelines direct that the USMO should be advised promptly when real property forfeitures are included in the following:

- (1) Filing of civil forfeiture complaints
- (2) Return of indictments
- (3) Issuing of informations

- f. **USAO'S Responsibilities under DOJ Policy:**<sup>5</sup> The USAO is responsible for ensuring that proper pre-seizure planning occurs.

Formal pre-seizure planning—through meetings or telephone conferences—must occur at least once prior to the filing of forfeiture actions against real property (including the adoption of state or local cases involving real property by a federal investigative agency).

Pre-seizure conferences should include the responsible AUSA (and, if appropriate, the AUSA in charge of related criminal matters), the investigative agency case agent (s), and appropriate USMO representatives (including a representative from the district where the real property is located, if different from the district in which the action is to be filed).

- g. **Proper Planning under DOJ Policy:** Failure of the AUSA, of the investigating agency, or of the USMO to ensure that critical financial and property management issues are addressed prior to posting or seizing real property can result in ill-advised forfeiture actions when comparing the cost to forfeit, manage, and dispose of the real property to the law enforcement impact achieved.

It is critical that the USMO document all pre-seizure planning activities in its property files and that failure by any member of the team to support pre-seizure planning is also documented. USMOs have several functions early on in the forfeiture process:

- (1) Involvement in the pre-seizure process to ensure that critical financial and property management issues are addressed prior to seizure or posting of real property.
- (2) Authority to disagree with decisions made by the USAO or by the investigating agency regarding the institution of a forfeiture action against real property.
- (3) Documenting failures to include USMO representatives in pre-seizure planning. The AFO is to be advised if such failures continue.

When a dispute over whether a forfeiture action should be taken against certain

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property cannot be settled between agencies, alternatives to forfeiture should be pursued until the issue is resolved. Matters that cannot be resolved at the district level are to be referred to the AFO in a PAR decision package. If necessary, the AFO will refer unresolved disputes to AFMLS.

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#### **h. Considerations in Pre-seizure Planning**

- (1) **Is the forfeiture action to be civil or criminal?** The AUSA must decide whether to seek the civil or criminal forfeiture of the real property.

In the past, civil forfeiture actions commenced with the seizure of the real property. As a result of the Supreme Court's decision in *United States v. James Daniel Good Real Property*, most civil forfeiture actions against real property start with the posting of the property instead of its seizure.<sup>6</sup>

Usually, criminal prosecutions do not result in the seizure of property until after a defendant is convicted. However, the court may issue restraining orders or other orders relating to the property or its financial management that may have to be carried out by the USMO.

- (2) **What interest is to be forfeited?** USAO representatives, the investigative agency, and the USMO must determine the full scope of forfeiture action (i.e., what interests in which specific real property is to be forfeited). In addition to the real property, individual personal property, contents, and related assets must be identified as included in or excluded from the forfeiture action.<sup>7</sup>
- (3) **Are there ongoing businesses?** The USMO must notify the AFO when an ongoing business is located on real property subject to forfeiture.
- (4) **Are there security concerns?**<sup>8</sup> The safety of law enforcement personnel who may be required to approach or enter real property is of primary importance.

Information that may affect the security of such personnel must be addressed during pre-seizure planning meetings. The USMO will seek information from the investigative agency and from the AUSA regarding the occupants of the real property, as well as other information, such as the possibility of weapons on the premises, dangerous animals, alarms, hazardous materials or illegal activity.

The information relevant to security is to be noted on the pre-seizure questionnaire<sup>9</sup> and presented to all participants in a posting or seizure operation. Conditions related to personnel required to execute the posting or seizure include the following:

- (a) The number of individuals required to execute the posting or seizure and the role of each participant must be determined and discussed in advance.
- (b) If it appears that personnel will encounter dangerous or unusual circumstances, a written plan should be prepared to address specific circumstances and to provide guidance for the safe execution of the operation.
- (c) If State and local law enforcement agency personnel are to be used in the

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operation, approval must be obtained from the AUSA before any information regarding the case may be disclosed.

- (d) When no prior contact is authorized with State and local law enforcement agencies, the USMO will notify the appropriate local law enforcement agency after the posting has been executed and, in the case of seizure, when the property has been secured.
- (e) If additional support personnel or assistance in developing the operational plan will be needed, the USMO may request support from the AFO.
- (5) **Are there management and disposal issues?** Because the USMO is responsible for the management and disposition of assets, its input into logistical problems, management problems, and potential marketing difficulties must be considered prior to posting or seizing real property. The USMO must document in the real property files any such concerns that are raised during pre-seizure planning.
- (6) **Has a title report<sup>10</sup> been obtained?** Immediately upon targeting real property—including commercial real property—for forfeiture, a preliminary title report (also known as an owners and encumbrances or O&E report) must be obtained. If a title report cannot be obtained prior to posting, it must be obtained immediately afterward.
- (7) **What happens when a compelling law enforcement purpose is cited as the basis to forfeit property with insufficient net equity to meet DOJ guidelines (e.g., real property having [REDACTED]?)** Such a purpose includes taking forfeiture action against real property that is actively being used to violate the law (e.g., as a crack house or a clandestine laboratory). b2,  
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- According to DOJ policy, in the case of actions against real property that has insufficient net equity, the AUSA and/or investigative agency personnel are responsible for providing a statement regarding the compelling law enforcement purpose for forfeiture to the USMO.
- (a) The statement provided by the AUSA will be retained in the case file.
- (b) If a statement is not provided, the USMO is to notify the AUSA in writing and request a statement of the purpose from the AUSA.
- (c) A copy of the written request to the AUSA is to be sent to the AFO.
- (d) If the AUSA does not provide a statement, the USMO will provide one for the file, detailing the AUSA's orally stated reasons for the forfeiture action or indicating that the AUSA failed to give his/her reasons. A copy of this memorandum should be sent to the AUSA.
- (8) **How is forfeiture action executed?** In a civil forfeiture, the AUSA is responsible for preparing the documents that are to be posted by the USMO. Also, in either a criminal or civil forfeiture, the AUSA is responsible for determining the type and content of the restraining order or seizure order and obtaining the court order or other authority to enter or cross private property b2

- i. **Pre-seizure Questionnaire:** The questionnaire<sup>13</sup> is to be completed by the USMO even when real property is being posted rather than seized. The USMO representative should review the questionnaire, which outlines critical issues that the USMO should address, prior to the pre-seizure planning meeting and complete as much of it as possible based upon existing information.

- j. **Assessment of the Financial Impact of Forfeiture Action:** DOJ policy requires that if the financial assessment indicates that the aggregate of all liens, mortgages, and management and disposal costs approaches or exceeds the anticipated proceeds from the sale of the property, or if the property is decaying or presents difficult management issues, the USAO must:

- (1) Determine not to go forward with the forfeiture action.
- (2) If forfeiture action has commenced, take action to dismiss the forfeiture action and to void any expedited settlement<sup>14</sup> agreements (if any have been entered into).
- (3) Acknowledge the potential loss and document the circumstances that warrant the continuation of the forfeiture action.<sup>15</sup>

k. **Issues to Be Analyzed to by the USMO During Pre-seizure Planning**

- (1) **Adequate Title Search Conducted Prior to the Decision to Begin Forfeiture Action Against Real Property:** In cases in which information relevant to titles and liens cannot be acquired without compromising the investigation, this material may be considered after the property has been posted or seized.

The USMO may request that the investigative agency involved in the forfeiture action provide copies of O&E reports or other title reports that it might have obtained.

- (2) **A drive-by appraisal on real property targeted for forfeiture should be obtained whenever doing so will not compromise an ongoing investigation.**<sup>16</sup>

A factor in determining appraised value is the nature of the real property being held (e.g., real property that supports an ongoing business would be valued higher than vacant land). The value of real property initially should be appraised at its highest and best use.

- l. **Use of Net Equity Worksheets<sup>17</sup> to Calculate and Document Net Equity:** Key categories to include in the calculations are appraised value of the property, identified liens, and anticipated expenses.

- m. **Estimated Expenses:** For both real property in custody or not in custody, the following items should be calculated on net equity worksheets:

- (1) Management costs for a 12-month period (e.g., repairs, maintenance, management fees, security, homeowner, condominium fees, utilities, and water and sewer taxes).

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Property in custody may have higher management costs than property not in custody.

(2) Liens and other encumbrances.

(3) Taxes up through final date of forfeiture.<sup>18</sup>

- Real property taxes, plus interest and penalties, may continue to accrue during the pendency of the forfeiture action if they are not paid by the current owner.
- These taxes will represent a tax lien against the property that will have to be paid before the forfeited property can be sold.
- These taxes will continue to erode the equity in the property the longer it takes to obtain final forfeiture. For this reason it is necessary to continue to monitor the status of the outstanding tax, and if necessary, to advise the AUSA responsible for the forfeiture action that it may be appropriate to dismiss the forfeiture action in favor of action by the local taxing authority.

(4) Cost of the title reports (initial and updated).

(5) Cost of appraisal(s).

(6) Estimated costs of the site assessment, decontamination, and cleanup and abatement, if hazardous material was located, stored, or disposed of on the property. (A statement regarding potential liability should be attached to the net equity worksheet for inclusion with the PAR decision package).

(7) Published notice costs.

(8) Estimated disposal costs, including sales commissions and seller's closing cost.

**Ownership of the Property:** The name of the reported owner(s) is to be included on the net equity worksheet. Other ownership interests may affect the net equity or may be impediments to the forfeiture action. The AUSA should be informed whenever such interests are identified. They include joint ownership interests, shared ownership interests, ownership interests in a corporation, ownership interests of apparent innocent parties and existence of a fugitive owner.<sup>19</sup>

- n. **Liens and Other Encumbrances:** When calculating net equity, the USMO shall consider all liens and other encumbrances as valid. After forfeiture, the AUSA must determine the validity of each lien and include the resolution of the lien's status in the court order declaring the forfeiture.

