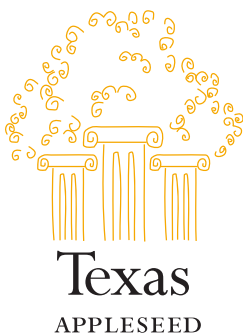


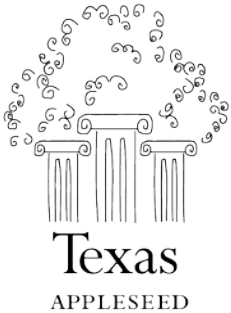


Defending Against a Civil Asset Forfeiture Case in Texas

A Toolkit for Property Owners



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Texas Appleseed Mission

Texas Appleseed's mission is to promote social and economic justice for all Texans by leveraging the skills and resources of volunteer lawyers and other professionals to identify practical solutions to difficult systemic problems.

Table of Contents

Texas Appleaseed Toolkit Team	i
Acknowledgments	iii
Overview of Civil Asset Forfeiture	1
Glossary	2
Questions You May Have About Civil Asset Forfeiture.....	4
Checklist for Appearing in Court.....	20
Sample Letter to the District Attorney	21
Sample Pleading	22
Defendant’s Original Answer	25
Sample Discovery Forms	27
Defendant’s Request for Disclosure	31
Defendant’s Request for Admissions, Interrogatories, and Production of Documents.....	32
Defendant’s Response to Plaintiff’s Request for Disclosure	38
Defendant’s Response to Plaintiff’s Request for Admissions.....	40
Defendant’s Response to Plaintiff’s Interrogatories	42
Defendant’s Response to Plaintiff’s Request for Production	44
Sample Summary Judgment.....	47
Defendant’s Motion for Summary Judgment	49
Defendant’s Response to Plaintiff’s Motion for Summary Judgment.....	51
Sample Final Judgment	53
Final Judgment	54

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OVERVIEW OF CIVIL ASSET FORFEITURE AND THE PURPOSE OF THIS GUIDE

Civil asset forfeiture is a legal tool that allows law enforcement to take private property used or intended to be used in committing certain crimes. The goal of civil asset forfeiture is to deprive criminal organizations of access to certain tools that they need to commit crimes, such as the money used to fund crime. Another goal is to discourage future crimes by taking away the profits from those crimes. However, civil asset forfeiture is sometimes used to take property from innocent property owners, serving no purpose but to benefit law enforcement.

This guide is an introduction to civil asset forfeiture and it is written specifically for anyone whose property has recently been taken by law enforcement. This guide is intended to help you understand which laws allowed your property to be seized, what happens throughout the legal process, and what you can do to try to get your property back.

This guide is also meant to help anyone who is interested in better understanding civil asset forfeiture, even if it has never happened to you. It may even help you prevent your assets from being forfeited in the future.

This guide is not meant to provide legal advice, either specific or general. For legal advice, you should consult a lawyer. Legal aid, the Texas State Bar, or Texas Appleseed may be able to help you find a lawyer for your civil asset forfeiture case. There is no guarantee that using the information in this guide will result in you winning your case, but it may be able to help.

GLOSSARY

An **Answer** is a response to a petition (or complaint). It is a type of legal pleading.

Contraband is any type of property that is used or intended to be used in committing a crime.

Discovery is the legal process used to find out facts that are important to a legal case. Discovery takes place before a case goes to trial. The point of discovery is to give both sides of a forfeiture case a chance to learn as much as they can about all the facts and legal issues of the case before they ever enter in a courtroom. Discovery prevents both sides from being surprised during trial.

Forfeiture is what happens when you lose your case in court. Forfeiture means that the agency has permanently taken your property.

An **Interest Holder** or an **Interested Party** is a person who is not the main owner of the property that has been seized, but still has an interest in the property. For example, you are the owner of your house, but a bank that has a mortgage on your house is an interest holder in that house.

A **Judgment** is a decision of a court about the rights and responsibilities of the parties in a legal action or proceeding. More simply put, it is the final decision of a judge that says who wins and who loses the case or what each party gets and what each party loses.

A **Motion** is a request to the court to rule in your favor. Parties or potential parties to a lawsuit make motions to the court.

Notice is when one party to the case notifies another of a document that it has filed with the court and delivers a copy of that document or Motion to the party being notified. Notice can also be required when an action is taken by the court. Notice is required by law for certain legal documents, like Answers or Motions.

An **Owner** is a person who owns all or a portion of the property that has been seized.

A **Petition** or a **Complaint** is the first document filed in a case that starts the case and states the facts that the case is based on. It is a type of legal pleading. The response to a Petition or a Complaint is called an Answer. In forfeiture cases, sometimes a Petition or Complaint will be called a "**Notice of Seizure and Intended Forfeiture.**"

A **Pleading** is a formal document in which you make legal claims, respond to legal claims, or list your defenses to the State's legal claims.

A **Seizure** is when a law enforcement officer takes possession of your property, beginning the process of civil asset forfeiture.

Service is the act of legally delivering a document, such as a pleading or some type of Notice. When a document requires Notice, you may have to serve the document in a specific way, and get a receipt to prove that you provided service.

QUESTIONS YOU MAY HAVE ABOUT CIVIL ASSET FORFEITURE

The Story of Steve Carter: A Civil Asset Forfeiture Example: Throughout the FAQ Section of this guide, we will use a made-up situation to explain the process for a forfeiture lawsuit/case.

These are the facts: On June 15, a Texas resident named Steve Carter goes to a check casher to cash his paycheck. On his way home, Steve gets pulled over by a police officer named Anthony Potts in York County, Texas for running a stop sign. At that time, Steve is carrying the \$900 in cash that he got from cashing his paycheck. Officer Potts asks Steve, "Are you carrying anything I should know about?" Steve tells the officer, "I have \$900 in the car because I just cashed my paycheck." Officer Potts orders Steve out of the car and takes the cash. Later, Officer Potts says that he smelled marijuana in the car, and that he took the cash because he was "sure that Steve's money came from selling drugs." Steve is Served with Notice of the forfeiture suit on July 7.

1. **What is civil asset forfeiture?**

Civil asset forfeiture is a legal tool that allows law enforcement to take your ***private property used or intended to be used in committing certain crimes***. The goal of civil asset forfeiture is to deprive criminal organizations of access to certain tools that they need to commit crimes, such as the money used to fund crimes. Another goal is to discourage future crimes by taking away the profits from those crimes. However, civil asset forfeiture is sometimes used to take property from innocent property owners for the benefit of the law enforcement agency.

To permanently take property from its owner, the law enforcement agency must go to court. To keep the property, the agency needs a court order known as a "judgment," sometimes referred to as a "judgment of forfeiture." To get a judgment of forfeiture, an attorney for the law enforcement agency must bring (and win) a forfeiture lawsuit in State court. The lawsuit by the State will be a civil case (not a criminal case). The case will be filed against the property (not against the owner of the property).

In our example, the lawsuit brought by the State would be called "State v. \$900 Cash" (instead of "State v. Carter"). The difference between the State filing against ***your property*** and the State filing against ***you*** is important, as discussed below.

Civil asset forfeiture is governed by Texas and federal law. The law most often used to support forfeiture of property in Texas can be found in the Texas Code of Criminal Procedure under Title 1, Chapter 59.

2. What is the difference between "a seizure" and "a forfeiture?"

Seizure is the act of taking property. In the most common case, seizure occurs when law enforcement takes physical property into its possession, for example, if a police officer takes your money during a traffic stop. In the case of non-physical property, such as a bank account, seizure takes place when the law enforcement agency takes away your right to use the property. The seizure of a bank account, for example, takes place when you lose the right to use the money in your account.

Forfeiture occurs when your rights to the seized property are permanently lost through a court order or judgment. Forfeiture occurs *after* seizure, and seizure does not always end in forfeiture.

In our example, the seizure takes place when Officer Potts takes the money from Steve. Forfeiture takes place if, and only if, the Court rules that Steve's money is contraband and that it will be forfeited. Then Officer Potts' police department gets to keep the money.

3. Who can seize property?

Local and State law enforcement can seize property, as well as federal law enforcement like the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), or Internal Revenue Service (IRS). Usually, however, the seizing party will be a member of a local or State police force.

The federal government gets more time to file forfeiture cases than the State does (up to 60 days), and the federal government can hold administrative proceedings instead of, or in addition to, judicial proceedings. Oftentimes, federal and State agencies will work together on a forfeiture case through a joint investigation, known as "equitable sharing." With equitable sharing, local officials are allowed to keep up to 80 percent of the proceeds of the sale of property.

In our example, Officer Potts is a York County, Texas police officer who is allowed to seize Steve's property as long as he has "probable cause." Officer Potts will say he had "probable cause" to seize the \$900 because he smelled marijuana and thought the money was from Steve selling drugs.

4. **What types of property can be seized?**

Law enforcement can seize **any** type of property. They can seize physical property like cars, boats, weapons, cash, drugs, drug paraphernalia, houses, and other real property. They may also seize non-physical property such as bank accounts, royalties, and proceeds from crimes. They can even seize property that does not exist yet, such as the future proceeds of crimes that have not yet been earned when the crime takes place. Police may even be able to seize income a person later earns through book or movie sales from a memoir written about his or her supposed crime, although there is some question as to whether that would be a violation of the person's constitutional rights.

In our example, Officer Potts would argue that he seized Steve's cash because Officer Potts believed that the cash was payment received for an illegal drug deal.

5. **When can civil asset forfeiture happen?**

After taking property, the State has 30 days to file the case with the court. If the property was taken by Federal agents (such as the FBI, DEA, or IRS) and then turned over to the State, the 30-day clock starts running when the property is given to State law enforcement. If the State does not file within the 30-day time period, you are entitled to the return of your property. The State is required to let you know through the mail or in person when it has filed a suit against your property. Letting you know through the mail or in person is called Serving Notice.

