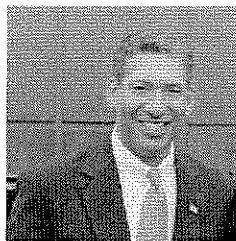


OVERVIEW OF FEDERAL ASSET FORFEITURE

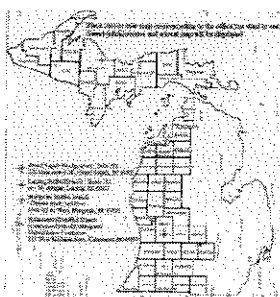
AUSA Joel S. Fauson
Asset Forfeiture Coordinator
USAO, Western District of Michigan

USAO – Western District of Michigan



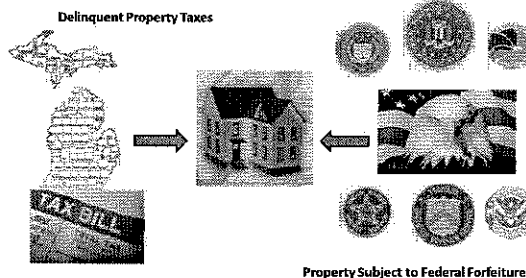
- United States Attorney: Patrick A. Miles, Jr.
- Chief Federal Law Enforcement Officer
- Responsible for criminal prosecutions and civil cases involving the Federal Government

USAO – Western District of Michigan

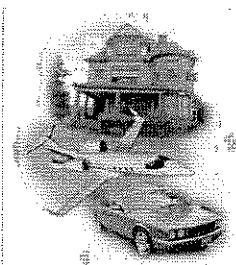


- 49 Counties
- 35,229 square miles
- Offices in Grand Rapids, Kalamazoo (unstaffed), Lansing, and Marquette
- 34 Assistant United States Attorneys

WHAT'S THE ISSUE?

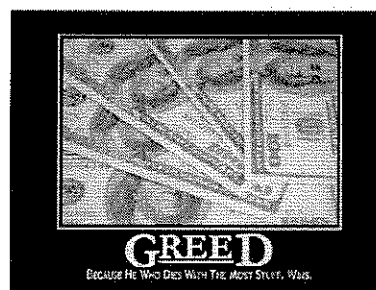


WHAT IS ASSET FORFEITURE?



The divestiture, without compensation, of property used in a manner contrary to the laws of the sovereign

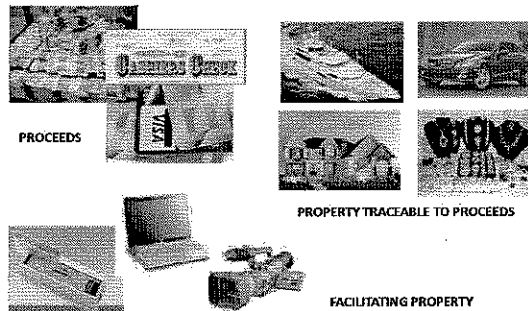
THE MOTIVATION FOR MANY (MOST?) CRIMES



WHY FORFEITURE?

- Punish the criminal
- Deter the illegal activity
- Remove the tools of the trade
- Disrupt the organization
- Return assets to the victims
- Protect the community
- Use the money for law enforcement

TYPES OF FORFEITABLE PROPERTY



RESTRAINTS ON REAL PROPERTY

- Affidavits of Interest
- Lis Pendens
- Protective/ Restraining Orders

AFFIDAVITS OF INTEREST

- Authorized by Mich. Comp. Laws § 565.451a
 - *An affidavit stating facts relating to any of the following matters which may affect the title to real property in this state...may be recorded in the office of the register of deeds of the county where the real property is situated:*
 - *(b) Knowledge of the happening of any condition or event which may terminate an estate or interest in real property*
- Utilized while a case is under investigation but judicial proceedings have not yet been instituted

LIS PENDENS

- Authorized by Mich. Comp. Laws § 600.2701
 - *To render the filing of a complaint constructive notice to a purchaser of any real estate, the plaintiff shall file for record...a notice of the pendency of such action, setting forth the title of the cause, and the general object thereof, together with a description of the lands to be affected thereby.*
- Mich. Comp. Laws § 600.2735 makes this provision applicable to suits in federal court.
- Utilized after filing a civil forfeiture complaint or after a Grand Jury returns an indictment naming real property subject to forfeiture.

