NORTH MIAMI POLICE DEPARTMENT

STANDARD OPERATING PROCEDURES

FORFEITURE 300.04

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APPROVED: _____
Chief of Police

SUPERSEDES: 02-04-19

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I. PURPOSE

To define the North Miami Police Department's seizure and forfeiture policy, and establish the process through which such action can and should be initiated to remove the tools of crime from criminal organizations or specific individuals, deprive wrongdoers of the proceeds of their crime, recover property that may be used to compensate victims, and deter crime.

II. POLICY

The North Miami Police Department will seize and forfeit articles of contraband in a non-discriminatory manner following all applicable legal standards, to include the provisions established by the Florida Contraband Forfeiture Act (FCFA), Sections 932.701 through 932.7062 of the Florida State Statutes (FSS); and the U.S. Department of Justice's Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies.

III. SCOPE

This policy applies to all members of the Department.

IV. DEFINITIONS

A. **Contraband Property:** Any real property, interest in real property, aircraft, currency, motor vehicle, personal property, vessel, or other article that has been employed as an instrument in the commission of, or in aiding, or abetting the commission of a felony.

B. **Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies**: Describes the parameters by which law enforcement agencies can attain a share of federally forfeited property by participating in an investigation with a U.S. Department of Justice Agency (or other listed Federal agencies) such as the Federal Bureau of Investigation (FBI), Drug Enforcement Agency (DEA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

C. **Florida Contraband Forfeiture Act (FCFA):** The Act encompasses FSS Sections 932.701 through 932.7062, described further in Section V of this policy.

D. **Notice of Seizure:** Notification to the affected person that an item has been seized and that he or she has the right to an adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property has been or is being used in violation of the FCFA. During the hearing, the Department must prove its case.

E. **Forfeiture:** For purposes of this policy, means the loss of property without compensation as a consequence of violating the FCFA.

F. **Forfeiture Coordinator:** An Investigator, appointed by the Chief of Police, or his/her designee, to facilitate forfeiture actions initiated by the Department.

G. **Perfected Lien:** A lien that is registered with the entity granting title, i.e., a motor vehicle lien filed with the Department of Highway Safety and Motor Vehicles.

H. **Property:** For purposes of this policy, “property” will mean personal property, including currency, vehicles, vessels, aircraft, and other contraband articles listed under FSS Section 932.701.

I. **Real Property:** Land owned as property, including any buildings or improvements made upon it.

J. The word "**Department**" in this policy refers to the North Miami Police Department. Other federal agencies mentioned are listed by full name.

V. THE FLORIDA CONTRABAND FORFEITURE ACT (FCFA)

A. The FCFA authorizes law enforcement agencies to seize and initiate forfeiture proceedings on personal property, including currency, vehicles, vessels, aircraft, and a variety of other contraband articles listed under FSS Section 932.701.

B. The FCFA allows seizure and forfeiture of any controlled substance, as defined in FSS Chapter 893, or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of FSS Chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband articles(s) can be traced to a specific narcotics transaction.

C. The FCFA also provides procedural safeguards for those claiming or having an interest in the seized property, including bona fide lien holders, lessors, and innocent co-owners.

VI. SEIZURE and FORFEITURE CRITERIA

A. Sworn law enforcement officers may seize currency, vehicles, vessels, or any other real or personal property or contraband articles, pursuant to the FCFA, when articulable probable cause exists to believe: **CFA 15.19**

1. The item subject to seizure has been used, is being used, was intended to be used, or was acquired with proceeds in violation of any provision of the FCFA.

2. Any violation of the FCFA has taken place, or is taking place in, upon, or by means of the seized property.

3. The item subject to seizure is a "contraband article," as defined in FSS Section 932.701, specifically authorizing forfeiture in accordance with FCFA.

B. Personal property may be seized at the time of an FCFA violation.

C. A seizure may occur only if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under Section 932.701, or one or more of the following circumstances apply:

1. The owner of the property cannot be identified after a diligent search, or the person in possession of the property denies ownership and the owner of the property cannot be identified by means that are available to the officer at the time of the seizure. If the person in possession of the property denies ownership, a Waiver of Claim to Assets form (Attachment B) must be signed by said person.

2. The owner of the property is a fugitive from justice or is deceased.

3. An individual who does not own the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under Section 932.701, and the owner of the property had actual knowledge of the criminal activity.