Item	Conditions
Mortgage or deed of trust	If information regarding the outstanding balance is not readily available, the date of the mortgage or deed of trust and the estimated amount paid may be used to estimate the outstanding

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	amount.  Unless there is information that the mortgage or deed of trust is delinquent, assume that it is current. Use [mortgage101.com] to compute the estimated outstanding balance given the date the mortgage or deed of trust was entered into and the number of years and months that have elapsed.
Mechanic's or materialman's lien	Unpaid work and/or materials in erecting or repairing a structure may result in a lien on the property.
Judgment	An uncollected monetary judgment against a property owner in local, State, or Federal court may result in a lien on the property to enforce the judgment.
Tax liens	See "Internal Revenue Service liens" below

**Use of Asset Forfeiture Fund:** Prior to forfeiture, USMOs are not authorized to use the Assets Forfeiture Fund to pay mortgages or liens.

- o. Minimum Net Equity Required for Forfeiture Against Real Property (Excluding Operating Commercial Enterprises):** The minimum amount is [REDACTED]. Individual judicial districts may have higher minimum values. These minimum values apply to both forfeiture actions arising from federal investigations and those generated by state or local law enforcement agencies.

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**Worksheet Results:** Analysis of results should be based on the following guidelines:

If	Then
The initial determination of net equity is less than the minimum value limitations.	The AUSA must be notified. A copy of the worksheet is to be provided to the AUSA to advise him/her that the minimum equity value has not been met.
A compelling law enforcement purpose mandates forfeiture of real property with insufficient net equity.	The AUSA must document this decision. The final decision to seize a property of lesser value rests with the AUSA.

- p. Bail Collateral:** The property owner cannot use real property subject to forfeiture as collateral for bail.

If	Then
There are criminal charges against the property owner (as determined by the civil case AUSA's verifying the situation with the investigating agency).	USMO advises criminal case AUSA to request a hearing during which the defendant must identify other assets that may be used for bail collateral. The property owner cannot use seized/posted property as collateral for bail.
A defendant identifies property subject to forfeiture for bail collateral.	The criminal case AUSA may petition the court to prevent its use.

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- q. **Forfeiture of Rental and Commercial Property:** Management issues can arise even if the property is merely going to be posted and not seized. For example, security deposits and rents may be held by or paid to the owner of record during the period of the forfeiture action. Under the terms of the forfeiture, these moneys may subsequently belong to the United States. It may be necessary, in coordination with the AUSA, to freeze or restrain the management accounts of the owner(s) or property manager(s).
- r. **Internal Revenue Service (IRS) Liens:** Generally, net proceeds from the sale of forfeited property will not be available to pay IRS tax liens.<sup>20</sup> The IRS is not required to release a pre-existing tax lien for forfeiture action to be undertaken.

If	Then
An IRS tax lien is served against real property that has been posted or seized.	The USMO will accept service and immediately notify the AUSA.
The property is forfeited.	The AUSA will address the IRS lien in the forfeiture order.
The forfeiture action is dismissed.	The USAO should advise the IRS that it can proceed against the real property. The local IRS office, Special Procedures Branch, may be contacted for assistance in dealing with an IRS tax lien.

- s. **Criteria for Determining Forfeiture Action on Contaminated Real Property<sup>21</sup> (Including Property Built Prior to 1978 that May Have Lead-based Paint):** DOJ policy is applicable in all cases regardless of the type or source of the hazardous substance, including:

- (1) [REDACTED] net equity for contaminated or potentially contaminated real property (but excluding pre-1978 property that may have lead-based paint). b2, b7E
- (2) Environmental assessment may be contracted by the USMO, upon request of the USAO, to determine whether to proceed with a forfeiture action. The USAO may make such a request, and the assessment will be paid as a property management expense.<sup>22</sup>
- (3) The marketability and the determination of net equity should be re-evaluated once the contamination has been cleaned or removed.

**Steps to Forfeiture Action:** The USMO will report all contaminated real property identified for forfeiture to the AFO before any forfeiture action is taken and prepare a PAR decision package with the assistance of the AUSA for approval from the AFO.

In addition, the PAR decision package must include a detailed description of the property, including whether it is occupied, and a detailed statement of the law enforcement purpose to be served and the reasons why it cannot be accomplished by alternative means.

**Considerations for Not Pursuing Forfeiture Action Against Contaminated Property:** When expectations to this general policy are considered, the USAO in the

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district where the forfeiture action against the property is being pursued, and in consultation with the seizing agency and the USMO, must justify such action.

Real property should not be forfeited when there is reason to believe the property is substantially contaminated with hazardous substances and this contamination would render the property unmarketable.

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If such a reason exists, alternatives to forfeiture must be explored.

**Alternatives to Forfeiture of Contaminated Real Property:** In addition to alternatives to forfeiture for real property, listed in the next section, options regarding contaminated real property include:

- (1) Moving for dismissal of forfeiture and removing the lis pendens, specifying contamination as the reason for such action.
- (2) Filing a notice of the contamination in the county deed records, if allowable under state law.
- (3) Notifying appropriate federal, state or local environmental, public health or safety agencies so they can proceed with condemnation or other action.
- (4) Taking action against the property and/or the persons responsible for contaminating it under environmental laws.

**Pre-1978 Property that may Have Lead-based Paint Contamination:**<sup>23</sup> Forfeiture action is not to be taken against property built prior to 1978 (or an earlier date as may be applicable in a particular district) in the absence of a compelling law enforcement purpose and only after pre-seizure planning.<sup>24</sup>

Unless a certified lead-based paint inspector<sup>25</sup> confirms that there is no lead-based contamination, the property will be treated as contaminated real property.

- (1) Pre-1978 residential property identified for seizure/forfeiture.
  - (a) The interim policy issued on August 16, 1996, under which the USMS was not to take custody of such residential property, is rescinded. There is no longer any limitation regarding forfeiture actions on residential property built between January 1, 1960 and December 31, 1977. Submission of a PAR decision package to AFO is no longer required.
  - (b) Each district office will notify the AFO, utilizing the PAR decision procedure, upon being advised that residential real property built before January 1, 1960, is targeted for forfeiture. The district office shall take no action to post or take such property into custody until approval is received from the AFO.
  - (c) If pre-1978 residential property is taken into custody, either before or after forfeiture.

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- if unoccupied, it shall not be leased out;
- if occupied, the occupants must be provided the information set forth in this directive.

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(2) Sale of pre-1978 residential property

- (a) Such property may be marketed and sold, using any USMS process, so long as the sale is completed within 270 days of the date of the final order of forfeiture.
- The information set forth in this directive shall be provided to all potential purchasers.
  - Any contract of sale will provide that the purchaser shall have 10 days to undertake any inspection for lead-based paint, and, if such lead based paint is found, may (but is not required to) cancel the contract of sale.
- (b) If residential property that was built between January 1, 1960, and December 31, 1977, cannot be sold within 270 days of the final order of forfeiture, then
- a lead-based paint inspection and risk assessment must be conducted and completed before the closing of the sale of the property; the results thereof must be made available to the prospective purchaser.
- No abatement action is necessary.

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- (c) If residential property that was built before January 1, 1960, cannot be sold with 270 days of the date of the final order of forfeiture, then
- a lead-based paint inspection and risk assessment must be conducted and completed before the closing of the sale of the property;
  - The results thereof must be made available to the prospective purchaser,
  - all identified lead-based paint hazards must be abated.
- (d) If the abatement cannot be completed for pre-1960 property before the closing of the sale, then the USMS continues to be responsible for assuring that the abatement is completed before the property is occupied. This continued responsibility is applicable to the transfer of such residential real property under the "Weed and Seed" initiative or other transfer authorities.

(3) Lead-based paint inspection, risk assessment and abatement of pre-1978 residential property

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The HUD regulations adopt the EPA standards for lead-based paint inspection, risk assessment and abatement when those actions are required.

- (a) Effective August 29, 1999, all lead-based paint inspection, risk assessment and abatement work must be performed by individuals or firms that are

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certified by EPA.

- (b) HUD has established two sources of information to locate such certified individuals and firms.

- Internet site [www.leadlisting.org](http://www.leadlisting.org)
- Telephone number 1-888-LEADLIST

- (c) When USMS district offices require lead-based paint inspection, risk assessment or abatement services, the above-listed sources of information should be utilized to identify potential service providers.

- t. **Alternatives to Forfeiture of Real Property:** The decision regarding how best to proceed in lieu of forfeiture rests with the USAO. However, the USMO will review these alternatives with the AUSA and coordinate action, as appropriate, with other interested parties.

**Legal Action by State or Local Authorities:** In certain high-crime areas, low-value real property (e.g., "crack houses") may be taken from the violator by coordinating with local authorities to have the building condemned on the basis of health and sanitary code violations or public nuisance.

**Seizure by the State or Local Taxing Authority:** When an owner is delinquent on state or local taxes, the real property may be seized for back taxes by the taxing authority.

**Foreclosure by a Lienholder:** Mortgage contracts commonly contain acceleration provisions that make the mortgage immediately due if the owner allows the property to be used for illegal activities. The dismissal of any forfeiture action in favor of foreclosure should be coordinated with the mortgagor to ensure that the property is not redeemed from forfeiture by a party whose interest is subject to forfeiture.

**Posting of Substitute Res:** When the forfeiture is based upon the purchase of the real property with proceeds from criminal activity, the owner may post a substitute res in lieu of forfeiture of the asset.

**Allowance of Sale and Seizure Out of Escrow:** This type of sale is permissible under the following conditions:

- (1) If pre-seizure planning or posting reveals that the real property is listed for sale, the AUSA should allow the sale to proceed and seize the proceeds rather than the property.
- (2) Under these circumstances, the sale continues normally, except that the USMO executes a warrant of arrest *in rem* against the sale proceeds before they are transferred from the escrow account to the seller.
- (3) This alternative is available only when the relevant statute authorizes the forfeiture of "proceeds" traceable to the property originally subject to forfeiture.

