



General Order 74.5 - Legal Process

PURPOSE: Describe accounting for property received by the agency, disposal of property received by the agency, and the methods used in the disposition of property.

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REVIEWED BY: Standard Review Committee

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DEFINITIONS:

- A. Lost, abandoned or unclaimed property: personal property, including vehicles and currency which the Sheriff's Office has collected and held for safe keeping during the regular course of Sheriff's Office business, but does not include items seized pursuant to a search warrant or validly seized without a warrant.
- B. Currency: Any United States currency or coin collected during the regular course of Sheriff's Office business and held as evidence or for safe keeping. Currency is not to include gold, silver, or other rare metals in bar or coin form, or coin collections valued at more than their apparent face value.
- C. Evidence: Any personal property collected during the regular course of Sheriff's Office business and held as evidence for prosecution of a criminal or traffic case.

- D. Hazardous materials: Any substance which is capable of posing an unreasonable risk to health, safety, and property. This includes any substance, which by its nature is explosive, flammable, corrosive, poisonous, radioactive, a biological hazard or a material- which may cause spontaneous combustion. This includes but is not limited to substances listed in the table of hazardous materials contained in the Code of Federal Regulations Title 49 and National Fire Protection Association's fire protection guide on hazardous materials. Ammunition and its components are excluded from this definition.
- E. Storage and maintenance fees: The estimated expense of storing and maintaining property by the Sheriff's Office Property and Evidence Section. These fees may include utilities, personnel expenses, vehicle and transportation expenses, security and alarm charges, and use of special equipment to maintain the value of the property.
- F. Tax Warrant Seizure: Property, evidence, vehicles, or currency seized by the Kansas Department of Revenue under a state tax warrant in conjunction with a Sheriff's Office or local investigation.
- G. Vehicle: Any automobile, truck, motorcycle, ATV, boat, or other motorized conveyance, or any farm implement, lawn care device, or aircraft in working or non-working condition and requiring storage outside the normal property and evidence storage facility and which is collected during the regular course of Sheriff's Office business which is held as evidence or for safe keeping.

74.5.1 ACCOUNTING FOR PROPERTY RECEIVED BY AGENCY

- A. Custody and disposition of seized and forfeited property shall be accomplished pursuant to applicable legal authorities:
 - 1. Property seized under a search warrant or validly seized without a warrant shall be kept and disposed of according to the requirements of K.S.A. 22-2512. Said property must be safely kept unless otherwise directed by a magistrate. The property must be kept as long as necessary for the purpose of being produced as evidence in any trial. Provided representative samples of hazardous materials may be destroyed. See K.S.A. 22-2512.
 - 2. All "real" property seized by the Sheriff's Office pursuant to a court order will be recorded in the administrative files. These files will be maintained by the sheriff's administrative staff and will contain, at a minimum, the following information as a part of the record of sale:
 - a. Court case numbers assigned to the legal action;
 - b. Complete legal description of the property to be sold;
 - c. Name(s) of all parties of interest to the property; and
 - d. Name(s) of person(s), corporation(s) or other entities to which the property is sold.
 - 3. Lost, abandoned, or unclaimed property. The sheriff is the designated agent of the county for purposes of storing, transferring, and disposing of all lost, abandoned, or unclaimed personal property which is not county property, per Sedgwick County

Code section 16-76. Such property shall be stored, transferred, and disposed of as provided in Sedgwick County Code Chapter 16, Article III.

4. Property may be seized for forfeiture, pursuant to state and federal laws. Custody and disposition of such property shall be as provided for in applicable law and will be coordinated with the District Attorney's Office or the United States Attorney's Office.

74.5.2 DISPOSAL OF PROPERTY RECEIVED BY AGENCY

- A. When property seized under a search warrant or validly seized without a warrant is no longer required as evidence, it shall be disposed of according to [K.S.A. 22-2512](#). A list of property proposed for disposal will be submitted to the County Counselor's Office and the District Attorney's Office. After receiving a finalized court order authorizing the disposal, the property may be disposed of as provided in the court order.
 1. Prior to disposal of electronic storage devices such as computers, digital cameras, external drives, or handheld devices, care should be taken to assure the device memory has been cleaned of all sensitive, personal, and/or illegal data. Technical assistance may be received from the Wichita/Sedgwick County Forensic Computer Crimes Unit.
 2. Proceeds of sales of unclaimed property or property for which ownership is unknown, less the cost of sale and any storage charges incurred in preserving it will be forwarded to the state treasurer pursuant to [K.S.A. 22-2512\(c\)\(3\)](#).
 3. Storage charges shall be calculated according to General Order 74.5.3
 4. Storage fees for property no longer needed as evidence will begin to accrue on the first date the property could have been released.
- B. When lost, abandoned, or unclaimed property is to be disposed of, the Sheriff's Office Property and Evidence section shall conduct the disposal pursuant to Sedgwick County Code Chapter 16, Article III, Sections 76 through 83.
 1. Requests for an order to dispose of or utilize lost, abandoned, or unclaimed property will be submitted to the County Counselor's Office only after the required time described in Sedgwick County Code Chapter 16 Article III.
 2. Lost, abandoned, or unclaimed property may be utilized by the department only if the items are specifically described in a District Court Order, and utilization by the department is allowed by the order.
 - a. The Property and Evidence Section will keep record of the location of all such property utilized by the department, and the time period the property was in use by the department.
 - b. All lost, abandoned, or unclaimed property will be returned to the Property and Evidence Section when no longer needed by the department, and shall be disposed of as described in Sedgwick County Code Chapter 16 Article III, Section 78.