4. The owner of the property agrees to be a confidential informant as defined in Section 914.28; however, at no time will a Department investigator use the threat of property seizure and/or forfeiture to coerce the owner of the property to enter into a confidential informant agreement. The Department shall return the property to the owner if criminal charges are not filed against the owner and the active criminal investigation ends, or if the owner ceases being a confidential informant, unless the agency includes the final forfeiture of the property as a component of the confidential informant agreement.

5. The property is a monetary instrument.

D. The determination as to whether to seize any property, including currency, must be made by supervisory personnel, who shall review the probable cause for the seizure.

E. Real property will not be seized without prior approval of the Investigative Division Assistant Chief of Police.

F. Contraband on private premises should be seized at the time of the FCFA violation.

G. Contraband on private premises, which is not seized at the time of the FCFA violation, should only be seized after obtaining a court order.

H. The employment, salary, promotion or other compensation of a law enforcement officer or attorney shall not depend on obtaining a quota of seizures.

VII. SEIZURE PROCEDURES

Upon determining that property should be seized, the seizing officer must adhere to the following:

A. Ensure that the property to be seized is valued at $5,000, or more; however, the Chief of Police has the discretion to deviate below this threshold amount based on the totality of the circumstances surrounding the case.

B. A thorough inquiry will be made to determine the identity of the registered owner, title holder, or holder of a perfected lien. If ownership cannot be determined at the time of seizure, the seizing officer shall specify in their report what efforts were made to identify ownership.

C. A Notice of Seizure (Attachment A) will be completed and served on the arrested person, or any other person present who is making claim to the property.

D. A complete inventory of seized property and all containers, open or closed, found therein will be completed at the time of seizure. As soon as possible after seizure, the officer will make a good faith attempt to release, to the lawful owner, all personal property seized that is not being retained as evidence or for forfeiture. If the owner is unknown, or has been arrested, or is otherwise unavailable to take possession of the property, the property will be placed in the Property and Evidence Unit to be released to the owner later, or handled pursuant to the legal provisions followed by the Property and Evidence Unit relating to lost, abandoned or unclaimed property.

E. Seized currency will be counted by the impounding officer in the presence of a supervisor. The currency will be listed on the Property Receipt by denomination. Upon completion of the Property Receipt, the impounding officer will sign it and the supervisor will co-sign. The currency will be placed in the appropriate container and sealed with evidence tape. All currency and other items will be stored in accordance with the Property

and Evidence Policy.

F. Seized vehicles shall be towed to the police station.

G. Seized vessels without a trailer will be temporarily stored at a local tow yard/marina. Seized vessels with a trailer shall be stored at the police station or motor pool.

H. If the property seized is an aircraft, the Investigative Section Major, or his/her designee, will make arrangements with a local airport storage facility.

I. Other items shall be stored in the Property and Evidence Unit or other approved secure storage.

J. If the property is jewelry or other personal property, the items will be packaged and stored separately in accordance with established procedures and a Property Receipt will be completed.

K. All relevant Vehicle Storage Receipts and/or Property Receipts shall be clearly marked "HOLD FOR FORFEITURE."

L. The keys to all seized vehicles/vessels/aircraft shall be forwarded to the Crime Suppression Unit (CSU) Supervisor, along with the copies of the Offense/Incident Report, Arrest Affidavit, Vehicle/Vessel Storage Receipt, Lien Holder printout, and any other documents.

M. The Department is responsible for maintaining the items in "time of seizure" condition until the rights, interests in, and titles to the seized property are perfected pursuant to the provisions of the FCFA. This maintenance does not mean prevention of oxidation of exterior or normal deterioration of the interior caused by weather conditions. The items may not be used for any purpose, except the use or operation necessary for reasonable maintenance.

VIII. POST SEIZURE PROCEDURES

A. As soon as possible, following a seizure, but within 24 hours, the Investigative Section Major and CSU Supervisor shall be notified of the seizure. The responsibility of conducting an investigation to ascertain if the forfeiture shall progress beyond this stage will be that of the CSU Supervisor, or his/her designee. The CSU Supervisor shall document:

1. Owners/title holders of the seized property.

2. Liens and encumbrances, if any.

3. Fair market value and condition.

4. That the owner(s)/lienholders(s) knew or should have known the item, property, vehicle, vessel, etc. was being used, was likely to be used, or was attempted to be used to further a felonious act.