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- u. **Historically Significant Properties:**<sup>26</sup> There are restrictions on the disposition of historically significant real property.<sup>27</sup>

(1) The USMO will notify the AFO immediately upon discovering that real property might be historically significant. (Historical markers or plaques are obvious signals).

(2) Before taking any action to dispose of such a property following forfeiture, the USMO will submit a PAR decision package to the AFO seeking approval of the disposal action.

- v. **Criminal Prosecutions that Include Real Property Forfeitures:** Factors in pre-seizure planning include the following:

(1) Completion of the same pre-seizure questionnaire and worksheets that are used for civil forfeiture action.

(2) Inclusion of a forfeiture count in the indictment or information charging the defendant before any property can be subject to forfeiture as part of a criminal prosecution.

(3) Determination of joint or shared ownership interests at the time of indictment because such ownership interests can impede the property's sale after forfeiture.

(4) Inclusion of the impact of joint ownership in determining net equity (e.g., innocent spouses' ownership interest).

Under DOJ policy, the AUSA responsible for prosecuting the criminal action is to ensure timely pre-indictment coordination with the USMO.

The AUSA must consult with the USMO before submitting to the court proposed orders that impose any restraint, seizure, property management, or financial management relating to the real property named in the indictment or information. If the AUSA fails to do so, the USMO should bring this requirement to his/her attention. The AFO should be notified regarding consultation failures that cannot be resolved at the district level.

## 2. MONITORING REAL PROPERTY SUBJECT TO FORFEITURE

- a. **USMO Responsibility after the Forfeiture Action Has Begun.** The USMO has the following responsibilities:

(1) Monitoring the condition of real property that has been posted in a civil forfeiture action.

(a) It may consist of monthly drive-by inspections or other inspections as allowed in court orders issued in the forfeiture action.

(b) It will not consist of entering posted real property without court authorization.

(2) Monitoring the condition of real property in criminal forfeiture action after a *lis*

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*pendens* is filed on property named in an indictment or information.

- b. **USMO Responsibility for Appraisal if One Has Not Been Obtained:**<sup>28</sup> If an appraisal has not been obtained, the USMO shall:

Civil Forfeiture	Criminal Forfeiture
Order a drive-by appraisal no later than 10 working days after the posting of the real property.	Obtain a drive-by appraisal within 10 days of being notified of the property's inclusion in an indictment or information.

- c. **USMO Responsibility Regarding Net Equity**<sup>29</sup>

- (1) Obtain, if possible, the payoff amount for all mortgages and liens.
- (2) Recalculate the net equity if market conditions or other factors have caused a significant change in the value of the property or when the annual appraisal is due.
- (3) Monitor the net equity so that timely action can be taken if the net equity diminishes. Some of the reasons that net equity declines are a decline in market value, an increase in maintenance expenses, accrual of interest on liens, and the discovery of previously unknown liens.
- (4) Advise the AUSA to consider the following alternatives if the net equity diminishes:
  - (a) Seek an interlocutory sale, either with the concurrence of the property owner(s) or by court order.
  - (b) Move to dismiss the case if the property has not yet been forfeited.

- d. **Foreclosure Actions Against Real Property Subject to Forfeiture:** Foreclosure may be undertaken by a lienholder when a mortgage is in arrears. State laws vary regarding the terms under which a lienholder may foreclose and the time period allowed for redemption.

If This Situation Exists	USMO Will
Liens exist against real property	Arrange for the mortgagor to advise the USMO immediately if the mortgage is in arrears. Refer inquiries or notifications from lien holders to the AUSA.
The mortgage is in arrears.	Advise the AUSA to notify the court and seek the necessary protective order to preserve the U.S. interest in the real property.
After the property has been forfeited, the United States is notified that the property is being subjected to foreclosure	Advise the AUSA to seek to remove the foreclosure action to the U.S. District

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proceedings.	Court.
The foreclosure action cannot be removed to the U.S. District Court.	Submit a PAR decision package requesting approval to redeem the property from foreclosure using moneys from the Assets Forfeiture Fund.

3. **CIVIL FORFEITURE:** The procedures outlined in this section are generally those applicable to civil forfeiture actions, which in the past commenced with the seizure of the real property, but which now have been affected by the Supreme Court's decision in United States v. James Daniel Good Real Property and by the Civil Asset Forfeiture Reform Act of 2000 (Public Law 106-185, April 25, 2000)(CAFRA).

a. **Current Policies and Procedures:** The USMO has primary responsibility for execution of warrants of arrest in rem. However, in light of the Good decision, forfeiture action against real property usually is commenced by posting<sup>30</sup> the property rather than by seizing it.<sup>31</sup>

The USMO will review each warrant of arrest in rem for real property to ensure that:

- (1) It contains the word "arrest" (to meet the requirements of the Admiralty Rules and to establish actual jurisdiction of the court).
- (2) It includes a statement that the real property is not being seized or otherwise taken into custody.
- (3) It does not place on the USMS responsibility for the care or maintenance of the property while the forfeiture action is pending.

When real property must be seized, through a warrant of arrest in rem, a judicial hearing usually must be held before seizure. If it cannot be held prior to seizure, it must be held as soon as practicable following seizure. The AUSA is responsible for requesting such a hearing.

A seizure warrant is normally served by the investigative agency and is not to be used unless the owner(s) of the real property to be seized is afforded both notice of and opportunity for a hearing prior to issuance of the warrant. It is also not to be used unless exigent circumstances justify issuance of an ex parte seizure warrant.

When a forfeiture action is against real property located outside the judicial district, DOJ policy requires that the AUSA responsible for the forfeiture action:

- Advise the USAO and the USMO for the district in which the property is located that a forfeiture action is being contemplated.
- Coordinate the forfeiture action with those offices. If the AUSA fails to contact these offices, the USMO must bring this requirement to his/her attention, and will contact the other USMO.

b. **Judicial Hearing Prior to Taking Property into Custody:** USMO personnel will

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advise the AUSA of situations in which a seizure should be undertaken, following a judicial hearing. Such situations include:

- (1) Vacant or unimproved real property that appears to be abandoned and is vulnerable to being vandalized.
- (2) Reason to believe the owner is not applying rental proceeds to payment of the mortgage, taxes, expenses, etc., or is allowing the property to deteriorate.
- (3) The presence of a business on the property, the income from which is necessary for its continued operation or is at risk of being misappropriated.
- (4) Illegal activity that is occurring on the real property.

**c. Seizure Based Upon Exigent Circumstances:<sup>32</sup>**

The AUSA is responsible for determining if exigent circumstances that justify a seizure exist. Advance ex parte judicial approval may still be required, even when the seizure is based upon exigent circumstances. Even when exigent circumstances exist, the United States must show that less restrictive measures will not suffice.

**d. Entry and Inspection at the Time of Posting or Seizure.** A warrant of arrest in rem does not in and of itself authorize the United States to search an occupied dwelling. However, the USMO may consider three alternatives that would allow entry onto the property upon the execution of the warrant of arrest in rem.

There are three alternatives for entry and inspection:

Alternatives	Conditions
<p>Inclusion of right of entry in the warrant of arrest in rem.</p> <p>Right of entry generally not included in the warrant of arrest in rem.</p> <p>Right of entry follows execution of the warrant of arrest in rem.</p>	<p>A U.S. District Court judge must review and sign the warrant.</p> <p>A hearing—at which all interested parties must be given the opportunity to appear—is required.</p> <p>This right is subject to the direction of a U.S. District Court judge.</p>
<p>Use of a writ of entry for property inspection and inventory,<sup>33</sup> which may be requested by the AUSA and issued by a U.S. District Court for use in executing a warrant of arrest in rem against a residence.</p>	<p>The writ of entry specifies:</p> <p>The terms and conditions of the USMO's right of entry following posting.</p> <p>That the USMO is authorized to conduct an inventory and structural inspection of the dwelling at the time of posting.</p> <p>It does not authorize a search for contraband or other evidence of criminal</p>

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	activity
Consent of the occupants for inspection and inventory of real property.	<p>Consent must be voluntarily given in writing.</p> <p>USMO personnel will take no coercive action to obtain consent.</p> <p>If consent is withdrawn, USMO personnel shall exit the premises.</p>

e. **Disposition of Evidence Found During Execution of a Warrant of Arrest In Rem:** If, during the USMO's inventory or structural inspection, evidence of a crime is observed, the inspection will be halted, evidence will be preserved, and persons will be secured. The investigative agency will be contacted and a search warrant obtained through the USAO.

f. **Contents of Real Property<sup>34</sup>**

- (1) **Subject to Forfeiture:** Before contents of real property can be subject to forfeiture, they must be named in the forfeiture complaint. Even in the case of a seizure following a pre-seizure hearing or based upon exigent circumstances, a warrant of arrest in rem that includes only the address or legal description of the real property does not authorize the USMO to seize personal property found in or on the real property.
- (2) **Not Subject to Forfeiture:** Contents of real property not subject to forfeiture may be located in either occupied or unoccupied real property.
  - (a) **Occupied Real Property:** If the warrant of arrest in rem does not include the contents of the real property for seizure, the USMO will conduct a video inventory of the condition of the real property subject to forfeiture, including appurtenances and fixtures. Contents not subject to forfeiture need not be inventoried; unless case-specific circumstances dictate otherwise.
  - (b) **Unoccupied Real Property:** If the warrant of arrest in rem for real property does not identify specifically its contents as subject to forfeiture and if the real property is vacant, the contents will be considered subject to Federal abandonment proceedings, when there is a seizure, or when the United States takes possession after forfeiture.

g. **Use of Federal, State or Local Agents to Assist in Executing the Warrant of Arrest in Rem:** A warrant of arrest in rem does not authorize a search. Other federal, state or local law enforcement agents may assist in executing a warrant of arrest in rem if their involvement will not prejudice the case and if the USMO anticipates that violence or resistance may be encountered in executing the warrant, believes that available USMO resources are insufficient to meet the threat of violence or resistance, and has consulted the AUSA and has obtained his/her consent.

