

Civil Asset Forfeiture: 7 Things You Should Know

1. What is civil asset forfeiture? Civil asset forfeiture is a legal tool that allows law enforcement officials to seize property that they assert has been involved in certain criminal activity. In fact, the owner of the property doesn't even need to be guilty of a crime: Civil asset forfeiture proceedings charge *the property itself* with involvement in a crime. This means that police can seize your car, home, money, or valuables without ever having to charge you with a crime. There are many, many stories of innocent people being stripped of their money and property by law enforcement.

2. Why would we ever do this? Today, civil forfeiture is intended to give law enforcement a tool they can use to go after organized crime, including drug dealers and their organizations. While its roots in the common law are deep, modern civil forfeiture is justified primarily on the grounds that it allows law enforcement to seize the assets and ill-gotten gains of these criminals, using the property and proceeds to fight against other alleged criminals. Unfortunately, civil asset forfeiture is also used by law enforcement as a way to generate revenue, and many of its targets are innocent members of the public.

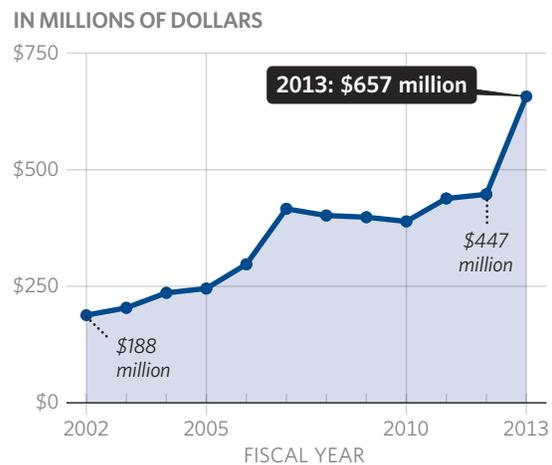
3. But don't police target only criminals? Unfortunately, no. There are many stories of innocent people having their property seized. For example, between 2006 and 2008, law enforcement agents in Tenaha, Texas, **engaged in a systematic practice** of seizing cash and property from innocent drivers with absolutely no evidence of wrongdoing. **In Philadelphia**, police seized the home of two sisters whose brother, who did not live there, showed up while trying to evade the cops. In Detroit, **cops seized over a hundred** cars owned by patrons of an art

institute event—because the *institute* had failed to get a liquor license. You can be totally innocent and still be unable to stop the government from seizing your property.

4. What if I'm innocent? Surely, innocent people can't have their property taken.

Being innocent does not mean that a state has to return your property. The Supreme Court of the United States has held that the “innocent owner” defense is not constitutionally required. Furthermore, even in states where you do have an innocent owner defense, the burden is typically on you. Your property is presumed to be guilty until you prove that you are innocent and that your property therefore should not be forfeited. In other words, you must prove (1) that you were not involved in criminal activity and (2) that you either had no knowledge that your property was being used to facilitate the commission of a crime

Equitable Sharing Payments to the States



Source: U.S. Department of Justice.

heritage.org

or that you took every reasonable step under the circumstances to terminate such use. And all the while, the police retain your property. To cap it all off, the success rate for winning back property is low. Pragmatic property owners, however innocent, may reason that it is best to cut their losses rather than challenge the forfeiture in court.

5. That's crazy!!! This can't happen in my state. It might be crazy, but civil asset forfeiture happens **in every state in the union**. Even if the state has laws that limit it, state and local law enforcement authorities can still seize property by partnering with federal law enforcement officials in a system called "equitable sharing," and payouts to state and local agencies have increased nearly 250% over a 12-year period.

6. But everybody at least gets their day in court, right? No. In fact, **the majority of federal civil forfeitures end administratively**, meaning that the property is automatically forfeited after a certain period of time because the owner of the property did not challenge the seizure.

Forfeiture proceedings might be barred because of waivers procured by law enforcement officials who pressure property owners to renounce ownership of their cars, homes, or money in order to avoid facing (often bogus) criminal charges. This quid pro quo raises serious fundamental questions about the fairness of the process. And if a property owner holds out and goes to court, he or she will face an uphill, costly, and lengthy battle.

7. My state has good forfeiture laws on the books, so none of this is a problem, right? Not necessarily. Federal law can do an end run around good state law. A process called equitable sharing allows local law enforcement officials to team up with federal law enforcement agents to seize property under federal forfeiture law that could not be seized under applicable state forfeiture law. Through equitable sharing, local law enforcement agencies pocket a portion of the proceeds from the seizure and the feds keep the rest. This is a way for local law enforcement to circumvent state law and continue to profit from civil asset forfeitures.