Chapter 475A

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Civil Forfeiture

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CIVIL FORFEITURE
(Definitions)

475A.005 Definitions for chapter. As used in this chapter, unless the context requires otherwise:

(1) "All persons known to have an interest" means:

(a) Any person who has, prior to the time the property is seized for forfeiture, filed notice of interest with any public office as may be required or permitted by law to be filed with respect to the property which has been seized for forfeiture;

(b) Any person from whose custody the property was seized; or

(c) Any person who has an interest in the property, including all owners and occupants of the property, whose identity and address is known or is ascertainable upon diligent inquiry and whose rights and interest in the property may be affected by the action.

(2) "Attorney fees" has the meaning given that term in ORCP 68 A.

(3) "Costs and disbursements" are those expenditures set forth in ORCP 68 A.

(4) "Financial institution" means any person lawfully conducting business as:

(a) A financial institution or trust company, as those terms are defined in ORS 706.008;

(b) A consumer finance company subject to the provisions of ORS chapter 725;

(c) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840, a mortgage servicing company or other mortgage company;

(d) An officer, agency, department or instrumentality of the federal government, including but not limited to:

(A) The Secretary of Housing and Urban Development;

(B) The Federal Housing Administration;

(C) The United States Department of Veterans Affairs;

(D) The Farmers Home Administration;

(E) The Federal National Mortgage Association;

(F) The Government National Mortgage Administration;

(G) The Federal Home Loan Mortgage Association;

(H) The Federal Agricultural Mortgage Corporation; and

(I) The Small Business Administration;

(e) An agency, department or instrumentality of the state, including but not limited to:

(A) The Housing Agency;

(B) The Department of Veterans' Affairs; and

(C) The Public Employees Retirement System;

(f) An agency, department or instrumentality of any municipality in the state, including but not limited to such agencies as the Portland Development Commission;

(g) An insurer as defined in ORS 731.106;

(h) A private mortgage insurance company;

(i) A pension plan or fund or other retirement plan; and

(j) A broker-dealer or investment adviser as defined in ORS 59.015.

(5) "Forfeiting agency" means the State of Oregon or a political subdivision thereof that has accepted for forfeiture property seized by a seizing agency or that is processing a forfeiture case.

(6) "Forfeiture counsel" means an attorney designated to represent a forfeiting agency in forfeiture actions or proceedings.

(7) "Law enforcement agency" means any agency which employs police officers or prosecutes criminal cases.

(8) "Official law enforcement use" or "official law enforcement activity" means uses or activities which may reasonably be expected to result in the identification, apprehension or conviction of criminal offenders.

(9) "Police officer" has the meaning given that term in ORS 133.525.

(10) "Proceeds of prohibited conduct" means property derived directly or indirectly from, maintained by or realized through an act or omission, and includes any benefit, interest or property of any kind without reduction for expenses of acquiring or maintaining it or incurred for any other reason.

(11) "Prohibited conduct" includes violation of, solicitation to violate, attempt to violate or conspiracy to violate any provisions of ORS 475.005 to 475.285 and 475.805 to 475.980 when the conduct constitutes either a felony or misdemeanor as those terms are defined in ORS 161.525 and 161.545.

(12) "Property" means any interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property, including currency, instruments or securities or any other kind of privilege, interest, claim or right whether due or to become due.

(13) "Seizing agency" means a law enforcement agency that has seized property for forfeiture.

(14) "Weapon" means any instrument of offensive or defensive combat or anything used, or designed to be used, in destroying, defeating or injuring a person. [1989 c.791 §2; 1991 c.291 §1; 1993 c.508 §44; 1995 c.79 §388; 1997 c.631 §565; 2001 c.104 §215; 2001 c.780 §§1,1a; 2003 c.14 §308; 2005 c.625 §§74,75]

(Civil Forfeiture Generally)

475A.010 Legislative findings; preemption of local laws; remedy not exclusive. (1) The Legislative Assembly finds that:

(a) The prohibited conduct defined in this chapter is undertaken in the course of profitable activities which result in, and are facilitated by, the acquisition, possession or transfer of property subject to forfeiture under this chapter;

(b) Transactions involving property subject to forfeiture under this chapter escape taxation;

(c) Governments attempting to respond to prohibited conduct require additional resources to meet their needs; and

(d) There is a need to provide for the forfeiture of certain property subject to forfeiture under this chapter, to provide for the protection of the rights and interests of affected persons, and to provide for uniformity throughout the state with respect to the laws of this state which pertain to the forfeiture of real and personal property based upon prohibited conduct as defined in this chapter.

(2) Therefore, the Legislative Assembly adopts the provisions of this chapter as the sole and exclusive law of the state pertaining to the forfeiture of real and personal property based upon the prohibited conduct, thereby replacing all charter provisions, ordinances, regulations and other enactments adopted by cities and counties pertaining to such forfeitures. After July 24, 1989, no actions for forfeiture shall be initiated except those in compliance with the provisions of this chapter.

(3) This chapter is applicable throughout this state and in all cities and counties. The electors or the governing body of a city or county shall not enact and the governing body shall not enforce any charter provision, ordinance, resolution or other regulation that is inconsistent with this section.

(4) This chapter does not impair the right of any city or county to enact ordinances providing for the forfeiture of property based upon conduct that is other than prohibited conduct as defined in this chapter if:

(a) The property was used to commit the conduct described in the ordinances, or is proceeds of the conduct; and

(b) The forfeiture is subject to procedures and limitations set forth in this chapter.

(5) Nothing in this chapter shall be construed to limit or impair any right or remedy that any person or entity may have under ORS 166.715 to 166.735. The application of any remedy under this chapter is intended to be remedial and not punitive and shall not preclude or be precluded by the application of any previous or subsequent civil or criminal remedy under any other provision of law. Civil remedies under this chapter are supplemental and not mutually exclusive. [1989 c.791 §1; 1999 c.59 §145; 2001 c.780 §§2,2a]

475A.015 Right, title and interest in forfeited property vests in forfeiting agency. Subject to this chapter, all right, title and interest in property forfeited under this chapter shall vest in the forfeiting agency upon commission of the prohibited conduct. [1989 c.791 §12; 1999 c.59 §146]

(Property Subject to Forfeiture)

475A.020 Property subject to forfeiture generally. The following will be subject to civil in rem forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, possessed or acquired in the course of prohibited conduct;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct;

(3) All property which is used, or intended for use, as a container for property described in subsection (1) or (2) of this section;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, to transport or in any manner facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles or vessels, which are used or intended for use in prohibited conduct or to facilitate prohibited conduct in any manner, except that:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless the owner or other person in charge of such conveyance was a consenting party or knew of and acquiesced in the prohibited conduct; and

(b) No conveyance shall be forfeited under the provisions of this section by reason

of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state;

(5) All books, records, computers and research, including formulae, microfilm, tapes and data which are used or intended for use to facilitate prohibited conduct in any manner;

(6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;

(7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit or facilitate in any manner the commission of prohibited conduct; and

(8) All weapons possessed, used or available for use in any manner to facilitate conduct giving rise to forfeiture. [1989 c.791 §3; 2001 c.780 §§3,3a]

475A.025 Property seized as result of consensual search of motor vehicle; written notice of right to refuse search required. (1) Notwithstanding any other provisions of this chapter, property that is seized solely on the basis of a consensual search of a motor vehicle is not subject to civil in rem forfeiture unless, before obtaining the consent of a person for the search, the person is provided with written, multilingual notice of the right of the person to refuse to consent to the search. The notice shall include at least the following information:

(a) Notice that the person has a right to refuse to consent to a search.

(b) Notice that a refusal to consent to a search cannot be used against the person for any purpose.

(c) Notice that anything found in the search can be seized as evidence of a crime or can be seized for civil forfeiture.

(2) A notice or consent form under this section shall be considered multilingual if the notice or form provides information in at least English and Spanish. [1993 c.699 §20]

475A.030 Currency; seizure of less than $15,000. Notwithstanding any other provision of this chapter, United States currency in an amount less than $15,000 is not subject to seizure or forfeiture solely on the basis that the money is in the form of cash rather than some other form. [1993 c.699 §22; 2001 c.780 §§4,4a]

(Seizure of Property)

475A.035 Procedure for seizure; immunities; constructive seizure; inventory. Property may be seized for forfeiture as provided in this section.

(1) Any person who delivers property in obedience to an order or direction to deliver the property under this section shall not be liable:

(a) To any person on account of obedience to the order or direction; or

(b) For any costs incurred on account of any contamination of the delivered property. This includes, but is not limited to, any disposal costs for any property forfeited under ORS 475A.020, any hazardous waste or material, any contraband or any other contamination contained in property seized under this section.