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If other Federal, State, or local law enforcement agency personnel are to assist in the execution of a warrant of arrest in rem, the USMO should advise such personnel that the warrant does not in and of itself authorize entry into the real property or a search for contraband or other evidence of criminal activity; nor does a writ of entry authorize such a search.

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- h. **Notice Requirements:**<sup>35</sup> The USAO's responsibility to provide (publish) notice involves preparing notice<sup>36</sup> to all known persons or entities who may have an ownership interest in or claim against the defendant's property of the intent to forfeit and placing notices in appropriate newspapers.
- (1) **Notice by Publication:** Although the USMO is not responsible for publishing notice, many USMOs have assumed this duty because, by doing so, the USMO may avoid disposition problems associated with unknown claimants. If the USMO takes on the responsibility for publishing the notices, the following actions will be required:
- (a) Upon the execution and posting of a warrant of arrest in rem, the United States will within 10 days cause a public notice of action to be given in a newspaper of general circulation, as designated by an order of the court.
- (b) Generally, the notice is to be published weekly for three consecutive weeks in a newspaper of general circulation in the district where the property is located and, if different, in the district where the forfeiture action is being heard. Local court rules may provide for different publication requirements. The notice must include:

The legal description of the real property.

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The street or mailing address of the real property.

The forfeiture case name, case number, and judicial district.

A statement that parties with an interest in the property who seek to contest the forfeiture must intervene in the forfeiture action by the date specified and in accordance with the Admiralty Rules.

The procedures for filing a petition for remission or mitigation of forfeiture in accordance with 28 CFR 9.

- (2) **Notice by Mail:** Parties-in-interest—who are identified based upon a current title report—must be notified. These parties include but are not limited to possessors, record owners, lienholders, mechanic lienholders, and others who claim to have an interest in the property. The notice must include, at a minimum, all information contained in the published notice.
- (3) **Personal Service:** In lieu of notice by mail, the USMO should consult with the AUSA responsible for the forfeiture action to determine if personal service should be undertaken. Effective personal service requires that:
- (a) The receipt of the notice is acknowledged in writing by the served party-in-interest.

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- (b) The receipt of the notice is acknowledged by one authorized to accept service for the potential party-in-interest.
  - (c) The person who is authorized to serve notice on behalf of the United States and who executes service states in writing that service was made to the potential party-in-interest or to one authorized to accept service for the potential party-in-interest.
- i. **Lis Pendens:** Where state law allows, a *lis pendens* should be filed simultaneously with the filing of the complaint to prevent the transfer or encumbrance of the real property subject to forfeiture.
- (1) The filing of a *lis pendens* does not preclude transfer of the title to the property through sale or foreclosure, but it does place the public on notice that the forfeiture action is pending and that any transfer may be subject to the subsequent forfeiture.
  - (2) If the property is sold or foreclosed in spite of the *lis pendens*, and if this information comes to the USMO's attention, then the USMO will notify the AUSA.
  - (3) The filing of a *lis pendens* does not fulfill the requirement regarding notice of the intent of the United States to forfeit, and service of process is still required.

The USMO will verify whether the AUSA has or has not filed a *lis pendens*. If a *lis pendens* has not been filed with the recorder or registrar of deeds in the county where the property is located, the AUSA in the district executing the warrant of arrest in rem must file the *lis pendens*.

- j. **Civil Forfeiture by Settlement:** Settlements of forfeiture actions are encouraged to conserve the resources of both the United States and claimants. Any settlement binds only the parties to it.
- (1) Settlements shall not include the transfer of real property to the United States by consent or stipulation (even when a deed is executed by the owner) without an order of forfeiture.
  - (2) Settlements shall not provide for installment payments ("partial payments") of amounts in settlement in lieu of forfeiture of real property unless such an arrangement has been approved by the AFMLS in consultation with the AFO.

k. **Responsibilities in Civil Settlements**

Office	Responsibility
AUSA <sup>37</sup>	Consults with the USMO and the investigating agency before entering into a settlement.
USMO	Advises the case AUSA regarding the real property's appraised market value, net equity, and current and prospective expenses to ensure that the settlement is fiscally sound.
USMO	Advises the case AUSA to include in any

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	settlement agreement a hold harmless provision, <sup>38</sup> as well as waivers of actions regarding any and all past, present, or future claims against the United States, the DOJ, its agencies, offices, employees, and assigns
USMO responsible for the property being returned	Deposits any monetary amount received in settlement <sup>39</sup> into the Marshal's Account 5042 in the Assets Forfeiture Fund, pursuant to <u>19 USC 1613(c)</u> , which does not require further order of the court.
USMO	Obtains copies of the executed settlement documents (notice of dismissal or stipulation for compromise settlement approved by the court) from the AUSA and retains them in the case file.

**4. CRIMINAL FORFEITURE PROCEDURE**

a. **Criminal Prosecutions Including Forfeiture Counts:** Criminal forfeiture actions are part of a criminal prosecution and are, therefore, in personam and not in rem. Criminal forfeiture actions require the following:

- (1) An indictment of or an information against an individual
- (2) A separate count in the indictment or information that identifies the property subject to forfeiture upon conviction of the individual charged
- (3) Conviction of the individual charged
- (4) A separate verdict (the special forfeiture verdict) that finds the property subject to forfeiture
- (5) A preliminary order of forfeiture authorizing seizure of the property
- (6) Ancillary proceedings following forfeiture
- (7) A final order of forfeiture

b. **Criminal Indictments or Information**

When Real Property Is Named	When Real Property Is Not Named
Usually real property will not be seized.	Such real property CANNOT BE FORFEITED through a plea agreement.
If assets are to be restrained under the provisions of a criminal forfeiture statute, USMOs will execute the orders of the court issued as part of the criminal prosecution.	Substitute assets belonging to a defendant may replace unavailable forfeited assets:  When permitted by the specific forfeiture

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<p>Such court orders may place upon the USMO certain custodial responsibilities to manage the property, collect rents, etc.</p>	<p>statute.</p> <p>Only if a provision for substitute assets was included in the indictment or information.</p>
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- c. **Restraining Orders:** Restraining orders may be issued by the court and served by the USMO before or after an indictment.

Pre-indictment <sup>40</sup>	Post-indictment
<p>A restraining order may be issued following notice and opportunity for a hearing. It is effective for no more than 90 days unless:</p> <p>It is extended for good cause.</p> <p>An indictment or information is filed charging the defendant with the underlying offense and alleging that the property named in the indictment or information is subject to forfeiture upon conviction.</p>	<p>A full evidentiary hearing on the probable success of the United States may be required before such restraining orders can be issued. The AUSA should consult with the AFMLS regarding whether a post-indictment restraining order should be sought.</p>
<p>An ex parte restraining order (effective for no more than 10 days, unless extended for good cause) may be issued following:</p> <p>The AUSA's application to the court.</p> <p>A demonstration of probable cause that the property at issue is subject to criminal forfeiture and that provision of notice would jeopardize the availability of the property.</p>	

- d. **Preliminary Order of Forfeiture After a Conviction:** The jury must find that the real property is subject to forfeiture by a separate verdict referred to as a special forfeiture verdict.

Based upon such a verdict, the court will issue a preliminary order of forfeiture under which the USMO will be authorized to take custody of the real property or to take whatever action is directed by the court.<sup>41</sup>

Other federal, state or local law enforcement agents may assist in executing the orders of the court if the USMO anticipates that violence or resistance may be encountered, believes that available USMO resources are insufficient to meet the threat of violence or resistance, and consults the AUSA and obtains his/her concurrence.

If other federal, state or local law enforcement agency personnel are to assist in the

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execution of the orders of the court, the USMO should advise such personnel that no search will be made of the real property unless such a search is authorized.

**e. Ancillary Proceedings After a Preliminary Order of Forfeiture:** Ancillary proceedings may be held to resolve third-party interest(s) in the forfeited property.

Notice of the ancillary proceedings must be sent to all possessors, lienholders, owners of record, and others with a possible interest in or claim against the property.

(1) Generally, both individual written notice and notice by publication should be made.

(2) Publication procedures similar to those for civil forfeiture, as described in "Notice requirements" above, may be used.

If a timely hearing can be held without affecting the rights of private parties or without unduly jeopardizing the government's legitimate interests, the ancillary proceedings should commence within 30 days of the filing of the claimant.<sup>42</sup>

**f. Final Order of Forfeiture**

Under These Conditions	This Action Occurs
Ancillary proceedings have concluded	A final order of forfeiture may be issued.
No petitions have been received in response to publication and the deadline for claimants to file petition has expired.	A final order of forfeiture is not required, or a preliminary order of forfeiture becomes a final order of forfeiture.

The AUSA must notify the USMO, in writing, when the court does not issue a final order of forfeiture because no petition was received. Written notification must document that the forfeiture was properly published, no petitions were filed and the USMO may proceed to dispose of the property.

The USMO will notify the AFO in case of any failure or refusal by an AUSA to provide such written notification.

**g. Plea Agreements:** Plea agreements shall not include the transfer of real property to the United States by consent or stipulation (even when a deed is executed by the owner) without an order of forfeiture.

If	Then in a Plea Agreement
The property was named in the indictment or information.	The United States can obtain the defendant's consent to forfeit his/her interest in real property.
The property was NOT named in the indictment or information.	The United States can only obtain the defendant's agreement that he/she will not contest a civil forfeiture of the real property.
The real property is unencumbered and the defendant is the sole owner and	The United States may agree to accept the real property; conveyance must be by the execution, by the defendant, of a

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agrees to convey clear title to the United States.	deed to the United States. However, a final order of forfeiture is still required.
Third-party interests exist.	Ancillary proceedings are required to dispose of the rights of third parties.
A court order is provided.	A monetary amount <sup>43</sup> may be accepted in lieu of forfeiture of property named in an indictment or information. Such amounts must be deposited by the USMO responsible for the property being returned into the Marshal's Account Number 5042 in the Assets Forfeiture Fund, pursuant to 19 USC 1613(c).
Installment payments ("partial payments") of a monetary amount in lieu of forfeiture on real property are proposed.	Under DOJ policy, <sup>44</sup> the AFO must agree. The USMO will advise the AFO immediately when it is informed of any proposal by an AUSA to enter into a plea agreement that would provide for such payments.

