#### Volume 1

## PART I. FEDERAL FORFEITURE PRACTICE

## CHAPTER 1. ASSET FORFEITURE: A BRIEF HISTORY AND OVERVIEW

§	1:1	In	troduc	tio	n	
o	1 0	123	C . 1	,	1	

- § 1:2 Forfeiture's historical perspective
- § 1:3 Criminal forfeiture distinguished
- § 1:4 Civil versus criminal forfeiture
- § 1:5 Forfeiture doctrines relating to both types of statutes
- § 1:6 —Relation back doctrine
- § 1:7 —The innocent owner
- § 1:8 —Property subject to forfeiture
- § 1:9 —Disproportionality
- § 1:10 State forfeiture statutes
- § 1:11 Legislative reform proposals
- § 1:12 Conclusion

## CHAPTER 2. FEDERAL FORFEITURE OVERVIEW

- § 2:1 Introduction
- § 2:2 Criminal forfeiture
- § 2:3 Civil forfeiture
- § 2:4 —Collateral impacts of civil forfeitures
- § 2:5 Civil Asset Forfeiture Reform Act (CAFRA)
- § 2:6 —Fugitive disentitlement
- § 2:7 Federal forfeiture statutes
- § 2:8 Evolving legal issues

#### CHAPTER 2A. CONSTITUTIONAL ISSUES

- § 2A:1 Criminal versus civil forfeiture: When a distinction makes a difference
- § 2A:2 Recognizing the obvious: When forfeiture is punishment
- § 2A:3 The government reacts to Austin
- § 2A:4 Testing excessiveness after *Austin*
- § 2A:5 —United States v. Bajakajian
- § 2A:6 —The courts apply *Bajakajian*

§ 2A:7	Standing issues
§ 2A:8	Application of Fourth Amendment
§ 2A:9	Protecting the homestead
§ 2A:10	Severability and divisibility of the forfeitable property
§ 2A:11	
§ 2A:12	·
§ 2A:13	
§ 2A:14	
§ 2A:15	
§ 2A:16	
§ 2A:17	· - ·
§ 2A:18	
3 211.10	Torres
§ 2A:19	—Punishment
§ 2A:20	— Forfeiture under 21 U.S.C.A. § 881(a)(6)
§ 2A:21	881(a)(6) forfeitures
§ 2A:22	—Separate proceedings
§ 2A:23	—United States v. Ursery—The final chapter—For now
§ 2A:24	
§ 2A:25	—Hudson v. United States—The Final final chapter?
§ 2A:26	—Impact of <i>Hudson</i>
§ 2A:27	Right to counsel
§ 2A:28	Self-incrimination
§ 2A:29	Procedural due process claims
CHA	PTER 3. CIVIL FORFEITURES
§ 3:1	Controlled substance statutes: Title 21 United States Code,
8 2.0	Section 881
§ 3:2	—Jurisdiction
§ 3:3	— — Jurisdiction over foreign property
§ 3:4	— — Jurisdiction of the court of federal claims
§ 3:5	—Procedures and pleadings
§ 3:6	—The 10-day rule
§ 3:7	——Cross-claims
§ 3:8	—Time limitations
§ 3:9	-Notice: U.S. v. James Daniel Good Real Property
§ 3:10	—The impact of <i>Good</i>
§ 3:11	——Applying Good to personal property: Krimstock v. Kelly
§ 3:12	——Sufficiency of notice
§ 3:13	——Effect on statute of limitations
§ 3:14	—Standing to contest the forfeiture
§ 3:15	— — The fugitive claimant
§ 3:16	——Competing federal and state claims against the same

§ 3:17 § 3:18

§ 3:19

—Burdens of proof—Defining the terms

Statutory analysis

§ 3:20	—Subject property: Section 881(a)
§ 3:21	——Facilitation and affirmative defenses
§ 3:22	——The innocent owner
§ 3:23	— — Bennis v. Michigan
§ 3:24	———The Supreme Court decides Bennis
§ 3:25	———The impact of Bennis
§ 3:26	——Knowledge and consent
§ 3:27	—Seizure pursuant to supplemental rules for certain admiralty and maritime claims: Section 881(b)
§ 3:28	—Custody of attorney general: Section 881(c)
§ 3:29	—Other laws and proceedings applicable: Section 881(d)
§ 3:30	—Disposition of forfeited property: Section 881(e)
§ 3:31	—Forfeiture of schedule I or II substances: Section 881(f)
§ 3:32	—Plants: Section 881(g)
§ 3:33	—Property title, etc. vested in the United States [the relation back doctrine]: Section 881(h)
§ 3:34	—Stay of civil proceeding: Section 881(i)
§ 3:35	—Venue: Section 881(j)
§ 3:36	—Functions: Section 881(k)(1)
§ 3:37	—Conclusion
§ 3:38	Department of Justice, Federal Bureau of Investigation: Seizures of currency for forfeiture purposes under Title 21 United States Code, Section 881—Introduction
§ 3:39	—Authority to seize
§ 3:40	——Statutory authority
§ 3:41	— —Fourth Amendment authority
§ 3:42	—Probable cause
§ 3:43	— — Direct evidence
§ 3:44	— — Circumstantial evidence
§ 3:45	— — —Quantity of money
§ 3:46	———Lack of legitimate source of income
§ 3:47	— — — Money found in presence of drugs
§ 3:48	— — — Money found in presence of drug paraphernalia
§ 3:49	——Other factors
§ 3:50	— — —Residue
§ 3:51	—Additional issues concerning forfeiture of property
§ 3:52	——Application of exclusionary rule
§ 3:53	——Standing
§ 3:54	——————————————————————————————————————
§ 3:55	——————————————————————————————————————
§ 3.56	— — Civil suit — — Motions for return of property
§ 3:56 § 3:57	Conclusion
8 0.01	Colletusioli