METHODS OF FEDERAL FORFEITURE

- Administrative
- Criminal
- Civil

ADMINISTRATIVE FORFEITURE

- The process by which personal property may be forfeited to the United States without judicial involvement.

CRIMINAL FORFEITURE



An action that charges a crime against a person and includes the forfeiture of property

(U.S. v. Person)

CRIMINAL FORFEITURE

- Criminal Forfeiture is *in personam*.
- A defendant's property is only forfeitable upon obtaining a conviction.
- Need to establish a nexus between the count of conviction and the property.
 - Exception: money judgment + substitute assets
- Defendant's rights in the property are extinguished at sentencing.

CRIMINAL FORFEITURE

- What about third parties who may have an interest in the property?
 - The Government is obligated to publish notice and send direct notice to any person who "reasonably appears to be a potential claimant with standing to contest forfeiture..." Fed. R. Crim. P. 32.2(b)(6)(A)
 - Third parties may file a petition in U.S. District Court claiming their interest in the property within a specified time period
 - Petitions must be signed under penalty of perjury and provide specific information required by 21 U.S.C. § 853(n)(3)

CRIMINAL FORFEITURE

- There are only two bases for third parties to avoid forfeiture in a criminal case.
 - Demonstrating that they have a right, title, or interest in the property that was superior to the Defendant's at the time of the offense of conviction.
 (or)
 - Demonstrating that they are a bona fide purchaser for value of the right, title, or interest in the property and at the time of purchase, were reasonably without cause to believe that the property was subject to forfeiture.

CRIMINAL FORFEITURE

- Exclusive Jurisdiction
 - When real property is subject to a federal forfeiture order, no third party may claim an interest in the property, except as provided under 21 U.S.C. § 853(n).
 - When third parties attempt to litigate interests in real property subject to a federal forfeiture order in state court, remedy for the federal government is to seek removal of the case to federal court.

CIVIL FORFEITURE



An *in rem* proceeding brought against the property linked to criminal activity.

Based on the legal fiction that the property itself is "guilty".

(U.S. v. Property)

CIVIL FORFEITURE

- Protection for third party rights:
 - Government is required to publish notice and send direct notice and a copy of the complaint to any person who reasonably appears to be a potential claimant on the facts known to the Government.
 - A person wishing to assert an interest in the defendant property must file a claim under penalty of perjury in U.S. District Court that identifies the property and states the claimant's interest in it.
 - Claimants must also file an answer to the complaint within 21 days after filing their claim.

CIVIL FORFEITURE

- The burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is linked to criminal activity.
- Then, the claimant has the burden of proving that he/she is an *innocent owner* by a preponderance of the evidence.

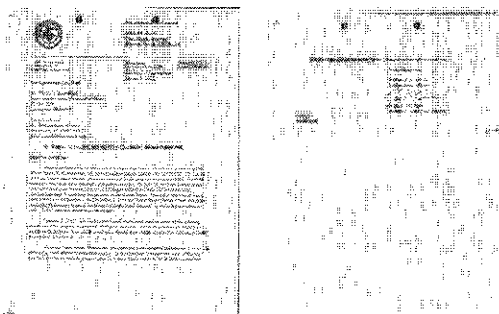
CIVIL FORFEITURE

- What is an innocent owner?
 - If the claimant had an interest in the property at the time of the illegal activity, they must show that:
 - They were not aware of the illegal activity, and
 - Upon learning of the illegal activity, they did all that could reasonably be expected to terminate such use of the property.
 - If the claimant acquired their interest after the illegal activity took place, they must show that:
 - They were a bona fide purchaser or seller for value, and
 - They did not know and were reasonably without cause to believe that the property was subject to forfeiture.

CIVIL FORFEITURE

- An innocent owner is not (by statute)
 - A person with only a general unsecured interest in, or claim against, the property
 - Bailees
 - Nominees who exercise no dominion or control over the property

COMMUNICATION



WHAT HAPPENS AFTER PROPERTY IS FORFEITED?



- Title vests in the United States
- Government sells the property
- Sale proceeds used to pay off county tax liens, remainder goes to the United States

QUESTIONS?

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(616) 456-2404
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