

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION**

General Court Regulation

No. 02 of 2016

Proceedings Seeking Civil Forfeiture of Real Estate and Seized Property

The Forfeiture Act of 1988, Act of June 30, 1988, P.L. 464, No. 79, §4, 42 Pa. C.S. §6801 et seq., which identifies real estate and seized property which may be subject to forfeiture to the Commonwealth, is the legal authority most commonly used in Philadelphia County to seek forfeiture of real estate and seized property. The purpose of these *in rem* civil proceedings is to determine the status of the property at issue and the respective rights of the Commonwealth and the property owner. Section 6802 specifies the procedure that must be followed in seeking such forfeiture; however, Section 6802 does not provide comprehensive procedures resulting in litigation challenging the process used in forfeiture proceedings. Recently, the Pennsylvania Supreme Court determined that the Rules of Civil Procedure may be applied to forfeiture proceedings where they do not conflict with the Forfeiture Act. See *Commonwealth v. All That Certain Lot or Parcel of Land Located at 605 University Drive*, 61 A.3d 1048 (Pa. 2014).

The within General Court Regulation is intended to fill the procedural gaps inherent in the Forfeiture Act and other statutes which authorize the forfeiture of real estate and property consistent with decisions of the Supreme Court and other appellate courts. Proceedings filed pursuant to this General Court Regulation are *in rem* and will be filed in the Court of Common Pleas of the First Judicial District of Pennsylvania, and will be managed through the statewide Court of Common Pleas Case Management System (CPCMS). The procedures adopted herein shall not apply to petitions for return of property which are filed pursuant to Pa.R.Crim.P. 588. Moreover, the procedures adopted herein do not apply to nonstatutory or common law forfeitures, if such proceedings are still recognized in this Commonwealth. See *Commonwealth v. 2010 Buick Enclave*, 99 A.3d 163 (Pa. Cmwlth. 2014).

1. **Filing of Petition.** The forfeiture proceeding shall be commenced within the time period specified by law by filing of a Petition with the Office of Judicial Records, Criminal Section (formerly “Clerk of Quarter Sessions” and “Clerk of Courts”).

Explanatory Note: The Petition, Answer and other pleadings and legal papers should be electronically filed as provided in Phila. Criminal Rule 576, at www.courts.phila.gov. However, the Office of Judicial Records will accept for filing the Petition, Answer and other pleadings and legal papers in a paper format through its office at the Justice Juanita Kidd Stout Center for Criminal Justice (“Stout Center”), Second Floor, Motions Counter, 1301 Filbert Street, Philadelphia, PA.

2. **Parties.** The parties shall be referenced as “Petitioner” (i.e., the Commonwealth of Pennsylvania) and “Respondent” (i.e., the property at issue) rather than “Plaintiff” and “Defendant.” The party or parties who have an interest in the property subject to forfeiture shall be referenced as “Claimant(s).”

3. **Content of Petition.** The Petition shall contain the following:

- a. A description of the property seized or subject to forfeiture.
- b. A statement of the time and place where seized, as applicable.
- c. The owner, if known.
- d. The person or persons in possession, if known.
- e. The related Offense Tracking Number (OTN), CPCMS criminal case number, and the criminal complaint, if applicable.
- f. The Property Receipt which describes the property seized.
- g. The Philadelphia Tracking Number (PID) of the claimant, if issued.
- h. The Philadelphia Police Department District Control number (DC#) associated with the seizure of the subject property, if one exists.
- i. An allegation that the property is subject to forfeiture pursuant to section 6801(a) (relating to controlled substances forfeiture) or 6801.1(a) (relating to terrorism forfeiture) and an averment of material facts upon which the forfeiture action is based.
- j. A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and sold according to law, unless cause be shown to the contrary.
- k. A verification pursuant to Pa.R.C.P. No. 1024 signed by the attorney for the Commonwealth.

4. **Notice to Defend.** The first page of the Petition shall include a Notice to Defend, signed as noted thereon, substantially as follows:

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION**

Commonwealth of Pennsylvania	:	CP - 51- MD - _____ - _____
Petitioner		
vs.	:	OTN #
		PID
[Description of Property Seized]	:	DC #
Respondent	:	PR #

LOCATION OF SEIZURE: _____

PROPERTY SEIZED FROM: _____

NOTICE TO DEFEND: CIVIL FORFEITURE OF PROPERTY

TO THE CLAIMANT OF THE ABOVE DESCRIBED PROPERTY:

You have been identified as the owner of, or person with a legal interest in, the above property. Alternatively, you were the person in possession of the above property at the time of the seizure.