6. **Is a warrant required to seize my property?**

No, law enforcement does not always need a warrant to seize property. A police officer can seize property if he or she is in the process of arresting a person or conducting a lawful search, or if the officer conducts a search with your permission.

However, if property is seized without a warrant, the officer **must** have "probable cause" to make the search that leads to seizure. This means that before being searched by an officer, there must be facts that would lead a reasonable person to think that a crime had been or was about to be committed.

In our example, Officer Potts did not have a warrant, but he would argue that he had "probable cause" to search the car and seize the cash because he believed he smelled marijuana. Because Officer Potts believed he smelled marijuana, it was reasonable for him to believe that the crime of illicit drug use had just happened in Steve's car.

Alternatively, if Officer Potts asked Steve for permission to search the car and Steve said yes, Officer Potts could legally search the car and seize Steve's money.

7. **Do I have to be convicted of a crime for my property to be seized?**

No. Neither you nor anyone else needs to be convicted of a crime for your property to be seized or forfeited. In fact, **no criminal charges** need to be brought for your property to be forfeited.

In our example, Steve has never been charged with possession or selling of marijuana, but his \$900 was still taken.

8. **What protections do I have if my property is seized?**

If the seizing agency is a local or State police force, that agency must submit paperwork to a local District Attorney in the county where the property was taken and ask the District Attorney to file a lawsuit for the agency to keep the property permanently. This lawsuit is called a forfeiture lawsuit and is brought in the name of the State, against the property.

Once the State files a forfeiture lawsuit, you will need to defend against the lawsuit to try to get your property back. If you choose to do nothing, your seized property will be automatically forfeited through a "default judgment." See Questions 38 and 39 for more information on default judgments.

If the seizing agency is a federal entity (such as the FBI, DEA, or IRS), that agency must inform you of the seizure and any next steps you can take to attempt to acquire your property.

In our example, Officer Potts will have to submit an Affidavit that says why he stopped Steve and took Steve's money. The York County District Attorney will then review that paper work and file a forfeiture lawsuit based on Officer Potts' statements in his Affidavit. Steve will then have to defend his right to keep the \$900 in court.

9. **Do I have a right to a court-appointed attorney?**

No. Normally, when the State accuses **you** of committing a crime, you have a right to a free court-appointed attorney if you cannot afford a lawyer. Because **the property** is named as the defendant in the lawsuit, you do not have that right in a forfeiture case.

Fortunately, even though you don't have the right to a free, court-appointed attorney, there may be free or low-cost options available to help defend against forfeiture.

The [American Civil Liberties Union of Texas, ACLU](#), [Texas State Bar](#), and other legal aid organizations may be able to provide legal support in some cases. Other legal aid organizations include:

- [Lone Star Legal Aid](#)
- [Texas Rio Grande Legal Aid](#)
- [Legal Aid of Northwest Texas](#)
- [Houston Volunteer Lawyers Association](#)
- [Dallas Volunteer Attorney Program](#)

Unfortunately, each of these organizations has limited capacity, and in some cases, no free legal resources may be available.

10. Do I have the right to an attorney at all?

Yes. Even though there is no right to a free attorney, you always have the right to hire an attorney to defend your property rights. You will have to pay for your attorney, unless free legal help is available.

11. If my property is seized, is it automatically forfeited?

No. Seized property is not automatically forfeited. Property can only be forfeited through the State process if the State wins a court judgment in its favor. If the State wins its case, ownership of the property goes to the State, and you permanently lose any and all rights to the property.

In our example, Steve's \$900 was only seized, and is not yet forfeited. A forfeiture does not become final until the court signs a Judgment saying that the property is Contraband.

12. Will it cost me money to challenge the seizure?

Probably. In the event that legal aid or other free legal help is not available, you may want to hire a lawyer.

You can also choose to defend the case on your own, without a lawyer. If you choose to defend the case without a lawyer, your monetary costs will be smaller, but you will not

have the experience or expertise of a lawyer. You may appear in court when your forfeiture suit is set for hearing to present proof to the judge that your property was wrongly seized and should not be forfeited.

In our example, hiring an attorney may not be Steve's best option, given that an attorney may cost more than the \$900 that was taken. If Steve does not hire a lawyer, Steve will have to file and serve all of his own paperwork with the court and pay the fees necessary to file. Steve will also have to go to trial and present evidence that the money belonged to him, that it came from the check casher, that the money was the product of his paycheck, and that the money was not involved in any criminal activity.

13. **Will I have a jury trial?**

Probably not. Forfeiture suits are usually tried by a judge who listens to the State's evidence and your evidence. The judge then makes the final decision.

14. **Can I get my property back before the forfeiture case is decided?**

It is usually possible to temporarily get your property back after it's seized and before the forfeiture case is decided. Common exceptions to this rule, when you can't get your property back, include if the property is:

- a) evidence in a pending criminal investigation/case; or
- b) money or a check.

To **temporarily** get property back after it has been taken, you will need to "post a bond" by paying the court an amount equal to the value of the seized property. The court will only agree to temporarily give you your property back in place of the bond if (1) you promise to return the property to the custody of the State on the day of the forfeiture trial and (2) you will abide by the decision that is made at the end of the case. If you lose your forfeiture case, you will have to return the property and will have no further rights to the property.

In our example, because Steve's seized property is \$900, he will most likely not be able to get his property back while he waits for the court to hear his case.

15. **What if the property is my home?**

Your home can be seized and permanently forfeited even if it is your homestead. Texas homestead laws do not provide a defense to the owner of a seized home.

16. **What rules is the State required to follow in a forfeiture case?**

- **Filing Deadlines:** The State must file its forfeiture case within 30 days of taking your property (unless the property is taken by Federal agents, in which case the 30-day clock does not start running until the property is transferred to State law enforcement). If the State does not file within this time period, you are entitled to the return of your property.
- **Notice:** Under State law, Notice of a forfeiture lawsuit must be given to (1) the owner of the property and (2) any “interest holder” in the property (for example, a bank with a mortgage on your property). There are special Notice rules for cars and some other types of property. If the State does not give you Notice and that failure ends in your property being forfeited, you can:
 - file a Motion for a New Trial (a.k.a., ask your trial judge for a new trial); or
 - file what is called a “Bill of Review” suit. A "Bill of Review" suit is not an appeal of a forfeiture case, but a separate attack on the result of the forfeiture case. If successful, it gets rid of the judgment in the forfeiture case and allows a new trial for the forfeiture case. A "Bill of Review" suit is only allowed if you have a defense to the forfeiture action that you were not allowed or able to use because of (1) the State's fraud, accident, or wrongful act or (2) some other official mistake. The fact that you were not allowed or able to use a defense cannot be due to your fault or negligence in any way.

In our example, Steve should get his property back if the York County District Attorney does not file a Petition or "Notice of Seizure and Intended Forfeiture" by July 15, which is 30 days from June 15, when the \$900 was seized.

17. **What is the State’s burden of proof?**

Because civil asset forfeiture is *civil* in nature, the State does not need to prove that any crime occurred. The State must prove only **by a preponderance of the evidence** that your property is contraband.

"Preponderance of the evidence" means that the State needs to show that your property was **more likely than not** used (or intended to be used) in the commission of a crime. For example, money found in a drug lab may meet this burden of proof, even if there is no evidence that it was used in a specific drug transaction.

In our example, the presence of several baggies of marijuana in the car might lead the court to conclude that Steve more likely than not received the money as the proceeds of a drug sale. Steve's receipt from the check casher would suggest that the money was not from proceeds of a crime.

Fortunately, even if the State can meet that burden, there are "defenses" that you can use to keep your property from being forfeited. See Question 18.

18. **What are some defenses I can use to challenge a seizure?**

- **The Innocent Owner Defense** – This is the most common defense to forfeiture. You can use this defense if you got the seized property before, during, or after the time of the crime that made the property subject to forfeiture. In order to prove that you are an innocent owner, you need to show:
 - If you got the property **before or during** the time that the crime took place: You had no knowledge of that crime before taking the property, and you should not have reasonably known about the crime when the property was taken.
 - If you got the property **after** the crime took place: You got the property for value (i.e., you did not take the property for free), and did not have reason to believe the property was Contraband.

You cannot use the innocent owner defense if you purposefully avoided learning that the property was used (or intended to be used) in a crime.

- **Family Violence** – This defense applies to spouses who are victims of family violence, which makes them unable to stop a crime that is the basis for the seizure of their property.
- **Dismissal of Criminal Charges** – Dismissal of criminal charges (for the crime related to the seizure) is not a complete defense against forfeiture. However, you can use this defense when the criminal charges that may be associated with the property at issue in the forfeiture case are dropped in a separate court case. If the charges in your personal criminal case are dropped, you should include this defense along with Innocent Owner defense.

In our example, Steve would probably use the Innocent Owner Defense because he got the \$900 from the check casher. If that money had ever been involved in a crime, it was a crime that Steve didn't know about and could not have reasonably known about.

Other Common Defenses

The following defenses are common defenses in civil actions and *some may* apply to your forfeiture case. These defenses are also called "affirmative defenses," or defenses that are put forth by the defendant that, if proven, defeat or limit the legal consequences of the defendant's otherwise potentially unlawful acts.

- accord and satisfaction
- arbitration and award
- assumption of risk
- contributory negligence
- discharge in bankruptcy
- duress
- estoppel
- failure of consideration
- fraud
- illegality
- injury to fellow servant
- laches
- license
- release
- res judicata
- statute of frauds
- statute of limitations
- waiver

Descriptions of how and when these defenses might be used can be found on TexasLawHelp.org.

19. What are Pleadings?

Pleadings are documents filed with the court, by each party, that describe the basic position of each party, and ask the court to rule in that party's favor.

