



## OVERLAND PARK POLICE DEPARTMENT STANDARD OPERATING PROCEDURE

**NUMBER:** 3240  
**TOPIC:** PROPERTY SEIZURES/FORFEITURES/DRUG TAX  
**EFFECTIVE DATE:** 09/08/2021  
**SUPERCEDES:** 10/31/2016

**SIGNATURE:** /s/ Frank Donchez  
Chief of Police

/s/ Simon Happer  
Bureau Commander

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### I. PURPOSE

The purpose of this SOP is to establish Department guidelines which are in compliance with local, state and federal laws regarding property seizures, forfeitures and drug taxing.

### II. DEFINITIONS

CIVIL FORFEITURE is a civil proceeding seeking forfeiture of property that is created by a statute governing civil forfeitures, such as [21 U.S.C. § 881](#) and [K.S.A. 60-4101, et seq.](#)

CONTRABAND is any property that is illegal to possess.

CRIMINAL FORFEITURE is a punishment created by a statute defining criminal conduct and providing for forfeiture of assets used to facilitate that criminal conduct, such as the [Racketeer Influenced and Corrupt Organizations Act \(RICO\)](#), [18 U.S.C. §§ 1961 - 1968](#), or felony violations of the [Federal Controlled Substances Act](#), [21 U.S.C. § 853](#).

CONVEYANCE is any vehicle, trailer, vessel, aircraft or other means of transportation.

DEALER is any person who, in violation of Kansas law, manufactures, produces, ships, transports or imports into Kansas or in any manner acquires or possesses more than 28 grams of marijuana, or more than one gram of any controlled substance, or 10 or more dosage units of any controlled substance which is not sold by weight.

DRUG TAX SEIZURE is when property from a dealer is seized in order to satisfy a tax assessment under the [Kansas Marijuana and Controlled Substances Tax Act, K.S.A. 79-5201, et seq.](#)

KANSAS FORFEITURE ACT is the [Kansas Standard Asset Seizure and Forfeiture Act, K.S.A. 60-4101, et seq., and amendments thereto.](#)

NOTICE OF SEIZURE FOR FORFEITURE is a written statement by a law enforcement agency that property has been seized and may be proceeded against pursuant to the [Kansas Forfeiture Act](#) and providing information concerning the property, the seizure, and the law enforcement agency.

REAL PROPERTY is lands and appurtenances to lands, such as buildings, crops, or mineral rights, as opposed to personal property such as currency and conveyances.

PROCEEDS means anything of value, derived directly or indirectly from or realized through unlawful activity, including any monies used or intended to be used, or facilitate or intended to facilitate, the purchase, manufacture, cultivation, transportation, storage, distribution, sale, or possession of controlled substances or contraband.

### III. PROCEDURE

#### A. CRIMES GIVING RISE TO FORFEITURE

Asset forfeiture may be initiated only when an officer possesses probable cause to believe an offender has engaged in one of the following crimes which statutorily and specifically authorize forfeiture violations involving:

- **Controlled Substances**, as described in [K.S.A. 2015 Supp. 21-5701 through 21-5717](#), and amendments thereto.
- **Theft** as defined in [K.S.A. 2015 Supp. 21-5801](#), and amendments thereto.
- **Criminal Discharge of a Firearm**, as defined in [K.S.A. 2015 Supp. 21-6308\(a\)\(1\) and \(a\)\(2\)](#), and amendments thereto.
- **Gambling**, as defined in [K.S.A. 2015 Supp. 21-6404](#), and commercial gambling, as defined in [K.S.A. 2015 Supp. 21-6406\(a\)\(1\)](#), and amendments thereto.
- **Counterfeiting**, as defined in [K.S.A. 2015 Supp. 21-5825](#), and amendments thereto.
- **Unlawful Possession or use of a Scanning Device or Re-encoder**, as described in [K.S.A. 2015 Supp. 21-6108](#), and amendments thereto.

