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Seizure of Conveyance Used in Robbery or Felony Theft

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Reference Number: CTAS-1288

Subject to the discretion of the court, where there is a final judgment of conviction, the sheriff is authorized, upon process issued by the court having jurisdiction over the property, to seize any conveyance, including a vehicle, aircraft or vessel that was used to transport, conceal or store money or goods that were the subject of a robbery offense under Title 39, Chapter 13, Part 4, or felony theft under Title 39, Chapter 14, Part 1. Seizure without process may be made if the seizure is incident to an arrest or a search under a search warrant. T.C.A. §§ 40-33-101 and 40-33-102.

A conveyance taken or detained by the sheriff under T.C.A. § 40-33-102 is not subject to replevin but is deemed to be in the custody of the sheriff, subject only to the orders and decrees of the court that has jurisdiction over the property. T.C.A. §§ 40-33-104(a) and 40-33-106. *See Knobler v. Knobler*, 697 S.W.2d 583, 586 (Tenn. Ct. App. 1985) (Property is in *custodia legis* if it has been lawfully taken by virtue of legal process.). When the sheriff seizes a conveyance pursuant to T.C.A. § 40-33-102, the sheriff may (1) place the conveyance under seal, (2) remove the conveyance to a place designated by the court; or (3) take custody of the conveyance and remove it to an appropriate location for disposition in accordance with law. T.C.A. § 40-33-104(b).

When the sheriff seizes a conveyance pursuant to T.C.A. § 40-33-102, the sheriff is required to give the person in possession of the conveyance, if any, a receipt. The receipt must state a general description of the seized conveyance, the reasons for the seizure, the procedure by which recovery of the conveyance may be sought, including the time period in which a claim for recovery must be presented, and the consequences of failing to file within the time period. If the person found in possession of the conveyance is not the sole unencumbered owner of the conveyance, the court having jurisdiction over the property is required to make a reasonable effort to notify the owner or lienholder of the seizure by furnishing all parties known to have an interest in the conveyance with a copy of the receipt. A copy of the receipt must be filed with the clerk of the court having jurisdiction over the property and shall be open to the public for inspection. T.C.A. § 40-33-107(1).

Any person claiming a seized conveyance may, within 15 days after receiving notification of seizure, file with the court a claim in writing requesting a hearing and stating the person's interest in the seized conveyance. The claimant must also file a cost bond with one or more good and solvent sureties in the sum of \$250 made payable to the state. An indigent person may file a claim *in forma pauperis* by filing an affidavit stating that they are unable to bear the cost of the proceeding. T.C.A. § 40-33-107(3). The court must set a date for a hearing within 45 days from the day a claim requesting a hearing is filed. T.C.A. § 40-33-107(4). *See also* T.C.A. § 40-33-108. In the event the decision of the court is favorable to the claimant, the clerk of the court is required to deliver the seized conveyance to the claimant. If the ruling of the court is adverse to the claimant, the clerk of the court directs the sheriff to sell or dispose of the conveyance. The expenses of storage, transportation, etc., are adjudged as part of the cost of the proceeding. T.C.A. § 40-33-107(5). If no claim is filed, the conveyance is forfeited without further proceedings and is sold or disposed of as provided in Title 40, Chapter 33, Part 1. T.C.A. § 40-33-109.

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