(2) Property may be seized by any police officer without a court order if:

(a) The property has been the subject of an earlier judgment in favor of any forfeiting agency in an earlier civil in rem proceeding under this chapter;

(b) There is probable cause to believe that property is subject to forfeiture, provided that the property may constitutionally be seized without a warrant;

(c) The seizure is in the course of a constitutionally valid criminal investigative stop, arrest or search, and there is probable cause to believe that the property is subject to forfeiture;

(d) The property is directly or indirectly dangerous to the health or safety of any person; or

(e) An owner consents to the seizure.

(3) Except as provided in ORS 475A.045, with regard to cash or other assets which at the time of seizure are held in any form of account in a financial institution, if the property is in whole or in part intangible, the person having control or custody of the property shall deliver the same over to the police officer.

(4)(a) Property may be seized by any police officer pursuant to an order of the court. Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

(b) Application shall be made to any judge as defined in ORS 133.525. The application shall be supported by one or more affidavits setting forth the facts and circumstances tending to show where the objects of the seizure are to be found. The court shall issue the order upon a finding of probable cause to believe that the described property is subject to forfeiture. The order may be set out on the face of a search warrant.

(c) Except as provided in ORS 475A.045, with regard to cash or other assets which at the time of seizure are held in any form of account in a financial institution, if the property is in whole or in part intangible, the order shall direct any person having control or custody of the property to deliver the same over to the seizing agency or to the court to abide judgment.

(5) Property may be constructively seized by posting notice of seizure for forfeiture on it or by filing notice of seizure for forfeiture or notice of pending forfeiture in the public records that impart constructive notice of matters relating to such property. A notice which is filed must include a description of the property that is the subject of the seizure. Real property, including interests arising out of land sale contracts, shall be seized only upon recording notice of seizure containing a legal description of the property in the mortgage records of the county in which the real property is located.

(6) Property which has been unconstitutionally seized may be subject to forfeiture if the basis for forfeiture under this chapter is sustained by evidence which is not the fruit of the unconstitutional seizure.

(7) Promptly upon seizure, the officer who seized the property shall make an inventory of the property seized and shall deliver a receipt embodying the inventory to the person from whose possession they are taken or to the person in apparent control of the property at the time it is seized. The officer may, in addition, provide an estimate of the value of the property seized and information on the right to file a claim under ORS 475A.055 (2), and the deadline for filing that claim. If the property is unoccupied or there is no one present in apparent control, the officer shall leave the receipt suitably affixed to the property. If the property is physically removed from the location of seizure and it is unoccupied or there is no one present in apparent control, then the officer shall promptly file the receipt in the public records of the forfeiting agency. Every receipt prepared under this subsection shall contain, in addition to an inventory of the property seized, the following information:

(a) The identity of the seizing agency; and

(b) The address and telephone number of the office or other place where the person may obtain further information concerning the forfeiture.

(8) A police officer has probable cause to believe that cash, weapons or negotiable instruments are subject to forfeiture if the cash, weapons or negotiable instruments are found in close proximity to controlled substances or to instrumentalities of prohibited conduct. Notwithstanding ORS 475A.080, if the forfeiting agency establishes in a forfeiture action that cash, weapons or negotiable instruments were found in close proximity to controlled substances or to instrumentalities of prohibited conduct, the burden is on any person claiming the cash, weapons or negotiable instruments to prove by a preponderance of the evidence that the cash, weapons or negotiable instruments are not proceeds of prohibited conduct or an instrumentality of prohibited conduct.

(9) In the event that property is seized from the possession of a person who asserts a possessory lien over such property pursuant to applicable law, notwithstanding any other provision of law, any lien of the person from whom the property was seized shall remain in effect and shall be enforceable as fully as though the person had retained possession of the property. [1989 c.791 §4; 1991 c.218 §1; 1991 c.237 §1; 1991 c.934 §2; 1999 c.59 §147; 2001 c.780 §§5,5a; 2005 c.830 §31]

475A.040 Amendment of inventory. If, prior to the commencement of forfeiture proceedings under ORS 475A.075, it is determined that the inventory prepared pursuant to ORS 475A.035 and 475A.055 is substantially incorrect, the seizing agency shall cause the inventory to be amended. The substance of the amendment shall be clearly noted on the face of the inventory. The amended inventory shall be served with any summons and complaint served under ORS 475A.075. If the amendment occurs after the commencement of forfeiture proceedings, the amended inventory shall be served on all persons previously served with summons and complaint under ORS 475A.075. [1991 c.218 §5; 2001 c.780 §§20,20a]

475A.045 Status of seized property; release; maintenance and use. (1)(a) Except as otherwise provided in this chapter, property seized for forfeiture is not subject to replevin, conveyance, sequestration or attachment, nor is it subject to a motion or order to return under ORS chapter 133. The seizure of property or the commencement of a forfeiture proceeding pursuant to this chapter shall not abate, impede or in any way delay the initiation or prosecution of a

suit or action by a financial institution for the possession of seized property in which the financial institution has or purports to have a lien or security interest or for the foreclosure of such lien or security interest. A financial institution may proceed with any suit or action involving property in which it has a lien or security interest even though a seizure has occurred and forfeiture proceedings have been or will be commenced. Any such suit or action may be consolidated with the forfeiture proceeding for the purpose of trial. If property which may be subject to forfeiture is sold prior to the conclusion of the forfeiture proceedings, the sheriff, trustee or other person conducting the sale and who has actual notice of the forfeiture proceedings shall distribute the sale proceeds as follows:

(A) To the expenses of the sale;

(B) To the payment of the obligations owed to the foreclosing financial institution that are secured by the property and to any other person whose lien or security interest in the property has been foreclosed in the suit or action in the order determined by the court; and

(C) The surplus, if any, shall be distributed to the seizing or forfeiting agency, or to the court in which the forfeiture proceedings are pending.

(b) The sheriff, trustee or other person who distributes the sale proceeds as provided shall not be liable to any person who has or asserts an interest in the property.

(2) Within 30 days following seizure of property for forfeiture, the seizing agency, in consultation with the district attorney of the county in which the property was seized for forfeiture, shall determine whether it will seek the forfeiture of the property. If the seizing agency elects not to seek forfeiture, it shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens arising under ORS 87.152 to 87.162 that have attached to the property since its seizure and release the property. The property may be released to a person other than the person from whose custody or control the property was taken if the seizing agency, forfeiting agency or forfeiture counsel first mails to the last-known addresses of all persons known to have an interest in the property a notice of intent to release the property. The notice shall specify the person to whom the property is to be released and shall detail the time and place of the release. An agency that complies with the provisions of this subsection by paying costs and expenses of towing and storage, discharging possessory liens, mailing any required notices and releasing the property shall not be liable for its actions under this subsection or for any consequences thereof.

(3) A forfeiting agency shall, pending forfeiture and final disposition and subject to the need to retain it in any criminal proceeding, provide that property in the physical custody of the seizing or forfeiting agency be serviced or maintained as may be reasonably appropriate to preserve the value of the property.

(4) A forfeiting agency may, pending forfeiture and final disposition and subject to the need to retain seized property in any criminal proceeding:

(a) Provide that the seized property be transferred for forfeiture to any city, county, state or federal agency with forfeiture authority, provided that no such transfer shall have the effect of diminishing or reducing the rights of any third party under this chapter.

(b) Apply to the court for an order providing that the seized property may be sold, leased, rented or operated in the manner and on the terms that may be specified in the court's order. The court shall deny any application unless the sale, lease, rental or operation of the property will be conducted in a commercially reasonable manner and shall not result in a material reduction of the property's value. An order shall only be entered:

(A) After notice and opportunity to be heard is provided to all persons known to have or to claim an interest in the property; and

(B) With the consent of all persons holding security interests of record in the property.

(c) Provide that the seized property be removed to a storage area for safekeeping.

(5) Unless otherwise ordered by the court, the proceeds of the sale, leasing, renting or operation under subsection (4) of this section shall be held by the forfeiting agency, and the rights of holders of security interests of record in the property shall attach to the proceeds of the sale, leasing, renting or operation in the same order of priority as interests attached to the property.

(6)(a) Except as provided in paragraph (b) of this subsection and except for currency with apparent or known intrinsic collector value, all cash seized for forfeiture, together with all cash received from the sale, leasing, renting or operation of the property, shall be immediately deposited in an insured interest-bearing forfeiture trust account or accounts maintained by the seizing or forfeiting agency exclusively for this purpose. Cash may be retained as evidence in a criminal proceeding but shall be deposited imme-

diately when the need to retain it as evidence is discharged.

