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ASSET FORFEITURE

13.4 Businesses, Commercial Real Property, and Financial Instruments

DISPOSAL OF BUSINESSES (INCLUDING COMMERCIAL REAL PROPERTIES) AND ASSOCIATED ASSETS AFTER FORFEITURE

1. **POLICIES AND PROCESSES:** The disposition of property forfeited to the United States is an executive branch decision and not a matter for the district court.
 - a. Orders of forfeiture should be broad, should order the forfeiture of property to the United States, and should direct that the property shall be disposed of as provided by statute.⁹⁶
 - b. Confirmation of sale by the district court is not required for the sale of forfeited property. However, confirmation may be sought by the AUSA 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.⁹⁷

- c. This is generally called a forfeiture sale of the property.⁹⁸
- d. However, under certain circumstances, property may be disposed of under the terms of a court-authorized judicial sale or a stipulated sale.

The attorney general's authority to dispose of property that is:

- e. Forfeited under laws enforced or administered by the DOJ is specifically cited in each forfeiture statute.⁹⁹
 - f. Forfeited under the DOJ asset forfeiture program has been delegated to the U.S. Marshal in each judicial district.¹⁰⁰
2. **STIPULATED SALES:** This refers to property targeted for forfeiture that is sold by the owner of record, but the proceeds of which are subject to forfeiture. Such proceeds will become the subject of the forfeiture action.

Authority	Responsibility
AUSA	Prepares the agreement by which the United States will stipulate specifications for the sale of the property and the conditions under which the proceeds are to be preserved so that they can be made subject to forfeiture.
USMO	Must not assist or participate in a

	<p>stipulated sale without a court order directing action by the USMS.</p> <p>Deposits all proceeds subject to forfeiture into the Seized Asset Deposit Fund (15X6874) pending a final order of the district court.</p>
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3. **INTERLOCUTORY SALES**¹⁰¹

Condition	Action
<p>In civil judicial forfeiture cases</p>	<p>The sales are:</p> <p>Undertaken under the authority of <u>28 USC 2001</u> as incorporated into 2004, which requires judicial confirmation. These are known as judicial sales.¹⁰²</p> <p>Executed by the USMO only under the terms authorized by a district court order.</p> <p>Handled under procedures for the disposal of property after forfeiture provided that these procedures are consistent with the court order directing the judicial sale.</p>

4. **CRIMINAL FORFEITURE:** Before the disposal of criminally forfeited property, the USMO for the district where the forfeited property is located must obtain a copy of the final order of forfeiture or written documentation from the AUSA that states that:

- a. Notice of the United States' intent to dispose of criminally forfeited property has been published and served, together with appropriate certificates of service.
- b. Ancillary proceedings have been held (if required).
- c. All claims and/or appeals have been resolved or barred.¹⁰³

5. **CIVIL FORFEITURE**

- a. **Civil Order of Forfeiture:** A civil order of forfeiture should include language that provides that:
 - (1) The U.S. Marshal is authorized to dispose of the forfeited property in accordance with the law.
 - (2) The first charge against sale proceeds will be the recovery of the government's costs.¹⁰⁴
 - (3) All liens and encumbrances are identified and either validated or disallowed.
 - (a) Validated liens and encumbrances must be paid from the proceeds of the sale.

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- (b) All right, title and interest in the property are vested in the United States free and clear of all liens and encumbrances, with any such liens and encumbrances to be paid from the proceeds of the sale, as may be applicable.

- (4) The amount and priority of valid liens are specified and that such amount may be deducted from any sales proceeds remaining after the Government has recovered all of its costs.
- (5) Generally, any attorneys' fees, late charges, and penalties sought by lienholders are disallowed.

The USMO should determine if the government's costs will be covered by the sale of the forfeited assets prior to accepting a sales contract.

If	Then
Sufficient proceeds to cover all government costs cannot be generated by the property's sale.	The USMO should: Negotiate with the lienholder to reduce the government's costs or to settle the debt at a discounted amount. Attempt to return the forfeited property to the lienholder in exchange for all or part of the government's costs.
An agreement with the lienholder cannot be reached.	The USMO should contact the AFO for advice and assistance.

b. Judgment of Forfeiture:

If	Then
Either a consent judgment or a default judgment is issued.	The USMO may immediately dispose of the forfeited property.
Either a judgment after trial or a summary judgment is issued.	The USMO shall delay the execution of the judgment by postponing the disposal of the forfeited property for a period of 10 working days to allow for the filing of an appeal.
On or after the 11 th working day following a judgment after trial or a summary judgment, the AUSA documents in writing that no motions or requests for additional stays have been filed.	The USMO may 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. Notify the AFO of continued failures to provide documentation if the problem cannot be resolved at the district level.

