

## Instructions for Filing a Petition for Recognition of Exemption

**Caution: You may want to have an attorney review your completed form before you mail it. This is a basic form and may not cover every situation. Use of forms without the assistance of an attorney could harm your legal rights.**

### *Read Directions Completely*

1. Complete the Claim form. **Please Type or Print Neatly.** Where your name is required, insert your full legal name.

Paragraph 4 – List the property in which you are claiming an interest. It must be property listed in the “Defendants” section of the case caption in the upper left corner of the Notice of Pending Forfeiture or Complaint that you received.

Paragraph 5 – Give details about your interest in the property. For example, state whether you own or lease or have some other kind of interest. Also state whether you are the only interest-holder or whether your interest is less than 100%.

Paragraph 7 – State why the property is exempt from forfeiture under K.S.A. 60-4106, a copy of which is attached to these instructions.

2. Sign the completed Petition. Your signature is your affirmation that all of the information in the petition is accurate to the best of your knowledge.
3. Complete the Certificate of Service and sign it.
4. Make 2 additional copies of the Petition and Certificate of Service. Mail one copy to the seizing agency and one copy to the plaintiff’s attorney. You must mail the copies by certified mail, return receipt requested. **The Petition must be mailed within 60 days after the effective date of notice of pending forfeiture.**

**60-4106. Exemptions.** (a) All property, including all interests in property, described in K.S.A. 60-4105, is subject to forfeiture subject to all mortgages, deeds of trust, financing statements or security agreements properly of record prior to the forfeiture held by an interest holder except that property specifically exempted hereunder:

- (1) No real property or conveyance, or an interest therein, may be forfeited under this act unless the offense or conduct giving rise to forfeiture constitutes a felony.
- (2) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this act unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act.
- (3) No property is subject to forfeiture under this act if the owner or interest holder acquired the property before or during the conduct giving rise to the property's forfeiture, and such owner or interest holder:
  - (A) Did not know and could not have reasonably known of the act or omission or that it was likely to occur; or
  - (B) acted reasonably to prevent the conduct giving rise to forfeiture.
- (4) No property is subject to forfeiture if the owner or interest holder acquired the property after the conduct giving rise to the property's forfeiture, including acquisition of proceeds of conduct giving rise to forfeiture, and the owner or interest holder acquired the property in good faith, for value and was not knowingly taking part in an illegal transaction.
- (5) (A) An interest in property acquired in good faith by an attorney as reasonable payment or to secure payment for legal services in a criminal matter relating to violations of this act or for the reimbursement of reasonable expenses related to the legal services is exempt from forfeiture unless before the interest was acquired the attorney knew of a judicial determination of probable cause that the property is subject to forfeiture.
  - (B) The state bears the burden of proving that an exemption claimed under this section is not applicable. Evidence made available by the compelled disclosure of confidential communications between an attorney and a client other than nonprivileged information relating to attorney fees, is not admissible to satisfy the state's burden of proof.

(b) Notwithstanding subsection (a), property is not exempt from forfeiture, even though the owner or interest holder lacked knowledge or reason to know that the conduct giving rise to property's forfeiture had occurred or was likely to occur, if the:

- (1) Person whose conduct gave rise to the property's forfeiture had authority to convey the property of the person claiming the exemption to a good faith purchaser for value at the time of the conduct;
- (2) owner or interest holder is criminally responsible for the conduct giving rise to the property's forfeiture, whether or not there is a prosecution or conviction; or
- (3) owner or interest holder acquired the property with notice of the property's actual or constructive seizure for forfeiture under this act, or with reason to believe that the property was subject to forfeiture under this act.

(c) Prior to final judgment in a judicial forfeiture proceeding, a court shall limit the scope of a proposed forfeiture to the extent the court finds the effect of the forfeiture is grossly disproportionate to the nature and severity of the owner's conduct including, but not limited to, a consideration of any of the following factors:

- (1) The gain received or expected to be received by an owner from conduct that allows forfeiture;
- (2) the value of the property subject to forfeiture;
- (3) the extent to which the property actually facilitated the criminal conduct;
- (4) the nature and extent of the owner's knowledge of the role of others in the conduct that allows forfeiture of the property and efforts of the owner to prevent the conduct; and
- (5) the totality of the circumstances regarding the investigation.

**History:** L. 1994, ch. 339, § 6; July 1.

IN THE \_\_\_\_\_ JUDICIAL DISTRICT  
DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Plaintiff,

v.

Case No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant(s).

**PETITION FOR RECOGNITION OF EXEMPTION**

1. I am the claimant and my name is \_\_\_\_\_.

2. The name of the plaintiff's attorney who authorized the **Notice of Pending Forfeiture or Complaint** is:

*(Insert on the lines below the plaintiff's attorney's name and address.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. I will accept mail at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. I claim an interest in the following property seized by law enforcement:

---

---

5. The nature and extent of my interest in the property is as follows:

---

---

---

6. I obtained an interest in the property as follows:

*(Insert on the lines below a detailed description of WHEN and HOW you obtained an interest in the property.)*

---

---

---

7. The property is exempt from forfeiture because:

*(Insert on the lines below any applicable reason(s) under K.S.A. 60-4106.)*

---

---

---

I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct.

Date signed: \_\_\_\_\_

\_\_\_\_\_  
*(Signature of claimant)*

Claimant's Name and Address:

---

---

---

---

Claimant's Telephone Number:

---

Claimant's Email Address (if any)

---

**CERTIFICATE OF SERVICE**

I served the Claim by mailing a copy by certified mail, return receipt requested, to the seizing agency and the plaintiff's attorney as follows:

*(Insert on the lines below the plaintiff's attorney's name and address.)*

---

---

---

---

*(Insert on the lines below the name of the seizing agency and the agency's address.)*

---

---

---

---

Date signed: \_\_\_\_\_

\_\_\_\_\_  
*(Signature of claimant)*