# CHAPTER 3A. CIVIL ASSET FORFEITURE REFORM ACT (CAFRA)

- § 3A:1 Introduction
- § 3A:2 Procedures and deadlines
- § 3A:3 Standing

6044	D
§ 3A:4	Representation
§ 3A:5	The innocent owner defense under CAFRA
§ 3A:6	Excessive fine
§ 3A:7	Claimant's actions and rights
§ 3A:8	Attorneys' fees
§ 3A:9	Warrant and seizure requirements
§ 3A:10	Claimant retaining his property or securing its return
§ 3A:11	Staying a civil forfeiture proceeding
§ 3A:12	Preserving property for litigation
§ 3A:13	Government obligations and responsibilities
§ 3A:14	
§ 3A:15	
§ 3A:16	
§ 3A:17	
§ 3A:18	1 1 0
§ 3A:19	Restraining orders; protective orders
СНАІ	PTER 4. CRIMINAL FORFEITURES
§ 4:1	Federal kingpin statute—Continuing criminal enterprise: Section 848 of title 21 of the U.S. Code—Introduction
§ 4:2	—"Continuing criminal enterprise" defined: Subsection (c)
§ 4:3	—Penalties and forfeitures: Subsections (a) and (b)
§ 4:4	—Criminal forfeitures: Section 853 of title 21 of the U.S. Code
§ 4:5	—Conclusion
§ 4:6	Criminal drug-related forfeiture: Section 853 of title 21 of the U.S. Code
§ 4:7	—Brief history of criminal forfeiture
§ 4:8	—Generally
§ 4:9	—Statutory analysis
§ 4:10	——Property subject to criminal forfeiture: Section 853(a)
§ 4:11	— — Meaning of term "property": Section 853(b)
§ 4:12	— —Third-party transfers: Section 853(c)
§ 4:13	——Rebuttable presumption and burden of proof: Section
3 1.10	853(d)
§ 4:14	——Protective orders: Section 853(e)
§ 4:15	— Protective orders: Section 853(e)—Attorney fees
§ 4:16	— — Warrant of seizure: Section 853(f)
§ 4:17	——Execution: Section 853(g)
§ 4:18	——Disposition of property: Section 853(h)
§ 4:19	——Authority of the Attorney General: Section 853(i)
§ 4:20	——Applicability of civil forfeiture provisions: Section 853(j)
§ 4:21	——Bar on intervention: Section 853(k)
§ 4:22	— — Jurisdiction to enter orders: Section 853(1)
§ 4:23	——Depositions: Section 853(m)
§ 4.23 § 4:24	— Third-party interests: Section 853(n)
§ 4.24 § 4:25	— — Liberal construction: Section 853(o)
_	
§ 4:26	——Section 853(p) (untitled)

§ 6:11

§ 4:27	—Conclusion
§ 4:28	Criminal forfeiture under RICO
§ 4:29	Forfeiture in a criminal proceeding
CHA	PTER 5. FEDERAL MONEY LAUNDERING
§ 5:1	Introduction
§ 5:2	Money laundering under 18 U.S.C.A. § 1956: general overview
§ 5:3	Money laundering under 18 U.S.C.A. § 1956: general overview—Subsection (a)
§ 5:4	Money laundering under 18 U.S.C.A. § 1956: general overview—Subsection (b)
§ 5:5	—Subsection (c)
§ 5:6	—Subsection (d)
§ 5:7	—Subsection (e)
§ 5:8	—Subsection (f)
§ 5:9	—Subsection (g)
§ 5:10	—Subsection (h)
§ 5:11	Money laundering under 18 U.S.C.A. § 1957
§ 5:12	Civil forfeiture under 18 U.S.C.A. § 981
§ 5:13	Criminal forfeiture under 18 U.S.C.A. § 982
§ 5:14	Restraining Orders under 18 U.S.C.A. § 983(j)
§ 5:15	Civil forfeiture of fungible property under 18 U.S.C.A. § 984
§ 5:16	Conclusion
	PTER 6. ADMINISTRATIVE
FOR.	FEITURES
§ 6:1	Remission and mitigation of forfeitures: Overview
§ 6:2	Department of Justice, Federal Bureau of Investigation:
	Facts on petitions for remission or mitigation of forfeiture—Introduction
§ 6:3	—What are the ways a claimant of property seized for forfeiture can seek relief from the forfeiture?
§ 6:4	—What federal regulations govern the remission or mitigation of forfeiture actions?
§ 6:5	—What are the basic tenets regarding this method of relief?
§ 6:6	—What are the three types of petitioners recognized by the petition regulations?
§ 6:7	—Is there a certain format required for filing a petition?
§ 6:8	—What are the standards used to rule on a petition for remission of the forfeiture?
§ 6:9	— — Petitioner must have a valid, good faith interest in the seized property as owner or otherwise
§ 6:10	— Petitioner had no knowledge that the property in which petitioner claims an interest was or would be involved in any violation of the law