Within 30 days of the seizure, the State (always the Plaintiff in forfeiture cases) will file a Petition (also known as a Complaint) with the court. In civil asset forfeiture cases that Petition/Complaint is often called a "Notice of Seizure and Intended Forfeiture." The State's Petition will give the reason the State is suing for the forfeiture of the owner's property, the general facts that support the State's suit, and the relief that the State requests (here, forfeiture of your property).

In order to defend against the suit, the owner of the property must file an Answer. For more on the Answer, see Question 20.

In our example, the State would file a Petition or "Notice of Seizure and Intended Forfeiture" saying that the State believed drugs had been sold, that Steve's \$900 are the proceeds of a drug deal, and that under the forfeiture laws, Steve's cash is Contraband and should be forfeited to the State.

20. **What Pleadings should I file?**

After being served with a copy of the forfeiture suit, you should file an Answer. An Answer is your response to the State’s claims in their Petition.

You have only a limited amount of time in to file an Answer, or else you may lose the case. You should file an Answer **before** 10:00 a.m. in the court where the Petition was filed on or before the first Monday **after** 20 days have passed since the Petition was served on you. For instance, if the Petition is served on you on Friday, March 1, you should file an Answer before 10:00 a.m. Monday, March 25 because that is the first Monday that occurs after 20 days have passed (on Thursday, March 21) since the Petition was served on you.

Example Calendar

March						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 State Serves Petition on You	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21 Twenty Days After Service	22	23
24	25 Your Answer Due before 10:00 am	26	27	28	29	30

Your Answer should either (a) generally deny all the claims made in the State’s petition or (b) specifically deny each claim made in the State’s petition (deny each statement in the petition, one by one). It is also okay for you to say that you do not have enough facts to confirm or deny the claims made by the State in the Petition. A statement that you do not have enough facts works as a denial. Additionally, ***your Answer should include all***

defenses that you may potentially argue in court. See Question 18 for possible defenses.

For an example Answer, see "Defendant's Original Answer" in the Sample Pleadings Section of this Toolkit.

In our example, because Steve was Served with the "Notice of Seizure and Intended Forfeiture" on July 7, Steve will need to file and serve his Answer any time **before** 10:00 a.m. on the Monday immediately after July 27, in York County, Texas. In his Answer, Steve will generally deny the allegations of the State's Petition. Steve will also argue that the Innocent Owner Defense applies to him because (1) no drug sale took place and (2) the cash came from a legitimate source (the check casher after cashing his regular paycheck). Finally, Steve will clearly say that the cash should not be forfeited to the State, but returned to him.

21. **What is the difference between filing a document and serving a document?**

You **file** a document (like an Answer or Motion) with the court when you bring a document to the court clerk or file the document online through the Texas online filing system, found at <https://efile.txcourts.gov/ofswb>.

You **serve** a document by providing a copy of a document to the State and any other parties to the lawsuit.

Documents like Pleadings (including Petitions, Answers, Motions, and Notices) must be **filed** with the court where the case is taking place AND **served** on the State entity that filed the original forfeiture suit (like the District Attorney, if that is who filed the original Petition), plus served on any other party to the lawsuit.

22. **How do I file a document?**

You file a document in the court where your property is being sued (usually where your property was taken) by:

- bringing the document to the court clerk to be filed; **or**
- filing the document online through the Texas online filing system, found at <https://efile.txcourts.gov/ofswb>.

The county and court where your property is being sued can be found at the top of the State's Petition.

In our example, Steve will file his Answer any time **before** 10:00 a.m. on the Monday immediately after July 27, in York County, Texas.

23. **How do I serve a document?**

In the case of a forfeiture suit, you can serve a document on the State by hand-delivering a copy of the document, mailing it, faxing it, or emailing it to the State's attorney. If there are other parties named or listed in the suit as interest holders, besides you, you should also serve those parties or their legal representatives, if they have an attorney. You can serve a document on another party by hand-delivering a copy of the document, mailing it, faxing it, or emailing it to that party's attorney. If the party does not have an attorney, you serve it directly on that party. Other parties to the suit will be listed on the "Certificate of Service" for the Petition.

In an asset forfeiture case, the State will first need to **file** its petition with the court and then **serve** it on you, as well as on any other interested parties who must receive notice of the seizure, before the lawsuit can move forward. When you **file** your Answer to the State's petition, you will also need to **serve** it on the State and any other interested parties listed in the lawsuit. A court clerk should be able to provide more information about where and how to serve the State and any other parties.

In our example, Steve will mail his Answer to the York County District Attorney, who represents the State in his case.

24. **Do I have to file and serve documents in a forfeiture case?**

Yes. In addition to filing the Answer with the court, you will need to serve the Answer on the State's attorney that filed the original forfeiture suit. You should also serve any other interested party listed in the lawsuit, or their legal representative, if they have an attorney. If you make any other requests of the court by filing any motions (for example, asking the court to deny a request for discovery as discussed in Question 28), you will also need to serve those documents on the State's attorney and on any other parties to the lawsuit.

25. **Who do I need to Serve?**

Any time service is required, you will need to serve **every** party to the lawsuit. This means the State agency, as well as any other agency, individual, or party the State has named in the suit. The person who receives service is the attorney of the agency, entity,

or individual. If a party does not have an attorney, you serve that agency, entity, or individual, directly.

26. **What happens if I miss a deadline for a Pleading?**

After you are Served with the State's Petition, you usually have around 20 days (see Question 20 or 38) to file your Answer. If you do not respond to the State's Petition in time, the court will enter a "default judgment" against the property and the property will automatically go to the State. Although it is possible to reopen a case within 14 days after a default judgment, you really want to avoid a default judgment if you want attempt to get your property back.

A default judgment is the most common way that property is forfeited to law enforcement. (See Questions 38 and 39 for more information on default judgments.)

27. **What is "Discovery," and what is a "Discovery request"?**

Discovery is the process used before trial to allow both you and the State to learn about the facts of the case. Sometimes, Discovery helps the parties resolve the case before trial. There are seven types of Discovery:

- a. Requests for disclosure – This type of discovery is just the exchange of basic information between the parties. Requests for disclosure usually include the names and addresses of the parties and witnesses.
- b. Requests for production, inspection of documents, and tangible things – This type of discovery is used to get copies of documents and inspect other physical items relevant to the case.
- c. Requests and motions for entry upon and examination of real property – This type of discovery is used to gain access to land. Real property discovery allows a party to inspect, measure, test, or photograph land or property.
- d. Interrogatories – This type of discovery is a set of **written** questions that requires answers under oath from the person or entity answering the questions. The questions are used to narrow the issues, identify possible witnesses, and determine relevant documents.
- e. Requests for admission – This type of discovery is used to simplify the case by forcing parties to state basic facts about the case. A request for admission requires you to simply admit or deny certain facts. It is like answering a set of true/false questions.

- f. Oral or written depositions – This type of discovery is used to get sworn testimony before trial. A deposition is like what happens on a witness stand, except that it takes place outside the courtroom and before the trial.
- g. Motions for mental or physical examinations – This type of discovery is used to determine if there is an issue with the mental or physical health of a party.

It is common for the State to send you requests for disclosure, requests for production, interrogatories, and requests for admission. The State may also decide to combine different types of discovery into one discovery request.

In our example, the State may request that Steve answer an interrogatory with questions about what happened before and during the traffic stop with Officer Potts. The State may also ask Steve to show proof that he got the cash from the check casher. Steve should ask the State for the police report filed by Officer Potts (the officer who took Steve's property), as well as any video or audio recorded during the traffic stop. Steve can ask for the police report by sending a "Requests for Production, Inspection of Documents, and Tangible Things" to the State.

28. What should I do if the State sends me a request for discovery?

If the State sends you discovery requests, you must respond to those requests. (See Questions 29 & 30 for more information.) If you do not respond, the court can hold you in **contempt**, which means the judge decides that you have failed to comply with the court's rules. The judge can also impose penalties called **sanctions** if you do not respond to the State's discovery requests. If you are sanctioned, you may have to pay a fine or complete another task the judge thinks is appropriate.

If you think that the State's request for discovery has nothing to do with the case, or that the State is asking for too much work on your part, you can serve written objections on the State. These objections can include (but are not limited to) the following:

- a. The discovery request is **duplicative**, meaning that the State is asking for an unreasonable amount of information and for information that is repetitive;
- b. The discovery request is **obtainable from an alternative source**, meaning that the State is asking for information that it should get from another person or place more conveniently or less expensively;
- c. The discovery request is **harassing**, meaning that the State has issued this request not to get information, but solely to bother you;

- d. The discovery request is **overbroad**, meaning that the State is asking for too much information or too many documents without reasonable limitations on time, location, or subject of the information;
- e. The discovery request **invades your protected rights**, meaning the State's request violates your personal, constitutional, property, or privacy rights; or
- f. The discovery request is **not reasonably calculated to lead to the discovery of admissible evidence**, meaning the discovery request is not relevant to the seizure of property.

If, after your objection, the State still requires the information in its discovery request, it will file a Motion to Compel, asking the court to order you to give them the information/records requested. You can file a Response to the Motion to Compel by asserting the objections listed above.

29. **What happens if I miss a deadline to respond to a request for discovery?**

If the State sends you requests for discovery, you must respond to them either by answering the requests or objecting to them. Generally, you have 30 days to respond to the State's requests. If you miss the 30-day deadline, you should still respond to the State's request for discovery. Even if the response is late, you're much less likely to get sanctioned than if you never respond at all.

30. **Should I send the State my own discovery requests?**

If there are things that you think the State knows or documents, pictures, or video that you think the State has that could help you prove your arguments, you should make a discovery request. The State must respond to your requests; but the State's responses to your discovery requests are allowed have written objections like the ones listed in Question 28.

In our example, Steve may want to make a discovery request for any video or audio recording of Officer Potts' traffic stop that led to the seizure of Steve's money. Steve may also want to request any written reports filed by Officer Potts about the traffic stop and seizure.