(b) Notwithstanding paragraph (a) of this subsection, all cash seized for forfeiture which at the time of seizure is deposited in any form of account in a financial institution may remain in the account in the financial institution. From the time of seizure until the forfeiture proceeding is abandoned, or until a court ultimately enters or fails to enter a judgment of forfeiture, all deposits except the deposit of interest by the financial institution, withdrawals or other transactions involving the account are prohibited, unless approved by the court.

(c) Subject to any court order, interest earned upon cash deposited in a forfeiture trust account or held in an account in a financial institution under this subsection shall be disbursed as follows:

(A) If the forfeiture proceeding is abandoned, or if the court ultimately fails to enter a judgment of forfeiture or foreclosure, any interest earned, together with the cash deposited in the forfeiture trust account in connection with the seizure in question, shall be paid by the seizing or forfeiting agency to the person from whom it was seized and any interest earned, together with the cash deposited in an account in a financial institution shall be released by the seizing or forfeiting agency to the person from whom it was seized.

(B) If a judgment of forfeiture is entered, but parties other than the forfeiting agency establish rights to portions of the amount deposited in the forfeiture trust account or the account held in a financial institution which are in the aggregate larger than or equal to the cash on deposit plus interest earned thereon, the interest, together with the cash on deposit, shall be disbursed by the forfeiting agency to the parties in the order of their priority.

(C) If a judgment of forfeiture is entered, and the total amount arising out of the seizure which is on deposit in the forfeiture trust account or in an account in a financial institution, including interest earned on moneys deposited, is greater than the aggregate amount needed to satisfy the established interests of security interest holders, lienholders and other claimants, then the balance remaining after payment by the forfeiting agency to parties shall be retained by the forfeiting agency.

(7) If the property seized for forfeiture consists of stocks, bonds, promissory notes, or other security or evidence of indebtedness, and the property is held in some form of account in a financial institution, the property may remain in the account pending a final decision in the forfeiture proceedings. Unless otherwise allowed by order of the court, no transactions involving the account shall be permitted other than the deposit or reinvestment of dividends or other normally recurring payments on the property. Any accrual to the value of the property during the pendency of forfeiture proceedings shall be disbursed in the manner provided for the disbursement of interest under subsection (6) of this section.

(8) If property is seized for forfeiture or if a notice of forfeiture is filed without a prior judicial determination of probable cause, a court, on application filed by an owner of or interest holder in the property within 15 days after notice of its seizure for forfeiture, or actual knowledge of it, whichever is earlier, may, after five days′ written notice to the forfeiture counsel, issue an order to show cause to the forfeiting agency, for a hearing on the sole issue of whether probable cause for forfeiture of the property then exists. If the court finds that there is no probable cause for forfeiture of the property, the property seized for forfeiture from the applicant or subjected to the notice of forfeiture shall be released from its seizure for forfeiture or lien pending the outcome of a judicial proceeding under ORS 475A.075. [1989 c.791 §5; 1991 c.237 §2; 1991 c.276 §1; 1991 c.800 §1; 1995 c.459 §1; 1999 c.59 §148; 2001 c.780 §§6,6a]

475A.050 Recorded notice of intent to forfeit real property; form. (1) Whenever the state or a political subdivision intends to forfeit any real property, the state or political subdivision may have recorded by the county clerk or other recorder of deeds of every county in which any part of the premises or real property lies a notice of intent to forfeit real property under ORS 205.246. The notice shall contain the legal description of the real property, the common address if any and the attorney responsible for the forfeiture action. From the time of recording the notice, and from that time only, the intent to forfeit is notice to purchasers and encumbrances of the rights and equities in the premises of the party filing the notice. The notice shall be recorded in the same book and in the same manner in which mortgages are recorded and may be discharged in like manner as mortgages are discharged, either by such party or the attorney signing the notice.

(2) Unless otherwise prescribed by law, a party recording a notice of intent to forfeit shall use substantially the following form:

NOTICE OF INTENT
TO FORFEIT

Pursuant to ORS 475A.050, the undersigned states:

That I, _____ do declare that it is my intent to initiate forfeiture proceedings on the following described real property:

1. The description of the real property to be affected is:

_____
_____
_____
_____
_____

2. The common address, if any, is:

_____
_____
_____

Dated this _____ day of _____, _____.

This notice of intent to file forfeiture will expire on _____ day of _____, _____ absent future filings.

Name of agency seeking forfeiture

_____

Name of Attorney

_____

Address

_____
_____
_____

Phone Number

_____

State of Oregon)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____.

_____
Notary Public for Oregon
My commission expires _____.

(3) The notice of intent to forfeit property shall expire 30 days after the date of filing absent future filings to perfect. [1989 c.791 §19; 2001 c.780 §§21,21a]

(Nonjudicial Forfeiture)

475A.055 Nonjudicial forfeiture; notice of seizure for civil forfeiture; when notice need not be given; claims. Personal property which is not subject to an interest in favor of any person known to have an interest, other than a person who engaged in prohibited conduct, may be forfeited by the forfeiting agency in the manner provided in this section.

(1) As soon as practicable after seizure for forfeiture, the seizing agency shall review the inventory prepared by the officer under ORS 475A.035 (7) and estimate the value of the property seized. The forfeiting agency shall amend the inventory to supply an estimate of value of the property seized if no estimate was made by the officer under ORS 475A.035 (7). The forfeiting agency shall, in addition, amend the inventory to supply a correct listing of the property seized or estimate of the value of that property if either the listing or any estimate of value made by the officer is substantially incorrect. Within 15 days after seizure for forfeiture, the forfeiting agency shall prepare a notice of seizure for forfeiture containing a copy of the inventory prepared pursuant to this section and ORS 475A.035, the identity of the person from whom the property was seized, the name, address and telephone number of the seizing agency and the address and telephone number of the office or other place where further information concerning the seizure and forfeiture may be obtained, and shall make reasonable efforts to serve the notice of seizure for forfeiture on all persons known to have an interest in the seized property. A person may be served as provided in ORCP 7 D except that the notice shall also include information regarding the right to file a claim under subsection (3) of this section, if applicable, and the deadline for filing the claim. If the property is cash in the amount of $1,000 or less, or if the fair market value of the property is $1,000 or less, the forfeiting agency may publish notice of seizure for forfeiture in a newspaper as provided in ORCP 7 D(6)(b) to (d). In all other cases, the forfeiting agency shall publish notice of seizure for forfeiture in a newspaper as provided in ORCP 7 D(6)(b) to (d). A copy of the notice, inventory and estimate of value shall be provided to the forfeiting agency's forfeiture counsel.

(2)(a) The notice of seizure for forfeiture provided for in this section need not be served on a person who has received the receipt provided for in ORS 475A.035 (7) if:

(A) The receipt contains an estimate of the value of the property seized and the seizing agency has not amended the listing

of property or estimate of the value in reviewing the inventory under subsection (1) of this section; and

(B) The receipt contains information regarding the right to file a claim under subsection (3) of this section and the deadline for filing the claim.

(b) Any person who has received the receipt provided for in ORS 475A.035 (7), who must be served with the notice of seizure for forfeiture solely by reason of an amendment to the listing of property or estimate of value under subsection (1) of this section, need only be served by mailing a true copy of the notice of seizure for forfeiture by certified mail, return receipt requested.

(3) Any person claiming an interest in the property shall file a claim with the forfeiting agency's forfeiture counsel within 21 days after notice of seizure for forfeiture if notice is given in a manner other than by publication. All other persons claiming an interest in the property shall file a claim with the forfeiting agency's forfeiture counsel within 21 days after the last publication date if notice is published. No extension for the filing of any claim shall be granted. The claim shall be signed by the claimant under penalty of perjury and shall set forth all of the following:

(a) The true name of the claimant;

(b) The address at which the claimant will accept future mailings from the court or forfeiture counsel; and

(c) A statement that the claimant has an interest in the seized property.

(4) If no timely claim is filed, the property shall, upon application and affidavit of the forfeiting agency, be declared forfeited to the forfeiting agency. The affidavit shall set forth proof of service or, if no service was accomplished, facts demonstrating the forfeiting agency's efforts to accomplish service, together with proof of publication of notice. The application and affidavit shall be filed in the circuit court designated in ORS 475A.075. The judgment declaring the property forfeited shall be as provided in ORS 475A.110.