B. The Department shall give notice of the seizure to the owner(s) and bona fide lien holder(s), at the time of seizure. Any notice not provided in person must be provided by certified mail, return receipt requested, within five (5) working days after the seizure to all parties known to the seizing officer to be a person entitled to the notice.

C. The CSU Supervisor will log the seizure on a Forfeiture Log and will make notification via the chain of command of said seizure to the Division's Assistant Chief of Police.

D. The CSU Supervisor will assign an investigator as the Forfeiture Coordinator as soon as possible after any seizure is made. Notification shall include a copy of the Notice of Seizure and any arrest affidavit or reports associated with the seizure. Once notified, the Forfeiture Coordinator will review the documentation and shall contact the City's Attorney's Office as soon as possible to notify them of the item(s) seized for forfeiture. The CSU Supervisor will ensure that the Forfeiture Coordinator follows the above steps, and acts as the liaison for the Department during the forfeiture process.

E. Although all rights, interest in, and title to seized assets vest immediately in this Department upon seizure, seized items shall not be used for any purpose until the rights to, interest in, or title to the seized property is transferred to the Department.

F. The determination of whether the Department will file a civil forfeiture action should be made by an Assistant Chief of Police in conjunction with the City's forfeiture attorney.

G. Settlement of any forfeiture action shall be consistent with the mandates of the FCFA and agreed upon with the Chief of Police.

H. When a decision is made not to proceed with a forfeiture action, the forfeiture attorney shall mail a certified letter to the owner of the seized property, advising him/her of the decision and of any outstanding charges.

I. If the registered owner does not reply or respond to reclaim his/her property, the Forfeiture Coordinator will be notified and will arrange for the item(s) to be processed by the Property and Evidence Unit pursuant to the legal provisions relating to unclaimed property.

IX. RELEASE or RETENTION OF SEIZED PROPERTY

A. Release of Seized Property:

1. When the claimant prevails at the conclusion of the forfeiture proceeding, if the Department decides not to appeal, the seized property shall be released immediately to the person entitled to possession of the property as determined by the court. Under such circumstances, the Department shall not assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant with respect to the seized property or the forfeiture proceeding.

2. If the seized property is to be released pursuant to a settlement agreement, then the release, fees, and related issues shall be in accordance with the settlement agreement and the following will apply:

   a. Under no circumstances shall any seized property that has been held for forfeiture be released without written approval by an Assistant Chief of Police.

   b. The CSU Supervisor shall ensure that a Supplementary Report articulating the details of the release is completed.

   c. The Vehicle Storage Release (VSR), if applicable, or Property Receipt shall be signed by the person receiving the property and the Department member releasing the property.

3. Settlements of any forfeiture property will be consistent with the mandates of the FCFA and in compliance with this policy. The best interest of the City of North Miami shall be the primary consideration regarding settlements. Any settlement agreement shall be personally approved by the Chief of Police, or his/her designee. If the Chief of Police is unavailable, and a delay would adversely affect the settlement, approval may be given by his/her designee.

4. The Department will ensure the prompt release of seized property when there is no other legitimate basis for holding such seized property, and will review, without delay, all asserted claims of interest in seized property for potential validity.

B. Retention of Seized Property:

1. If the Department prevails at the conclusion of the forfeiture judicial process, the agency will obtain a certified copy of the forfeiture order.

2. If the property forfeited is currency, jewelry, or other property, the Chief of Police will cause the property to be disposed of as follows:

   a. **Currency:** Once the criminal case has been resolved, and the currency is not needed for prosecution, the Forfeiture Coordinator will provide a copy of the Forfeiture Court Order to the Department's Property and Evidence Custodian, and the Department's Police Administrator, who will direct the money to be deposited in the Law Enforcement Trust Fund, or distributed in accordance with any asset sharing agreement. The Chief of Police, or designee, via the Police Administrator, will complete an annual report by October 10th documenting the receipts and expenditures to be submitted to the Florida Department of Law Enforcement in accordance with FSS 932.7061.

   b. **Jewelry and Other Property:** Once the criminal case has been resolved, the Forfeiture Coordinator will arrange for the disposition of the forfeited property in accordance with agency procedures, and ensure that a copy of the forfeiture order is provided to the Property and Evidence Custodian for follow up.