Note: Requests for discovery are **not** filed with the court, but are only Served on the State and any other parties. You can serve a document on the State by hand-delivering a copy of the document, mailing it, faxing it, or emailing it to the State's attorney. You can serve a document on another party by hand-delivering a copy of the document, mailing

it, faxing it, or emailing it to that party's attorney. If the party does not have an attorney, you serve it directly on that party.

31. What are the possible ways my case could end?

A case could end in the following ways:

1. You do not file an answer to the State's suit, the court enters a default judgment in favor of the State, and your property is forfeited;
2. The State drops its case, dismisses its suit for the forfeiture of the property, and you get your property back;
3. After trial, the court finds in your favor and you get your property back;
4. After trial, the court finds in the State's favor and your property is forfeited; or
5. You and the State agree to settle before the case goes to trial. Generally, this means the State agrees to return all or a portion of your property to you.

There is a sixth possibility if there is more than one owner, or more than one interest holder. If the largest part of the property is the property that was seized, and the court finds for the State, the property will be sold. After the property is sold, the person who owns the largest part of the property will get nothing, but the other owners who own the parts of the property that were not forfeited may get part of the money from the property sale.

32. What is a settlement agreement?

A settlement agreement is when you and the State agree to end the forfeiture lawsuit and settle the case outside of court. Generally, this means the State agrees to return all or a portion of your property to you.

33. What can I do to settle my case?

You can attempt to call and talk to the District Attorney handling the State's forfeiture lawsuit. You may have to compromise, but the State probably does not want to go to trial either, so settlement may be a good solution. Settlement may also save you the costs associated with going to court, such as lost work hours, court filing fees, and some mailing costs.

In our example, Steve might call, email, or mail a letter to the York County District Attorney saying that the seizure was a mistake, asking for his money back, and showing that he got the \$900 from a check casher after cashing his legal paycheck.

34. What documents/evidence should I bring with me to court?

You should bring evidence that proves the argument you are trying to make. For example, if you bought a car from a reputable dealer without knowing that it was used in a drug transaction, bring the documents showing that you bought the car from the dealership. You should also bring any evidence suggesting your belief in the legitimacy of the purchase and your lack of knowledge of the car's history. For example, you could get a letter from the dealership saying that they also did not know the car had been used in a drug transaction.

In our example, Steve's best evidence might be a time-stamped receipt from the check casher or a written statement (also known as an affidavit) from a clerk at the check casher stating that the clerk had given Steve the \$900 in exchange for the check from Steve's employer on the day of the traffic stop.

35. How should I talk to the judge in my case?

You should speak to the judge respectfully and formally. Call the judge "Your Honor" and answer the judge's questions directly and honestly. Stay calm, even if you are frustrated, and always try to look the judge in the eyes. Even if you are frustrated by the State's attorney, you must always address your answers to the judge, and never to the other attorney. Remember to stand any time the judge comes into the room, as well as any other time that you are asked to speak.

36. What should I wear to court?

You should dress in your "Sunday best" when appearing in court. Men should wear a jacket and tie. Women should wear a dress or pant-suit. Your outfit should show your respect for the courtroom, and that you are taking the case seriously. You will want to present your best image to the court. A pair of slacks and a button-up shirt or blouse will reflect much better than cut-off shorts and flip-flops. In fact, some courts will *not* allow you to enter the courtroom if you are wearing shorts or a hat. Avoid any athletic attire, exercise outfits, or flip-flops.

37. Can cell phones be turned on during court?

No. Cell phones must be completely off when you are in the courtroom.

38. **What is a default judgment?**

After you are served with the State’s Petition, you only have a limited amount of time to file your Answer, or else you may lose the case by what is called a default judgment. You should file an Answer before 10:00 a.m. in the court where the Petition was filed **on or before** the first Monday after 20 days have passed since the Petition was served on you. For instance, if the Petition is served on you on Friday, March 1, you should file an Answer before 10:00 a.m. Monday, March 25 because that is the first Monday that occurs after 20 days have passed (on Thursday, March 21) since the Petition was served on you.

Example Calendar

March						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 State Serves Petition on You	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21 Twenty Days After Service	22	23
24	25 Your Answer Due before 10:00 am	26	27	28	29	30

The top of the Petition will say what district court the suit was filed in. If you do not respond to the State’s Petition by your deadline to file an Answer, the court will enter a judgment against your property. This is called a “default judgment.” Although it is sometimes possible to undo a default judgment, it is important to avoid a default judgment if you want your property back.

The most common way property is forfeited to the State is that property owners do not file an Answer to the State’s suit for forfeiture, and the court enters a default judgment against the property.

39. **Once a default judgment is entered, is there anything I can do?**

Yes. Within 14 days after a default judgment, you can file a motion asking the court to reverse its decision and set aside the default judgment. If the court grants your motion, you then have a chance to present your defense to the State's forfeiture suit. The judge can set aside the default judgment if the judge believes you have explained why your Answer to the State's case was not filed on time. In other words, the judge will decide if you have shown "good cause" for why you did not file your Answer on time. For example, a judge might consider it good cause if you received service of the State's Petition, but then you became extremely ill for the next two weeks and could not file on time.

40. **What happens if I lose my case? Can I appeal?**

Yes, you can appeal. Remember, appealing a decision will take more time and money.

41. **What can the State do with my property if I lose the case?**

Once your property is officially forfeited, the law enforcement agency that seized your property can use it for a wide variety of purposes, including paying police officers' salaries. Receiving unregulated profit from civil asset forfeiture is a clear incentive for police departments to seize property, which is one of the reasons that the civil asset forfeiture statutes of Texas are so widely criticized. Even if law enforcement uses forfeited property improperly, you **will not** be entitled to get that property back.

42. **What do I do if I am feeling overwhelmed? What do I do if I feel like this is too much for me to handle?**

Take a deep breath. Take it one step at a time. Remember, there may be free or low-cost help to represent you in your forfeiture case. Even if these organizations cannot represent you directly, they may be able to provide some advice.

- [American Civil Liberties Union of Texas, ACLU](#)
- [Texas State Bar](#)
- [Lone Star Legal Aid](#)
- [Texas Rio Grande Legal Aid](#)
- [Legal Aid of Northwest Texas](#)
- [Houston Volunteer Lawyers Association](#)
- [Dallas Volunteer Attorney Program](#)

CHECKLIST FOR APPEARING IN COURT

To prepare for trial, make sure to do the following:

- Confirm your trial date, time, and assigned courtroom.
- Arrange for any witnesses that you plan to have testify for you to attend the trial as well.
- Wear appropriate clothing. (See Question 36.)
- Turn your cell phone completely off. (See Question 37.)
- Gather, organize, and bring the following items to court during the trial:
 - Copies of all the legal papers that you have filed, sent, or received (for example, pleadings, motions, discovery, and responses by you or from the State);
 - A proposed judgment, stating how you would like the judge to rule;
 - A short summary of the facts of your case;
 - A pen and paper to take notes; and
 - Evidence: Any photographs, reports, or other documents that you plan to show in the case, labeled as “Exhibit A,” “Exhibit B,” “Exhibit C,” and so on. Use a highlighter to highlight important sections of information on ***copies*** of the documents. Make ***four copies*** of the evidence (one for the judge, the court clerk, the State, and yourself). Make more copies if there are other interested parties named in the case. Hold onto the original documents for presentation to the judge, if necessary.

SAMPLE LETTER TO THE DISTRICT ATTORNEY

Sometimes, it is possible to get your property back before a forfeiture lawsuit is ever filed by sending a simple letter to the attorney for the State in the county where your property was taken.

[INSERT DATE]
[NAME OF DISTRICT ATTORNEY IN COUNTY WHERE PROPERTY WAS TAKEN] [ADDRESS] [CITY, STATE ZIP]
Dear Mr./Ms. [INSERT LAST NAME OF DISTRICT ATTORNEY]:
It is my understanding that you are the district attorney in [CASE NAME & NUMBER, IF AVAILABLE], an asset forfeiture case pending in [NAME OF COURT, IF AVAILABLE]. The case involves [DESCRIPTION OF PROPERTY] that was seized by law enforcement on [DATE PROPERTY WAS TAKEN]. I am the owner of/an interest holder in this property and write to respectfully request that you consider dropping the case and returning the property to me.
As background, [ADD ANY BACKGROUND INFORMATION THAT IS RELEVANT. FOR INSTANCE, DESCRIBE WHAT HAPPENED WHEN THE PROPERTY WAS TAKEN AND WHAT YOU WERE DOING WITH THE PROPERTY AT THE TIME.]
[MAKE ANY ARGUMENTS ABOUT WHY THE CASE SHOULD BE DROPPED (A COMPREHENSIVE LIST OF SUCH ARGUMENTS IS AVAILABLE IN THIS TOOLKIT). FOR EXAMPLE, DID YOU BUY OR RECEIVE THE PROPERTY BEFORE OR DURING THE TIME THE RELEVANT CRIME TOOK PLACE AND HAVE NO KNOWLEDGE OF THE CRIME IN WHICH THE PROPERTY WAS USED? DID YOU GIVE SOMETHING OF VALUE FOR THE PROPERTY AFTER THE SUPPOSED CRIME TOOK PLACE AND WITHOUT REASON TO BELIEVE THE PROPERTY WAS USED IN COMMITTING A CRIME? IF THERE HAS NOT BEEN A CRIMINAL CONVICTION OR THERE HAVE NOT BEEN CRIMINAL CHARGES BROUGHT, STATE THAT ALSO].
Please let me know if you would be willing to discuss the case with me and/or if there is anything I can do to have the case dropped and my property returned. I would be more than willing to provide you with any additional information you may need.
Thank you for your consideration. I look forward to hearing from you.
Respectfully, [YOUR SIGNATURE] [YOUR PRINTED NAME] [YOUR ADDRESS] [YOUR PHONE NUMBER] [YOUR EMAIL]