(5) If a timely claim is filed, a judicial forfeiture proceeding may be commenced as provided in ORS 475A.075.

(6) Notwithstanding ORS 8.720 or any other provision of law, but subject to the provisions of ORS 180.060, a district attorney may act as forfeiture counsel in any civil forfeiture proceeding.

(7) In any civil forfeiture proceeding where there are or may be related criminal proceedings, a prosecuting attorney or forfeiture counsel may participate in settlement negotiations initiated by the defendant or claimant or by the attorney representing the defendant or claimant.

(8) If a forfeiting agency publishes notice of seizure for forfeiture in a newspaper in the manner provided by subsection (1) of this section, the agency may include in a single publication as many notices of forfeiture as the agency considers convenient. The publication may contain a single statement of matters from the notices of forfeiture that are common to all of the notices and which would otherwise result in needless repetition. The publication must contain for each notice of forfeiture a separate copy of the inventory prepared pursuant to this section and ORS 475A.035 and a separate statement of the identity of the person from whose custody the property was seized. The published inventory need not contain estimates of value for the property seized. [1989 c.791 §6; 1991 c.218 §2; 1991 c.799 §1; 1991 c.934 §1; 1993 c.553 §1; 1993 c.699 §10; 2001 c.780 §§7,7a]

(Expedited Hearing)

475A.060 Petition for expedited hearing; relief authorized; time of hearing. (1) A person claiming an interest in property seized pursuant to this chapter may file a petition for an expedited hearing within 15 days after notice of seizure for forfeiture or within such further time as the court may allow for good cause shown.

(2) A petition for an expedited hearing shall contain a claim if no claim has previously been filed. The petition shall reflect whether the petitioner seeks one or more of the following:

(a) A determination at the hearing of any of the affirmative defenses provided for in ORS 475A.085.

(b) An order restoring custody of seized property to the petitioner during the pendency of the proceedings if the court finds, by a preponderance of the evidence, that it is probable that the property will remain available for forfeiture at the completion of the proceedings and that there is a reasonable possibility that the petitioner will ultimately prevail in the proceeding.

(c) Appointment of a receiver.

(3) A person filing a petition under this section shall serve a copy of the petition on all persons known to have an interest. Service shall be accomplished as provided in ORCP 7D. Service by publication shall not be required prior to an expedited hearing.

(4) A hearing shall be held within 15 days after service of all persons known to have an interest or at such later time as the court may allow for good cause shown. The hearing shall be limited to:

(a) Deciding whether claimant can prove an affirmative defense provided for in ORS 475A.085 if the petitioner asserts one of those defenses;

(b) Determining whether an order should be entered directing the return of the seized property to the claimant during the pendency of the hearing; and

(c) Determining whether an order should be entered directing the appointment of a receiver to manage property seized pursuant to this chapter pending a final determination as to the disposition of the property, if the petitioner or the forfeiting agency requests that order.

(5) If the petition is denied, and evidence that was not previously available to the petitioner is discovered, the petitioner may file a new petition under this section at any time prior to a trial under ORS 475A.075. The new petition shall be served as provided under subsection (3) of this section. A hearing on the petition shall be conducted as provided in ORS 475A.065.

(6) The parties to a proceeding under ORS 475A.075 may at any time stipulate to the entry of an order restoring custody of seized property to a petitioner who claims an interest in the property. The order shall comply with the requirements of ORS 475A.070 (1). [1991 c.934 §4; 2001 c.780 §§22,22a]

475A.065 Expedited hearing on claimed affirmative defense. (1) In any expedited hearing under ORS 475A.060 in which petitioner seeks a determination at the hearing of any of the affirmative defenses provided for in ORS 475A.085, the court may consider evidence relating to those affirmative defenses and shall make a determination as to any of those defenses that may be asserted by the petitioner.

(2) If the court finds that petitioner has proven an affirmative defense provided for in ORS 475A.085, the court shall order that custody of the seized property be returned to the petitioner to the extent of the petitioner's interest pending a final determination as to the disposition of the property, unless the forfeiting agency can show that the return of the property will result in prejudice to the agency in seeking forfeiture of other claimants' interest in the property.

(3) If the court finds that the petitioner has failed to prove an affirmative defense provided for in ORS 475A.085, the court shall continue the matter for further proceedings consistent with ORS 475A.075. [1991 c.934 §5]

475A.070 Order restoring custody of property after expedited hearing; requirements; enforcement. (1) An order restoring custody to a petitioner under ORS 475A.060 or 475A.065 shall:

(a) Prohibit the petitioner from using the property in unlawful conduct of any kind, or from allowing the property to be used by any other person in unlawful conduct;

(b) Require the petitioner to service and maintain the property as may be reasonably appropriate to preserve the value of the property; and

(c) Require the petitioner to inform the court of the exact location of the property at the time of any trial under ORS 475A.075 and to deliver the property to the forfeiting agency immediately upon the issuance of a judgment of forfeiture.

(2) An order restoring custody to a petitioner under ORS 475A.060 or 475A.065 may include such other requirements as the court finds appropriate pending a final determination as to the disposition of the property.

(3) An order restoring custody to a petitioner under ORS 475A.060 or 475A.065 is enforceable by a contempt proceeding brought on the relation of forfeiture counsel, by a further order directing the petitioner to deliver the property to the custody of the forfeiting agency, by an order awarding to the forfeiting agency its reasonably incurred attorney fees, costs and investigative expenses, and by such other remedies or relief as the court may find appropriate. [1991 c.934 §6]

(Judicial Forfeiture)

475A.075 Civil action for forfeiture; when required; complaint; affidavit in response. A civil action in rem may be brought as provided in this section in any case in which forfeiture is sought. A civil action in rem must be brought if the property is real property, the property is in whole or part a manufactured dwelling as defined in ORS 446.003, the property is a floating home as defined in ORS 830.700 or the property is subject to an interest in favor of any person known to have an interest, other than a person who engaged in prohibited conduct.

(1) If a forfeiting agency has commenced proceedings under ORS 475A.055, then an action shall be commenced by forfeiture counsel, within 15 days of receipt of a claim. If no proceedings have been commenced under ORS 475A.055, then the action shall be commenced by forfeiture counsel within 30 days of seizure. The property may be released by forfeiture counsel as provided in ORS 475A.045 (2).

(2) An action is commenced by filing a complaint. Responses to a complaint shall conform to the following procedure:

(a) A person claiming an interest in the property shall respond as provided in the Oregon Rules of Civil Procedure and, if a

claim has not previously been filed, by filing a claim in the form set forth in ORS 475A.055 (3) with the court and posting a bond with the court. The bond shall be a cash bond in an amount equal to 10 percent of the value of the interest claimed by the person in the property. Upon good cause shown by motion and affidavit filed with the initial appearance, the court may waive or reduce the bond. Failure to file an appearance, claim and bond shall constitute a default. The bond shall be returned to the claimant upon the entry of a final determination on the claim.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, a financial institution holding an interest in the seized property shall respond to a complaint with an affidavit establishing that the financial institution's interest in the property was acquired:

(A) In the regular course of business as a financial institution;

(B) For valuable consideration;

(C) Without knowledge of the prohibited conduct;

(D) In good faith and without intent to defeat the interest of any potential forfeiting agency; and

(E) With respect to personal property, prior to the seizure of the property, or with respect to real property, recorded prior to the recording of notice of the seizure of the real property in the mortgage records of the county in which the real property is located. Failure to file an affidavit shall constitute a default. The affidavit shall be filed within 30 days from the date of service.

(c) Notwithstanding the provisions of paragraph (a) of this subsection, any person, other than a financial institution, who transfers or conveys an interest in real property pursuant to a contract for transfer or conveyance of an interest in real property as defined in ORS 93.905 and who retains an interest in the real property, or any successor in interest, may respond to a complaint with an affidavit establishing that the person:

(A) Received the interest in return for valuable consideration or by way of devise or intestate succession;

(B) Had no knowledge at the time of transfer or conveyance of the prohibited conduct;

(C) Acted in good faith and without intent to defeat the interest of any potential forfeiting agency;

(D) Recorded the interest in the mortgage records of the county in which the real property is located prior to the recording of any notice of intent to seize or notice of seizure; and

(E) Continued to hold the interest without acquiescing in the prohibited conduct.

(d) For the purposes of paragraph (c) of this subsection, a person shall be considered to have acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed to take reasonable action under the circumstances to terminate or avoid use of the property in the course of prohibited conduct. For purposes of this section, "reasonable action under the circumstances" includes, but is not limited to:

(A) Reporting the prohibited conduct to a police agency;

(B) Commencing action that will assert the rights of the affiant as to the property interest;

(C) Terminating a rental agreement; or

(D) Seeking an abatement order under the provisions of ORS 105.505 to 105.520, or under the provisions of ORS 105.550 to 105.600, or under any ordinance or regulation allowing abatement of nuisances.

