

10.10 CIVIL IN REM FORFEITURE ACTIONS (N.J.S.A. 2C:64-1)
(Approved 11/00)

This is a civil forfeiture action brought on behalf of the State by the *[name county]* County Prosecutor/Attorney General against *[named property]*. This is not a criminal case brought against a criminal defendant. Rather, it is a civil action brought against certain property that the County Prosecutor/Attorney General alleges was used in an unlawful manner. In a civil forfeiture proceeding, property is removed from private ownership because the property was an integral part of criminal activity or because the property was connected with or related to criminal activity, or was intended to be connected with such criminal activity. The basis of the forfeiture is the misuse of the property rather than the crime that may have been committed by the owner or user. Forfeiture is intended to discourage the unlawful use of property and removes from circulation property that was used or was intended to be used to violate the law. The Legislature created forfeiture to encourage property owners to be more responsible with their property and not to use it or allow it to be used for illegal purposes.

The fact that a claimant was not charged in a criminal complaint with a crime or was acquitted of a crime is irrelevant to your determination of whether forfeiture is appropriate in this case. It is also irrelevant that the claimant did not take part in the

criminal activity. Your duty is to decide whether the *[named property]* is subject to forfeiture.

A. Burden of Proof

NOTE TO JUDGE

The court should charge Preponderance of the Evidence, Model Civil Charge 1.12H or I.

In this action the State has the initial burden to prove all of the following elements necessary to establish that the *[named property]* is subject to forfeiture.

1. *[Choose the appropriate provision(s)]:*
 - a. The *[named property]* has been (or was intended to be) used in furtherance of or to facilitate the commission of the criminal activity;
 - b. The *[named property]* has become (or was intended to become) an integral part of criminal activity; or
 - c. The *[named property]* constitutes proceeds of criminal activity, including, but not limited to, property or money obtained as a result of the sale of illegally held property.
2. The criminal activity existed or was planned; and
3. There is a link or connection between the *[specific offense]* and the *[named property]*.

I shall now instruct you on each of these three elements in more detail. The first element the State must prove is *[choose the appropriate provision(s)]:*

1. The *[named property]* has been (or was intended to be) used in furtherance of or to facilitate the commission of the criminal activity.¹

"To facilitate" means to use the *[named property]* in a way that assists the commission of the crime or that the *[named property]* was instrumental in the commission of the crime.

2. The *[named property]* has become (or was intended to become) an integral part of criminal activity.²

"Integral part" means an essential component or part of the criminal activity.

3. The *[named property]* constitutes proceeds of criminal activity, including, but not limited to, property for money obtained as a result of the sale of illegally held property.³

The second element the State must prove is that criminal activity existed or was planned. In this case, the State alleges that the criminal activity involved was *[specific crime]*.⁴ The State must prove by a preponderance of the evidence that the seized *[named property]* was connected to this crime. The law defines the crime of *[specific*

¹ N.J.S.A. 2C:64-1a(2).

² N.J.S.A. 2C:64-1a(3).

³ N.J.S.A. 2C:64-1a(4).

⁴ The underlying offense, however, may not be a disorderly persons offense. *State v. Seven Thousand Dollars*, 136 N.J. 223 (1994).

crime] as: *[include applicable language from Model Criminal Charge on specific crime]*.

However, a person need not have been convicted of or even charged with that crime.⁵ The fact that a prosecution against *[named person]* terminated without a conviction does not prevent forfeiture proceedings against the *[named property]*, as long as the State proves by a preponderance of the evidence that the *[named property]* was connected to that crime. The unlawful activity can be a past crime and an intended but not-yet-committed crime.⁶

The final element the State must prove is that there is a link or connection between the *[specific crime]* and the *[named property]*. The causal connection between the *[named property]* and the *[specific crime]* must not only exist, but it also must be direct and substantial. The existence of some relationship between the *[named property]* and the *[specific crime]* is not sufficient.⁷ There must be evidence tying the *[named property]* to the crime that has occurred or was planned. Mere possession of property that could be used at some time in the future in criminal

⁵ *N.J.S.A. 2C:64-4b.*

⁶ *State v. Seven Thousand Dollars*, 136 *N.J.* at 234.