SAMPLE PLEADING

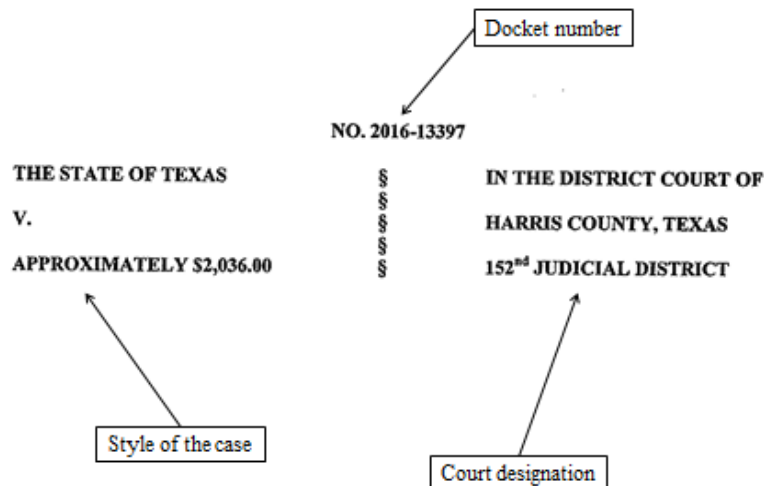
Both you and the State must comply with the court's rules, called the [Texas Rules of Civil Procedure](#), throughout the case. The rules require that the State take certain steps **before** going to trial. You must also follow these rules during and after the trial.

Many, but not all, courts and judges will understand that you are not a lawyer and do not know all the rules. They will not expect you to know all the rules, but they will expect you to follow them to the very best of your ability, even though you do not have legal training.

Some of these steps include filing documents with the court, called Pleadings. This section of the Toolkit provides a description of the Pleading that you will need to file during the case, called the Answer, and provides sample forms to use in writing and filing that Pleading.

While it is impossible to draft an example pleading that will cover all possibilities in a case, the example Pleading below may prove useful in defending an asset forfeiture case. You should carefully review the pleading and change it as needed, for your specific case.

For each pleading you file with the court, the document should contain the same caption that appears on the State's Petition. The caption shows the docket number, style, and court designation. The picture below is an example of a caption.



You must also personally sign each pleading and give your home address, telephone number, and e-mail address, if you have one.

Filing an Answer

The first thing that will happen in an asset forfeiture case is the State will file a document called a Petition/Complaint (see Question 19) with the court, also sometimes called a "Notice of Seizure and Intended Forfeiture." The Petition will notify you that the State has seized your property and identify the specific property seized. The State must file the Petition with the court within 30 days after the date the property is seized in one of the district courts in the county where the State seized the property. After the State files the Petition, the State must serve you. This means that the State must have someone deliver a copy of the Petition to you, usually, in person.

After the Petition has been delivered to you, you **must** file an Answer with the same court. An Answer is a type of Pleading that lists the reasons for your defense in plain language. Your Answer should either (a) generally deny all the claims made in the State's Petition or (b) specifically deny each claim made in the State's Petition (deny each statement in the Petition, one by one). It is also okay for you to say that you do not have enough facts to confirm or deny the claims made by the State in the Petition. A statement that you do not have enough facts works as a denial. Additionally, your Answer should include each argument you will raise in the case, including each defense you claim to the State's accusations. You may include as many defenses as you would like. (See Question 18 for common defenses.)

You only have a limited amount of time to file an Answer, or else you may lose the case. You **must** file an Answer by 10:00 a.m. in the court where the Petition was filed on or before the first Monday *after* 20 days have passed since the Petition was served on you. For instance, if the Petition is served on you on Friday, March 1, you should file an Answer before 10:00 a.m. on Monday, March 25 because that is the first Monday that occurs after 20 days have passed (on Thursday, March 21) since the Petition was served on you.

Example Calendar

March						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 State Serves Petition on You	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21 Twenty (20) Days After Service	22	23
24	25 Your Answer Due before 10:00am	26	27	28	29	30

If you do not file an Answer before the deadline, the State can request a Default Judgment, which means that the court rules in favor of the State simply because you did not file an Answer within the deadline. Even if you miss the deadline, you should still file an Answer with the court. If you miss the deadline, but file an Answer before the judge grants the State a Default Judgment, the court cannot give the State a Default Judgment and the case will continue.

The form in this Toolkit titled "Defendant's Original Answer" form is a model form for your Answer to the State's Petition. Your Answer must also include (1) the last three digits of your driver's license number, if you have one, and (2) the last three digits of your social security number, if you have one.

CAUSE NO. _____

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § _____ COUNTY, TEXAS
[INSERT PROPERTY] § _____ JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE COURT:

Defendant, [INSERT YOUR NAME, LAST THREE NUMBERS OF SOCIAL SECURITY NUMBER, AND LAST THREE NUMBERS OF DRIVER'S LICENSE NUMBER], files this original answer to Plaintiff's Petition on [DATE], and by way of answer, shows:

Defendant denies generally every allegation in Plaintiff's Petition and demands strict proof by a preponderance of the credible evidence.

Defendant also claims the following affirmative defenses:

1. [LIST DEFENSE ONE.]
2. [LIST DEFENSE TWO.]
3. [LIST DEFENSE THREE.]
4. [CONTINUE LISTING DEFENSES AS NEEDED. SEE QUESTION 18 FOR COMMON DEFENSES TO FORFEITURE AND OTHER MORE GENERAL DEFENSES.]

Defendant asks that Plaintiff take nothing from this lawsuit. Defendant asks for costs of court. Defendant asks for such other and further relief, at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted,

[SIGN YOUR NAME]
[PRINT YOUR NAME]
[YOUR ADDRESS]
[YOUR PHONE]
[YOUR EMAIL]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent on the [DAY] day of [MONTH] [YEAR] by regular U.S. mail, by facsimile, or certified mail, return receipt requested, to the following parties or attorneys of record:

[INSERT NAME OF STATE'S ATTORNEY], Attorney at Law

[INSERT NAME OF ANY OTHER PARTY OR THEIR ATTORNEY, AS NEEDED]

[SIGN YOUR NAME]

SAMPLE DISCOVERY FORMS

Before a case goes to trial, both parties can participate in a process called discovery. The purpose of discovery is to allow both you and the State to learn about all the issues and facts of the case, and to prevent both of you from being surprised during trial. Discovery can also result in the case being resolved without going to trial. For example, a party may make a request to the court for summary judgment at the end of discovery.

You can get discovery from the State about anything that has to do with your case. The State can also obtain discovery from you about anything that has to do with the case.

Both you and the State have to follow certain rules when sending and answering discovery requests. The discovery rules are found in the [Texas Rules of Civil Procedure](#). If you do not try follow those rules, you could be subject to sanctions, which are penalties that the court can impose. The court can impose several different types of sanctions. For example, if you do not respond to the State's discovery requests and the State requests that the court impose sanctions, the court could order you to pay money to the State or order the owner to do community service. The State can also receive sanctions if it does not follow the discovery rules and it could also be ordered to, for example, pay you money.

Types of Discovery

There are seven types of discovery:

1. Requests for disclosure;
2. Requests for production and inspection of documents and tangible things ("requests for production");
3. Requests for motions for entry upon and examination of real property;
4. Interrogatories to a party;
5. Requests for admission;
6. Oral or written depositions; and
7. Motions for mental or physical examinations.

The types of discovery most commonly used in asset forfeiture cases are requests for disclosure, requests for production, interrogatories, and requests for admission. This section of the Toolkit provides a description of these four types of discovery and provides sample forms to use when sending discovery requests to the State and responding to discovery requests from the State. The example discovery forms may prove useful in discovery for an asset forfeiture case.

NOTE: Carefully review each discovery form and change the document where needed to fit your specific case. It is impossible to draft an example discovery form in a way that anticipates all possibilities for every case.

Levels of Discovery

Besides the seven *types* of discovery, there are also three *levels* of discovery: Level 1, Level 2, and Level 3. The State will choose which level of discovery that will be used for the case – either Level 1 or 2. Most cases occur under Level 2 discovery. Level 3 discovery will only happen if a court specifically orders that discovery be conducted at Level 3.

- Under a **Level 1** discovery plan, the discovery period lasts for 180 days from the date of the first request for discovery.
- Under a **Level 2** discovery plan, the discovery period ends either (a) thirty days before the date set for the trial; or (b) nine months after the date of the first oral deposition or nine months after the due date of the first response to written discovery, whichever is earlier.
- Under a **Level 3** discovery plan, the court will set the end of the discovery period or the deadline for serving discovery.

Requests for Disclosure

A "Requests for Disclosure" must be served no later than 30 days before the end of any discovery period. Different rules will apply, depending on the Level of discovery. (See above on Levels of Discovery.)

Your "Response to Plaintiff's Request for Disclosure" must be served on the State within 30 days after you receive that Request. However, if the State serves you with a Request For Disclosure *before* your Answer is due, you do not have to respond to the State's Request for Disclosure until 50 days after you receive it.

If your answer later changes or if you learn new information that you did not include in your first Response, you will need to update (also known as, "Amend") your Response to Plaintiff's Requests for Disclosure through the court.

Requests for Production

You can use the form in this Toolkit titled "Defendant's Requests for Admissions, Interrogatories, and Production of Documents" to request that the State give you any necessary:

1. document;
2. object; or
3. information.

You should file this document if you want to see, sample, photograph, copy, or perform any (nondestructive) test on a document or object that the State has in its possession. You may not serve the State with the Request any later than 30 days before the end of the discovery period. (See above section on Levels of Discovery to find out how long your discovery period is.)