(e) The affidavit permitted by paragraph (c) of this subsection shall be filed within 30 days from the date of service of the summons and complaint. Failure to file an affidavit or to respond as set forth in paragraph (a) of this subsection shall constitute a default.

(f) In response to an affidavit filed pursuant to paragraph (c) of this subsection, the forfeiting agency may controvert any or all of the assertions made in the affidavit. The affidavit of the forfeiting agency shall be filed within 20 days of the filing of the affidavit filed under paragraph (c) of this subsection. The transferor, conveyor or successor in interest may respond, within five days of the filing of the affidavit of the forfeiting agency, with a supplemental affidavit limited to the matters stated in the affidavit of the forfeiting agency. If the forfeiting agency does not file an affidavit within the time allowed, the transferor, conveyor or successor in interest shall be considered a financial institution for all purposes under this chapter.

(g)(A) If the forfeiting agency files an affidavit under paragraph (f) of this subsection, the court shall determine from the affidavits whether there is a genuine issue of material fact with respect to the assertions of the transferor, conveyor or successor in interest.

(B) If the court determines that there is no genuine issue of material fact as to the truth of the assertions in the affidavit filed under paragraph (f) of this subsection, the transferor, conveyor or successor in interest shall be considered a financial institution for

all purposes under this chapter. The court shall order the forfeiting agency to pay the costs and disbursements, including attorney fees, of the prevailing transferor, conveyor or successor in interest if the forfeiting agency does not prevail.

(C) If the court determines that there is a genuine issue of material fact as to the truth of the assertions in the affidavit filed pursuant to paragraph (f) of this subsection, the transferor, conveyor or successor in interest shall, within 15 days, respond as provided in paragraph (a) of this subsection. The court may order the transferor, conveyor or successor in interest to pay the attorney fees of the forfeiting agency that were incurred in contesting the affidavit of the transferor, conveyor or successor in interest if the court determines that the affidavit of the transferor, conveyor or successor in interest was frivolous.

(3) All persons known to have an interest in the property, including any claimant, shall be served with a true copy of the inventory of the property prepared pursuant to ORS 475A.035 and 475A.055, the summons and the complaint as provided in ORCP 5 and 7 D. Notice of the action shall be published as provided in ORCP 7 D(6)(b) to (d) unless notice has previously been published in accordance with ORS 475A.055 (1). In the event that a forfeiture involves a vehicle, and the notices required by this statute have been given, and substitute service on the claimant is required because personal service cannot be reasonably accomplished, service as authorized by ORCP 7 D(4) shall be sufficient to establish jurisdiction over a registered owner or operator of a vehicle. If the property is in whole or part a manufactured dwelling as defined in ORS 446.003 or a floating home as defined in ORS 830.700, the forfeiting agency shall, in addition to serving all persons known to have an interest in the property, record a notice of seizure containing a description of the manufactured dwelling or floating home in all public offices maintaining records that impart constructive notice of matters relating to manufactured dwellings or floating homes.

(4) Forfeiture counsel may move the court at any time after a response is made as provided in subsection (2)(a) of this section for an order finding that the defendant is a fugitive and in default. The court may enter an order finding the defendant in default under this subsection and enter a judgment of civil forfeiture if the court finds that the defendant is not confined or held in custody by another jurisdiction, and that the defendant, after notice or knowledge of the fact that a warrant has been issued for the defendant:

(a) Purposely left the state to avoid prosecution;

(b) Declines to return to the state and allow execution of the warrant; or

(c) Otherwise evades the jurisdiction of the court issuing the warrant.

(5) All judicial proceedings under this chapter shall be governed by the Oregon Rules of Civil Procedure to the extent that they do not conflict with specific provisions of this chapter.

(6)(a) The filing of criminal charges related to any civil proceeding for forfeiture may, upon motion of forfeiture counsel or the district attorney or upon motion on behalf of defendant in a related criminal proceeding, stay the civil forfeiture proceeding until the trial, plea or dismissal of the related criminal proceeding. A motion for stay on behalf of the defendant in a related criminal proceeding shall constitute a waiver of double jeopardy by the defendant as to the civil forfeiture proceeding and any related criminal proceeding. Pursuant to subsection (7) of this section, a civil forfeiture proceeding stayed under this paragraph may be consolidated for trial or other resolution with any related criminal proceeding.

(b) The court may stay the civil forfeiture proceeding upon motion of a party and good cause shown. Good cause may include a reasonable fear on the part of a claimant that the claimant could be prosecuted for conduct arising out of the same factual situation which gave rise to the seizure of property. Pursuant to subsection (7) of this section, a civil forfeiture proceeding stayed under this paragraph may be consolidated for trial or other resolution with any related criminal proceeding.

(7) Notwithstanding any stay entered pursuant to subsection (6)(a) or (b) of this section, an action pursuant to this section may be consolidated with any other action pursuant to this section relating to the same property or parties on motion by any party in any related action. Upon motion by the state or a political subdivision of the state, or any criminal defendant who is also a claimant, a civil forfeiture proceeding under this section may be consolidated for trial or other resolution with any related criminal proceeding. Trial or other resolution of the civil forfeiture action shall immediately follow the related criminal trial or other resolution, shall be part of the same proceeding and shall be heard by the same trier of fact. Any objection by the defendant to the consolidation or any motion by the defendant to sever the related criminal case from the civil proceeding for forfeiture shall constitute a waiver of double jeopardy as to any related

criminal action and the civil forfeiture proceeding.

(8) The action shall be commenced and tried:

(a) In the case of real property, in the circuit court in a county in which the property is situated; or

(b) In all other cases, in the circuit court of the county in which the property was seized or the county in which any part of the prohibited conduct took place. [1989 c.791 §7; 1991 c.218 §3; 1991 c.238 §1; 1991 c.275 §1; 1991 c.799 §2; 1991 c.828 §1; 1993 c.699 §18; 1995 c.459 §2; 1999 c.59 §149; 1999 c.168 §11; 2001 c.780 §§8,8a; 2005 c.830 §34]

475A.080 Standards of proof in civil action for forfeiture. (1) Except as provided in subsection (2) of this section, in all civil forfeiture actions the forfeiting agency must prove that the claimant of the property has been convicted of a crime that constitutes prohibited conduct, and that the property to be forfeited is:

(a) Proceeds of the crime for which the claimant has been convicted;

(b) Instrumental in committing or facilitating the crime for which the claimant has been convicted;

(c) Proceeds of one or more other crimes similar to the crime for which the claimant was convicted; or

(d) Instrumental in committing or facilitating one or more other crimes similar to the crime for which the claimant was convicted.

(2) A forfeiting agency may bring an action for civil forfeiture of property of a claimant who has not been convicted of a crime if the forfeiting agency proves all elements of subsection (1) of this section with respect to another person and:

(a) That the claimant took the property with the intent to defeat forfeiture of the property;

(b) That the claimant knew or should have known that the property was proceeds of prohibited conduct; or

(c) That the claimant acquiesced in the prohibited conduct.

(3) If the property to be forfeited in a civil forfeiture action is personal property, the forfeiting agency must prove the elements specified in subsection (1) or (2) of this section by a preponderance of the evidence. If the property to be forfeited in a civil forfeiture action is real property, the forfeiting agency must prove the elements specified in subsection (1) or (2) of this section by clear and convincing evidence.

(4) For the purposes of subsection (2)(c) of this section, a person shall be considered to have acquiesced in prohibited conduct if the person knew of the prohibited conduct and failed to take reasonable action under the circumstances to terminate the prohibited conduct or prevent use of the seized property to facilitate the prohibited conduct. [1989 c.791 §13; 2001 c.780 §§9,9a; 2005 c.830 §30]

475A.085 Affirmative defenses in civil action for forfeiture. (1) A claimant may plead as an affirmative defense that the property was seized in violation of ORS 475A.025.

(2) In any action brought against property subject to forfeiture under ORS 475A.020 (7), a claimant may plead as an affirmative defense that the controlled substance was solely for personal use.

(3) If, by a preponderance of the evidence, the claimant proves a defense under this section, then judgment shall be entered for the claimant as provided in ORS 475A.110 (7).