In order to preserve any interest you may have to the above property, you are required to file an Answer to the attached Petition, setting forth your title or legal

interest in, and right to possession of, the said property within 30 days from the date you are served with this Notice. If you fail to file said Answer, a decree of forfeiture will be entered against said property. You may lose money or property or other rights important to you.

Additionally, you should know that **you may request a jury trial**. However, the request must be made no later than twenty (20) days after the service of the last permissible pleading. You can request a jury either by indicating so on any Answer you file or by submitting and filing a separate request with the Office of Judicial Records, Criminal Section.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE. YOU ARE NOT ENTITLED TO A COURT-APPOINTED LAWYER.

*Philadelphia Bar Association
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197*

/s/

Name of Person Signing and Title:
Attorney General, Deputy Attorney General,
District Attorney, Deputy District Attorney
or Assistant District Attorney
Date:

A copy of this Notice is also attached hereunder as “Attachment A.” This Notice may be modified from time to time as may be appropriate, and the current version shall be posted on the website of the First Judicial District at: www.courts.phila.gov/forms.

5. **Service of the Petition.** The Petitioner shall serve the Petition on the owner of the property or upon the person or persons in possession of the property at the time of the seizure. Service shall be accomplished by personal service or by certified mail.

6. **Substituted Service.** If the owner of the property is unknown or there was no person in possession of the property when seized or if the owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court (determined as provided in 42 Pa.C.S. § 6802 (d)), notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property shall have been seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary

notwithstanding. The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication. If no claims are filed within 30 days of the last publication, the property shall summarily forfeit to the Commonwealth.

7. **Proof of Service.** Immediately upon service, Petitioner shall file with the Office of Judicial Records, Criminal Section an Affidavit of Service, if service is accomplished by personal service, Proof of Service, if service is accomplished by certified mail, and Proof of Publication, if service is accomplished by publication as provided in Section 6 above. The certificate(s) of mailing and publication notices, when applicable, must be attached.

8. **Pretrial Conference.**

- (a) The Office of Judicial Records shall schedule a Pretrial Conference within thirty (30) days from the date the Petition is served on the owner(s) or person(s) in possession at the time of the seizure of the property.
- (b) A draft Notice is attached hereunder as "*Attachment B.*" This Notice may be modified from time to time by the Court as may be appropriate.

9. **Answer.** Any Claimant or putative or person in possession of the property shall file an Answer setting forth the Claimant's title in and right to possession of the property within thirty (30) days of service of the Petition as required by 42 Pa.C.S. § 6802 (b), or at any other time agreed upon by the Petitioner and the Claimant(s).

10. **Failure to File an Answer.** If an Answer is not filed as required above, the Petitioner may seek an entry of judgment by default by complying with the provisions of Pa.R.C.P. No. 237.1, or by filing a motion for judgment on the pleadings as provided in Pa.R.C.P. No. 1034, or by filing a motion for summary judgment pursuant to Pa.R.C.P. No. 1035.1 *et seq.*, or may seek any other appropriate relief. All motions shall be filed with the Office of Judicial Records, and will be assigned to a judge for disposition.

11. **Jury Demand.** A jury trial may be demanded by the Petitioner or Claimant(s) or other aggrieved party. Pursuant to Pa. R.C.P. No. 1007.1 (a), the right to jury trial shall be deemed waived unless a party files of record and serves on the adverse party a demand for jury trial no later than twenty (20) days after the service of the last permissible pleading. The jury demand shall be made by endorsement on a pleading or by a separate writing, substantially in the form attached hereto as "*Attachment C.*" A jury trial may be waived as provided in Pa.R.C.P. No. 1007.1(c)(2).

12. **Pretrial Conference.** The Pretrial Conference shall be conducted by a judicial officer or Trial Commissioner. The following issues shall be addressed by the judicial officer or Trial Commissioner:

- a. Whether the Petition and related documents were served on the on the owner of the above-referenced Property or upon the person or persons in possession of the property at the time of the seizure. If service could not effectuated, the Pretrial Conference will be rescheduled to a date certain to enable the Petitioner to effectuate service.