The AUSA must provide the USMO with copies of the plea agreement and any related documents (e.g., deeds). These documents are to be retained in the case file.

**5. CIVIL AND CRIMINAL FORFEITURE PROCEDURES**

**a. Payment of State and Local Real Property Taxes:** Because of the doctrine of sovereign immunity, the Federal Government does not pay State and local real property taxes on property that it owns, including real property that it obtains ownership of through forfeiture. However, before property is forfeited, such taxes may accrue even if the property is being managed by the USMO. If taxes for the year have been paid in advance for the year by the USMO as a management expense, and a final order of forfeiture is issued during that year, then a rebate may be due to the USMO when the ownership transfers to the Federal Government. The USMO should have the State law reviewed to determine if a rebate is due.

(1) **Civil Forfeiture Cases:**<sup>45</sup> DOJ policy authorizes payment of previously incurred and unpaid ad valorem real property taxes accrued up to the date of entry of a civil order of forfeiture.

If	Then
A civil order of forfeiture is issued.	The AUSA initiates appropriate legal action to remove the real property from the tax rolls.
The AUSA fails to undertake legal action.	The USMO should notify the AUSA of the need to do so.
After notification from USMO, AUSA does not take action in a timely manner.	The USMO shall notify the taxing authority to remove the forfeited property from the tax rolls and shall advise the AUSA.

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- (2) **Criminal Forfeiture Cases:**<sup>46</sup> Payment of state and local taxes on criminally forfeited real property may be made in the same manner and to the same extent as is authorized for civilly forfeited real property.

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- b. **Taxes Paid in Advance:** The date of the final order of forfeiture is the date after which the United States will no longer pay state or local taxes.

If taxes for the year have been paid in advance for that year by the USMO as a management expense, and a final order of forfeiture is issued during that year, then a rebate may be due to the USMO when the ownership transfers to the Federal Government. The USMO should have the State law reviewed to determine if a rebate is due.

- c. **Payment of Interest and Penalties on Real Property Taxes:** Generally, interest but not penalties may be paid on overdue taxes in accordance with the formula set forth by statute.<sup>47</sup>

(1) USAOs, with the concurrence of the AFMLS,<sup>48</sup> may agree to a higher rate of interest.

(2) USMOs may make payments at the higher rate when the AUSA provides documentation that the rate has been approved.

Such taxes and interest may be paid only after the final order of forfeiture.

A decrease in the value of the real property may not have been reflected in the assessed value upon which the State and local real property taxes were based.

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(3) The USMO will compare the current appraised value of the real property to the assessed value shown on the tax records and notify the local taxing authority of any decline in value.

- c. **Expedited Settlements:** Expedited settlement agreements through which mortgagees' and lienholders' interests may be paid upon forfeiture should include a provision allowing the USAO to void such a settlement agreement within 90 days after execution, if the liens along with the management and disposal costs exceed the net equity of the United States at the time of forfeiture.

(1) For the AUSA to enter into informed settlement agreements, the USMO must provide the AUSA with an estimate of the potential net equity in real property as soon as possible after posting or seizure. Generally, the potential net equity in real property should be either 20 percent or \$10,000, whichever is greater.

(2) Expedited settlements that allow the pre-forfeiture payment of liens and mortgages are authorized only in limited circumstances.<sup>49</sup> The USAO is responsible for drafting the proposed expedited settlement agreement. Such agreements must be submitted in advance to the AFMLS for approval.

- d. **Real Property in Custody:** Real property subject to forfeiture<sup>50</sup> may be seized either upon the execution of a *warrant of arrest in rem* (following a pre-seizure hearing) or upon a showing of exigent circumstances.

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The USMO should advise the AUSA that the warrant of arrest *in rem* must include a provision authorizing the USMO to manage the property in a manner that maintains its value and condition, including renting out the property.

e. **Appraisal After the Seizure of Real Property**<sup>51</sup>

If	Then
An appraisal has not been obtained.	The USMO should order an appraisal by a certified real estate appraiser no later than 10 working days after the property is taken into custody. In general, the contractor who appraises the property should be different from the one who manages or sells it.
The seized property is occupied.	It may be necessary to do a drive-by appraisal.

Specifications for carrying out appraisals are as follows:

- (1) USMOs must ensure that the appraiser is a certified real estate appraiser who is accredited by an organization that is an appraisal sponsor member in good standing of the Appraisal Foundation.<sup>52</sup>
- (2) The appraisal report must include adequate, supporting factual data and must relate the appraiser's conclusion to those facts.
- (3) The appraisal is to be based upon the market value of the property.

f. **Petitions for Remission or Mitigation.** Petitions for remission or mitigation filed in either civil or criminal actions may be granted either before or after forfeiture by the chief of AFMLS.<sup>53</sup>

If	Then
Remission is granted	The real property will be released in accordance with the written terms of the remission decision
Mitigation is granted	An amount may be received from the petitioner in exchange for the release of the real property.

Moneys from mitigation will be deposited into the Assets Forfeiture Fund. Alternatively, the mitigation may take the form of a money amount to be paid to the petitioner from the proceeds of sale of the real property.

A copy of the decision will be sent to the USMO from the deciding official in the AFMLS setting forth the terms of the mitigation to be executed by the USMO.

6. **PROPERTY MANAGEMENT:** Generally, real property in the custody of the USMO is to

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be placed under the control of a property management contractor. Occupied properties require different management services than do unoccupied properties.

**a. Contracting Options**

Conditions	Then
For services not to exceed \$100,000	Purchase orders that utilize simplified acquisition procedures or a formal contract. <sup>54</sup>
For property management services exceeding \$100,000 (e.g., when there is a large property inventory)	
	Formal contracts. <sup>55</sup>

Although a property management services contract may be used to perform a variety of property management services, when practicable, the same contractor should not be used to appraise, manage, and sell a given piece of real property unless adequate performance requirements are included in the contract to protect the United States' interest.

- (1) Use of a property manager does not relieve the USMO of the responsibility for ensuring that property in the custody of the United States is managed properly.
- (2) Property management fees for all reimbursable expenses are invoiced to the district and are paid from the Assets Forfeiture Fund or from the joint individual property account opened for the rental property.

The property management contract should provide that it is the responsibility of the property manager to find a tenant. Any proposed tenant must be approved by the USMO.

The USMO must inspect property being maintained by a property management services contractor on a monthly basis. The extent of the inspection would depend upon the degree of management and control the contractor has over the property.

If the contractor has complete control of the property, both the exterior and interior of the property should be inspected.

- Generally the USMO will undertake no direct inspections but will rely on report and/or photographs provided by the property management services contractor.
- However, if information or complaints are received regarding the actions or conduct of the property management, then the USMO will inspect the property.

If the property is occupied, access will be governed by the occupancy agreement.

- Under such circumstances, the inspection may be limited to a drive-by inspection of the exterior to assess the condition of the property and to assure it is being properly maintained (e.g., the grass is being cut).

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**b. Guidelines for Rental Income**

(1) For each property that produces rental income, the USMO income will establish with the property management contractor a joint individual property account for the deposit of rental income that may accrue.

(a) The account balance should NEVER exceed one month's estimated operating expenses.

(b) Any net income above one month's operating costs and after payment of budgeted expenses or extraordinary expenses [separately authorized by the Contracting Officer's Technical Representative (COTR)] must be returned to the USMO payable to "U.S. Marshal," in Marshal's Account Number 15X6874.

(2) Types of expenses that should be paid from rental income include:

(a) Mortgages that have been validated by the AUSA should receive priority for payment from rental income.

(b) If rents do not cover the total amount of the mortgage payment, the USMO will consult with the mortgagee and attempt to negotiate partial payments of the mortgage with the rent proceeds that are received.

(c) Other types of expenses (e.g., lawn maintenance, utilities, minor repairs, and association fees). Property manager's fees are to be billed to the USMO; they would be considered secondary.

**c. Protective Order or Occupancy Agreement:** If the court authorizes the seizure of the property prior to forfeiture, the AUSA should request that the U.S. District Court issue a protective order or authorize the USMS to enter into an occupancy agreement with the occupants of the property.

The USMO will advise the AUSA that the protective order should provide that the property is maintained in a condition that is the same as or better than the condition it was in when the forfeiture action commenced.

The occupancy agreement<sup>56</sup> must provide that the occupants agree to:

(1) Maintain the property and keep the premises in good repair or in the condition that existed at the time the warrant of arrest in rem was served.

(2) Avoid illegal activity.

(3) Provide for sufficient casualty, fire, and liability insurance with the USMS named as the coinsured.

(4) Make timely payment of any and all mortgages and loan, rent, utility, tax, and/or other obligations.

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- (5) Allow reasonable, periodic inspections with adequate and reasonable advance notice to the occupants (at least 48 hours).
  - (6) Acknowledge, if the property was built before 1978,<sup>57</sup> that it may contain a lead-based paint hazard.
  - (7) Acknowledge that they may be required to vacate the property within 30 days of a final order of forfeiture or when otherwise notified by USMO.
- d. **Conditions for Continued Occupancy of Rental Property.** Continued occupancy of rental property does not require the approval of the District Court.

If	Then
A lease exists.	The USMO should obtain a copy. Generally, existing leases are honored.
An existing lease expires or a copy of the existing lease cannot be obtained.	Continued occupancy is allowed on a month-to-month basis, pursuant to a USMS occupancy agreement.
The USMO cannot obtain an occupancy agreement or the AUSA cannot obtain an order from the court.	The USMO will coordinate eviction proceedings with the AUSA.

e. **Continued Occupancy or Eviction**

(1) If the property is found to be occupied by third parties not related to the forfeiture action (e.g., other persons with an ownership interest in the property, tenants, children of persons involved in the forfeiture action, or squatters), the USMO will advise the AUSA who may:

(a) Allow continued occupancy:

Requesting that the U.S. District Court issue a protective order.