3. All forfeited property retained for use by the Department will be maintained and utilized in accordance with the FCFA, and subject to the same controls with regard to property acquired through the Department's normal appropriations process. **CFA 15.19**

X. FEDERAL FORFEITURE SHARING PROGRAM

A. The Department participates in the Federal Equitable Sharing Program and follows the U.S. Department of Justice's Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies.

B. Joint criminal investigations with federal law enforcement agencies that

result in the seizing of assets for federally-initiated forfeiture cases may, at the discretion of the Department of Justice and the U.S. Department of Treasury, result in the sharing of assets with the Department of either currency, or other types of property, if the federal forfeiture is successfully litigated.

C. In order to request a share of the forfeited assets for Department of Justice-led investigations, the Department must electronically submit a DAG-71 form to the federal seizing agency through the Department of Justice's e-Share Portal. A separate DAG-71 form must be completed for each asset to be shared.

D. In order to request a share of the forfeited assets for Department of Treasury-led investigations, the Department must submit a TD F form to the federal agency processing the forfeiture.

E. Sharing requests may be submitted at any time following the seizure, but no later than 45 days after forfeiture. The DAG-71 or TD F, must include both work hours contributed and a detailed narrative of the Department's contribution to the law enforcement effort resulting in federal forfeiture of the asset.

F. The Department is responsible for ensuring the deciding federal authority is provided with enough information to adequately evaluate the qualitative and quantitative contributions. Without this information, the deciding authority may not award a share that fully captures the agency's law enforcement contributions resulting in federal forfeiture of the requested asset.

G. Shares or percentages of each asset, to be shared and allocated to the Department, must bear a reasonable relationship to this Department's direct participation in the law enforcement effort resulting in the federal forfeiture. The deciding federal authority ordinarily determines percentages by comparing the number of work hours expended by each agency participating in the federal forfeiture, including all federal, state, local, and tribal agency contributions.

H. Where the work hours alone do not reflect the contribution of a law enforcement agency, the deciding federal authority considers qualitative factors in making adjustments to the sharing percentage. The deciding authority will consider such qualitative factors as:

    1. The inherent importance of the contributing activity.

2. Whether the Department, otherwise entitled to an adjustment, would already receive a comparatively large share based on reported work hours.

3. Whether the Department originated the information leading to the seizure.

4. Whether the Department provided and articulated specific unique or indispensable assistance.

5. Whether the Department seized one or more assets that were forfeited in non-federal proceedings during the same investigation.

Note: Any of these qualitative factors may warrant an increase or decrease in the percentage awarded.

I. Once equitably shared funds have been awarded, they must be used in accordance with the U.S. Department of Justice's Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies for law enforcement purposes that directly supplement the appropriated resources of this Department.

J. Equitably shared funds are federal financial assistance and are subject to the provisions of the Code of Federal Regulations (CFR). Equitable sharing funds will be used in a reasonable and necessary manner and at no point will create the appearance of waste or extravagance.

K. Shared funds must be used to increase or supplement the resources of the Department. Shared funds shall not be used to replace or supplant the appropriated resources of the Department. The agency must benefit directly from the sharing.

L. The Department, through the City's Finance Department, shall establish and maintain separate Department of Justice, and Department of the Treasury, expenditure and revenue accounts. No other funds may be commingled in these accounts.

M. All expenditures and payments must be processed in the same manner as other appropriated City funds, including procurement and payment transactions.

N. The Chief of Police, or his/her designee, must authorize all expenditures from the equitable sharing funds.

O. The Chief of Police, or his/her designee, must obtain approval for expenditures of awarded equitably share funds from the City of North Miami Council through Council Resolution. The approval will last for one year from the date the Resolution was approved.

P. The City's Finance Department, following the draft submitted by the City of North Miami's Police Administrator, shall submit annually an Equitable Sharing Agreement and Certification (ESAC) Report through the e-Share portal, regardless of whether funds were received or maintained during the fiscal year, in order to maintain compliance.

Q. The Department, through the City's Finance Department, shall submit the ESAC within two months after the end of the fiscal year (October 1st to September 30th). The ESAC must be filed, reviewed, and accepted by November 30th for the Department to remain compliant.

R. The Department shall comply with the applicable Single Audit Act Amendments of 1996, and OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, or any subsequent updates to the U.S. Department of Justice's Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies. Per the Guide, the Department shall conduct an independent audit, which will take place when the City conducts its yearly Comprehensive Annual Financial Report (CAFR).