⁷ *Id.* at 234-35.

activity may be insufficient⁸ unless the evidence shows that the property is sufficiently linked or connected to the crime. However, the property need not be present to sustain a forfeiture, if there is other evidence that establishes by a preponderance of the evidence, and not just suspicion, that the property is connected or linked to criminal activity.

If the State proves all of the above elements, then the State is entitled to forfeiture of the *[named property]*. On the other hand, if the State fails to prove any one of those elements, then the State is not entitled to forfeiture of *[named property]*.

B. Presumption from Conviction of Criminal Defendant

You may also consider evidence of *[name of person]*'s conviction for *[specify crime]* in which the seized *[named property]* was either used or the *[named of property]* provided an integral part of the State's proofs in the criminal prosecution. Such evidence creates a rebuttable presumption that the *[named property]* was utilized in furtherance of an unlawful activity.⁹ In other words, evidence that *[name of person]* was convicted or pled guilty to the crime(s) and that the *[named property]* was an integral part of the State's proofs in that prosecution creates a presumption that

⁸ *State v. \$36,560.00*, 289 N.J. Super. 237, 255-56 (App. Div. 1996).

⁹ N.J.S.A. 2C:64-3(j).

the *[named property]* was utilized in furtherance of the *[specify crime(s)]* but *[name of claimant of property]* may rebut that presumption with contrary evidence.

C. Defenses — Legitimate Use

As I have explained to you, the State must prove by a preponderance of evidence that the *[named property]* is subject to forfeiture. However, once the State satisfies that burden, then the burden shifts to *[name of claimant]* to disprove the State's evidence or to establish a statutory defense to avoid forfeiture altogether or to show what portion of the seized property, if any, should be attributed to legitimate uses. If *[name of claimant]* presents sufficient credible evidence to allocate the property between illegal and legal purposes, then the forfeiture should be limited only to the property connected to the criminal activity.

D. Innocent Owner

NOTE TO JUDGE

Charge only if applicable.

[Name of claimant] contends that the *[named property]* is not subject to forfeiture based on what is known as the "innocent owner" defense. To establish this defense, *[name of claimant]* must prove that he/she owned the *[named property]* and that he/she was not involved in or aware of the unlawful activity and did all that

reasonably could be expected under the circumstances to prevent *[named property]* from being utilized for unlawful activity.

I shall now describe in greater detail what *[name of claimant]* must prove to establish the "innocent owner" defense. First, *[name of claimant]* must establish that he/she is the "real" owner of the *[named property]* and that the *[named property]* was lawfully acquired. To determine ownership, you may look at evidence other than the formal title to the *[named property]*. There may be evidence that the record owner is not the "real" owner but is merely a "straw man" set up either to conceal criminal dealings or to avoid forfeiture. If *[name of claimant]* fails to establish "real" ownership, than *[name of claimant]* has failed to prove innocent ownership in this case.

Second, the *[name of claimant]* must also establish that the *[named property]* was not unlawfully used or possessed by him/her. In the event that the evidence establishes that the *[named property]* was unlawfully used or possessed by a person other than *[name of claimant]*, then the burden is on *[name of claimant]* to show that the unlawful use or possession was without *[name of claimant]'s* knowledge and consent. In other words, to establish the "innocent owner" defense, *[name of claimant]* must establish that he/she was not involved in or aware of the unlawful activity.

Finally, *[name of claimant]* must prove that he/she did all that could reasonably be expected under the circumstances to prevent the illegal use of the *[named property]* by another person or an agent, which in this case was *[name of person or agent]*. You must decide whether an ordinary person faced with the situation could reasonably be expected to act as *[name of claimant]* did to prevent the unlawful use.

In considering this aspect of the "innocent owner" defense, I instruct you that another person who uses or possesses property with the consent or knowledge of the owner is deemed to be the agent of the owner for the purposes of this defense.¹⁰ If *[name of claimant]* was aware of the criminal activity, and had knowledge that the other person was utilizing the *[named property]* for unlawful purposes, then *[name of claimant]* has failed to meet his/her burden and has not established the statutory defense of innocent ownership.

If the *[name of claimant]* establishes all the elements of this defense, then the property is not subject to forfeiture. On the other hand, if the *[name of claimant]* fails to establish any of the elements of this defense, then the property is subject to forfeiture as long as the State has met its burden of proof on all the other elements of this forfeiture action.

¹⁰ N.J.S.A. 2C:64-5(b).