Authorizing the USMO to enter into an occupancy agreement with the residents of the property.

(b) Determine to remove occupants through eviction proceedings brought in U.S. District Court, if possible, otherwise, State court.

(2) USMOs will advise the AUSA when circumstances exist that may warrant eviction action. Conditions that warrant eviction include:

(a) Nonpayment of rent as required under the terms of the lease or occupancy agreement

(b) Serious damage, destruction, or threatened damage to the property (e.g., signs

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that the property is falling into disrepair)

(c) Extreme degradation in health and safety conditions (e.g., major code violations or evidence of contamination)

(d) Violation of the use provisions of the lease (e.g., conducting a business in a rental unit restricted to residential use)

(e) Evidence of illegal activity

(f) Other circumstances that could jeopardize the real property

(3) USMOs must document in writing the factual circumstances as they arise that led to the decision to seek eviction so that there is a contemporaneous record for use in any eviction proceeding.

Before commencing eviction proceedings, the occupants are to be asked to vacate the premises voluntarily.

f. **Rental of Unoccupied Real Property:** Generally, seized real property that is vacant or that becomes vacant while forfeiture proceedings are taking place will not be rented.

Issue	Result
Contains lead-based paint contamination.	No rental is possible. <sup>58</sup>
Occupied rental property becomes vacant and disposal of the property is anticipated to take more than 6 months.	The USMO may seek the assistance of the AUSA in requesting an order for rental of the property and the court's approval of an occupancy agreement. (An occupancy agreement authorized by an order from District Court is more enforceable if eviction is required.)

g. **Multi-unit Commercial Property.** In addition to the considerations relevant to the management of residential property, matters may need to be addressed in dealing with multiunit commercial property. If the asset is part of a business or is organized as a business, the management and disposal procedures applicable to business properties will be followed rather than the management and disposal procedures for real property.

In either case, upon the targeting of a business for forfeiture, the AFO will be notified immediately when the USMO is advised of the proposed action.

h. **Contamination and Safety Considerations in Real Property in Custody:** The USMO must endeavor to ensure that contamination does not occur while the property is in its custody. Contamination is most likely to occur during the operation of businesses that have the potential to produce contaminants (e.g., chemical companies, gasoline stations with obsolete underground storage tanks, metal plating shops); and on real properties with attractive nuisances (such as swimming pools, ponds), which present special management risks that may

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require installation of safety devices (e.g., enclosures).

**i. Responsibilities for Security**

- (1) **Occupied Real Property:** Security is the occupant's responsibility, as provided in the occupancy agreement and/or lease.
- (2) **Unoccupied Real Property:** If the property is unoccupied at the time of seizure and will remain so, the USMO must ensure that the level of security is proportional to the degree of risk. Actions that may be appropriate to ensure security include:
- (a) Changing entry locks.
  - (b) Boarding up<sup>59</sup> vacant buildings or equipping them with alarm systems when there is a strong likelihood of vandalism or trespassing. The net equity and the estimated costs of the alarm system should support the expense.
  - (c) Obtaining guard services. These services, however, can be expensive and should be used only on an interim basis. USMOs should monitor the cost of the service measured against the property's equity. If the payment of guard services would cause the net equity to fall below the [REDACTED] the USMO will immediately advise the AUSA and will follow the procedures regarding forfeiture actions against real property with a net equity value below the prescribed minimum threshold, as discussed in "Considerations in pre-seizure planning," above. b2, b7E
  - (d) Ensuring that unnecessary utilities are terminated. If a need for utility service(s) exists; e.g., to operate a security system or a pool filter, appropriate service(s) should be continued.
  - (e) Winterizing vacant properties in areas where the temperatures are likely to fall below freezing.<sup>60</sup>

Access to keys will be restricted to those who manage the property. A record of duplicate keys made and issued to contractors or real property brokers must be kept in the case file.

- j. Restricted Use of Real Property in Custody:** Real property may only be used while in custody by U.S. agencies under specific conditions. USMO has responsibility for:
- (1) Ensuring that persons who are not entitled to be on the real property (including DOJ personnel) do not use real property in custody for any purpose before the civil order of forfeiture or the final order of forfeiture is issued and then only after proper approval.<sup>61</sup>
  - (2) Ensuring that DOJ personnel do not make such real property available for use by others, including person(s) acting as substitute custodians, for any purpose prior to the forfeiture, except as authorized as follows:
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- (a) Use of real property subject to forfeiture in emergency situations may be approved only by DOJ.
- (b) Requests for such use may be made on a case-by-case basis through the submission of a PAR decision package to the AFO.
- (c) The AFO will determine whether to forward a request to DOJ for approval.

k. **Taking Real Property into Custody After Forfeiture:** In general, the procedures set forth above, regarding taking real property into custody before forfeiture, are applicable to real property taken into custody after forfeiture.

This is particularly the case when the real property is subject to a preliminary order of forfeiture in a criminal case in which the interests of innocent parties have not been resolved through ancillary proceedings.

However, the following additional requirements are applicable to real property subject to a civil order of forfeiture or a final order of forfeiture in a criminal case:

Civil Proceeding	Criminal Case
The USMO will seize real property, in accordance with the terms of the court order, after the court issues a civil order of forfeiture.	The USMO will seize real property following a special forfeiture verdict, when authorized to do so by the preliminary order of forfeiture. Once the final order of forfeiture is issued, the USMO has the same authority to deal with real property as under a civil order of forfeiture.

- (1) **An Update to the Appraisal:** A re-appraisal should be obtained if the forfeiture action continues past 12 months or if the property remains unsold for 12 months after forfeiture.
- (2) **Occupied Real Property:** If the property is found to be occupied by third parties not related to the forfeiture action (such as other persons with an ownership interest in the property, tenants, children of persons involved in the forfeiture action, or squatters), the USAO should be consulted about seeking the removal of the occupants following forfeiture.
- (3) **Unoccupied Real Property:** Experience has proved that occupied property is better maintained than vacant property:
  - (a) If an occupied property becomes vacant and its disposal is expected to take longer than 6 months, the USMO should consider renting it provided that it is not a pre-1978 property.
  - (b) The property management contract should provide that it is the responsibility of the property manager to find a tenant. However, any proposed tenant must be approved by the USMO.

**7. DISPOSAL OF REAL PROPERTY AFTER FORFEITURE**

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- a. **Policies and Process:** The disposition of property forfeited to the United States is an executive branch decision and not a matter for the court.

Orders of forfeiture will be drafted broadly to direct forfeiture of the property to the United States "for disposition in accordance with the law." It is inappropriate for the court to confirm the manner and conditions of sale of forfeited property, except in certain civil settlements.

The Attorney General has the authority to dispose of forfeited property "by sale or any other commercially feasible means," without subsequent court approval. This is generally called a "forfeiture sale" of the property.<sup>62</sup> However, under certain circumstances, forfeited real property may nonetheless be disposed of under the terms of a court-authorized judicial or stipulated sale.

- (1) **Judicial Sale:** Interlocutory sales<sup>63</sup> will follow the procedures contained in 28 USC 2001 requiring judicial confirmation. When property is sold in this manner, the transaction is called a "judicial sale."<sup>64</sup>

The USMO will undertake any such interlocutory sale only under the terms authorized by a U.S. District Court order. The procedures set forth below in "USMS's authority to dispose of real property" after forfeiture may be utilized provided they are not inconsistent with the court order directing the judicial sale.

- (2) **Stipulated Sale:** Real property that has been targeted for forfeiture also may be sold by the owner of record, with the proceeds subject to forfeiture.

- (a) The AUSA is responsible for preparing the agreement by which the United States will stipulate the sale of the real property and the conditions under which the proceeds of sale will be preserved so that they may be subject to forfeiture.

- (b) Such proceeds of sale will be treated not as a real property forfeiture but rather as the forfeiture of cash.

**b. Civil Forfeiture of Real Property - Judgment of Forfeiture**

Issues	Results
Either a consent judgment or a default judgment.	The USMO may immediately dispose of the forfeited property.
After trial or upon summary judgment	The USMO should delay the execution of the judgment for a period of 10 working days to allow for the filing of an appeal.
On the 11th working day following a judgment after trial or a summary judgment, if the AUSA documents in writing that no motions or requests for additional stays have been filed.	The USMO will proceed with the disposal of the forfeited property.
The AUSA fails to provide such documentation.	The USMO should bring this requirement to the AUSA's attention. The AFO should be notified of continued failures to provide documentation if the failures cannot be

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mediated at the district level.

c. **Civil Order of Forfeiture:** Every effort should be made to include language in the civil order of forfeiture that provides that:

- (1) The Marshal is authorized to dispose of the forfeited real property in accordance with law.
- (2) The first charge against sale proceeds will be the recovery of the Marshal's management and other costs.
- (3) All liens and encumbrances are identified by amount and priority, and validated or disallowed.
- (4) Any attorneys' fees are disallowed.
- (5) If validated, liens and encumbrances are to be paid from and limited to the proceeds of sale after recovery of management costs.
- (6) If sufficient proceeds to cover the management and disposal costs cannot be generated by the sale of the property, the USMO will attempt to negotiate the return of the property to the lienholder in exchange for the USMO's expenses.

All rights, title, and interest of the property are vested in the United States free and clear of all liens and encumbrances, with any such liens and encumbrances attached to the proceeds of sale, as may be applicable.