— Petitioner had no knowledge of the particular violation

that subjected the property to seizure and forfeiture

§ 6:12 ——Petitioner had no knowledge that the user of the property had any record for violating laws of the United States or of any state for a related crime — Petitioner had taken all reasonable steps to prevent § 6:13 the illegal use of the property —What are the standards used to rule on a petition for § 6:14 mitigation of the forfeiture? § 6:15 —What about persons who rent or lease property? § 6:16 —What should the petition include? § 6:17 —When do you submit the petition? § 6:18 —Where do you submit the petition? § 6:19 — To submit a criminal or civil judicial forfeiture action petition, send to: — To submit an administrative forfeiture action petition, § 6:20 § 6:21 —Do you have to submit a bond with the petition? § 6:22 —What is a petition investigation? § 6:23 —Who rules on petitions? § 6:24 —What are the conditions for remission of the forfeiture for an owner or lienholder? § 6:25 —Is postseizure interest added to the amount of the net equity? § 6:26 —What happens when the owner and a lienholder both petition for remission? § 6:27 -What are the conditions for mitigation of the forfeiture for an owner or lienholder? § 6:28 —What are the conditions for a grant of remission or mitigation to a general creditor?

## CHAPTER 7. FORFEITURE AND REAL PROPERTY

—Whom should you contact if assistance is needed?

—What happens if the petition is denied?

§ 7:1 Civil and criminal forfeiture of real property § 7:2 Civil forfeiture of real property § 7:3 Civil forfeiture under the Controlled Substances Act— Generally Civil forfeiture under the Controlled Substances Act— § 7:4 Buena vista and the innocent owner § 7:5 Civil forfeiture under the Controlled Substances Act— "Knowledge or consent" § 7:6 Civil forfeiture under the Controlled Substances Act—Relation back doctrine and innocent owner defense § 7:7 -Attorneys fees § 7:8 Criminal forfeiture under RICO § 7:9 —Analyzing the elements of a lienholder's recovery — —Litigated judicial forfeiture proceeding § 7:10

———Loan principal and interest

———Costs and attorney fees

§ 7:11

§ 7:12

§ 6:29

§ 6:30

§ 7:21

Conclusion

———Penalty or default interest § 7:13 — — Lienholder's right to foreclosure on property subject § 7:14 to forfeiture ——Expedited federal forfeiture procedures for mortgage § 7:15 holders § 7:16 ——Remission and mitigation for the lienholder § 7:17 State forfeiture proceedings against real property § 7:18 Forfeiture under Uniform Controlled Substances Act § 7:19 Civil forfeiture under New York's CPLR Article 13-A Criminal forfeiture under New York's Penal Law Article 480 § 7:20

# PART II. STATE FORFEITURE PRACTICE

#### CHAPTER 8. STATE FORFEITURE LAW

§ 8:1 Historical perspective and analysis —Uniform Controlled Substances Act § 8:2 § 8:3 —Legislative history § 8:4 Underlying theories of state forfeiture law —Criminal versus civil forfeiture: Their distinct origins, § 8:5 rationales, and justifications § 8:6 — Civil forfeiture: Taint theory and the limits of its logic — — Criminal forfeiture not dependent upon taint theory § 8:7 § 8:8 —Proposed abandonment of taint doctrine as limitation on civil forfeiture § 8:9 ---Substitute assets forfeiture

## CHAPTER 9. CIVIL FORFEITURE AND STATE RICO ACTIONS—TYPE I JURISDICTIONS

- § 9:1 Introduction
  § 9:2 Section 881 of Title 21 of the U.S. Code: Overview
  § 9:3 Constitutional issues
  § 9:4 —Federal law
  § 9:5 —Relation back doctrine
  § 9:6 —State law distinctions
  § 9:7 —Alabama
- § 9:8 Double jeopardy § 9:9 — Excessive fines
- 9 9.9 Excessive lines
- § 9:10 ——No preliminary hearing required