- b. Whether an Answer was filed. If an Answer has not been filed, whether there is agreement that an Answer may be filed within an agreed-upon period of time.
- c. Whether the Claimant is represented by counsel. The Claimant shall be informed that the Claimant is entitled to counsel, but is not entitled to court-appointed counsel.
- d. Whether the Claimant has requested, or intends to request, a jury trial. The Claimant shall be informed that the Claimant is entitled to a jury trial, and that in order to obtain a jury trial the Claimant must file a written request for a jury trial no later than twenty (20) days after the service of the last permissible pleading.
- e. Whether the proceedings may be resolved by agreement.
- f. If the Petitioner and Claimant indicate that an agreement has been reached, the proceeding shall continue as provided in No. 13 below. In the event the Pretrial Conference is conducted by a Trial Commissioner, the Trial Commissioner shall refer the case to a judge or, if a judge is unavailable, shall schedule the case before a judge for a hearing or trial.
- g. Whether there are any genuine issues of material fact.
- h. Whether discovery is necessary, and if so, the terms of discovery and a discovery schedule shall be established.
- i. Whether the Claimant is seeking a post-deprivation hearing. If a post-deprivation hearing is sought, a hearing shall be scheduled as soon as practicable after the filing of necessary pleadings, such as an Answer to the underlying forfeiture petition or motion for post-deprivation relief, as directed by the judicial officer presiding at the Pretrial Conference.
- j. Whether the Forfeiture proceedings should be stayed pending the disposition of a pending criminal case. Forfeiture proceedings shall be stayed if the Claimant is a defendant in a criminal case related to the property at issue in the Forfeiture proceedings.
- k. Whether a trial date must be or can be scheduled.
- l. Any other issues impacting the forfeiture of the seized property or the owner(s) thereof.

13. Trial or Hearing. The trial or hearing on the merits of the relief requested, if the proceedings have not been disposed through non-hearing disposition, shall be scheduled for a date certain. On the hearing or trial date, the Court shall:

- a. Determine whether the Claimant was given notice of the right to legal representation and the right to a jury trial, substantially as provided by the Notice to Defend provided herein.
- b. Determine whether a jury trial, if requested, has been waived or is waived by any party.
- c. If the Claimant is not represented by counsel despite having received notice that the Claimant could be represented by counsel, inform the Claimant that the Claimant may call any witnesses or offer documentary evidence in support of the Claimant's claim.

14. Burden of Proof. The Commonwealth must establish by a preponderance of the evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under section 6801(a), 6801.1(a) or other applicable statutory provision. If the Commonwealth meets its evidentiary burden, the burden then shifts to the Claimant to prove by a preponderance of the evidence that, *inter alia*:

- a. That the Claimant is the owner of the property or the holder of a chattel mortgage or

contract of conditional sale thereon.

- b. That the Claimant lawfully acquired the property.
- c. That the property was not unlawfully used or possessed by the Claimant. In the event that it shall appear that the property was unlawfully used or possessed by a person other than the Claimant, then the Claimant shall show that the unlawful use or possession was without his/her knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

15. **Appeal.** No post-trial motions need to be filed to the final order or judgment entered by the court. Appeals may be filed pursuant to Pa.R.A.P. 903.

16. **Other Applicable Rules of Civil Procedure.** Should any procedural issues arise during the forfeiture proceedings which are not amenable to resolution solely by application of the Forfeiture Act, the assigned judge may apply other Rules of Civil Procedures to regulate the practice and procedure of these proceedings.

17. **Minors as Parties.** In the event the owner or person or persons in possession of the seized property is a minor, the Commonwealth shall serve the minor and shall bring to the Court's attention the minority of the owner or person in possession. The Court shall determine to what extent a parent or natural guardian may need to represent the minor's interests consistent with Pa.R.C.P. No. 2026 *et seq.*

18. **Return of Property Petitions.** The terms of this General Court Regulation do not apply to motions for return of property filed pursuant to Pa.R.Crim.P. 588.

This General Court Regulation is issued in accordance with the April 11, 1986 order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration, Docket No. 1, and shall be filed with the Office of Judicial Records (formerly the *Prothonotary, Clerk of Quarter Sessions* and *Clerk of Courts*) in a docket maintained for Orders and General Court Regulations issued by the First Judicial District of Pennsylvania. Two certified copies of this General Court Regulation, and one copy on a computer diskette, shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Copies will be submitted to *American Lawyer Media, Jenkins Memorial Law Library*, and the Law Library for the First Judicial District shall be published in *The Legal Intelligencer* and posted on the First Judicial District's website at <http://courts.phila.gov>. This General Court Regulation will become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

BY THE COURT:

/s/ Jacqueline F. Allen

Date: July 25, 2016

HONORABLE JACQUELINE F. ALLEN
Administrative Judge, Trial Division
Court of Common Pleas, Philadelphia County

ATTACHMENT A

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION

Commonwealth of Pennsylvania	:	__ 51- MD - _____ - _____
Petitioner		
vs.	:	OTN #
		PID
[Description of Property Seized]	:	DC #
Respondent	:	PR #

LOCATION OF SEIZURE: _____

PROPERTY SEIZED FROM: _____

NOTICE TO DEFEND: CIVIL FORFEITURE OF PROPERTY

TO THE CLAIMANT OF THE ABOVE DESCRIBED PROPERTY:

You have been identified as the owner of, or person with a legal interest in, the above property. Alternatively, you were the person in possession of the above property at the time of the seizure.