- **Medicaid Fraud**, as described in [K.S.A. 2015 Supp. 21-5925 through 21-5934](#), and amendments thereto.
  - An act or omission occurring outside this state, which would be a violation in the place of occurrence and would be described in this section if the act occurred in this state, whether or not it is prosecuted in any state.
  - An act or omission committed in furtherance of any act or omission described in this section including any inchoate or preparatory offense, whether or not there is a prosecution or conviction related to the act or omission.
  - Any solicitation or conspiracy to commit any act or omission described in this section, whether or not there is a prosecution or conviction related to the act or omission.
- **Terrorism**, as defined in [K.S.A. 2015 Supp. 21-5421](#), and amendments thereto
- **Illegal use of Weapons of Mass Destruction**, as defined in [K.S.A. 2015 Supp. 21-5422](#), and amendments thereto
- **Furtherance of Terrorism or Illegal Use of Weapons of Mass Destruction**, as described in [K.S.A. 2015 Supp. 21-5423](#), and amendments thereto.
- **Unlawful Conduct of Dog Fighting and Unlawful Possession of Dog Fighting Paraphernalia**, as defined in [K.S.A. 2015 Supp. 21-6414\(a\) and \(b\)](#), and amendments thereto.
- **Unlawful Conduct of Cockfighting and Unlawful Possession of Cockfighting Paraphernalia**, as defined in [K.S.A. 2015 Supp. 21-6417\(a\) and \(b\)](#), and amendments thereto.
- **Selling Sexual Relations**, as defined in [K.S.A. 2015 Supp. 21-6419](#), and amendments thereto
- **Promoting the Selling of Sexual Relations**, as defined in [K.S.A. 2015 Supp. 21-6420](#), and amendments thereto
- **Buying Sexual Relations**, as defined in [K.S.A. 2015 Supp. 21-6421](#) and amendments thereto.
- **Human Trafficking and Aggravated Human Trafficking**, as defined in [K.S.A. 2015 Supp. 21-5426](#), and amendments thereto.
- **Violations of the Banking Code**, as described in [K.S.A. 9-2012](#), and amendments thereto.
- **Mistreatment of a Dependent Adult**, as defined in [K.S.A. 2015 Supp 21-5417](#), and amendments thereto.
- **Giving a Worthless Check**, as defined in [K.S.A. 2015 Supp. 21-5821](#), and amendments thereto.
- **Forgery**, as defined in [K.S.A. 2015 Supp. 21-5823](#), and amendments thereto.
- **Making False Information**, as defined in [K.S.A. 2015 Supp. 21-5824](#), and amendments thereto.
- **Criminal Use of a Financial Card**, as defined in [K.S.A. 2015 Supp. 21-5828](#), and amendments thereto.

- **Unlawful Acts Concerning Computers**, as described in [K.S.A. 2015 Supp. 21-5839](#), and amendments thereto.
- **Identity Theft and Identity Fraud**, as defined in [K.S.A. 2015 Supp. 21-6107\(a\) and \(b\)](#), and amendments thereto.
- **Electronic Solicitation**, as defined in [K.S.A. 2015 Supp. 21-5509](#), and amendments thereto.
- **Felony Violations of Fleeing or Attempting to Elude a Police Officer**, as described in [K.S.A. 2015 Supp. 8-1568](#), and amendments thereto.
- **Commercial Sexual Exploitation of a Child**, as defined in [K.S.A. 2015 Supp. 21-6422](#), and amendments thereto.
- Violations of the **Kansas Racketeer Influenced and Corrupt Organization Act**, as described in [K.S.A. 2015 Supp. 21-6329](#), and amendments thereto.
- **Indecent Solicitation of a Child** and **Aggravated Indecent Solicitation of a Child**, as defined in [K.S.A. 2015 Supp. 21-5508](#), and amendments thereto.
- **Sexual Exploitation of a Child**, as defined in [K.S.A. 2015 Supp. 21-5510](#), and amendments thereto.
- **Violation of Consumer Protection Order** as defined in [K.S.A. 2016 Supp. 6423](#), and amendments thereto.

Civil forfeiture may occur regardless of whether a criminal prosecution commences or a conviction results related to the crime.

Before requesting forfeiture, officers will ensure that there is probable cause to believe that the asset was used in facilitating or committing one of the crimes listed above, or constitutes proceeds from one of the crimes listed above, and that forfeiture of the asset would not be grossly disproportionate when compared with the severity of the crime.

## B. ASSETS AVAILABLE FOR SEIZURE

Assets available for seizure include:

- Property described in a statute authorizing forfeiture.
- All property, including, but not limited to , cash and negotiable instruments and the whole of any lot or tract of land and any appurtenances or improvements to real property that is either:
  - Furnished or intended to be furnished by any person in an exchange that constitutes conduct giving rise to forfeiture; or
  - used or intended to be used in any manner to facilitate conduct giving rise to forfeiture;
- All proceeds of any conduct giving rise to forfeiture;
- Any property derived from or realized through any proceeds which were obtained directly or indirectly from the commission of an offense listed in [K.S.A. 60-4104](#), and amendments thereto;
- All weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture;
- Ownership or interest in real property that is a homestead, to the extent the homestead was acquired with proceeds from conduct giving rise to forfeiture;

- Contraband, which shall be seized and summarily forfeited to the state without regard to the procedures set forth in the [\*Kansas Standard Asset Seizure and Forfeiture Act\*](#);
- All controlled substances, raw materials, controlled substance analogs, counterfeit substances, or imitation controlled substances that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state; and
- Any items bearing a counterfeit mark.

This list obviously includes the following items that are frequently found in the possession of criminals:

- U.S. Currency
- Communications devices (pagers, mobile phones, etc.)
- Weapons
- Vehicles
- Real and personal property, including illegal drugs.

#### C. OVERLAND PARK POLICE DEPARTMENT QUALIFIERS FOR ASSET FORFEITURE

In order to qualify for asset forfeiture for the City of Overland Park, the following conditions should be considered:

- Items must have a collective value of \$500.00 or more unless a *FORFEITURE WAIVER* is obtained [Attachment E](#). There may be circumstances when values less than \$500.00 are accepted if an Investigations supervisor and the Police Legal Advisor approve.
- Real property and conveyances may only be forfeited for felony offenses or conduct, not misdemeanors.
- Conveyances used by common carriers in the transaction of business as a common carrier will not be seized for forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the [\*Kansas Forfeiture Act\*](#).
- Vehicles or other property subject to a lien should only be considered for forfeiture when the value of the asset, less the amount of the lien, exceeds \$5000.00
- Refrain from seizing livestock or household pets. The cost of caring for animals quickly exceeds the revenue produced from the sale of any such item.
- The Investigations Division is responsible for tracking all forfeiture proceedings. The Investigations Division Commander will be responsible for oversight of the forfeiture process.

#### D. FEDERAL FORFEITURES

Investigators considering assets for federal forfeiture or involved in investigations involving the United States Department of the Treasury will follow the guidelines and procedures set forth in “A Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies, July 2018, as supplemented by the United States Department of Justice and the United States Department of the Treasury.

## E. STATE FORFEITURES

Commissioned personnel considering assets for state forfeiture will follow the procedures set forth in the Kansas Forfeiture Act.

Field officers considering assets or currency for state forfeiture will contact a field supervisor, who will coordinate with an Investigations supervisor.

Consideration will be given to the following factors when determining whether to forfeit conveyances or money.

- Value and condition of conveyance
- Ownership – is there a third party interest
- Money in proximity of drugs
- Ability to associate the money with the dealer or drugs.

If the determination is made to seize assets for forfeiture, an offense report detailing circumstances must be written. Additional information will include the arrest report, tow information, inventory of seized property, photographs and *INITIAL REPORT of FORFEITURE* [Attachment B](#) and forward to the SIS supervisor for follow up. Insure the property subject to forfeiture is labeled as possible forfeiture rather than evidence.

Investigators assigned or otherwise considering assets or currency for state forfeiture will follow the procedures listed below.

The item(s) to be forfeited will be seized or real property should be posted as subject to forfeiture. As soon as practicable after seizure for forfeiture, the investigators will conduct a written inventory and estimate the value of the property seized.

The investigator(s) will also present the owner or possessor of the seized property with a receipt for the item as required by [K.S.A. 22-2512](#). The notice to the owner or possessor of the seized property will be served within 30 days of the seizure as required by [K.S.A. 60-4107\(d\)](#) [Attachment A](#). If personal service is not possible the *Notice of Seizure for Forfeiture* form notice will be sent by certified mail, return receipt requested.

Any seized conveyance will be inventoried by the primary officer or case detective seizing the conveyance. Any other evidence, contraband or property will be processed as set forth in [SOP 3250, Property Procedures](#).

An investigator will complete the *Request for Forfeiture* form and send it to the District Attorney's (D.A.), office within 45 days of the seizure. In turn the D.A. has 15 days to consider the request.

If the requesting investigator has received notice that the District Attorney has declined the forfeiture request or has failed to respond within 15 days, the investigator may seek other options to include; requesting the Overland Park Police Legal Advisor (PLA) file forfeiture through the District Court, federal forfeiture if the case meets federal guidelines, or requesting the Kansas Highway Patrol (KHP) or the Kansas Bureau of Investigation (KBI)

adopt the forfeiture. A request may be made to the District Attorney to have an attorney represent the agency in the forfeiture proceedings.

If the investigator fails to send a request for forfeiture within the time limits required, the property will be released upon the request of an owner or interest holder to such owner's or interest holder's custody, as custodian for the court, pending further proceedings pursuant to the Kansas Forfeiture Act. The statute of limitations on forfeiture proceedings runs five years after the last conduct giving rise to forfeiture.

#### F. UNITED STATES CURRENCY SEIZURES

Except as provided by the Drug Tax Seizures section in this policy, currency not deemed to have forensic evidentiary value will be removed from the Property Room on a regular basis. Those funds will be transferred to the Finance Department to be placed in an interest-bearing account, and they will remain there until forfeiture proceedings are concluded.

Photographs of the currency will be taken or copied for the case file. If officers determine the currency being seized has forensic evidentiary value, the currency denominations and any serial numbers should be photographed and/or copied. Two officers will be present when currency is counted. Currency seized as a drug tax seizure may be turned over to the Kansas Department of Revenue as set forth in [K.S.A. 79-5204\(c\)](#) and [79-5212\(d\)](#).

#### G. FORFEITED PROPERTY CONVERTED TO CITY PROPERTY [84.1.8](#)

A list of property that has been seized and awarded to the City of Overland Park will be compiled by the Investigations Division Commander or designee and distributed to all OPPD Division Commanders, Deputy Chiefs and Chief of Police for review.

Any Division Commander or Deputy Chief requesting the property to be used by Department personnel for a law enforcement function in compliance with [K.S.A. 60-4117](#) and amendments thereto, will submit a memo to the Chief of Police listing the requested property, how it will be used and where it will be stored.

The Chief of Police will review the request and either approve or deny it. If approved, the Division Commander or designee will have an asset number assigned if an item is over \$50.00. Send a copy of the approved memo to the Investigations Division Commander, Inventory Control Clerk, and the Police Fiscal Manager for tracking purposes.

The Investigations Division Commander will maintain a spread sheet to track all items which have been converted to City property. Once an asset number has been assigned, the requesting supervisor will send the Property Supervisor an e-mail indicating the Chief's approval for the release of the property and the asset number.

When the forfeited property is no longer needed, it will be properly disposed of per [K.S.A. 60-4117](#) and amendments thereto. Notification of the disposal of property will need to be sent to the Inventory Control Clerk and Police Fiscal Manager.



Property awarded to the City of Overland Park as a part of a plea agreement, will follow the same procedure, however [K.S.A. 60-4117](#) is not applicable in these situations.