— —Enterprise forfeiture

- § 9:11 —Alaska
- § 9:12 —Massachusetts
- § 9:13 ——Human trafficking
- § 9:14 —New Mexico
- § 9:15 —North Carolina
- § 9:16 —North Dakota

```
-Ohio
§ 9:17
       -South Dakota
§ 9:18
§ 9:19
       —West Virginia
§ 9:20
       Types of property subject to forfeiture—Federal law
§ 9:21
        —State law distinctions
§ 9:22
       —Alabama
§ 9:23
       —Alaska
§ 9:24
       -Massachusetts
§ 9:25
        -New Mexico
       -North Carolina
§ 9:26
§ 9:27
        -North Dakota
§ 9:28
       -South Dakota
§ 9:29
       -West Virginia
       Innocent owner defense—Federal law
§ 9:30
§ 9:31
       —State law distinctions
       —Alabama
§ 9:32
§ 9:33
       —Alaska
§ 9:34
       -Massachusetts
        -New Mexico
§ 9:35
§ 9:36
       -North Carolina
§ 9:37
       -North Dakota
§ 9:38
       -South Dakota
§ 9:39
       -West Virginia
§ 9:40
        Third-Party claims—Federal law
§ 9:41
       —State law distinctions
§ 9:42
       —Alabama
§ 9:43
       —Alaska
§ 9:44
       —Massachusetts
§ 9:45
       -New Mexico
       -North Carolina
§ 9:46
        -North Dakota
§ 9:47
§ 9:48
       -South Dakota
§ 9:49
        -West Virginia
§ 9:50
       Remedies against the government—Federal law
§ 9:51
       —State law distinctions
§ 9:52
       —Alabama
§ 9:53
       —Alaska
§ 9:54
       -Massachusetts
§ 9:55
       —New Mexico
§ 9:56
       -North Carolina
       -North Dakota
§ 9:57
       -South Dakota
§ 9:58
§ 9:59
       -West Virginia
§ 9:60
        Conclusion
§ 9:61
        Type I States: Reprints of state forfeiture statutes
§ 9:62
        Alabama's forfeiture statute
§ 9:63
        Alaska's forfeiture statute
§ 9:64
        Massachusetts' forfeiture statute
```

§ 9:65 New Mexico's forfeiture statute
§ 9:66 North Carolina's forfeiture statute
§ 9:67 North Dakota's forfeiture statute
§ 9:68 South Dakota's forfeiture statute
§ 9:69 West Virginia's forfeiture statute