In order to preserve any interest you may have to the above property, you are required to file an Answer to the attached Petition, setting forth your title or legal interest in, and right to possession of, the said property within 30 days from the date you are served with this Notice. If you fail to file said Answer, a decree of forfeiture will be entered against said property. You may lose money or property or other rights important to you.

Additionally, you should know that **you may request a jury trial**. However, the request must be made no later than twenty (20) days after the service of the last permissible pleading. You can request a jury either by indicating so on any Answer you file or by submitting and filing a separate request with the Office of Judicial Records, Criminal Section.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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Name:
Title:
Date:

ATTACHMENT B

**Commonwealth of Pennsylvania
Court of Common Pleas
County of Philadelphia
1st Judicial District**



NOTICE OF PRETRIAL CONFERENCE
Forfeiture Proceedings

Commonwealth v. [Describe Property]
Docket No. CP-51-MD--

Property Receipt No.:
Date Seized:
Location:

You are hereby DIRECTED to appear for a Pretrial Conference in the above-captioned Forfeiture proceeding to be held as follows:

Date:	Location: Courtroom The Juanita Kidd Stout Center for Criminal Justice 1301 Filbert Street Philadelphia, PA 19107
Time:	

On the above date, a Pretrial Conference will be held. The following issues shall be addressed:

- a. Whether the Petition and related documents were served on the on the owner of the above-reference Property or upon the person or persons in possession of the property at the time of the seizure. If service could not effectuated, the Pretrial Conference will be rescheduled to a date certain to enable the Petitioner to effectuate service.
- b. Whether an Answer was filed. If an Answer has not been filed, whether there is agreement that an Answer may be filed within an agreed-upon period of time.
- c. Whether the Claimant is represented by counsel. The Claimant shall be informed that the Claimant is entitled to counsel, but is not entitled to court-appointed counsel.
- d. Whether the Claimant has requested, or intends to request, a jury trial. The Claimant shall be informed that the Claimant is entitled to a jury trial, and that in order to obtain a jury trial the Claimant must file a written request for a jury trial no later than twenty (20) days after the service of the last permissible pleading.
- e. Whether the proceedings may be resolved by agreement.
- f. If the Petitioner and Claimant indicate that an agreement has been reached, the proceeding shall continue as provided in No. 14 below. In the event the Pretrial Conference is conducted by a Trial Commissioner, the Trial Commissioner shall refer the case to a judge or, if a judge is unavailable, shall schedule the case before a judge for a hearing or trial.
- g. Whether there are any genuine issues of material fact.
- h. Whether discovery is necessary, and if so, the terms of discovery and a discovery schedule shall be established.
- i. Whether the Claimant is seeking a post-deprivation hearing. If a post-depravation hearing is sought, a hearing shall be scheduled as soon as practicable after the filing of necessary pleadings, such as an Answer to the underlying forfeiture petition or motion for post-depravation relief, as directed by the judicial officer presiding at the Pretrial Conference.
- j. Whether the Forfeiture proceedings should be stayed pending the disposition of a pending criminal case. Forfeiture proceedings shall be stayed if the Claimant is a defendant in a criminal case related to the property at issue in the Forfeiture proceedings.
- k. Whether a trial date must be or can be scheduled.
- l. Any other issues impacting the forfeiture of the seized property or the owner(s) thereof.

ATTACHMENT C

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION**

Commonwealth of Pennsylvania : CP - 51- MD - _____ - _____
 Petitioner
 vs. : OTN #
 : PID
 [Description of Property Seized] : DC #
 Respondent : PR #

LOCATION OF SEIZURE: _____

PROPERTY SEIZED FROM: _____

NAME OF CLAIMANT: _____

JURY TRIAL DEMAND

Claimant, _____, requests a Jury Trial as provided in Pa.R.C.P.

No. 1007.1 and Phila. Civ.R. *1007.1 and *1007.2.

Claimant
Date: