

## **CONVEYANCES (VESSELS, VEHICLES AND AIRCRAFTS)**

19 U.S.C. 1595a(a); 21 U.S.C. 881; 49 U.S.C. 80302/80303; 19 U.S.C. 1703; 19 U.S.C. 1590; 19 U.S.C. 1594

The above-noted statutes provide for the seizure and forfeiture of conveyances (vessels, vehicles, and aircrafts), which have been used in the importation or transportation of merchandise (including contraband) contrary to law. It also includes seizure and forfeiture of conveyances which are the proceeds from the sale of contraband or which have been outfitted for the purpose of smuggling. As a general rule, such conveyances are returned to owners who demonstrate lack of complicity in the violation. Also, in addition to the seizure and forfeiture of conveyances, the provisions of 19 U.S.C. 1595a(a) permit the seizure and forfeiture of any thing used to facilitate the importation contrary to law.

**NOTE:** The seizure and forfeiture of any conveyance is subject to the applicability of any exceptions to seizure of a common carrier as provided for under 19 U.S.C. 1594 and as noted in subsection II of this section.

### **I. Statutory Authority for Seizure and Forfeiture**

#### **A. 19 U.S.C. 1595a(a) – Importations contrary to law**

1. Provides for the seizure and forfeiture of vessels, vehicles, and aircraft, **or other thing** used in, to aid in, or to facilitate:
  - a. importation or bringing in,
  - b. unloading, landing, or removal,
  - c. concealing or harboring or,
  - d. subsequent transportation,
2. Of any article which is:
  - a. being or has been introduced into the United States contrary to law, or
  - b. attempted to be introduced into the United States contrary to law.
3. A conveyance for purposes of this section is not limited to a traditional conveyance but could include any merchandise used to transport or conceal merchandise being introduced contrary to law.

- B. 21 U.S.C. 881 – Transportation and facilitation of controlled substances; proceeds of sale of such substances
1. Provides for the seizure and forfeiture of vessels, vehicles, and aircraft used or intended for use:
    - a. to transport, or
    - b. to facilitate the transportation, sale, receipt, possession, or concealment of,
  2. The following:
    - a. Controlled substances which have been manufactured, dispensed or acquired illegally, or
    - b. Raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance illegally.
- C. 49 U.S.C. 80302 and 49 U.S.C. 80303 – Transportation of contraband
1. 49 U.S.C. 80302 prohibits a person from:
    - a. transporting contraband in an aircraft, vehicle or vessel;
    - b. concealing or possessing contraband on an aircraft, vehicle or vessel; or
    - c. using an aircraft, vehicle or vessel to facilitate the transportation, concealment, receipt, possession, purchase, sale, exchange, or giving away of any contraband article.
  2. Contraband article means:
    - a. Any narcotic drug which
      - i. is possessed with intent to sell or offer for sale in violation of the laws or regulations of the United States, or
      - ii. is acquired, is possessed, sold, transferred, or offered for sale in violation of those laws, or

- iii. is acquired by theft, robbery, burglary and transported within or between states, territories, possessions, or D.C., or
      - iv. does not bear legally required tax-paid internal revenue stamps.
    - b. Any firearm with respect to which there has been committed any violation of the National Firearms Act.
    - c. Any forged, altered, or counterfeit coin or obligation or other security of the U.S. or any foreign government, or any material or apparatus used or intended to make such coin, etc.
    - d. A cigarette involved in a violation of chapter 114 of title 18 or a regulation prescribed under chapter 114 (regarding trafficking in contraband cigarettes, meaning a quantity in excess of 60,000 cigarettes which bear no evidence of the payment of applicable State cigarette taxes in the state where such cigarettes are found and which are in the possession of a person other than a person holding an IRS permit, a common carrier transporting the cigarettes under a proper bill of lading, a person who is licensed or authorized by the State where the cigarettes are found to account for an pay cigarette taxes, or an officer, employee or other agent of the U.S. or State Department agency having possession of such cigarettes in connection with official duties.
    - e. A counterfeit label for a phonograph record, copy of a computer program or computer program documentation or packaging, or copy of a motion picture or other audio/visual work, a phonorecord or copy or a fixation of a sound recording or music video of a live musical performance or any good bearing a counterfeit mark.
  - 3. 49 U.S.C. 80303 provides for seizure and forfeiture of any conveyance used to transport, conceal, possess or facilitate the transportation, concealment, possession or sale of contraband.
- D. 19 U.S.C. 1703 – Vessels outfitted for smuggling
- 1. Provides for the seizure and forfeiture of vessels that have been built, purchased, fitted out in whole or in part, or held, in the U.S. or elsewhere, for the purpose of being used:

- a. to defraud the revenue, or
  - b. to smuggle any merchandise into the United States, or
  - c. to smuggle any merchandise into a foreign country in violation of the laws thereof.
2. Have been used or attempted to be used within the United States to defraud the revenue or to smuggle or assist therein.
  3. Note that this statutory provision does not include seizure of **vehicles** that are outfitted for smuggling.

E. 19 U.S.C. 1590 – Aviation Smuggling

1. It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.
2. It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary of the Treasury to make such transfer and the aircraft is owned by a citizen of the United States or is registered in the United States, or the vessel is a vessel of the United States, or (without regard to vessel or aircraft nationality) such transfer is made under circumstances indicating the intent to make it possible for such merchandise or any part thereof to be introduced into the United States unlawfully.
3. Such conveyance is subject to seizure and forfeiture. In addition any person who violates this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than \$10,000.
4. For purposes of this section, “merchandise” means merchandise whose importation is prohibited or restricted.
5. The following acts provide *prima facie* evidence of a violation under this section:
  - a. operation of an aircraft or a vessel without appropriate lights
  - b. presence on an aircraft of an auxiliary fuel tank not installed in accordance with law

- c. failure to identify the vessel by name or country of registration or aircraft by registration number and country of registration
  - d. external display of false registration numbers
  - e. presence on board of unmanifested restricted or prohibited merchandise
  - f. presence on board of controlled substances which are not manifested
  - g. presence of any compartment or equipment which is built or fitted out for smuggling
  - h. failure of a vessel to stop when hailed by a customs officer or other government authority
6. A vessel or aircraft used in connection with, or in aiding or facilitating, any violation of this statute may be seized and forfeited in accordance with the customs laws whether or not any person is charged in connection with such a violation.
7. A vessel or aircraft may not be seized and forfeited under this statute if it is determined that such vessel or aircraft is a common carrier.
- F. 19 U.S.C. 1594 – Seizure of conveyances when any vessel, vehicle or aircraft or any owner, operator, master, pilot, conductor, driver or other person in charge of a vessel, vehicle or aircraft is subject to a penalty for violation of the Customs laws.
- 1. Whenever a vessel, vehicle or aircraft or the owner, operator, master, pilot, conductor, driver, or other person in charge of the vessel, vehicle or aircraft is subject to a penalty for violation of the customs laws, the conveyance **shall be held** for the payment of such penalty.
    - a. The claimant to the property shall be afforded a reasonable period of time to settle any penalty for purposes of return of the conveyance.
    - b. If the penalty is not settled in that reasonable period of time, the conveyance may be seized subject to forfeiture and sale.
  - 2. Proceeds of any sale in excess of an assessed penalty and expenses

of seizing, maintaining, and selling the conveyance shall be held for the account of any interested party.

3. The seizure and forfeiture of any conveyance under this statute is conditioned upon the applicability of any exceptions to seizure of a common carrier, as provided for under 19 U.S.C. 1594 and as noted in subsection II. of this section.

## II. Common Carriers

- A. Definition – a carrier owning or operating a railroad, steamship, airline or other transportation line or route which undertakes to transport goods or merchandise for all of the general public who choose to employ him. “The salient characteristic of a common carrier is that “[h]e must be engaged in the business of carrying goods for others as a public employment, and must hold himself out as ready to engage in the transportation of goods for persons generally.... [and] undertakes for all persons indifferently.” See, U.S. v. One (1) Liberian Refrigerator Vessel, 447 F.Supp. 1053 (M.D. Fla. 1977) (quoting, United States v. Stephen Brothers Line, 384 F.2d 118 (5th Cir. 1967)).
- B. Common carriers are exempted from seizure and forfeiture while being used in the transaction of business as a common carrier, unless
  1. under the Customs laws, it appears that the owner, at the time of the illegal act, either had knowledge of drugs being smuggled aboard his conveyance, or was grossly negligent in preventing or discovering the drugs, or failed to exercise the highest degree of care and diligence in the case of illicit drugs found in unmanifested cargo; or
  2. under 49 U.S.C. 80303, the owner, conductor, driver, pilot, or other person in charge of the aircraft or vehicle, or the master or owner of the vessel, or the owner of the rail car or engine, consents to, or knows of the alleged violation when the violation occurs.

## III. Immediate Administrative Forfeiture Proceedings

- A. These are to be used when conveyances are seized for the illegal importation or transportation, or the facilitation thereof, of:
  1. Any heroin
  2. One (1) pound or more of cocaine
  3. Five (5) pounds or more of hashish, or

4. Fifty (50) pounds or more of any other controlled substance.
- B. If sufficient controlled substances are found, as noted above (unless the conveyance falls within one of the exceptions below) consider petitions for relief only with regard to claims for refund of sale proceeds.
- C. Exceptions to the immediate forfeiture procedure:
1. Common carriers.
  2. Conveyances which have been reported as stolen to any federal, state, or local law enforcement agency prior to the time of seizure.
  3. Foreign flag vessels seized beyond the 12-mile limit, unless the country of registry has consented to U.S. forfeiture jurisdiction.
  4. Do not forfeit U.S. documented vessels with a preferred ship's mortgage granted under title 46, U.S. Code without contacting the Penalties Branch, Headquarters (202-927-2344).

#### **IV. General Considerations When Reviewing Petitions for Relief**

- A. A petitioner must demonstrate that he has a petitionable interest in the property, (e.g., as owner or lienholder).
- B. The granting of administrative relief is discretionary. Therefore, the burden of proving that relief is warranted lies with a petitioner.
- C. Examples of exculpatory evidence that may be submitted when seized property is in possession of another at the time of the seizure.
1. Evidence as to the manner in which the property came into the possession of such other person;
  2. That before parting with the property petitioner did not know, or have reasonable cause to believe, that the property would be used to violate Customs laws or other laws;
  3. That the petitioner did not know, or have reasonable cause to believe, that the violator had a criminal record or general reputation for commercial crime, and
  4. That the petitioner took reasonable steps to prevent the conveyance from being used in violation of Customs or other laws.

- D. Evidence to be submitted by petitioner who is holder of chattel mortgage or conditional sales contract, lessor who has executed long-term lease, or one who allows another to use the conveyance without cost.
1. That petitioner has an interest acquired in good faith,
  2. That petitioner, at no time, had any knowledge or reason to believe that the property was being or would be used in violation of Customs laws or other laws, and
  3. That petitioner at no time had any knowledge or reason to believe that the owner of the beneficial interest in the property had a criminal record or general reputation for commercial crime.
- E. Straw purchase transactions
1. Definition - purchase property in one's name for another who has a criminal record or general reputation for crime.
  2. If lienholder knows or has reason to believe that the purchaser of record is not the real purchaser, evidence described in D above shall be presented as to both the purchaser of record and the real purchaser.
- F. Evidence to be considered in determining if administrative relief is warranted when property is in possession of another at the time of the seizure:
1. Whether petitioner asked the person in possession if he had a criminal record,
  2. Whether petitioner asked for and was provided with business, financial, personal references,
  3. Whether petitioner contacted references,
  4. Whether there was an agreement that the property would be used only in accordance with law, and
  5. Whether petitioner contacted Federal, State or local enforcement authorities as to the criminal record or reputation of the person taking possession.

**V. Forfeiture Remission Guidelines - 19 U.S.C. 1595a(a), 21 U.S.C. 881, and 49 U.S.C. 80303**

- A. **NOTE:** THESE ARE TO BE USED ONLY WHEN THE IMMEDIATE FORFEITURE PROCEEDING DESCRIBED IN SECTION III. ABOVE IS NOT APPROPRIATE
- B. Petition Submitted by Conveyance Owner
1. If owner is in possession at the time of the seizure, presume that he had knowledge of the illegal activities,
    - a. Deny relief from the forfeiture unless the controlled substances are in a small quantity and apparently for personal use only.
    - b. If it is determined that the controlled substances are for personal use, and the immediate forfeiture guidelines above do not apply, remit upon the payment of:
      - i. Seizure expenses plus
      - ii. Any amount shown in Customs Directive 4410-010A, dated June 22, 2000 entitled ENFORCEMENT ACTIONS: PERSONAL USE QUANTITIES OF CONTROLLED SUBSTANCES.
  2. If conveyance is in possession of an individual other than the owner, e.g., a lessee, at the time of the seizure,
    - a. Deny relief if owner fails to sustain the burden of proving he had neither knowledge nor reason to believe the conveyance would be used in violation of Customs or other laws.
    - b. If it is determined that the owner had neither knowledge nor reason to believe that the conveyance would be used in violation of Customs or other laws, but that the owner was negligent in that he, for example:
      - i. Failed to take precautions to prevent a violation; or
      - ii. Failed to check references of those employed to drive, pilot, master, or otherwise take control of, or assist in the control of, the conveyance outside of the owner's direct supervision,

iii. Then remit the forfeiture upon the payment of seizure expenses plus a baseline of 15 percent of the domestic value of the conveyance, up to as much as 25 percent if aggravating factors are found, and down to as low as 5 percent if mitigating factors are found.

Examples of aggravating factors are: owner has not cooperated with Customs in the past; owner's conveyance(s) has been used in previous violation(s); owner has failed to periodically monitor use of the conveyance.

Examples of mitigating factors are: owner has traditionally cooperated with Customs; first violation involving any conveyance of owner; owner carefully checked references; owner periodically monitored use of the conveyance.

3. Co-owners

Relief may be granted to a co-owner of a vehicle, whether or not subject to a lien or encumbrance, if the co-owner meets the requirements for remission described in paragraph 2 above.

C. Petition Submitted by Lienholder

1. Consider such a petition only if immediate forfeiture is not appropriate, and owner has not petitioned or owner's petition has been denied.
2. If lienholder submits sufficient evidence that there was no knowledge or reason to believe the conveyance would be used illegally, remit the forfeiture upon the payment of the larger of the two following amounts:
  - a. Expenses of seizure, or
  - b. The amount by which the appraised value exceeds the net equity in the conveyance.
  - c. If petitioner fails or declines to comply with decision, forfeit and sell the conveyance, and reimburse petitioner out of the proceeds of sale.

3. If lienholder fails to submit sufficient evidence that there was no knowledge or reason to believe the conveyance would be used illegally, deny relief from the forfeiture and commence appropriate forfeiture proceedings.

## **VI. Mitigation Guidelines - 19 U.S.C. 1703, 19 U.S.C. 1590**

- A. **NOTE:** THESE ARE TO BE USED WHEN THE IMMEDIATE FORFEITURE PROCEEDING DESCRIBED ABOVE IS NOT APPROPRIATE, OR WHEN A PETITION FOR PROCEEDS OF SALE IS BEING CONSIDERED AFTER IMMEDIATE FORFEITURE HAS OCCURRED.
- B. Petition Submitted by Conveyance Owner
  1. If there is outfitting for smuggling and contraband on board, usually in a concealed compartment, deny relief from the forfeiture.
  2. If there is outfitting for smuggling and no contraband on board, remit the forfeiture upon the payment of 20 - 30 percent of the value of the conveyance, using a baseline of 25 percent and considering the extent of any modifications to the conveyance, plus expenses of seizure.
  3. If the forfeiture is to be remitted, condition remission upon removal of any modifications.
- C. Petition Submitted by Lienholder
  1. Consider such a petition only if immediate forfeiture is not appropriate, and owner has not petitioned or owner's petition has been denied.
  2. If lienholder submits sufficient evidence that there was no knowledge or reason to believe the conveyance would be used illegally, remit the forfeiture upon the payment of the larger of the two following amounts:
    - a. Expenses of seizure, or
    - b. The amount by which the appraised value exceeds the net equity in the conveyance.
    - c. If petitioner fails or declines to comply with decision, forfeit and sell the conveyance, and reimburse petitioner out of the proceeds of sale.

3. If lienholder fails to submit sufficient evidence that there was no knowledge or reason to believe the conveyance would be used illegally, deny relief from the forfeiture and commence appropriate forfeiture proceedings.

## **VII. Mitigation Guidelines - Petitioning for Proceeds of Sale Following Immediate Forfeiture**

- A. Consider petitions using principles outlined above to arrive at a decision.
- B. When a forfeiture would ordinarily be remitted to a petitioner, reimburse that petitioner as follows:
  1. An owner in an amount up to the value of the conveyance.
  2. A lienholder, in an amount up to its equity in the conveyance.

## **VIII. Restoration of Proceeds of Sale (19 U.S.C. 1613; 19 C.F.R. Part 171, Subpart E)**

- A. Any person claiming any vessel, vehicle, aircraft, merchandise or baggage which has been forfeited and sold, may at any time within 3 months after the date of sale apply for remission of the forfeiture and restoration of the proceeds of such sale.
- B. Applicant must supply satisfactory proof that he did not know of the seizure prior to the declaration of forfeiture and was in such circumstances as prevented him from knowing and that the forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant.
- C. If forfeited property which is the subject of a claim under this section has been authorized for official use, retention or delivery, such action will be regarded as a sale for purposes of forfeiture remission under this authority.