Abandoned or unclaimed property or property seized in criminal cases as evidence must have a court order prior to it being converted to City inventory per [K.S.A. 22-2512](#), and amendments there to. This includes any contraband personnel would like to use as training aids.

#### H. DRUG TAX SEIZURES

In lieu of forfeiture proceedings, currency and assets may be turned over to the Kansas Department of Revenue in order to satisfy drug tax obligations as set forth in the *Kansas Marijuana and Controlled Substances Tax Act*, [K.S.A. 79-5201](#), *et seq.*

If officers discover currency and/or assets which is subject to drug tax seizure, an Investigations supervisor will be notified. That supervisor will decide whether a Department of Revenue employee and/or Investigations personnel will be called to the scene or will respond later.

If a Department of Revenue employee does not respond to the scene, officers will:

- Seize available currency and assets based on procedures set forth in the *Kansas Forfeiture Act*
- Complete the Initial Report for Forfeiture Seizure [Attachment B](#)
- Forward the form, along with all other reports to the SIS supervisor
- Weigh any narcotics and note the weight in the report.
- Include Failure to Pay Drug Tax [K.S.A. 79-5204\(a\)](#) on the arrest report.

Taxes and penalties become due and payable immediately upon a person's acquisition or possession of items subject to the tax. [K.S.A. 79-5204 \(c\) & \(d\)](#) and amendments thereto.

Upon personal service of a notice of assessment to a dealer and the dealer's failure to immediately pay the assessment, the Department of Revenue may immediately seize the dealer's assets. [K.S.A. 79-5205\(a\)](#) and amendments thereto. Law enforcement officers may assist in these efforts upon the request of a Department of Revenue employee. [K.S.A. 79-5212\(b\)](#) and amendments thereto.

If the OPPD is holding assets of someone subject to a drug tax assessment and is served with a drug tax warrant, the OPPD will deliver the funds or other personal property to the Sheriff or Department of Revenue employee as set forth in [K.S.A. 79-5212\(d\)](#) and amendments thereto.

Money received from the Department of Revenue will be deposited in the Special Law Enforcement Trust Fund pursuant to [K.S.A. 79-5211](#) and amendments thereto.



## I. EXPENDITURES FROM LAW ENFORCEMENT TRUST FUNDS

Personnel requesting use of forfeiture funds will submit an expenditure request via the chain of command to the Chief of Police.

Prior to expending federal forfeiture (equitable sharing) funds, the requestor will contact the Police Budget & Grants Finance Officer to request an entity registration check in the System for Award Management (SAM).

Assuming the entity registration check finds the proposed vendor does not have an exclusion status, the requestor will be permitted to proceed with the purchase. If the entity registration search identifies an exclusion status, a new vendor will be identified and a separate SAM entity registration check must be conducted prior to the disbursement of federal equitable sharing funds. This requirement ensures recipients of equitable sharing funds conduct business only with entities that are not prohibited from receiving federal funds.

Purchase requests using forfeiture funds will follow City of Overland Park's central purchasing procedures.

Date of Origin: 12/18/2007

Revision Date: 07/21/2009

Revision Date: 07/24/2012

Revision Date: 01/13/2014

Revision Date: 05/12/2015

Revision Date: 10/31/2016

Revision Date: 09/08/2021

[CALEA references:](#)

[84.1.8](#)

SOP 3240

Attachment A

**Overland Park Police Department**  
Special Investigations Section

**NOTICE OF SEIZURE FOR FORFEITURE**

To: \_\_\_\_\_

Case #: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, KS ZIP code: \_\_\_\_\_

***You are hereby given notice pursuant to the Kansas Standard Asset Seizure and Forfeiture Act, K.S.A. 60-4101, that the following property has been seized for forfeiture from the listed location(s) on the listed date(s):***

<i>Date</i>	<i>Location</i>	<i>Property</i>

Name of Seizing Agency: **OVERLAND PARK POLICE DEPARTMENT**

Additional information may be obtained from:

AGENCY CONTACT PERSON: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CODE: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