You should use the form in this Toolkit titled "Response to Plaintiff's Requests for Production" to respond to any Request for Production from the State. Your Response must be served on the State within 30 days after you receive that Request. However, if the State serves you with a Request for Production *before* your Answer is due, you do not have to respond to the State's Request for Production until 50 days after you receive it.

Interrogatories

You can use the form in this Toolkit titled "Defendant's Requests for Admissions, Interrogatories, and Production of Documents" to ask the State to answer your interrogatories or questions. You should use this document to ask about any information relevant to the case (except for information about the State's testifying experts, if they have any).

Depending on which level discovery the case is proceeding under, different discovery rules may apply. On a Level 1 discovery plan, you or the State can only serve up to 15 interrogatories. On a Level 2 discovery plan, you or the State can only serve up to 25 interrogatories.

Discovery limits do not include interrogatories asking only for identification or authentication of specific documents. Each distinct part of an interrogatory is counted as a separate interrogatory. (For example, if you have Interrogatory 1(a), 1(b), 1(c), and

1(d), that counts as 4 of your allowable interrogatories.) You cannot serve the State with Interrogatories if there are fewer than 30 days left in the discovery part of the case.

You should use the form in this Toolkit titled "Defendant's Response to Plaintiff's Request for Interrogatories" to respond to any Request for Interrogatories from the State. Your Response must be served on the State within 30 days after you receive that Request. However, if the State serves you with Interrogatories *before* your Answer is due, you do not have to respond to the State's Interrogatories until 50 days after you receive it.

Requests for Admissions

You can use the form in this Toolkit titled "Defendant's Requests for Admissions, Interrogatories, and Production of Documents" to require the State to admit or deny the truth of any matter within the scope of discovery for the case. This procedure is meant to simplify the issues for trial by eliminating matters where both parties agree. You can use Requests for Admissions to show that there is no dispute for specific statements of opinion or of fact. You cannot serve the State with a Request if there are fewer than 30 days left in the discovery part of the case.

You should use the form in this Toolkit titled "Response to Plaintiff's Requests for Admission" to respond to any Request for Admission from the State. Your Response must be served on the State within 30 days after you receive that Request. However, if the State serves you with a Request for Admissions *before* your Answer is due, you do not have to respond to the State's Request for Admissions until 50 days after you receive it.

CAUSE NO. _____

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § _____ COUNTY, TEXAS
[INSERT PROPERTY] § _____ JUDICIAL DISTRICT

DEFENDANT’S REQUEST FOR DISCLOSURE

Pursuant to Rule 194, you are requested to disclose, within thirty (30) days of service of this request, the information or material described in Rule 194.2 of the Rules of Civil Procedure.

Respectfully submitted,

[SIGN YOUR NAME]
[PRINT YOUR NAME]
[ADDRESS]
[PHONE NUMBER]
[EMAIL]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent on the [DAY] day of [MONTH] [YEAR] by regular U.S. mail, by facsimile, or certified mail, return receipt requested, to the following parties or attorneys of record:

[NAME OF THE STATE’S ATTORNEY], Attorney at Law
[ADDRESS OF THE STATE’S ATTORNEY]

[NAME EACH INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]
[ADDRESS OF INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]

[SIGN YOUR NAME] _____

CAUSE NO. _____

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § _____ COUNTY, TEXAS
[INSERT PROPERTY] § _____ JUDICIAL DISTRICT

**DEFENDANT’S REQUESTS FOR ADMISSIONS, INTERROGATORIES,
AND PRODUCTION OF DOCUMENTS**

Pursuant to Rules 196, 197, and 198 of the Texas Rules of Civil Procedure, Defendant hereby serves these Requests for Admissions, Interrogatories, and Production of Documents to Plaintiff.

The answer to Interrogatories shall be made under oath by Plaintiff, separately and fully in writing, on or before the 30th day after receipt of such Interrogatories and shall be delivered to Defendant. You are further charged with the duty, as imposed by Rule 193.5, Texas Rules of Civil Procedure, to supplement these answers not less than thirty (30) days before the beginning of trial in this case if you later obtain information upon which:

- a. You or your attorney know that your answer to one or more of the following Interrogatories was incorrect or incomplete when made; or
- b. You or your attorney know that your answer to one or more of the following Interrogatories, though complete when made, is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading.

As used in the attached requests:

“**Identify**” when referring to a person, means to state that person’s full name, complete present or last known address, including the street, street number, route number, city, county,

state, zip code, home and cell phone numbers, and, if known, present or former employment, including the name of the person's employer and the employer's complete address.

“**Document**” means and includes all originals when available, and otherwise a carbon copy, photocopy, or other identical or non-identical copy, of any papers, books, accounts, writings, drawings, graphs, charts, photographs, electronic, video, or audio recordings, and other data compilations.

Additionally, Defendant requests Plaintiff to admit the truth of the following matters of fact for the purpose of such action only, and subject to all proper objections to admissibility which may be made at the trial of this cause. These requested admissions are made under Rule 198 of the Texas Rules of Civil Procedures, and each of the matters of which an admission is requested shall be deemed admitted unless the party to whom the request is directed delivers or causes to be delivered to the party requesting the admissions, a response within thirty (30) days or such further time as the Court may allow on motion, either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

If any request cannot be admitted or denied, please specify on a separate sheet the reasons why the request cannot be admitted or denied and any efforts made to obtain information sufficient to allow you to admit or deny the request. Under Rule 198.2, an answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or obtainable by him is insufficient to enable him to admit or deny.

Additionally, Defendant requests Plaintiff to produce for inspection the documents requested herein, pursuant to Rule 196. This request for production may be complied with by

mailing copies of the requested documents to Defendant within thirty (30) days of the receipt of this request. To the extent any request for production is objected to, please set forth a complete basis for the objection. If you object to only a portion of a particular request, specifically identify the portion of the request to which you are objecting and respond completely to the remainder.

INTERROGATORIES

INTERROGATORY ONE: For each person listed in Defendant's Request for Disclosure under Rule 194.2(e), please state in detail the relevant facts of which each person has knowledge.

INTERROGATORY TWO: For each person you plan to call to testify at trial, other than a testifying witness, please:

- a. Identify each person.
- b. State the matter on which the person is expected to testify.
- c. State the substance of the anticipated testimony.
- d. Identify each and every document, including, but not limited to, any statement of any person with knowledge of relevant facts, that has been prepared by or reviewed by the person who is expected to testify, with regard to the subject matter of this case.

INTERROGATORY THREE: Identify any and all felony offenses that you allege or plan to allege were committed in relation to the seizure of the property at issue in this case.

INTERROGATORY FOUR: Under what statute and/or regulation(s) was this asset forfeiture established?

INTERROGATORY FIVE: How much money do you expect your office to retain from this seizure?

INTERROGATORY SIX: Identify the relationship or nexus between the property that was seized and the alleged underlying criminal activity.

INTERROGATORY SEVEN: Have you filed or do you intend to file criminal charges in relation to the alleged underlying crime or wrongdoing?

INTERROGATORY EIGHT: Describe the probable cause that supported the seizure.

INTERROGATORY NINE: Did you or any other person or entity prepare any preliminary, final, or other written reports of any kind concerning in any manner the seizure of the property that is at issue in this case? If so:

- a. Identify the person who currently has custody of each report.
- b. Give the date of each report.
- c. Identify the author(s) of each report.
- d. Identify the person who initially requested the preparation of each report.
- e. State the conclusions reached in each report.

INTERROGATORY TEN: [CONTINUE INTERROGATORIES AS NEEDED. DO NOT GO OVER NUMBER OF INTERROGATORIES ALLOWED. (On a Level 1 discovery plan, you can only serve up to 15 interrogatories. On a Level 2 discovery plan, you can only serve up to 25 interrogatories.)]

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION ONE: Produce all documents or reports that have been prepared by those persons you plan to call at trial.

REQUEST FOR PRODUCTION TWO: Provide all documents, materials, or tangible things which you state support forfeiture in this case or support the allegations or assertions which you have raised or will raise.

REQUEST FOR PRODUCTION THREE: Provide the sworn statement from the seizing officer or individual to the attorney representing the State that contains a schedule of the property seized, an acknowledgment that the officer seized the property, and a list of the officer's reasons for seizure.

REQUEST FOR PRODUCTION FOUR: [CONTINUE REQUESTS FOR PRODUCTION AS NEEDED.]

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION ONE: That the property seized is alleged to be proceeds gained from the commission of a felony.

REQUEST FOR ADMISSION TWO: That the property seized is alleged to be property acquired with proceeds gained from the commission of a felony.

REQUEST FOR ADMISSION THREE: That the property seized is alleged to be property used to commit a crime.

REQUEST FOR ADMISSION FOUR: That the property seized is alleged to be property intended to be used to commit a crime.

REQUEST FOR ADMISSION FIVE: That the property seized is alleged to be used or intended to be used in sex crimes against children or trafficking.

REQUEST FOR ADMISSION SIX: That the property seized is alleged to be used in connection with money laundering.

REQUEST FOR ADMISSION SEVEN: That the law enforcement officer who seized the property placed the property under seal no later than 72 hours after seizure.

REQUEST FOR ADMISSION EIGHT: That the law enforcement officer who seized the property removed the property to a place ordered by a court not later than 72 hours after seizure.

REQUEST FOR ADMISSION NINE: That the law enforcement officer who seized the property required a law enforcement agency of the State or a political subdivision to take custody of the property and move it to a property location not later than 72 hours after seizure.

REQUEST FOR ADMISSION TEN: [CONTINUE REQUESTS FOR ADMISSION AS NEEDED.]