If it has not already been done, the USMO will advise the AUSA that the lis pendens filed in the action should be withdrawn, and a copy of the civil order of forfeiture is to be filed in its place.

d. **Written Notification of Criminal Forfeiture:** Prior to the disposal of criminally forfeited property, if no final order of forfeiture has been issued, the AUSA must provide written notification to the USMO in the district in which the forfeited real property is located, documenting that:

- (1) Notice of the intent of the United States to dispose of criminally forfeited property has been published and served, with the appropriate certificates of service attached thereto.
- (2) Ancillary proceedings have been held (if required).
- (3) All claims and/or appeals have been resolved or barred.

e. **USMO Responsibility upon Receipt of Forfeiture Order**

- (1) Upon Receipt of a Civil Order of Forfeiture or a Final Order of Forfeiture in a criminal

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case, the USMO should ensure that the order is recorded, the title is transferred to the United States and the property is removed from the tax rolls.<sup>65</sup>

(2) If the USMO is unable to remove the property from the tax rolls, the matter must be referred to the AUSA for resolution. The USMO shall notify the AFO regarding any matter that cannot be resolved by the AUSA

(3) **Inclusion of Appurtenances, Fixtures and Contents in a Forfeiture Sale:**  
Appurtenances and fixtures are subject to forfeiture unless the court orders otherwise.

**f. Property's Contents and Forfeiture**

Contents Subject to Forfeiture	Contents NOT Subject to Forfeiture
<p>The order of forfeiture for a residence specifically identifies the contents as forfeited.</p> <p>The USMO must:</p> <p>Conduct a complete inventory of the contents.</p> <p>Prepare a written report of that inventory.</p> <p>Obtain photographs of the inventoried contents.</p> <p>Obtain an appraisal<sup>66</sup> of the contents.</p> <p>Determine if the contents should be moved to a secure storage area.</p>	<p>The order of forfeiture does not identify the contents contained in the real property as being subject to forfeiture.</p> <p>The real property is vacant. Upon taking possession, the USMO must:</p> <p>Conduct a complete inventory of the contents.</p> <p>Update the inventory if the owners do not claim the contents. When the United States takes possession following forfeiture, the USMO must initiate abandonment procedures against unclaimed personal property in order to dispose of it.<sup>67</sup></p> <p>Determine whether the contents should be packaged and stored in a secure storage area.</p>

To determine the most appropriate action to take regarding the contents of forfeited real property, the USMO must evaluate:

- (1) The value of the contents and the point at which the cost of securing them will exceed their value.
- (2) The probable length of time that the property has been and/or will be in custody.
- (3) Geographic factors that may mandate special levels of security (e.g., the location of the property is a high-crime area or in a remote area).
- (4) The cost of moving the assets to a storage facility.

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(5) Whether the real property is and will continue to be occupied.

g. **Forfeiture Sale:** Forfeiture sales do not require judicial confirmation pursuant to 18 USC 2001. Except in unusual cases, the USMO has the authority to determine the best method and conditions of sale of forfeited property in its custody.<sup>68</sup>

(1) **Update Appraisal:** See "Appraisal following the seizure of real property," above.

(a) Properties must be listed for sale based upon an appraisal that is current within six months.

(b) If market conditions for the real property have changed suddenly and significantly, an updated appraisal or a re-appraisal should be ordered before the property is listed for sale.

(2) **Updated Title Report:** Prior to disposal, an updated title report must be obtained. In addition, a physical inspection of the property by the USMO or the property manager may indicate the need for a survey to disclose any existing encroachments, easements, party walls, or noncompliance with setback requirements.

(3) **Title Insurance:** Under a title insurance policy, the title company agrees to defend the policyholder's title against any lawsuits that may arise as a result of defects covered in the policy and to make good a loss arising from defects in a title to real property or any liens or encumbrances thereon. However, a title insurance company will not insure a title that has unresolved issues associated with it.

**h. Issues that Could Hinder the Sale**

Problem	Action
Any liens or encumbrances disclosed by the title report that would delay or prevent the transfer of title.	These must be brought to the attention of the AUSA, along with a request that the order of forfeiture be amended to resolve the status of the lien.
Any other unresolved recorded objections to clean title—such as encroachments, easements, or other problems—disclosed by the title report or survey.	<p>The USMO will provide a copy to the AUSA and request his/her assistance.</p> <p>If the AUSA is unable or unwilling to promptly address the unresolved title issues, including objections to clean title (e.g., encroachments or easements) after consulting with the AUSA, the USMO may retain private counsel for the purpose of clearing the title.</p> <p>Copies of all requests for an opinion regarding the title issue are to be provided to private counsel.</p> <p>If litigation is required, prior approval must</p>

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	<p>be obtained from the USAO for the continued use of private counsel.</p> <p>Alternatively, the USMO may provide the relevant information to the listing agent so that the listing discloses that the property sale is subject to the resolution of certain disputes.</p>
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- i. **USMS's Authority to Dispose of Real Property:** The USMO authority to dispose of real property is derived from the following delegations.

Authority	To
Attorney General	Dispose of property forfeited under laws enforced or administered by the DOJ (cited specifically in each forfeiture statute <sup>69</sup> ).
Attorney General's authority delegated to the U.S. Marshal in each judicial district <sup>70</sup>	Issue a quitclaim deed.  Issue a special warranty deed covering the process used to forfeit the property conveyed. <sup>71</sup>
The U.S. Marshal or deputy U.S. Marshal <sup>72</sup>	Dispose of real property up to \$1 million in value. This applies provided that the property is being sold at a [REDACTED] of its appraised market value. <span style="float: right;">b2, b7E</span>
The U.S. Marshal or deputy U.S. Marshal	Transfer title by a special warranty deed with indemnifications, but a PAR approved by the AFO is needed.
USMO	Submit a PAR decision package for approval of a sales plan before the sale of any property with an appraised value of \$1 million or more.

The U.S. Marshal or the deputy U.S. Marshal is not authorized to place real property into official use or to transfer title of real property to another federal agency to be placed into official use. The attorney general must approve the official use by any federal agency of real property.

- 8. **METHODS OF DISPOSAL:** To determine the appropriate method of disposal, the USMO will consider the market value of the real property and the projected management and disposal costs.

- a. **Return to Lienholder**

(1) A lienholder may make claim to the real property if:

- (a) The United States has little or no net equity in a forfeited property.<sup>73</sup> The USMO will release the property to the sole or primary lienholder using a Marshal's quitclaim deed,<sup>74</sup> provided that the lienholder will take the property.

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(b) A lienholder's claim to real property has been validated by the U.S. District Court.

~~(e) The AUSA dismisses the forfeiture action in favor of a lienholder's claim.~~

(2) The USMO should then:

(a) Attempt to recover USMS expenses from the lienholder in return for releasing the property. However, it is within the discretionary authority of the USMO to release the real property even if it cannot recover expenses.

(b) Seek assurances from the lienholder in the form of a statement in writing signed under penalty of perjury that the property will not be returned to the party from whom it was forfeited. If the lienholder refuses to provide these assurances, the USMO will notify the AUSA and seek his/her assistance.

#### b. Place into Official Use

(1) **By Federal Agencies:**<sup>75</sup> A component of the DOJ, including the USMS, may request authority to place forfeited real property into official use only if the proposed use of that real property would be consistent with a law enforcement purpose.

(a) The USMO will notify and forward the request to the AFO regarding a DOJ component placing forfeited real property into official use.

(b) The request must be submitted through the DOJ approval process.

(c) The attorney general must approve the transfer prior to placing forfeited real property into official use.

(2) **By State and Local Law Enforcement Agencies:**<sup>76</sup> Under the equitable sharing program, real property may be transferred to a state or local law enforcement agency for official use. Such transfers require the approval of the Office of the Deputy Attorney General.

(3) **Transfer to Private Entities:** The USAO may request that the USMO assist in identifying forfeited real property for transfer to State or local law enforcement agencies and for the use of public or private nonprofit organizations under the "Weed and Seed" initiative<sup>77</sup> or other transfer authorities.

All proposals to transfer such real property will be submitted by the USAO, through the USMO and the AFO, to the Office of the Deputy Attorney General for approval.

c. **Sale by Broker:** Forfeited real property may be sold through the use of a licensed real estate broker who is a member of the local Multiple Listing Service.

(1) **Listing Agreements:** To market forfeited properties through a broker, listing

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agreements are required.

- (a) Exclusive listing agreements, in which the seller agrees to appoint only one broker to sell the property for a specific period of time, are preferred. Such agreements will generally be for 3 months. Additional extensions of 3 month periods may be ordered.
  - (b) Open listings are given to any number of brokers who can work simultaneously to sell the forfeited property. USMOs may use open listings if the specific circumstances in a particular district so warrant.
  - (c) Generally, listing agreements will contain a provision that the broker will be paid his/her commission if a willing and able buyer is presented, but the USMO cannot proceed with the closing.
- (2) **Special Conditions:** They are required in listing agreements because of the nature of the USMO's role in disposing of forfeited real property. They permit the broker to know in advance important conditions of the sale so he or she can advise potential purchasers and submit appropriate offers to the USMO. The sale of forfeited property is subject to the following conditions:
- (a) Generally selling a property "as is." The USMS will not routinely make capital improvements to the property.
  - (b) Undertaking capital improvements that would cost in excess of 5 percent of the market value of the real property only after the approval of a PAR decision package by the AFO.
  - (c) Making repairs (including removal of lead paint) or making minor marketing enhancements as long as potential costs are compared carefully to the value of the property, and as long as such costs do not exceed the net equity.
  - (d) Paying for title insurance. Relevant listing agreements should clearly state that the expense of title insurance will be borne by the buyer even if, in a particular State, it is an expense generally borne by the seller
- (3) **List Price:** The USMO should establish the list price based on all the factors within its knowledge and with due regard for the broker's opinion.
- (a) The list price generally should equal the market value.
  - (b) If the property will be used for residential purposes, the list price for real property built prior to 1978 (or an earlier date if applicable in a particular district) may be reduced to [redacted] of the market value by a reasonable amount in order to compensate the buyer for the cost of abatement of lead-paint contamination.