(4) This defense may not be asserted by a financial institution that holds a security interest in the property. [1989 c.791 §8; 1991 c.322 §1; 1993 c.699 §21; 2001 c.780 §§10,10a; 2003 c.14 §§309,310; 2005 c.830 §32]

475A.090 [1993 c.699 §13; repealed by 2001 c.780 §32]

(Mitigation)

475A.091 Motion for mitigation; order of court. (1) If it has been determined in an action brought under the provisions of ORS 475A.075 that the plaintiff has prevailed as to some or all of the defendant property, the plaintiff shall serve on the claimant a proposed judgment of forfeiture and a statement of costs as described in ORS 475A.120 (4) and 475A.126 (3).

(2)(a) A claimant who has filed a claim to seized property, appeared in the action, and part or all of whose interest in the claimed property is forfeited under the terms of the proposed judgment may file a motion for a mitigation hearing.

(b) A motion under this section must list all evidence not previously received that is relevant to the determination to be made by the court under ORS 475A.100. Every argument that the claimant wishes to raise in mitigation must be set out in specific detail in the motion.

(c) Before filing a motion for mitigation, the claimant and the plaintiff must make a good faith effort to confer with one another concerning any issues in dispute. The claimant must file a certificate of compliance with the requirements of this paragraph before the time set for hearing on the motion. The certificate is sufficient if the certificate states that the parties conferred or the certificate contains facts showing good cause for not conferring.

(d) A motion under this section may be filed only after the service of a proposed judgment on the claimants. If a motion for a mitigation hearing is not filed with the court within 14 days after the date the plaintiff serves the proposed judgment on the claimant, the court shall enter judgment.

(3) If a motion for a mitigation hearing is filed, the court shall determine whether any portion of the proposed judgment is excessive in the manner provided by ORS 475A.100.

(4) A hearing under the provisions of this section is subject to the Oregon Rules of Evidence.

(5) The court may make such orders as may be necessary to ensure that the forfeiture is not excessive, including but not limited to the following orders:

(a) An order directing that the defendant property, or part of it, be sold and the proceeds of sale distributed between the litigants.

(b) An order directing that the claimant make available to the court other assets, not named as defendants in the forfeiture action, for the purpose of fashioning a judgment that is not excessive.

(6) The court shall make written findings of fact and shall enter written conclusions of law in proceedings under the provisions of this section. [2001 c.780 §35; 2003 c.576 §254; 2005 c.830 §41]

475A.095 [1993 c.699 §14; repealed by 2001 c.780 §32]

475A.096 Minimum forfeiture; offer of compromise. (1) Subject to subsection (2) of this section, the court shall forfeit to the forfeiting agency at least as much of the defendant property as may be required to pay the forfeiting agency's costs as described in ORS 475A.120 (4) and 475A.126 (3).

(2) At least 10 days before a trial under ORS 475A.075, a claimant may serve upon the forfeiting agency an offer to allow judgment to be given against all or part of the defendant property for a specified sum, specified property, or to a specified effect. If the forfeiting agency accepts the offer, the forfeiting agency must file a written acceptance with the clerk of the court within three days after the date on which the offer was served upon the forfeiting agency. If an acceptance is filed with the court, judgment shall be entered based on the acceptance as a stipulated judgment. Unless otherwise agreed by the parties, costs and disbursements as defined in ORCP 68 shall be entered as part of the judgment pursuant to the procedure provided by Rule 68. If an acceptance is not filed with the court within three days after the time the offer was served upon the forfeiting agency, the offer shall be considered withdrawn, and may not be given in evidence on the trial. If the forfeiting agency fails to obtain a judgment after trial that is more favorable than the offer made by the claimant, the court shall award to the claimant costs and disbursements as defined in ORCP 68, and the court may enter a judgment that forfeits to the forfeiting agency less of the defendant property than may be required to pay the forfeiting agency's costs as described in ORS 475A.120 (4) and 475A.126 (3). [2001 c.780 §36; 2005 c.830 §42]

475A.100 Factors to be considered by court in determining if forfeiture excessive. The court shall consider the following factors in determining whether any portion of the proposed judgment of forfeiture is excessive:

(1) The court shall enter judgment to the extent that the defendant property is derived directly or indirectly from past prohibited conduct.

(2) With respect to defendant property that is not derived directly or indirectly from past prohibited conduct, the court shall consider:

(a) Whether the defendant property constitutes the claimant's lawful livelihood or means of earning a living.

(b) Whether the defendant property is the claimant's residence.

(c) The degree of relationship between the defendant property and the prohibited conduct, including the extent to which the defendant property facilitated the prohibited conduct or could facilitate future prohibited conduct.

(d) The monetary value of the defendant property in relation to the risk of injury to the public from the prohibited conduct.

(e) The monetary value of the defendant property in relation to the actual injury to the public from the prohibited conduct.

(f) The monetary value of the defendant property in relation to objective measures of the potential or actual criminal culpability of the person or persons engaging in the prohibited conduct, including:

(A) The inherent gravity of the prohibited conduct;

(B) The potential sentence for similar prohibited conduct under Oregon law;

(C) The claimant's prior criminal history; and

(D) The sentence actually imposed on the claimant.

(g) Any additional relevant evidence. [1993 c.699 §15; 2001 c.780 §§11,11a]

475A.105 [1993 c.699 §16; repealed by 2001 c.780 §32]

(Judgment of Forfeiture)

475A.110 Judgment of forfeiture; contents; effect. (1) A judgment of forfeiture shall recite the basis for the judgment.

(2) If no financial institutions have filed the affidavit described in ORS 475A.075 (2)(b), and if the court has failed to uphold the claim or affidavit of any other claimant, the effect of the judgment shall be that:

(a) Title to the property shall pass to the forfeiting agency free of any interest or encumbrance thereon in favor of any person who has been given notice;

(b) The forfeiting agency may transfer good and sufficient title to any subsequent purchaser or transferee, and the title shall be recognized by all courts, by the state, by the departments and agencies of the state, and by any political subdivision. In the case of real property, the forfeiting agency shall warrant the title against constitutional defect. A warranty under this section is limited to the purchase price of the real property; and

(c) Any department, agency or officer of the state or any political subdivision whose official functions include the issuance of certificates or other evidence of title shall be immune from civil or criminal liability when such issuance is pursuant to a judgment of forfeiture.

(3) If any affidavits are filed by financial institutions as provided in ORS 475A.075 (2)(b), or if any claimants file an appearance, claim and bond as provided in ORS 475A.075 (2)(a) or an affidavit as provided in ORS 475A.075 (2)(c):

(a) The court shall foreclose all security interests, liens and vendor's interests of financial institutions and claimants as to which the court determines that there is a legal or equitable basis for foreclosure; and

(b) All other interests applicable to the property, which are not foreclosed or otherwise eliminated through a judgment of foreclosure, shall, if and to the extent that they are valid and subsisting, remain in effect, and the property shall remain subject to them upon completion of the forfeiture proceeding.

(4) Notwithstanding the provisions of this chapter or other law, if a financial institution or other person has filed an affidavit described in ORS 475A.075, or if the court has upheld the claim of any claimant, then as to each item of property seized:

(a) If the court has determined that the property should not be forfeited and has not foreclosed the security interests, liens or other interests covering the property, the court shall render judgment in favor of the owner of the property, the property shall be returned to the owner and all security interests, liens and other interests applicable to the property shall remain in effect as though the property had never been seized. Upon the return of the property to the owner, the seizing agency shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure.

(b) If the court has determined that the property should not be forfeited and has foreclosed one or more interests covering the property, including security interests or liens covering the property or contracts for the transfer or conveyance of the property, the seizing agency shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure and the court shall order the property sold pursuant to a sheriff's sale or other sale authorized by the court within such time as may be prescribed by the court following entry of the judgment. If any interests covering the property have not been foreclosed, including any liens or security interests of a claimant whose claim has been upheld, or of a financial institution that has filed the affidavit described in ORS 475A.075, the property shall be sold subject to those interests. The judgment shall also order the proceeds of such sale applied in the following order:

(A) To the payment of the costs of the sale;

(B) To the satisfaction of the foreclosed liens, security interests and contracts in order of their priority; and

(C) The excess, if any, to the owner of the property.

(c) If the court has determined that the property should be forfeited and has foreclosed one or more security interests, liens, contracts or other interests covering the property, the seizing agency shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure and the court shall order the property sold pursuant to a sheriff's sale or other sale authorized by the court. If any interest in the property was claimed by a financial institution or other claimant and the interest was upheld but not foreclosed, the property shall be sold subject to the interest. The sale of the property shall be held within such time as may be prescribed by the court

following entry of the judgment. The judgment shall also order the proceeds of such sale applied in the following order:

(A) To the payment of the costs of the sale;

(B) To the satisfaction of the foreclosed liens, security interests and contracts in the order of their priority; and

(C) The excess, if any, to the forfeiting agency to be disposed of as provided in ORS 475A.120.