Respectfully submitted,

[SIGN YOUR NAME]
[PRINT YOUR NAME]
[ADDRESS]
[PHONE NUMBER]
[EMAIL]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent on the [DAY] day of [MONTH] [YEAR] by regular U.S. mail, by facsimile, or certified mail, return receipt requested, to the following parties or attorneys of record:

[NAME OF THE STATE'S ATTORNEY], Attorney at Law
[ADDRESS OF THE STATE'S ATTORNEY]

[NAME EACH INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]
[ADDRESS OF INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]

[SIGN YOUR NAME] _____

CAUSE NO. _____

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § _____ COUNTY, TEXAS
[INSERT PROPERTY] § _____ JUDICIAL DISTRICT

DEFENDANT’S RESPONSE TO PLAINTIFF’S REQUEST FOR DISCLOSURE

Pursuant to Rule 194.3 of the Texas Rules of Civil Procedure, Defendant serves this response to Plaintiff’s Request for Disclosure as follows:

[Here you will restate each disclosure request and then answer the disclosure.]

(a) The correct names of the parties to the lawsuit.

[LIST THE CORRECT NAMES OF THE PEOPLE INVOLVED IN THE LAWSUIT.]

(b) The name, address, and telephone number of any potential parties.

[LIST YOUR CONTACT INFORMATION, AS WELL AS THE CONTACT INFORMATION OF ANYONE ELSE WHO MAY OWN PART OF THE SEIZED PROPERTY.]

(c) The legal theories and, in general, the factual bases of the responding party’s claims or defenses.

[DESCRIBE THE FACTS OF YOUR CASE, AND IN PARTICULAR, DESCRIBE THE FACTS THAT SUPPORT WHY YOU SHOULD GET YOUR PROPERTY RETURNED TO YOU.]

(d) The amount and any method of calculating economic damages.

[IF YOU SUFFERED ANY COSTS AS A RESULT OF THE SEIZURE, FILL THEM IN HERE, ALONG WITH HOW YOU CALCULATED THOSE COSTS.]

(e) The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

[FILL IN THE NAME AND CONTACT INFORMATION FOR ANYONE WHO IS INVOLVED IN THE CASE OR KNOWS IMPORTANT INFORMATION ABOUT THE PROPERTY.]

(f) [LIST NEXT DISCLOSURE REQUEST]

[ANSWER DISCLOSURE REQUEST (f)]

(g) [LIST NEXT DISCLOSURE REQUEST]

[ANSWER DISCLOSURE REQUEST (g)]

[CONTINUE AS NECESSARY]

Respectfully submitted,

[SIGN YOUR NAME]
[PRINT YOUR NAME]
[ADDRESS]
[PHONE NUMBER]
[EMAIL]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent on the [DAY] day of [MONTH] [YEAR] by regular U.S. mail, by facsimile, or certified mail, return receipt requested, to the following parties or attorneys of record:

[NAME OF THE STATE'S ATTORNEY], Attorney at Law
[ADDRESS OF THE STATE'S ATTORNEY]

[NAME EACH INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]
[ADDRESS OF INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]

[SIGN YOUR NAME] _____

CAUSE NO. _____

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § _____ COUNTY, TEXAS
[INSERT PROPERTY] § _____ JUDICIAL DISTRICT

DEFENDANT’S RESPONSE TO PLAINTIFF’S REQUEST FOR ADMISSIONS

Pursuant to Civil Procedure Rule 198, Defendant responds to the Requests for Admission served by Plaintiff as follows:

REQUEST NO. 1: [COPY THE REQUEST FROM THE PLAINTIFF WORD-FOR-WORD.]

RESPONSE NO. 1: [ANSWER "ADMITTED" IF THE ENTIRE STATEMENT IN REQUEST NO. 1 IS TRUE. ANSWER "DENIED" IF ANY PART OF THE STATEMENT IN REQUEST NO. 1 IS NOT TRUE. YOU ONLY HAVE TO EXPLAIN YOUR ANSWER IF YOU CANNOT ADMIT OR DENY THE REQUEST.]

REQUEST NO. 2: [COPY THE REQUEST FROM THE PLAINTIFF WORD-FOR-WORD.]

RESPONSE NO. 2: [ANSWER "ADMITTED" IF THE ENTIRE STATEMENT IN REQUEST NO. 2 IS TRUE. ANSWER "DENIED" IF ANY PART OF THE STATEMENT IN REQUEST NO. 2 IS NOT TRUE. YOU ONLY HAVE TO EXPLAIN YOUR ANSWER IF YOU CANNOT ADMIT OR DENY THE REQUEST.]

REQUEST NO. 3: [COPY THE REQUEST FROM THE PLAINTIFF WORD-FOR-WORD.]

RESPONSE NO. 3: [ANSWER "ADMITTED" IF THE ENTIRE STATEMENT IN REQUEST NO. 3 IS TRUE. ANSWER "DENIED" IF ANY PART OF THE STATEMENT IN REQUEST NO. 3 IS NOT TRUE. YOU ONLY HAVE TO EXPLAIN YOUR ANSWER IF YOU CANNOT ADMIT OR DENY THE REQUEST.]

[CONTINUE FOR AS MANY REQUEST NUMBERS AS NECESSARY TO ANSWER ALL REQUESTS.]

Respectfully submitted,

[SIGN YOUR NAME]
[PRINT YOUR NAME]
[ADDRESS]
[PHONE NUMBER]
[EMAIL]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent on the [DAY] day of [MONTH] [YEAR] by regular U.S. mail, by facsimile, or certified mail, return receipt requested, to the following parties or attorneys of record:

[NAME OF THE STATE'S ATTORNEY], Attorney at Law
[ADDRESS OF THE STATE'S ATTORNEY]

[NAME EACH INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]
[ADDRESS OF INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]

[SIGN YOUR NAME] _____

CAUSE NO. _____

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § _____ COUNTY, TEXAS
[INSERT PROPERTY] § _____ JUDICIAL DISTRICT

DEFENDANT'S RESPONSE TO PLAINTIFF'S INTERROGATORIES

Pursuant to Rule 197 of the Texas Rules of Civil Procedure, Defendant makes this response to the interrogatories served on Defendant by Plaintiff.

INTERROGATORY NO. 1: [COPY INTERROGATORY NO. 1 FROM THE PLAINTIFF'S REQUEST, WORD-FOR-WORD.]

RESPONSE TO INTERROGATORY NO. 1: [ANSWER INTERROGATORY NO. 1 TO THE BEST OF YOUR ABILITY, AS COMPLETELY AS POSSIBLE.]

INTERROGATORY NO. 2: [COPY INTERROGATORY NO. 2 FROM THE PLAINTIFF'S REQUEST, WORD-FOR-WORD.]

RESPONSE TO INTERROGATORY NO. 2: [ANSWER INTERROGATORY NO. 2 TO THE BEST OF YOUR ABILITY, AS COMPLETELY AS POSSIBLE.]

[CONTINUE AS NECESSARY.]

Respectfully submitted,

[SIGN YOUR NAME]
[PRINT YOUR NAME]
[ADDRESS]
[PHONE NUMBER]
[EMAIL]

DECLARATION UNDER PENALTY OF PERJURY

My name is [FILL IN YOUR FULL NAME], my date of birth is [FILL IN MONTH DATE AND YEAR YOU WERE BORN], and my address is [FILL IN YOUR FULL ADDRESS]. I declare under penalty of perjury that the foregoing answers to Plaintiff's Requests for Interrogatories are true and correct.

Executed in [FILL IN COUNTY WHERE YOU ARE SIGNING THIS DOCUMENT] COUNTY, STATE OF [FILL IN STATE WHERE YOU ARE SIGNING THIS DOCUMENT], on the [DAY] day of [MONTH] [YEAR].

[Sign your name] _____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent on the [DAY] day of [MONTH] [YEAR] by regular U.S. mail, by facsimile, or certified mail, return receipt requested, to the following parties or attorneys of record:

[NAME OF THE STATE'S ATTORNEY], Attorney at Law
[ADDRESS OF THE STATE'S ATTORNEY]

[NAME EACH INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]
[ADDRESS OF INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]

CAUSE NO. _____

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § _____ COUNTY, TEXAS
[INSERT PROPERTY] § _____ JUDICIAL DISTRICT

DEFENDANT’S RESPONSE TO PLAINTIFF’S REQUEST FOR PRODUCTION

Pursuant to Rule 196 of the Texas Rules of Civil Procedure, Defendant responds as follows to the requests of Plaintiff.

REQUEST NO. 1: [COPY REQUEST NO. 1 FROM THE PLAINTIFF'S REQUEST, WORD-FOR-WORD.]

RESPONSE NO. 1: [*Your answer to each request for production will be one of three responses:*

*(1) that production will be **permitted**;*

Example only: Production, inspection, and other requested action will be permitted as requested with respect to [fill in what the item is; for example, (“Bank records of ABC Company for the period of June 1, 2015 through January 1, 2016)];

*(2) that you **cannot produce** the requested document;*

Example only: No items have been identified that are responsive to the request. Defendant has made a diligent search in an effort to comply with the Request

*(3) that you **object** to the production of the document.*

Example only: Defendant objects to Plaintiff's request for production of documents because the request is beyond the scope of this lawsuit, and therefore

irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 2: [COPY REQUEST NO. 2 FROM THE PLAINTIFF'S REQUEST, WORD-FOR-WORD.]

RESPONSE NO. 2: [STATE WHETHER THE PRODUCTION WILL BE **PERMITTED**, WHETHER YOU **CANNOT PRODUCE** THE REQUESTED DOCUMENT, OR WHETHER YOU **OBJECT** TO THE PRODUCTION OF THE REQUESTED DOCUMENT, AS PROVIDED IN THE EXAMPLE ABOVE IN RESPONSE NO. 1.]

REQUEST NO. 3: [COPY REQUEST NO. 3 FROM THE PLAINTIFF'S REQUEST, WORD-FOR-WORD.]