### Volume 2

# CHAPTER 10. CIVIL FORFEITURE AND STATE RICO ACTIONS—TYPE II JURISDICTIONS

<ul> <li>§ 10:1 Introduction</li> <li>§ 10:2 Uniform Controlled Substances Act—New developments</li> <li>§ 10:3 Constitutional issues—Federal law—State law distinctions</li> <li>§ 10:4 —Arkansas</li> <li>§ 10:5 —Delaware</li> <li>§ 10:6 — Double jeopardy and excessive fines</li> <li>§ 10:7 —District of Columbia</li> <li>§ 10:8 —Georgia</li> <li>§ 10:9 —Hawaii</li> <li>§ 10:10 —Idaho</li> <li>§ 10:11 Kenger</li> </ul>
\$ 10:3 Constitutional issues—Federal law—State law distinctions \$ 10:4 —Arkansas \$ 10:5 —Delaware \$ 10:6 — —Double jeopardy and excessive fines \$ 10:7 —District of Columbia \$ 10:8 —Georgia \$ 10:9 —Hawaii \$ 10:10 —Idaho
distinctions  § 10:4 —Arkansas  § 10:5 —Delaware  § 10:6 — —Double jeopardy and excessive fines  § 10:7 —District of Columbia  § 10:8 —Georgia  § 10:9 —Hawaii  § 10:10 —Idaho
§ 10:5 —Delaware § 10:6 — —Double jeopardy and excessive fines § 10:7 —District of Columbia § 10:8 —Georgia § 10:9 —Hawaii § 10:10 —Idaho
§ 10:6 — —Double jeopardy and excessive fines § 10:7 —District of Columbia § 10:8 —Georgia § 10:9 —Hawaii § 10:10 —Idaho
<ul> <li>§ 10:7 — District of Columbia</li> <li>§ 10:8 — Georgia</li> <li>§ 10:9 — Hawaii</li> <li>§ 10:10 — Idaho</li> </ul>
§ 10:8 —Georgia § 10:9 —Hawaii § 10:10 —Idaho
§ 10:9 —Hawaii § 10:10 —Idaho
§ 10:10 —Idaho
8 10.11 Kangag
§ 10:11 —Kansas
§ 10:12 —Kentucky
§ 10:13 —Maryland
§ 10:14 —Michigan
§ 10:15 —Mississippi
§ 10:16 —Montana
§ 10:17 —Nevada
§ 10:18 —Oklahoma
§ 10:19 —Pennsylvania
§ 10:20 —South Carolina
§ 10:21 —Tennessee
§ 10:22 —Utah
§ 10:23 —Washington
§ 10:24 —Wisconsin
§ 10:25 —Wyoming
§ 10:26 Types of property subject to forfeiture—Federal law— State law distinctions
§ 10:27 —Arkansas
§ 10:28 —Delaware
§ 10:29 —District of Columbia
§ 10:30 —Georgia
§ 10:31 —Hawaii
§ 10:32 —Idaho
§ 10:33 —Kansas
§ 10:34 —Kentucky
§ 10:35 —Maryland

```
§ 10:36
          -Michigan
§ 10:37
          —Mississippi
          -Montana
§ 10:38
§ 10:39
          -Nevada
§ 10:40
          -Oklahoma
§ 10:41
          -Pennsylvania
§ 10:42
          -South Carolina
§ 10:43
          —Tennessee
§ 10:44
          —Utah
          -Washington
§ 10:45
§ 10:46
          -Wisconsin
§ 10:47
          -Wyoming
          Innocent owner defense—Federal law—State law
§ 10:48
           distinctions
§ 10:49
          —Arkansas
§ 10:50
          —Delaware
          —District of Columbia
§ 10:51
§ 10:52
          -Georgia
          —Hawaii
§ 10:53
§ 10:54
          -Idaho
§ 10:55
          -Kansas
          -Kentucky
§ 10:56
§ 10:57
          —Maryland
§ 10:58
          -Michigan
§ 10:59
          —Mississippi
§ 10:60
          -Montana
§ 10:61
          —Nevada
§ 10:62
          -Oklahoma
§ 10:63
          -Pennsylvania
          -South Carolina
§ 10:64
          —Tennessee
§ 10:65
§ 10:66
          —Utah
§ 10:67
          -Washington
          -Wisconsin
§ 10:68
§ 10:69
          —Wyoming
§ 10:70
          Third-Party claims—Federal law—State law distinctions
          —Arkansas
§ 10:71
§ 10:72
          —Delaware
§ 10:73
          —District of Columbia
§ 10:74
          —Georgia
          —Hawaii
§ 10:75
          -Idaho
§ 10:76
§ 10:77
          -Kansas
§ 10:78
          -Kentucky
§ 10:79
          -Maryland
§ 10:80
          -Michigan
§ 10:81
          —Mississippi
§ 10:82
          -Montana
```

```
-Nevada
§ 10:83
§ 10:84
          -Oklahoma
§ 10:85
          —Pennsylvania
§ 10:86
          —South Carolina
          —Tennessee
§ 10:87
§ 10:88
          —Utah
§ 10:89
          —Washington
§ 10:90
          -Wisconsin
§ 10:91
          -Wyoming
§ 10:92
          Remedies against the government—Federal law—State
           law distinctions
§ 10:93
          —Arkansas
§ 10:94
          —Delaware
§ 10:95
          —District of Columbia
§ 10:96
          -Georgia
§ 10:97
          —Hawaii
§ 10:98
          —Idaho
§ 10:99
          -Kansas
§ 10:100
          -Kentucky
§ 10:101
          -Maryland
§ 10:102
          —Michigan
§ 10:103
          —Mississippi
§ 10:104
          -Montana
§ 10:105
          -Nevada
          -Oklahoma
§ 10:106
§ 10:107
          —Pennsylvania
          —South Carolina
§ 10:108
§ 10:109
          —Tennessee
§ 10:110
          —Utah
§ 10:111
          —Washington
§ 10:112
          -Wisconsin
§ 10:113
          -Wyoming
§ 10:114
          Conclusion
```

### CHAPTER 11. CIVIL FORFEITURE AND STATE RICO ACTIONS—TYPE III JURISDICTIONS

§ 11:1 Introduction § 11:2 State law approaches Constitutional issues—Federal law—State law distinctions § 11:3 § 11:4 -Colorado § 11:5 -Connecticut § 11:6 -Illinois § 11:7 -Indiana § 11:8 —Iowa § 11:9 -Louisiana § 11:10 -Maine § 11:11 -Minnesota § 11:12 -Missouri