(d) If the court has determined that the property should be forfeited and has not foreclosed the interests of any party in the property, the seizing agency shall pay all costs and expenses relating to towing and storage of the property and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure, and the court shall enter a judgment awarding the property to the forfeiting agency, subject to the interests of any claimants whose claims or affidavits were upheld by the court, and subject to the interests of any financial institutions that filed affidavits under ORS 475A.075 (2)(b), which shall remain in full force and effect.

(5) The forfeiting agency shall not be liable to any person as a consequence of obedience to a judgment directing conveyance to a financial institution.

(6) A copy of the judgment, including any judgment entered under the provisions of ORS 475A.055 (4), shall be sent by forfeiture counsel to the Asset Forfeiture Oversight Advisory Committee.

(7)(a) On entry of judgment for a claimant in any proceeding to forfeit property under this chapter, unless the court has foreclosed one or more security interests, liens or other interests covering the property, such property or interest in property shall be returned or conveyed immediately to the claimant designated by the court. The court, in the manner provided by ORCP 68, shall award costs, disbursements and attorney fees to the prevailing claimants and financial institutions, to be paid by the forfeiting agency.

(b) If it appears that there was reasonable suspicion that the property was subject to forfeiture, the court shall cause a finding to be entered, and no claimant or financial institution shall be entitled to damages, nor is the person who made the seizure, the seizing or forfeiting agency or forfeiture counsel liable to suit or judgment on account of such seizure or action. An order directing seizure issued under ORS 475A.035 (4) shall constitute a finding of reasonable suspicion that the property was subject to forfeiture.

(8) Nothing contained in this section shall prevent a claimant or financial institution from obtaining any deficiency to which such claimant or financial institution would otherwise be entitled.

(9) Nothing in this section or in ORS 475A.045 shall prevent a seizing agency from entering into an agreement with a claimant or other person for the reimbursement of the seizing agency for the costs and expenses relating to towing and storage of property or the cost of discharging any possessory chattel lien on the property arising under ORS 87.152 to 87.162 that attached to the property between seizure of the property and release or forfeiture of the property. [1989 c.791 §9; 1991 c.275 §2; 1991 c.290 §1; 1991 c.322 §2; 1991 c.800 §2; 1993 c.553 §2; 1999 c.59 §150; 2001 c.780 §§12,12a; 2003 c.14 §§311,312; 2003 c.576 §§464,465]

475A.111 Appellate review of order of mitigation. (1) In any appeal from a judgment of forfeiture, review of any mitigation ordered by the trial court shall be limited to the following:

(a) Whether the findings of fact are supported by the evidence in the record.

(b) Whether the ultimate conclusion modifying or declining to modify the judgment submitted by the plaintiff was an abuse of discretion by the trial court.

(c) Whether the judgment complies with applicable constitutional limitations.

(2) An appellate court may reverse, affirm, modify or remand the provisions of a judgment of forfeiture relating to mitigation, but the appellate court may not consider arguments for mitigation of a judgment of forfeiture unless those arguments were timely raised by the motion provided for in ORS 475A.091. [2001 c.780 §37; 2003 c.576 §255; 2005 c.22 §352]

(Distribution of Forfeited Property and Proceeds)

475A.115 Equitable distribution of property or proceeds; intergovernmental agreements. Distribution of property or proceeds in accordance with this chapter shall be made equitably and may be pursuant to intergovernmental agreement under ORS chapter 190. Intergovernmental agreements providing for such distributions and in effect July 24, 1989, shall remain valid unless changed by the parties. [1989 c.791 §12a; 1999 c.59 §151; 2001 c.780 §§13,13a]

475A.120 Distribution of forfeited property or proceeds by local government. (1) The provisions of this section apply to a forfeiting agency other than the state.

(2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting agency may:

(a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement agency or district attorney.

(b) Sell forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

(c) Retain forfeited property.

(d) With written authorization from the district attorney for the county in which the property was seized, destroy any forfeited firearms or controlled substances.

(3) If the forfeiting agency is a political subdivision other than a county, the political subdivision shall enter into an agreement with the county pursuant to ORS chapter 190 to provide a portion of the forfeiture proceeds to the county. Any intergovernmental agreements or ordinances providing for the distribution of forfeiture proceeds in effect on July 24, 1989, shall remain valid unless changed by the parties.

(4) A forfeiting agency shall distribute forfeiture proceeds as follows:

(a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the provisions of this paragraph. The forfeiting agency may not pay expenditures made in connection with the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of this paragraph.

(b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

(A) Deduct an amount equal to five percent of the proceeds and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

(B) Deduct an amount equal to 2.5 percent of the proceeds and deposit that amount in the Asset Forfeiture Oversight Account established by ORS 475A.160 for the purposes specified in ORS 475A.155;

(C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the Oregon Criminal Justice Commission Account established under ORS 137.662 for disbursement to drug court programs as described in ORS 3.450; and

(D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State Commission on Children and Families Account established by ORS 417.733 for disbursement to relief nurseries as described in ORS 417.788.

(c) If the forfeiting agency has entered into an agreement with a county under subsection (3) of this section, after paying costs under paragraph (a) of this subsection and making the deductions required by paragraph (b) of this subsection, the forfeiting agency shall pay the county the amounts required by the agreement.

(d) After making all payments and deductions required by paragraphs (a) to (c) of this subsection, the forfeiting agency may use forfeiture proceeds, including amounts received by a county under paragraph (c) of this subsection and pursuant to an intergovernmental agreement entered into under ORS 475A.115, only for:

(A) The purchase of equipment necessary for the enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances;

(B) Cash for use in law enforcement activities;

(C) Drug awareness and drug education programs offered in middle schools and high schools;

(D) The expenses of a forfeiting agency in operating joint narcotic operations with other forfeiting agencies pursuant to the terms of an intergovernmental agreement, including paying for rental space, utilities and office equipment; and

(E) Expenses of a district attorney in criminal prosecutions for unlawful delivery, distribution, manufacture or possession of controlled substances, as determined through intergovernmental agreement between the forfeiting agency and the district attorney.

(5) Notwithstanding subsection (4) of this section, growing equipment and laboratory equipment seized by a forfeiting agency that was used, or intended for use, in the manufacturing of controlled substances may be donated to a public school, community college or institution of higher education.

(6) A political subdivision shall sell as much property as may be needed to make the distributions required by subsection (4) of this section. Distributions required under subsection (4)(b) of this section must be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.

(7) The forfeiting agency, and any agency which receives forfeited property or proceeds from the sale of forfeited property, shall maintain written documentation of each sale, decision to retain, transfer or other disposition.

(8) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop and make available forms for the purpose of reporting forfeitures.

(9) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel necessary for the preparation of the report required by subsection (8) of this section.

(10) Political subdivisions of the state who receive forfeiture proceeds under this section shall submit a report to the Asset Forfeiture Oversight Advisory Committee for any year in which those proceeds are received. The committee shall develop and make available forms for the purpose of those reports. The forms shall require the political subdivision to report on how proceeds received by the political subdivision have been or will be used, and such other information as may be requested by the committee. Reports shall be submitted each December 15 for the last ending fiscal year of the political subdivision.

(11) This section applies only to forfeiture proceeds arising out of prohibited conduct as defined by ORS 475A.005 (11), and does not apply to proceeds from forfeiture based on other conduct. [1989 c.791 §10; 1991 c.276 §2; 1991 c.290 §2; 1991 c.934 §7; 1993 c.552 §1; 1993 c.553 §3; 1993 c.699 §6; 1995 c.79 §389; 1997 c.592 §1; 2001 c.780 §§14,14a; 2005 c.830 §§35,36]

475A.125 [1989 c.791 §11b; 1991 c.276 §3; 1991 c.290 §3; 1993 c.699 §7; 1995 c.79 §390; 1997 c.592 §2; 1999 c.59 §152; repealed by 2001 c.780 §32]

475A.126 Distribution of forfeited property or proceeds by state. (1) The provisions of this section apply only when the forfeiting agency is the state.

(2) Except as otherwise provided by intergovernmental agreement and this section, a forfeiting agency may:

(a) Sell, lease, lend or transfer forfeited property to any federal, state or local law enforcement agency or district attorney.

(b) Sell forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

(c) Retain forfeited property.