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d. Sale by Auction

Type	Conditions
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Auction	The minimum bid that can be accepted is [redacted] of the property's market value.
Reserve Auction	The minimum sale price must be at least equal to the sum of the Marshal's expenses and all liens.
Auction Without Reserve	<p>Only after a 9-month marketing effort has been unsuccessful, can the USMO place real property in an auction without reserve. Overage real property may be sold at this type of auction in accordance with "Disposal of overage real property," below.</p> <p>The District Marshal may authorize the sale of overage real properties at below-market price by written approval, which will be retained in the property file.</p> <p>If there are liens on the real property, a PAR decision package must be submitted and approved by the AFO.</p>

Under all conditions, the USMO must reserve the right to reject any individual offeror. Individual offerors may be rejected because of their relationship to a defendant in a related criminal matter, or for other law enforcement reasons.

- (1) **Brokers:** At any auction type, a broker's participation payment (payable to a broker who brings a successful bidder to the auction) is allowed up to 2 percent of the sales price. The broker must register prior to the auction in order to be eligible for the participation payment.
- (2) **Auctioneers:** They should be licensed by the state. If the state does not have a licensing procedure, they must be members of the National Auctioneers Association or the Certified Auctioneers Institute.

**e. Sale by Sealed Bid**

- (1) After real property has been on the market for nine months, the USMO may conduct a sealed bid sale. In conducting a sealed bid sale, the USMO will:
  - (a) Prepare a sealed bid package.<sup>78</sup>
  - (b) Advertise the real property for sale by sealed bid.
  - (c) Distribute the bid package to responding bidders.
  - (d) Hold the bid opening.
  - (e) Award the sale to the highest acceptable bidder.
- (2) If the highest sealed bid is [redacted] of market value, then a PAR decision package must be submitted to and approved by the AFO before the

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sealed bid may be accepted.

**f. Sale by General Services Administration (GSA)<sup>79</sup>**

(1) The GSA may be used as an agent of the USMO for the purpose of selling real property. The USMO:

- (a) Sets the minimum acceptable price when GSA sells a property.
- (b) Pays GSA's approved sales expenses even if the sale is unsuccessful.
- (c) Uses an escrow company to conduct the settlement, as with other types of sales.
- (d) Requests, immediately after settlement, that GSA submit an itemized list of expenses that were previously approved in GSA's marketing plan.

(2) Within two weeks of settlement, GSA must deposit the sales revenue (less settlement expenses) into an account specified by the USMO.

**g. Sale Through Private Negotiations (Unsolicited Offers):** The USMO may accept unsolicited offers to purchase forfeited real property if the unsolicited offer [REDACTED] of market value. Negotiations may not take place with an unsolicited offeror; however, the offeror may be advised that its offer is not acceptable. b2, b7E

(1) Since all properties must be offered to the public and are subject to the requirements for fair and open competition, a sales advertisement must appear weekly for three consecutive weeks in a newspaper of general circulation in the judicial district where the real property is located. The advertisement must state the amount of the unsolicited offer and invite others to submit an offer at least 5 percent or \$5,000 (whichever is greater) above the unsolicited offer.

(2) If any higher offers are received, the unsolicited offeror will be notified, (although he/she will not be told the amount of the highest offer) and given the opportunity to submit a best and final offer.

(3) After receipt of the unsolicited offeror's best and final offer, the property will be sold to the highest offeror.

**h. Disposal of Overage Real Property**

(1) After 12 months, the District Marshal may authorize the sale of the overage real property at below-market price.

(a) The District Marshal's written approval will be retained in the property file. b2

(b) An updated appraisal is not required.

(2) ~~Overage real property that is in poor condition, in a poor location, or in a location where market conditions are depressed may be sold at an auction without reserve and without AFO approval if there is no lien on the property.~~

i. **Destruction:** In rare situations (e.g., numerous code violations, unsafe or dangerous physical conditions, or contamination), it may be advisable to destroy structures on forfeited real property because the expenditures required to rectify the deficiencies may exceed the value of the property.

USMOs must obtain an approved PAR before destroying permanent structures on forfeited real property.

j. **Sales Contract:** Except as discussed in "Disposal of overage real property," all sales of real property will be by Marshal's quitclaim deed or special warranty deed.

(1) **Contract Provisions:** The USMO should review the entire sales contract to ensure that all provisions are acceptable to the United States.

Factor	Result
Sale not completed by the purchaser	The security deposit is forfeited.
Sale contingent on the purchaser obtaining financing	A date must be stipulated by which the financing must be obtained. After that date, the USMO has the right to terminate the contract.
Access and alterations to the property	The purchaser can only access the property for routine inspections and may not alter the property in any way prior to closing. Exceptions must be approved in a PAR decision package.
Payment of points	Usually, the buyer must pay any points. When those points represent a buydown of the interest on the mortgage that the buyer is taking out to purchase the property because these points are paid as compensation for the use of borrowed money and are a substitute for a higher stated annual interest rate. If the USMO was to pay such points, it would amount to a discount in the sale price that the Government would receive on the sale of the property. This is not only disadvantageous to the Government but is also unfair to other potential purchasers of the property whose bid, when the cost of the points is considered, would

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	<p>actually have been higher. However, the USMO may pay points to the U.S. Department of Veteran Affairs (VA) and the U.S. Federal Housing Administration (FHA) when VA and FHA policies preclude the buyer paying. Also the USMO may pay points when necessary to complete the sale if, when the estimated cost of the points is deducted from the sales price of the property, the purchaser's position as the high offeror would remain unchanged and the Government will still realize [REDACTED] of the appraised value of the property.</p>
<p>Title insurance</p>	<p>The expense is to be borne by the buyer.</p>
<p>Recording the deed with the registrar of deeds</p>	<p>The buyer is responsible.</p>

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(2) All USMS sales are by cash or certified check. The USMS will not consider or provide interim financing.

k. **Types of Deeds:** The attorney general has the authority to warrant clear title to real property. This authority has been delegated to the USMS,<sup>80</sup> and generally the USMO will determine the appropriate deed that will be used to convey the real property. If the USAO disagrees with the form of deed selected by the USMO, the matter will be referred to the AFMLS<sup>81</sup> through the AFO.

(1) **Marshal's Quitclaim Deed:** Generally, a Marshal's quitclaim deed makes no warranty representations. It only conveys whatever right, title, and interest the United States has in the property as of the date of execution.

(2) **Special Warranty Deed:**<sup>82</sup> This type of deed assures the grantee/buyer that the United States, as the current seller, neither did anything to encumber the property nor conveyed any right, title, or interest in the property while it was the owner. In effect, the special warranty deed warrants the forfeiture process:

(a) A special warranty deed may be used when the USMO, in consultation with the AUSA, concludes that such a deed is necessary and appropriate given the facts of a particular case<sup>83</sup> (e.g., when the individual from whom the property has been forfeited is a fugitive).

(b) A PAR decision package must be submitted for approval by the AFO before a special warranty deed with indemnifications may be used.

(3) **General Warranty Deed:** This type of deed assures a grantee/buyer that title to the property is free and clear of any and all liens and insures the grantee/buyer from any future claims against the property:

(a) The USMS usually does not issue general warranty deeds.

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- (b) A PAR decision package must be submitted for approval by the AFO before a general warranty deed may be issued.

I. **Sale of Contaminated or Potentially Contaminated Real Property:** Contaminated real property includes property built prior to 1978 (or an earlier date, if applicable in a particular state)<sup>84</sup> that may contain lead-based paint.

Requirement	Resolution
Impact of state law on sale of contaminated real property	USMO reviews relevant statutes.
Notification of contamination	An analysis must be provided to potential purchasers describing the type and extent of contamination.
Environmental assessment	The USMO is responsible for arranging and paying for the environmental assessment.
Arrangements for the removal of hazardous substances from clandestine laboratory sites	The investigative agency (usually the U.S. Drug Enforcement Administration) may assume responsibility.
Buyer's commitment to future cleanup	The USMO obtains the buyer's commitment to clean up the property, which is stipulated in the contract for sale. The deed must contain a provision warranting that the USMS does not have cleanup responsibilities.
Buyer's refusal to commit to cleanup and there is little chance of securing an alternative purchaser	For pre-1978 properties, the sale cannot proceed.  Otherwise, the USMO should submit a PAR decision package seeking AFO approval for a waiver of this requirement.
Liability claims or lawsuits resulting from transferring or selling contaminated real property	They shall be referred to the USAO for action and the AFO shall be notified. The Judgment Fund is the proper source for satisfying these claims; the Assets Forfeiture Fund is NOT available to satisfy successful claims.

(1) **Notice of Potential Lead-based Paint Contamination:** Information must be included in the sales contract and the deed for such real property. Purchasers of such property must be notified:

- (a) That the property was built prior to 1978 (unless an earlier date is applicable).
- (b) That the property may contain lead-based paint.

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(c) Of the hazards, symptoms, and treatment of lead-based paint poisoning.

~~(d) Of precautions to avoid lead-based paint poisoning.~~

- (2) If an inspection finds lead-based paint contamination, the purchaser will be notified that the USMO has no responsibility for abatement. The responsibility for cleanup must be passed to the buyer in writing both in the sales contract and in the deed to the property.<sup>85</sup>

#### m. Elements of Real Property Closing

- (1) **Escrow Agent's Role:** Regardless of the disposal method, a state-licensed escrow agent (or equivalent) must complete the closing and is responsible for the following:
- (a) Ensures that the Marshal's expenses are reimbursed first except for validated liens and unless the order of forfeiture provides otherwise.
  - (b) Disburses payments to satisfy the liens, commissions, and other deductions authorized by the order of forfeiture.
  - (c) Ensures that the net proceeds of the sale of real property are made payable to the U.S. Marshals Service.
- (2) **USAO's Role:** If a third-party interest is not recognized in the order of forfeiture, this interest must be validated in writing after forfeiture by the USAO before it can be paid from the sale proceeds.
- (3) **Conveyance:** The property is conveyed (the title is transferred) to the new owner by the deed signed by the Marshal or his/her designee.<sup>86</sup>
- (4) **Documents:** The USMO will retain in the forfeiture file copies of sale contracts, listing agreements, HUD-1 forms, deeds, and any other pertinent documents relating to the sale of the real property.

Following closing, the USMO will notify the local tax authority of the sale of the property and will forward a copy of the deed.<sup>87</sup>