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6. **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. In civil or criminal judicial forfeitures, petition decisions are made by the Chief, AFMLS.¹⁰⁵

If	Then
Remission is granted.	The property will be released in accordance with the written terms of the remission decision.
Mitigation is granted.	<p>A monetary amount may be received from the petitioner in exchange for the release of the property or a monetary amount may be paid to the petitioner from the proceeds of sale of the property.</p> <p>Such an amount shall be deposited into the Assets Forfeiture Fund.¹⁰⁶</p> <p>The deciding official in the AFMLS should send the USMO a copy of the decision that sets forth the terms of the mitigation to be executed by the USMO.</p>

7. **FINAL ORDER OF FORFEITURE:** The USMO has specific duties that it must perform upon its receipt of a final order of forfeiture in a criminal case or a civil order of forfeiture in a civil case.

a. **Recording an Order:**

Type of Property	Where the Order Should be Recorded
Real property	Real estate records in the county where the property is located.
Corporations	Secretary of State's office in the State where the corporation is incorporated.
Unincorporated partnerships, joint ventures, and sole proprietorships	County clerk's office or the county office where the business names are recorded.

- b. **Transferring Title:** The USMO must ensure that the title is transferred to the United States.

- (1) The procedure will vary depending on the type of business and the laws of the State where the business is located.
- (2) When the USMO has been assigned the responsibility of disposing a forfeited business or business assets but cannot determine the title transfer procedures, the USMO may contact the AFO for advice and assistance.

8. **FORFEITURE SALES:** Regarding the sale of an ongoing business (including commercial real property), the USMS¹⁰⁷ shall:

- a. Coordinate with the U.S. Attorney's Office to ensure that all outstanding claims and litigation associated with the business are resolved prior to the disposal of assets.
- b. Obtain an updated assessment of the net worth of the business, based on monthly

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reports received from business managers or accountants.

c. Obtain a professional assessment of the business to determine possible disposal strategies, including:

- (1) Selling it as an operating business to other co-owners, shareholders, or professional organizations.
- (2) Liquidating the assets of the business [e.g., selling licenses (if possible), equipment, and supplies].

d. Develop a marketing strategy to dispose of the business or the business' assets.

9. METHODS OF DISPOSAL

Disposal Method	Procedures
Sale through private negotiations (i.e., unsolicited offers)	<p>If an unsolicited offer is received for a forfeited business, then the AFO should be immediately advised of the offer by telephone or e-mail.</p> <p>The offer should be forwarded to the AFO via a PAR decision package.</p> <p>The AFO will be responsible for coordinating the negotiations and approving any subsequent sale.</p>
Disposal by business brokers	<p>The USMO or the AFO (depending on who has been assigned the responsibility) should utilize competitive solicitation to find a commercial broker to market the business. (Note: Sales commissions may exceed procurement levels for individual USMOs.)</p>
Sealed bid approach	<p>The USMO or the AFO (depending on who has been assigned the responsibility) should:</p> <p>Determine the efficacy of utilizing USMS staff to develop and conduct the sealed bid sale, or</p> <p>Utilize competitive solicitation to find a commercial broker to conduct the sealed bid process.</p>
Auction approach	<p>The USMO or the AFO (depending on who has been assigned the responsibility) should utilize competitive solicitation to find a</p> <p>commercial broker to auction the business or the business' assets.</p> <p>If the anticipated sales commission will exceed small purchase levels, then</p>

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appropriate requests for a formal contract should be submitted through the AFO.

10. OWNERSHIP TRANSFER FOR FORFEITED BUSINESSES

When	Responsibility
The ownership of a forfeited business is transferred.	<p>The USMO is responsible for:</p> <p>Executing all necessary transfer documents.</p> <p>Ensuring that the U.S. Marshal's expenses are reimbursed first unless the order of forfeiture provides otherwise.</p> <p>Disbursing payments to satisfy the liens, commissions, and other deductions that are authorized by the order of forfeiture.</p>
A third-party interest is not recognized in the order of forfeiture	The USAO must validate the interest in writing after forfeiture before it can be paid from the sales proceeds.
A business is conveyed to the new owner (s) by the sale and purchase agreement and the bill of sale.	<p>The USMO should consult with the AFO regarding the specific form of conveyance¹⁰⁸ (e.g., a sale and purchase agreement, bill of sale, or transfer of stock powers).</p> <p>The U.S. Marshal or his or her designee¹⁰⁹ should execute the documents.</p>
The business is sold.	The USMO retains copies of the sales contract and any other pertinent documents relating to the business' sale in the case file.
The ownership is transferred	The USMO notifies the local tax authority of the sale of the business.

11. SALE OF BUSINESS ASSETS

If	Then
An evaluation of the business discloses that it will not be profitable to sell the business as an operating, ongoing business.	The USMO should dispose of the business' assets in accordance with the procedures set forth in the USMS's asset forfeiture manual for the specific type of asset (e.g., real property, personal property, and financial instruments).

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Financial Instruments

Appendices

Footnotes

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