(d) With written authorization from the district attorney for the county in which the property was seized, destroy any forfeited firearms or controlled substances.

(3) The forfeiting agency shall distribute forfeiture proceeds as follows:

(a) Costs shall be paid first, including costs, disbursements and attorney fees as defined in ORCP 68 A and special expenses, including the provision of lawful currency, incurred by any seizing or forfeiting agency in investigating and prosecuting a specific case. The forfeiting agency may pay expenses of servicing or maintaining the seized property under ORS 475A.045 (3) under the provisions of this paragraph. The forfeiting agency may not pay expenditures made in connection with the ordinary maintenance and operation of the seizing or forfeiting agency under the provisions of this paragraph. Any amount paid to or retained by the Department of Justice under this paragraph shall be deposited in the Criminal Justice Revolving Account in the State Treasury. Any amount paid to or retained by the Oregon State Police under this paragraph shall be deposited in the State Police Account.

(b) After payment of costs under paragraph (a) of this subsection, the forfeiting agency shall:

(A) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5);

(B) Deduct an amount equal to three percent of the proceeds, not to exceed $50,000 in a biennium, and deposit that amount in the Asset Forfeiture Oversight Account established by ORS 475A.160 for the purposes specified in ORS 475A.155;

(C) Deduct an amount equal to 20 percent of the proceeds and deposit that amount in the Oregon Criminal Justice Commission Account established under ORS 137.662 for disbursement to drug court programs as described in ORS 3.450; and

(D) Deduct an amount equal to 10 percent of the proceeds and deposit that amount in the State Commission on Children and Families Account established by ORS 417.733 for disbursement to relief nurseries as described in ORS 417.788.

(c) If the forfeiting agency has entered into an intergovernmental agreement with a political subdivision under ORS 475A.115, or has entered into an agreement with any

other law enforcement agency of the state relating to distribution of forfeiture proceeds, after paying costs under paragraph (a) of this subsection and making the deductions required by paragraph (b) of this subsection, the forfeiting agency shall pay an equitable portion of the forfeiture proceeds to each agency participating in the seizure or forfeiture as provided by the agreement.

(d) After making all payments and deductions required by paragraphs (a) to (c) of this subsection, the forfeiting agency shall distribute the remaining proceeds as follows:

(A) If no law enforcement agency other than the Department of Justice participated in the seizure or forfeiture, the remaining proceeds, and proceeds received by the Department of Justice under paragraph (c) of this subsection, shall be divided between the Criminal Justice Revolving Account and the Special Crime and Forfeiture Account established by ORS 475A.130 according to the following schedule:

(i) One hundred percent of the first $200,000 accumulated shall be deposited in the Criminal Justice Revolving Account.

(ii) Seventy-five percent of the next $200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(iii) Fifty percent of the next $200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(iv) Twenty-five percent of the next $200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(v) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(B) If no law enforcement agency other than the Department of State Police participated in the seizure or forfeiture, the remaining proceeds, and proceeds received by the Department of State Police under paragraph (c) of this subsection, shall be divided between the State Police Account and the Special Crime and Forfeiture Account according to the following schedule:

(i) One hundred percent of the first $600,000 accumulated shall be deposited in the State Police Account.

(ii) Seventy-five percent of the next $300,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(iii) Fifty percent of the next $200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(iv) Twenty-five percent of the next $200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(v) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(4) Forfeiture proceeds distributed under subsection (3)(d) of this section may be used only for:

(a) The purchase of equipment necessary for the enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances;

(b) Cash for use in law enforcement activities;

(c) Drug awareness and drug education programs offered in middle schools and high schools; and

(d) The expenses of a forfeiting agency in operating joint narcotic operations with other forfeiting agencies pursuant to the terms of an intergovernmental agreement, including paying for rental space, utilities and office equipment.

(5) A forfeiting agency shall sell as much property as may be needed to make the distributions required by subsection (3) of this section. Distributions required under subsection (3)(b) of this section must be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.

(6) The forfeiting agency, and any agency that receives forfeited property or proceeds from the sale of forfeited property, shall maintain written documentation of each sale, decision to retain, transfer or other disposition of the property or proceeds.

(7) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or not the forfeiture results in an entry of judgment under ORS 475A.110. The committee shall develop and make available forms for the purpose of reporting forfeitures.

(8) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel necessary for the preparation of the report required by subsection (7) of this section. [2001 c.780 §38; 2005 c.830 §§37,38]

475A.130 Special Crime and Forfeiture Account. The Special Crime and Forfeiture Account is established in the General Fund of the State Treasury. The account shall consist of all forfeiture proceeds received or retained by agencies of the state under this chapter, except as otherwise provided by ORS 475A.126. All moneys in the account are continuously appropriated to the Department of Justice and may be used only for the purposes specified in ORS 475A.126 (4). [1989 c.791 §11c; 1993 c.699 §9; 1999 c.59 §153; 2001 c.780 §15; 2001 c.834 §§5a,9a; 2005 c.830 §39]

475A.135 [1989 c.791 §20; 1999 c.59 §154; repealed by 2001 c.780 §32]

ASSET FORFEITURE OVERSIGHT ADVISORY COMMITTEE

475A.155 Asset Forfeiture Oversight Advisory Committee. (1) The Asset Forfeiture Oversight Advisory Committee is created. The committee consists of 12 members to be appointed as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint six legislators to the committee. Three shall be Senators appointed by the President. Three shall be Representatives appointed by the Speaker.

(b) The Governor shall appoint three members to the committee.

(c) The Attorney General shall appoint three members to the committee.

(2) The term of a legislative member of the committee shall be two years. The term of all other members shall be four years. Members of the committee may be reappointed. If a vacancy occurs on the committee for any reason during the term of membership, the official who appointed the member to the vacant position shall appoint a new member to serve the remainder of the term. A member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of compensation and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Prepare reports detailing the number and nature of forfeitures carried out under this chapter and ORS 131.550 to 131.600 including the disposition and use of the proceeds from the forfeitures. The reports shall be submitted on or before March 31 of each year to the Speaker of the House of Representatives, President of the Senate, Attorney General and Governor.

(b) In consultation with forfeiture counsel, review and, if necessary, modify the reports required from forfeiture counsel and political subdivisions to ensure that information necessary for oversight is being obtained and is gathered in an efficient and effective manner.

(c) Make any recommendations it deems necessary to increase the effectiveness, fairness and efficiency of forfeiture actions brought under this chapter and ORS 131.550 to 131.600.

(d) Make any recommendations for additional legislation governing forfeiture actions brought under this chapter and ORS 131.550 to 131.600.

(e) Conduct studies or other activities as necessary to accomplish the purposes of this subsection.

(6) The Executive Director of the Oregon Criminal Justice Commission shall provide the committee with staff, subject to funds available for that purpose.

(7) For purposes of this section, "forfeiture counsel" includes forfeiture counsel as defined in ORS 131.550. [1989 c.791 §14; 1991 c.290 §4; 1993 c.699 §4; 1997 c.592 §3; 1999 c.59 §155; 2001 c.666 §§20,21; 2005 c.830 §39a]

475A.160 Asset Forfeiture Oversight Account. (1) The Asset Forfeiture Oversight Account is established in the State Treasury separate and distinct from the General Fund.

(2) The following moneys shall be deposited into the State Treasury and credited to the Asset Forfeiture Oversight Account:

(a) Moneys received from a state agency or political subdivision under the provisions of ORS 475A.120 and 475A.126; and

(b) Any other moneys appropriated to the Asset Forfeiture Oversight Account.

(3) The State Treasurer may invest and reinvest moneys in the Asset Forfeiture

Oversight Account in the manner provided by law. Interest earned by the account shall be credited to the account.

(4) The moneys in the Asset Forfeiture Oversight Account are continuously appropriated to the Oregon Criminal Justice Commission to be used for the purposes specified in ORS 475A.155.

(5) If at the end of a biennium the Asset Forfeiture Oversight Account has received amounts under the provisions of ORS 475A.120 (4)(b) and 475A.126 (3)(b) that are in excess of 115 percent of the biennial expenditure limitation established for expenditures from the account, the Oregon Criminal Justice Commission shall refund to each state agency or political subdivision that made payment into the account during the biennium a pro rata share of the amounts that are in excess of 115 percent of the expenditure limitation for the account, based on the amount of forfeiture proceeds paid into the account by the state agency or political subdivision. The commission is not required to issue any refund under this subsection if the amount of the refund is less than $25. [1997 c.592 §4; 1999 c.864 §1; 2001 c.780 §§16,16a; 2005 c.830 §40]