S. The Department must retain all documents and records pertaining to its participation in the Federal Forfeiture Sharing Program for a period of at least five (5) years. Such documentation shall include, but is not limited to, receipts and procurement documentation for all expenditures of shared funds, bank statements, Forms DAG-71 and TD F, ESACs, accounting and bookkeeping documents, logs and records, bank records and statements, and audit reports.

XI. LAW ENFORCEMENT TRUST FUND

Property forfeited to the Department may be used, transferred, or sold. If sold, the proceeds of the sale are deposited into the Department's Law Enforcement Trust Fund, which is subject to normal accounting controls and financial audits of all deposits and expenditures, and is to be used for law enforcement purposes only. The funds may not be used to meet the normal operating expenses of the Department. The Investigative Section Major, or his/her designee, will maintain a log of all seizures.

XII. ANNUAL REPORTS

In addition to the annual Equitable Sharing Agreement and Certification Report, the Department will submit the Law Enforcement Agency Annual State Asset Forfeiture Report to the corresponding agency.

XIII. TRAINING

Pursuant to FSS 732.706, officers will receive seizure and forfeiture training while in the police academy. Further training will be conducted as needed.

Attachment A

NORTH MIAMI POLICE DEPARTMENT

NOTICE OF SEIZURE OF PERSONAL PROPERTY

NMPD Case No. _____

TO: _____ Date: _____

This is to advise you that on _____, 20__ the North Miami Police Department seized _____ for violation of the Florida Contraband Forfeiture Act, Florida Statutes §932.701-7062.

YOU HAVE THE RIGHT to request an adversarial preliminary hearing to have a court determine whether probable cause exists to believe that such property has been or is being used in violation of the Florida Contraband Forfeiture Act. The request must be made within fifteen (15) days after receiving this notice or your right to an adversarial preliminary hearing will be waived and the case will proceed to trial.

In order to request such a hearing, you must submit the request in writing by certified mail, return receipt requested, to the address indicated below. The request must specify the exact property that you are claiming and include an address at which the seizing agency may serve you with further papers in this proceeding.

PLEASE NOTE THAT the post-seizure adversarial hearing is **NOT MANDATORY** and you need not request a hearing to later contest the action taken against the property described herein.

SIGNATURE OF SEIZING OFFICER _____ Date: _____

(Check one of the following)

____ Hand Delivered, Accepted by: _____

____ Certified Mail

Please address hearing requests to:
Office of the City Attorney
776 N.E. 125th Street
North Miami, FL 33161

Attachment B

NORTH MIAMI POLICE DEPARTMENT

WAIVER OF CLAIM TO ASSETS
WAIVER OF RIGHT TO NOTICE OF SEIZURE

1. I acknowledge that the following described property was seized from me by officers of the North Miami Police Department under NMPD Case Number _____.

   Description of Property:
   _____
   _____

2. I hereby waive all ownership, right, title, claim and interest to the above listed property and consent to the immediate loss and forfeiture of the above listed property to the North Miami Police Department for its use and disposition pursuant to the Florida Contraband Forfeiture Act.

3. I am signing this form freely, voluntarily, and no promises, threats, force or physical or mental coercion of any kind have been used to obtain my signature.

4. I have been advised and understand that by signing this waiver of claim to the listed assets, I am waiving my statutory right to a Notice of Seizure, Right to an Adversarial Preliminary Hearing and the right to a civil forfeiture trial by jury.

5. I understand that I have the right to refuse to agree to this waiver and/or to consent to the forfeiture and immediate loss of the above described property by refusing to sign this document and privately securing an attorney to contest the seizure of the property.

6. I understand that I have a statutory right under the Forfeiture Act to contest the seizure of the property and to privately secure an attorney before signing and agreeing to the provisions herein but wish to waive this right and agree to sign and execute this document without benefit of counsel.

I SWEAR THAT I HAVE READ AND UNDERSTAND THIS WAIVER, RELEASE AND CONSENT AND FREELY AND KNOWINGLY ATTACH MY SIGNATURE BELOW. NO THREATS OR PROMISES HAVE BEEN MADE TO OBTAIN MY SIGNATURE.

SIGNATURE: _____ DATE: _____

PRINT NAME: _____

SEIZING OFFICER: _____ WITNESSING OFFICER:_____