- c. No storage or maintenance fees will be charged during the time such property is utilized by the department.
 - 3. Complete and accurate records of the sale of lost, abandoned, or unclaimed property will be maintained by the direct supervisor of the Property and Evidence Section.
 - 4. Storage and maintenance fees may be deducted along with sale expenses from the proceeds of the sale of lost, abandoned, or unclaimed property. Any remaining funds shall be distributed pursuant to Sedgwick County Code Chapter 16 Article III.
 - 5. The Property and Evidence Section will make notifications by mail or certified letter that property is available for claim or is to be sold. Notifications will be sent to the last known address of the documented property owner. Under normal circumstances property described in Sedgwick County Code, Chapter 16, Article III will be maintained for a period of no less than 90 days prior to disposal.
 - 6. At no time will any owner of any property or evidence held for any reason for any amount of time by the Sheriff's Office be requested or required to pay any storage or maintenance fee of any kind except as outlined in this policy and Sedgwick County Code Chapter 16, Article III.
 - 7. Storage fees for lost, abandoned, or unclaimed property will begin to accrue on the first date the property could have been released. This will normally be the date of the court's order of disposal.
- C. Forfeited property shall be disposed of according to applicable federal or state law.
 - D. Prior to disposal pursuant to this order, the Property and Evidence supervisor shall insure that each serial numbered item is checked through NCIC. If an item is found to be lost, stolen, or is otherwise wanted, it will be removed from the list of items to be sold or otherwise disposed of. The law enforcement agency responsible for the NCIC entry shall be contacted, and arrangements will be made for the proper return of the property.
 - E. If a weapon is seized from an individual and the individual is not convicted of, or adjudicated as a juvenile offender for, the violation for which the weapon was seized, then within 30 days after the declination or conclusion of prosecution of the case against the individual, including any period of appeal, the law enforcement agency that seized the weapon shall verify that the weapon is not stolen, and upon such verification shall notify the person from whom it was seized that the weapon may be retrieved. Such notification shall include the location where such weapon may be retrieved.
 - F. If weapons are sold as authorized by K.S.A. 22-2512(c)(6)(A), the proceeds of the sale shall be credited to the asset seizure and forfeiture fund of the seizing agency.
 - G. For purposes of this policy, the term "weapon" means a weapon described in K.S.A. 2013 Supp. 21-6301, an amendments thereto.
 - H. **(R)** Sheriff's Office employees are prohibited from purchasing any court ordered forfeited property at any public auction or sale.

74.5.3 STORAGE FEES

The following storage fee schedule will apply to sold property, which is seized but is no longer required as evidence as well as long, abandoned, or unclaimed property:

- A. Vehicle Storage -- \$10.00 per day
- B. Personal property or evidence -- \$1.00 per item per day.
- C. Currency – direct expenses only.
- D. Calculating storage and maintenance fees; sale expenses.
 - 1. Proceeds from the sale will be separately calculated for these categories: lost/abandoned/unclaimed property; evidence; and seized/forfeited property.
 - 2. Sale expenses will be included in the auctioneer's percentage from the sale plus any advertising or other expenses directly related to the sale. If lost/abandoned/unclaimed property, evidence, and seized/forfeited property is disposed of during the same auction, 1/3 of the sale expenses shall be considered as directly related to each of the three categories.
 - 3. Storage and maintenance fees for all items sold at auction will be added to the sale expenses in each category to determine total department expenses. The total department expenses will be deducted from the total proceeds of the sale. All remaining funds from the sale of property seized under K.S.A. 22-2512 shall be paid to the state treasurer pursuant to K.S.A. 20-2801 and amendments thereto. All remaining proceeds from the sale of lost/abandoned/unclaimed property will be paid to the county treasurer as provided under Sedgwick County Code, Chapter 16, Article III, section 16-82. All remaining proceeds from the sale of property forfeited under the state and federal forfeiture laws shall be distributed as provided therein.
 - 4. All funds from the sale of any and all property will be forwarded to the sheriff for placement in the appropriate fund. Sale expenses will be paid at the direction of the sheriff.

74.5.4 METHODS USED IN THE DISPOSITION OF PROPERTY

- A. Executions and Orders of Sale. Pursuant to [K.S.A. 60-2409](#), the deputy who levies upon non exempt personal property shall, before said deputy proceeds to sell the same, cause public notice to be given of the time and place of sale for at least fourteen (14) days before the day of sale. The notice shall be given by publication at least once each week for two (2) consecutive weeks in some newspaper meeting the qualifications prescribed by [K.S.A. 64-101](#) and amendments thereto, or in the discretion of the court, by putting up advertisements in five (5) public places in the county, one (1) of which shall be on a bulletin board established for public notices in the county courthouse.
 - 1. If the personal property levied upon cannot be sold at the execution sale for want of bidders, the judgment creditor may direct the deputy to return the execution showing that fact or, at such creditor's option, such creditor may report the same to the judge and obtain an order permitting a second sale under the same execution and an extension of the return day of the execution if that be necessary.
 - 2. All records of sales shall be retained according to state retention schedules.

- B. Pursuant to [K.S.A. 60-2410](#), lands and tenements taken on execution shall not be sold until the officer gives public notice of the time and place of the sale once each week for three (3) consecutive weeks prior to the day of sale, by publication in the county in which the judgment was rendered and in the county in which the land and tenements are located.
1. Each such publication shall be in a newspaper which meets the requirements of [K.S.A. 64-101](#) and amendments thereto and which is designated by the party ordering the sale. The last such publication shall not be less than seven (7) days nor more than fourteen (14) days prior to the day of sale.
- C. Pursuant to K.S.A. 60-2410, all sales of land or tenements under execution shall be held at the courthouse located in the county seat of the county in which the judgment was rendered. Upon application, a district judge whose district includes the county where the judgment was rendered may, for good cause shown, order such sale to be held on the premises or at such other location as the order may designate.
- D. Pursuant to K.S.A. 60-2410, if any judgment or judgments in satisfaction of which any lands or tenements are sold shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers. In such cases, restitution shall be made by the judgment creditors of the money for which such lands or tenements were sold, with lawful interest from the day of sale.
1. This subsection shall not apply in cases of sale under judgments rendered without personal appearance by the party against whom the judgment was rendered, and without service on such party other than by publication, when such sale was made within six (6) months from the date of such judgment.
- E. After the sale by the sheriff of any real estate on execution, special execution or order of sale, the sheriff, if the real estate sold by the sheriff is not subject to redemption, shall execute upon court order in accordance with K.S.A. 60-2415, and amendments thereto, a deed thereof to the purchaser.
1. If the real estate is subject to redemption, the sheriff, upon court order in accordance with [K.S.A. 60-2415](#), and amendments thereto, shall execute to the purchaser a certificate containing a description of the property and the amount of money paid by such purchaser, together with the amount of money paid by such purchaser, together with the amount of the costs up to that date.
 2. Such certificate shall state that, unless redemption of such real estate is made according to law, the purchaser or the purchaser's heirs or assigns will be entitled to a deed to the property. Any contract in any mortgage or deed of trust waiving the right of redemption shall be null and void except as provided by [K.S.A. 60-2414\(a\)](#) and amendments thereto.

74.5.5 USE OF ASSET FORFEITURE FUNDS

- A. **(R)** Following final disposition of property, the funds will be placed into the appropriate fund center;
1. **(R)** General Fund

2. **(R)** State Asset Forfeiture
 3. **(R)** Federal Asset Forfeiture
- B. **(R)** Funds placed in the General Fund will be used according to Sedgwick County Policy.
- C. **(R)** Funds placed in State Asset Forfeiture and Federal Asset Forfeiture will be used in accordance of the Department of Justice, *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*. Specifically for:
1. **(R)** Law Enforcement Investigations
 2. **(R)** Law Enforcement Training
 3. **(R)** Law Enforcement and detention facilities
 4. **(R)** Law Enforcement equipment
 5. **(R)** Law Enforcement travel and transportation
 6. **(R)** Law Enforcement awards and memorials
 7. **(R)** Drug and gang education and awareness programs
 8. **(R)** Matching funds
 9. **(R)** Pro rata funding
 10. **(R)** Asset accounting and tracking
 11. **(R)** Language assistance services
 12. **(R)** Transfers to other law enforcement agencies per General Order 17.1
 13. **(R)** Support of community-based programs
 14. **(R)** Windfall situations
- D. **(R)** Accounting for use of these funds will be done in accordance to General Order 17.1.