



LEXSTAT 28 CFR 9.2

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TITLE 28 -- JUDICIAL ADMINISTRATION
CHAPTER I -- DEPARTMENT OF JUSTICE
PART 9 -- REGULATIONS GOVERNING THE REMISSION OR MITIGATION OF CIVIL AND CRIMINAL
FORFEITURES

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§ 9.7 Terms and conditions of remission and mitigation.

(a) Owners. (1) An owner's interest in property that has been forfeited is represented by the property itself or by a monetary interest equivalent to that interest at the time of seizure. Whether the property or a monetary equivalent will be remitted to an owner shall be determined at the discretion of the Ruling Official.

(2) If a civil judicial forfeiture action against the property is pending, release of the property must await an appropriate court order.

(3) Where the government sells or disposes of the property prior to the grant of the remission, the owner shall receive the proceeds of that sale, less any costs incurred by the government in the sale. The Ruling Official, at his or her discretion, may waive the deduction of costs and expenses incident to the forfeiture.

(4) Where the owner does not comply with the conditions imposed upon release of the property by the Ruling Official, the property shall be sold. Following the sale, the proceeds shall be used to pay all costs of the forfeiture and disposition of the property, in addition to any monetary conditions imposed. The remaining balance shall be paid to the owner.

(b) Lienholders. (1) When the forfeited property is to be retained for official use or transferred to a state or local law enforcement agency or foreign government pursuant to law, and remission or mitigation has been granted to a lienholder, the recipient of the property shall assure that:

(i) In the case of remission, the lien is satisfied as determined through the petition process; or

(ii) In the case of mitigation, an amount equal to the net equity, less any monetary conditions imposed, is paid to the lienholder prior to the release of the property to the recipient agency of foreign government.

(2) When the forfeited property is not retained for official use or transferred to another agency or foreign government pursuant to law, the lienholder shall be notified by the Ruling Official of the right to select either of the following alternatives:

(i) Return of property. The lienholder may obtain possession of the property after paying the United States, through the Ruling Official, the costs and expenses incident to the forfeiture, the amount, if any, by which the appraised

value of the property exceeds the lienholder's net equity in the property, and any amount specified in the Ruling Official's decision as a condition to remit the property. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture. The Ruling Official shall forward a copy of the decision, a memorandum of disposition, and the original releases to the United States Marshals Service or other property custodian who shall thereafter release the property to the lienholder; or

(ii) Sale of Property and Payment to Lienholder. Subject to the provisions of § 9.9(a), upon sale of the property, the lienholder may receive the payment of a monetary amount up to the sum of the lienholder's net equity, less the expenses and costs incident to the forfeiture and sale of the property, and any other monetary conditions imposed. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture.

(3) If the lienholder does not notify the Ruling Official of the selection of one of the two options set forth in paragraph (b)(2) of this section within twenty (20) days of the receipt of notification, the Ruling Official shall direct the United States Marshal or other property custodian to sell the property and pay the lienholder an amount up to the net equity, less the costs and expenses incurred incident to the forfeiture and sale, and any monetary conditions imposed. In the event a lienholder subsequently receives a payment of any kind on the debt owed for which he or she received payment as a result of the granting of remission or mitigation, the lienholder shall reimburse the Assets Forfeiture Fund to the extent of the payment received.

(4) Where the lienholder does not comply with the conditions imposed upon the release of the property, the property shall be sold after forfeiture. From the proceeds of the sale, all costs incident to the forfeiture and sale shall first be deducted, and the balance up to the net equity, less any monetary conditions, shall be paid to the lienholder.

HISTORY: [Order No. 1210-87, 52 *FR* 32786, Aug. 31, 1987; Order No. 2064-96, 62 *FR* 314, 320, Jan. 3, 1997]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

28 *U.S.C.* 509, 510, 515-518, 524; 8 *U.S.C.* 1324; 15 *U.S.C.* 1177; 17 *U.S.C.* 509; 18 *U.S.C.* 512, 981, 982, 1467, 1955, 1963, 2253, 2254, 2513; 19 *U.S.C.* 1613, 1618; 21 *U.S.C.* 853, 881; 22 *U.S.C.* 401.

NOTES: [EFFECTIVE DATE NOTE: 62 *FR* 314, 320, Jan. 3, 1997, revised Part 9, effective Feb. 3, 1997.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

CROSS REFERENCES: Customs Service, Department of the Treasury: See Customs Duties, 19 CFR chapter I.

Internal Revenue Service, Department of the Treasury: See Internal Revenue Service, 26 CFR chapter I.

Employees' Benefits: See title 20.

Federal Trade Commission: See Commercial Practices, 16 CFR chapter I.

Other regulations issued by the Department of Justice appear in title 4; title 8; title 21; title 45; title 48.

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