#### CIVIL AND CRIMINAL FORFEITURE

```
§ 11:13
         -Nebraska
§ 11:14
         —New Hampshire
         -Ohio
§ 11:15
§ 11:16
         —Oregon
§ 11:17
         -Rhode Island
§ 11:18
         —Vermont
§ 11:19
         -Virginia
         Types of property subject to forfeiture—Federal law—State
§ 11:20
         law distinctions
§ 11:21
         -Colorado
§ 11:22
         —Connecticut
§ 11:23
         —Illinois
§ 11:24
         —Indiana
§ 11:25
         —Iowa
§ 11:26
         -Louisiana
§ 11:27
         -Maine
§ 11:28
         -Minnesota
§ 11:29
         -Missouri
§ 11:30
         -Nebraska
§ 11:31
         -New Hampshire
§ 11:32
         —Ohio
§ 11:33
         —Oregon
         -Rhode Island
§ 11:34
§ 11:35
         —Vermont
§ 11:36
         -Virginia
         The innocent owner defense—Federal law—State law
§ 11:37
          distinctions
§ 11:38
         —Colorado
§ 11:39
         —Connecticut
§ 11:40
         —Illinois
§ 11:41
         —Indiana
§ 11:42
         —Iowa
§ 11:43
         -Louisiana
§ 11:44
         -Maine
§ 11:45
         -Minnesota
§ 11:46
         -Missouri
§ 11:47
         -Nebraska
§ 11:48
         —New Hampshire
§ 11:49
         -Ohio
§ 11:50
         —Oregon
         -Rhode Island
§ 11:51
§ 11:52
         —Vermont
§ 11:53
         —Virginia
§ 11:54
         Third-party claims—Federal law—State law distinctions
§ 11:55
         —Colorado
§ 11:56
         —Connecticut
§ 11:57
         —Illinois
         —Indiana
§ 11:58
§ 11:59
         —Iowa
```

§ 11:60 -Louisiana -Maine § 11:61 -Minnesota § 11:62 § 11:63 -Missouri § 11:64 —Nebraska § 11:65 -New Hampshire § 11:66 -Ohio § 11:67 -Oregon -Rhode Island § 11:68 § 11:69 —Vermont § 11:70 —Virginia § 11:71 Remedies against the government—Federal law—State law distinctions -Colorado § 11:72 § 11:73 —Connecticut § 11:74 —Illinois —Indiana § 11:75 § 11:76 —Iowa -Louisiana § 11:77 -Maine § 11:78 § 11:79 -Minnesota § 11:80 -Missouri —Nebraska § 11:81 § 11:82 -New Hampshire § 11:83 -Ohio —Oregon § 11:84 § 11:85 -Rhode Island § 11:86 —Vermont § 11:87 -Virginia § 11:88 Conclusion

## CHAPTER 12. CIVIL FORFEITURE AND STATE RICO ACTIONS—ARIZONA

§ 12:1	Introduction
§ 12:2	—The 1994 amendments
§ 12:3	Constitutional issues and procedures: The nature of forfeiture actions
§ 12:4	—Applicability of exclusionary rule to forfeiture proceedings
§ 12:5	—Other constitutional issues
§ 12:6	—Relation back doctrine
§ 12:7	—Jurisdiction and venue
§ 12:8	-Probable cause and the seizure of forfeitable property
§ 12:9	—Notice requirements
§ 12:10	—Commencing a forfeiture proceeding
§ 12:11	<ul> <li>—Administrative forfeiture proceedings</li> </ul>
§ 12:12	— —Judicial forfeiture proceedings
§ 12:13	—Substituted assets

- § 12:14 Types of property subject to forfeiture
- § 12:15 The innocent owner defense and third-party claims
- § 12:16 Remedies against the government
- § 12:17 Other forfeiture provisions
- § 12:18 Conclusion

### CHAPTER 13. CIVIL FORFEITURE AND STATE RICO ACTIONS—CALIFORNIA

- § 13:1 Introduction
- § 13:2 History of forfeiture in California
- § 13:3 Nature of the statute
- § 13:4 Property subject to forfeiture
- § 13:5 Seizure of property subject to forfeiture
- § 13:6 Initiating the action
- § 13:7 Notice
- § 13:8 Motions for the return of the property
- § 13:9 Filing the claim
- § 13:10 Discovery
- § 13:11 Burdens of proof
- § 13:12 Administrative forfeiture under Section 11488.4(j)
- § 13:13 Procedures for third-party claims
- § 13:14 Civil actions to recover expenses
- § 13:15 Criminal proceeding for the recovery of expenses pursuant to Section 11470.1
- § 13:16 Distribution of funds
- § 13:17 Other constitutional issues
- § 13:18 California's new "Freeze & Seize"

## CHAPTER 14. CIVIL FORFEITURE AND STATE RICO ACTIONS—FLORIDA

- § 14:1 Introduction
- § 14:2 Constitutional issues and procedures
- § 14:3 Nature of the statute
- § 14:4 —Activity prohibited under the act
- § 14:5 —Property subject to forfeiture
- § 14:6 —The relation back doctrine
- § 14:7 —Notice requirements
- § 14:8 —Procedures
- § 14:9 —Replevin
- § 14:10 —The forfeiture proceeding
- § 14:11 —Outcome of the forfeiture proceedings and damages
- § 14:12 —Distribution of liens and forfeited property
- § 14:13 —Training requirements
- § 14:14 Florida's RICO Act
- § 14:15 —Procedures
- § 14:16 —Relation back
- § 14:17 —Disposition of forfeited property