RESPONSE NO. 3: [STATE WHETHER THE PRODUCTION WILL BE **PERMITTED**, WHETHER YOU **CANNOT PRODUCE** THE REQUESTED DOCUMENT, OR WHETHER YOU **OBJECT** TO THE PRODUCTION OF THE REQUESTED DOCUMENT, AS PROVIDED IN THE EXAMPLE ABOVE IN RESPONSE NO. 1.]

[CONTINUE AS NECESSARY.]

Respectfully submitted,

[SIGN YOUR NAME]
[PRINT YOUR NAME]
[ADDRESS]
[PHONE NUMBER]
[EMAIL]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent on the [DAY] day of [MONTH] [YEAR] by regular U.S. mail, by facsimile, or certified mail, return receipt requested, to the following parties or attorneys of record:

[NAME OF THE STATE'S ATTORNEY], Attorney at Law
[ADDRESS OF THE STATE'S ATTORNEY]

[NAME EACH INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]
[ADDRESS OF INTERESTED PARTY OR THEIR ATTORNEY,
IF REPRESENTED]

SAMPLE SUMMARY JUDGMENT

The State may decide to ask the court for summary judgment, which means that the court decides in favor of the State before the case goes to trial because there is no argument about the facts surrounding the seizure, and the law is in the State's favor. The court can only grant the State summary judgment if there are no disputed facts in the case and the court believes that the State is entitled to judgment as a matter of law. ***If you disagree with any facts that the State makes in its motion for summary judgment and you have evidence to prove that there is a disagreement, then there are likely facts in dispute and the case should continue on to trial.***

If the State files a Motion for Summary Judgment, you will receive a copy. The judge will then schedule a date to hold a hearing on the Motion for Summary Judgment. The Texas Rules of Civil Procedure require that you file a written response to the State's Motion for Summary Judgment ***at least*** seven days before that hearing date.

The form in this Toolkit titled "Defendant's Response to Plaintiff's Motion for Summary Judgment" is the form you would use to respond to a State's Motion for Summary Judgment. You can change the form to include more than one reason the court should not give the State summary judgment. The Response must contain all the facts and information you are relying on to argue against the State's Motion for Summary Judgment. For example, you may want to challenge whether the State can meet its "burden of proof" (see Question 17) to show that your property was contraband and should be forfeited.

Your Response should:

1. explain everything you object to in the State's Motion for Summary Judgment and in the State's supporting evidence;
2. list facts that you disagree with and provide your own supporting evidence (which you should attach to your response) showing why the State is not entitled to judgment as a matter of law; and
3. ask that the court deny the State's Motion for Summary Judgment.

The Response and any evidence that you rely on in your Response that is not already on file with the court must be filed and served on the State at least seven days before the day the judge has scheduled for the summary judgment hearing. You can ask the court for more time to file your Response or supporting evidence if you give good reasons in an affidavit or sworn motion. For example, if you need a statement from someone who is out of town, you can tell the court why the evidence is unavailable until a certain date and the judge ***may*** extend the deadline.

Courts rarely grant summary judgment, but you can also request summary judgment if you believe there are no disputed facts in the case. The form in this toolkit titled "Defendant's Motion for Summary Judgment" is the form you would use to ask the court for a summary judgment. The Motion must specify each reason you believe the court should grant you summary judgment. At the end of your Motion, you should specifically ask the court for summary judgment in your favor. If you decide to ask the court for summary judgment, you must file the Defendant's Motion for Summary Judgment with the court where the case has been filed and send a copy of the Motion to the State (and any other parties to the case).

CAUSE NO. _____

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § _____ COUNTY, TEXAS
[INSERT PROPERTY] § _____ JUDICIAL DISTRICT

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE COURT:

On this day, [DATE], Defendant moves for summary judgment against Plaintiff, and in support of the motion shows:

1. No Evidence to Support Element(s) of Plaintiff’s Cause(s) of Action

Plaintiff argues [DESCRIBE STATE'S CLAIMS]. The burden is on the Plaintiff to prove the essential elements of its cause of action in which the Plaintiff would have the burden of proof at trial. By this motion, Defendant argues that Defendant is entitled to judgment as a matter of law because there is no evidence to raise a genuine issue of material fact as to the following essential element[s] of the Plaintiff’s cause of action:

1. [FILL IN ANY ISSUE FOR WHICH THE STATE DOES NOT HAVE ANY EVIDENCE FROM THEIR PETITION. DESCRIBE WHY YOU BELIEVE THE STATE HAS NO EVIDENCE.]
2. [CONTINUE TO LIST EACH ARGUMENT MADE BY THE STATE THAT YOU BELIEVE IS EITHER WRONG OR THAT THE STATE DOES NOT HAVE SUPPORT OR EVIDENCE FOR AND DESCRIBE WHY YOU BELIEVE THE STATE HAS NO EVIDENCE OR IS WRONG.]

2. Defendant is Entitled to Judgment on the Pleadings as a Matter of Law

With respect to Plaintiff's allegations, Defendant is entitled to a judgment as a matter of law because [FILL IN REASONS THAT THE COURT SHOULD RULE IN YOUR FAVOR.]

WHEREFORE, Defendant requests that this matter be set for hearing, with notice to Plaintiff, and that on completion of the hearing, the Court render judgment as follows:

1. That Plaintiff take nothing by this suit.
2. That Defendant recover costs from Plaintiff, together with such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

[SIGN YOUR NAME]
[PRINT YOUR NAME]
[YOUR ADDRESS]
[YOUR PHONE]
[YOUR EMAIL]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent on the [DAY] day of [MONTH] [YEAR] by regular U.S. mail, by facsimile, or certified mail, return receipt requested, to the following parties or attorneys of record:

[INSERT NAME OF STATE'S ATTORNEY], Attorney at Law

[INSERT NAME OF ANY OTHER PARTIES OR THEIR ATTORNEY, IF REPRESENTED]

CAUSE NO. _____

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § _____ COUNTY, TEXAS
[INSERT PROPERTY] § _____ JUDICIAL DISTRICT

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION FOR SUMMARY
JUDGMENT**

TO THE HONORABLE COURT:

On this day, [DATE], Defendant files this Response to Plaintiff’s Motion for Summary Judgment, and shows the Court as follows:

1. The Evidence in Support of the Motion is Insufficient to Support Summary Judgment

Defendant objects to Plaintiff’s evidence as follows: [FILL IN YOUR OBJECTIONS TO WHY THE STATE SHOULD NOT AUTOMATICALLY WIN, PARTICULARLY FACTS THAT THE STATE MAKES IN ITS PETITION THAT ARE FACTUALLY INACCURATE.]

2. The Evidence is Sufficient to Raise a Genuine Issue of Material Fact Regarding the Case

- a. Plaintiff contends that a certain element of Defendant’s defense has no evidentiary support, namely, [REPEAT OBJECTIONS FROM ABOVE]. However, evidence exists sufficient to at least raise a genuine issue of material fact with regard to these facts.
- b. To demonstrate that there is evidence raising an issue of fact on [LIST FIRST ARGUMENT FROM ABOVE], Defendant refers the Court to the following [DESCRIBE YOUR VERSION OF THE FACTS, QUOTE THE STATE'S PETITION, AND IMMEDIATELY FOLLOW WITH YOUR OWN EVIDENCE (MAKE SURE TO ATTACH THAT EVIDENCE!)].

- c. To demonstrate that there is evidence raising an issue of fact on [LIST SECOND ARGUMENT FROM ABOVE], Defendant refers the Court to the following [DESCRIBE YOUR VERSION OF THE FACTS, QUOTE THE STATE'S PETITION, AND IMMEDIATELY FOLLOW WITH YOUR OWN EVIDENCE (MAKE SURE TO ATTACH THAT EVIDENCE!)].

WHEREFORE, Defendant requests that this Court deny Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

[SIGN YOUR NAME]
[PRINT YOUR NAME]
[YOUR ADDRESS]
[YOUR PHONE]
[YOUR EMAIL]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent on the [DAY] day of [MONTH] [YEAR] by regular U.S. mail, by facsimile, or certified mail, return receipt requested, to the following parties or attorneys of record:

[INSERT NAME OF STATE'S ATTORNEY], Attorney at Law

[INSERT NAME OF ANY OTHER PARTIES OR THEIR ATTORNEY, IF REPRESENTED]

SAMPLE FINAL JUDGMENT

When your case is decided, the judge will issue a "Judgment," which is a document that says who won the case and provides details about the outcome of the case. The form in this Toolkit titled "Final Judgment" is a proposed judgment that you can use to suggest what the judge says in his/her final ruling, if you win the case. You or the State can submit a proposed judgment to the judge at the end of the case, regardless of who wins the case. But you must provide all parties, including the State, with a copy of the judgment you are proposing if you want to do so.

The judgment must include the names of all parties (i.e., your property and the State), as stated in the pleadings. The proposed judgment should also include a place for the judge to sign and date the judgment.

CAUSE NO. _____

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § _____ COUNTY, TEXAS
[INSERT PROPERTY] § _____ JUDICIAL DISTRICT

FINAL JUDGMENT

On this day, the above-styled and numbered cause was called for trial and [INSERT YOUR FULL NAME, LAST THREE NUMBERS OF SOCIAL SECURITY, AND LAST THREE NUMBERS OF DRIVER'S LICENSE NUMBER], Defendant, appeared in person and announced ready for trial and Plaintiff appeared by attorney of record and announced ready for trial. The Court, having read the pleadings and papers on file, having heard the evidence presented by the Plaintiff and Defendant, and arguments of each party, finds that the [FILL IN THE PROPERTY THAT WAS SEIZED] is not subject to forfeiture.

It is therefore, ordered, adjudged, and decreed that Plaintiff take nothing by this suit and that all costs of court are assessed against Plaintiff. All other relief not expressly granted herein is denied.

Signed this [DAY] day of [MONTH] [YEAR]

Judge Presiding