- § 14:18 —RICO lien notice
- § 14:19 —Conclusion

### CHAPTER 15. CIVIL FORFEITURE AND STATE RICO ACTIONS—NEW JERSEY

- § 15:1 Introduction
- § 15:2 The nature of forfeiture proceedings under chapter 64
- § 15:3 —Property subject to forfeiture
- § 15:4 —Seizure of property
- § 15:5 —Procedures
- § 15:6 —Innocent ownership and the relation back doctrine
- § 15:7 —Remedies against the state
- § 15:8 —Disposal of forfeited property
- § 15:9 New Jersey's RICO statute: Forfeiture proceedings under chapter 41
- § 15:10 Other forfeiture provisions
- § 15:11 Conclusion

### CHAPTER 16. CIVIL FORFEITURE AND STATE RICO ACTIONS—NEW YORK

- § 16:1 Introduction
- § 16:2 Nature of the statute: CPLR Article 13-A—Generally
- § 16:3 —Definition of terms: Section 1310
- § 16:4 —The forfeiture action: "Preconviction" or "postconviction"
- § 16:5 ——The forfeiture defendant: Criminal or noncriminal
- § 16:6 ——The forfeited property
- § 16:7 ——Forfeiture of real property as an instrumentality of a crime in felony narcotics and marijuana cases
- § 16:8 ——Note on Narcotics Eviction Proceedings
- § 16:9 —Scope of the action: Section 1311: Jurisdiction and preliminary issues
- § 16:10 ——Effect of plea bargaining
- § 16:11 ——Summary judgment
- § 16:12 ——Recoverable property
- § 16:13 — Use of precommencement subpoenas: Section 1311-a
- § 16:14 —Provisional remedies: Sections 1313–1348
- § 16:15 ——Scope and elements of provisional remedies
- § 16:16 ———Attachment
- § 16:17 ———Preliminary injunction/temporary restraining order
- § 16:18 ———Temporary receivership
- § 16:19 ——Notice of pendency
- § 16:20 Other considerations
- § 16:21 —State-Federal Jurisdiction
- § 16:22 —Civil-Criminal State Court Jurisdiction
- § 16:23 —Burdens of proof and presumptions
- § 16:24 —"Interests of justice" relief: Section 1311(4)
- § 16:25 —Prosecutorial liability

§ 16:26	—Limitations on recovery
§ 16:27	—Disposition of forfeited assets: Section 1349
§ 16:28	—Constitutional issues and article 13-A
§ 16:29	—Effect of Civil or Criminal Nature on Constitutionality
§ 16:30	Double Jeopardy
§ 16:31	Penal Law Article 480
§ 16:32	
§ 16:33	Administrative Code Section 14-140—Introduction: A 14-
3 10.00	140 story
§ 16:34	—The statute and constitutional issues
§ 16:35	
§ 16:36	—Section 14-140 and DWI
-	Penal Law Article 460: "Baby RICO"—Introduction
§ 16:38	—Historical background
§ 16:39	—OCCA's legislative history and some basic procedures
§ 16:40	
§ 16:40 § 16:41	· -
§ 16:41	· ·
	——Participation
	— — articipation  — — Criminal activity
-	— —Statutory limitations
	——Statutory initiations —Forfeiture under OCCA
§ 16.46 § 16:47	
§ 16.47 § 16:48	
o .	
§ 16:49 § 16:50	
	—Conclusion
-	
-	Vehicle and Traffic Law § 511-b
§ 16:53	—Forfeiture for felony aggravated unlicensed operation of a motor vehicle
8 16.54	
§ 16:54	· · · · · · · · · · · · · · · · · · ·
§ 16:55	
§ 16:56	•
§ 16:57	
§ 16:58	* *
§ 16:59	— — Release of vehicle
§ 16:60	— —Additional requirements
	——Stolen or leased vehicles
§ 16:62	
0.40.00	been commenced
§ 16:63	——Failure to demand return of vehicle constitutes
	abandonment
§ 16:64	— — Termination of criminal proceedings defined
§ 16:65	
§ 16:66	——Service upon claimants/owners and lienholders
§ 16:67	
	Procedure
§ 16:68	— —Burden of proof where intervenor asserts security
	interest

— —Forfeiture—Affirmative defenses § 16:69 § 16:70 ——Dismissal in the interests of justice — — Determination of motion to dismiss § 16:71 § 16:72 ——Disposition of forfeited vehicles § 16:73 — Lienholders and other third parties' interest limited § 16:74 — Failure to notify claimant—Two-year statute of limitations § 16:75 ——Action for wrongful seizure—Two-year statute of limitations

## CHAPTER 17. CIVIL FORFEITURE AND STATE RICO ACTIONS—TEXAS

- § 17:1 Introduction
- § 17:2 Nature of the statute
- § 17:3 —Generally
- § 17:4 —Property subject to forfeiture
- § 17:5 ——Property used in the commission of a felony
- § 17:6 ——Forfeitability of currency
- § 17:7 —The requisite underlying crime
- § 17:8 —Seizure of subject property
- § 17:9 —Notification procedures and requirements
- § 17:10 —Initiation of a forfeiture action
- § 17:11 —Thirty-day rule
- § 17:12 —Forfeiture hearing
- § 17:13 —Innocent owner
- § 17:14 —Relation back doctrine
- § 17:15 —Other constitutional issues
- § 17:16 —Immunity
- § 17:17 —Disposition of property
- § 17:18 —Report of seized and forfeited aircraft
- § 17:19 —Summary judgment procedures
- § 17:20 Conclusion
- § 17:21 Texas's money laundering package
- § 17:22 The Texas controlled substances tax

### CHAPTER 18. STATE FORFEITURE LAWS REGARDING FORFEITURE OF MOTOR VEHICLE DUE TO OPERATION OF VEHICLE WHILE INTOXICATED

- § 18:1 Statutory authority; rationale
- § 18:2 Prerequisite offenses
- § 18:3 Procedure
- § 18:4 Co-owner and lienholder interests
- § 18:5 Disposition of vehicle
- § 18:6 Constitutional challenges
- § 18:7 Double jeopardy
- § 18:8 Excessive fines and unlawful taking

§ 18:9	Due process
§ 18:10	Equal protection
§ 18:11	Nexus between vehicle and offense
§ 18:12	Other defenses; self incrimination
§ 18:13	Innocent owner defense
§ 18:14	—Leased vehicles
§ 18:15	Joint or spouse's sole ownership of vehicle
§ 18:16	Hardship

### Volume 3

### **APPENDICES**

AFFENDIC	ES .
APPENDIX A.	Compilation of Selected Federal Forfeiture Statutes
APPENDIX A1.	Outline of Forfeiture Law and Procedures
APPENDIX A2.	Federal Forfeiture Overview (Applicable Statutes—Part II)
APPENDIX A3.	Drug Enforcement Administration Guide to Canine Interdiction
APPENDIX B.	Federal Statutory Index
APPENDIX C.	Admiralty and Maritime Claims: Civil Forfeiture Proceedings—Supplemental Rules
APPENDIX C1.	Civil Procedures in Civil Administrative Enforcement Proceedings
APPENDIX D.	Title 19: Custom Duties, 19 U.S.C. § 1618
APPENDIX D1.	U.S. Attorneys' Manual, Title 9-111.000 Forfeiture/ Seizure and Title 9-112.000, Administrative and Judicial Forfeiture
APPENDIX D2.	Regulations Governing The Remission Or Mitigation Of Administrative, Civil, And Criminal Forfeitures 28 C.F.R. Part 9
APPENDIX D3.	Seizure and Forfeiture Procedures of the U.S. Fish and Wildlife Service, Interior 50 C.F.R. Part 12
APPENDIX D4.	Department of Justice, Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy
APPENDIX E.	Sample Federal Forms
APPENDIX E1.	Asset Forfeiture Policy Manual (2023)—Seizures by State, Local and Tribal Law Enforcement
APPENDIX E2.	Model Claim for Seized Property
APPENDIX E3.	Model Claimant's Answer to Complaint for Forfeiture in Rem
APPENDIX E4.	Department of Justice Memorandum in Response to Austin v. United States and Alexander v. United States

APPENDIX E5.	Department of Justice Memoranda (2) in Response to <i>United States v. Ursery</i>
APPENDIX E6.	Department of Justice Memorandum in Response to <i>United States v. Bajakajian</i>
APPENDIX E7.	Application for a Warrant to Seize Property Subject to Forfeiture
APPENDIX E8.	Warrant to Seize Property Subject to Forfeiture
APPENDIX E9.	Internal Revenue Service Manual Criminal Investigation—Asset Seizure and Forfeiture
APPENDIX F.	Expedited Forfeiture Settlement Policy for Mortgage Holders and Lienholders
APPENDIX F1.	United States Attorneys' Manual—Expedited Payment of Lien Holders in Forfeiture Cases
APPENDIX G.	Attorneys' Fees
APPENDIX H.	Selected Federal Pleadings
APPENDIX H1.	Department of Justice Fact Sheet on Administration Legislative Proposals in Support of Kleptocracy Asset Recovery
APPENDIX H2.	Beneficial Ownership Information Reporting Requirements
APPENDIX I.	Uniform Controlled Substance Act
APPENDIX J.	Model Asset Seizure and Forfeiture Act (MASFA)
APPENDIX K.	Selected State Forms and Pleadings

#### **Table of Laws and Rules**

**Table of Cases** 

Index