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I hereby certify that I personally served/mailed a copy of this notice to the above person/address on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature: \_\_\_\_\_

SOP 3240



# OVERLAND PARK POLICE DEPARTMENT INITIAL REPORT OF FORFEITURE SEIZURE

Attachment B



Case number: \_\_\_\_\_

Seizing Officer (name, badge, division): \_\_\_\_\_

Assisting Officer (name, badge, division): \_\_\_\_\_

Date of Seizure: \_\_\_\_\_

Seizure Location: \_\_\_\_\_ County: \_\_\_\_\_

**Description of Property Seized for Forfeiture:**VEHICLE TYPE: ☐ Auto ☐ Boat ☐ Aircraft ☐ Other: \_\_\_\_\_

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_

Color: \_\_\_\_\_ VIN/Serial #: \_\_\_\_\_

Tag: \_\_\_\_\_ State of Issue: \_\_\_\_\_ Year: \_\_\_\_\_

General Condition: \_\_\_\_\_

Location of Seized Asset: \_\_\_\_\_

Photographs: ☐ Yes ☐ No Registration information attached: ☐ Yes ☐ NoAdditional equipment on vehicle which was seized (use separate form for additional vehicles):  
\_\_\_\_\_**CURRENCY:**

Amount Seized: \$\_\_\_\_\_

Photographs: ☐ Yes ☐ No**ARRESTEE'S NAME** (person in possession of property at time of seizure)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Charges: \_\_\_\_\_

**REGISTERED OWNER** (name, address, phone): \_\_\_\_\_

# **WARNING POLICE NOTICE**

***THIS VEHICLE IS CURRENTLY IN THE  
CUSTODY OF THE OVERLAND PARK  
POLICE DEPARTMENT PURSUANT TO KSA  
60-4107***

***THE ENTERING AND REMOVAL OF ITEMS  
FROM THIS VEHICLE IS ILLEGAL  
(KSA 21-5807 AND KSA 21-5801)***

***ANYONE IN VIOLATION OF THIS NOTICE  
WILL BE SUBJECT TO ARREST AND  
PROSECUTION UNDER KANSAS LAW***

**OVERLAND PARK POLICE DEPARTMENT  
913-895-6300  
CRIMINAL INVESTIGATION DIVISION**

ACKNOWLEDGEMENT  
(Return of Seized Property)

I, \_\_\_\_\_, hereby accept the return of;

☐ Motor Vehicle                      VIN #: \_\_\_\_\_

That was seized by the Overland Park Police Department in conjunction with the investigation of a violation of the [Kansas Uniform Controlled Substance Act](#). I acknowledge that said motor vehicle is returned in the same mechanical condition as when it was seized from me on or about \_\_\_\_\_, and that all equipment and accessories related to said motor vehicle were returned. I further acknowledge that the return of said vehicle is in no way related to the prosecution of lack of prosecution of any person in relation to the aforementioned violation of [K.S.A. 65-4101](#).

☐ Currency                              Amount: \_\_\_\_\_

That was seized by the Overland Park Police Department in conjunction with the investigation of a violation of the Kansas Uniform Controlled Substance Act. I acknowledge that said currency is returned in the full amount as when it was seized from me on or about \_\_\_\_\_. I further acknowledge that the return of said currency is in no way related to the prosecution of lack of prosecution of any person in relation to the aforementioned violation of the [Kansas Uniform Controlled Substance Act](#).

Date: \_\_\_\_\_  
\_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_  
\_\_\_\_\_  
(Signature of Witness)

**AFFIDAVIT, WAIVER OF CLAIM AND NOTICE,  
AND CONSENT TO FORFEITURE OF REAL OR PERSONAL PROPERTY**

I, \_\_\_\_\_, hereby state under penalty of perjury  
that I am the sole owner of the following property:

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

I agree to forfeit the above-described property to the City of Overland Park. I have surrendered this property to the Overland Park Police Department. I understand and agree that Overland Park may or will commence a civil action for forfeiture of this property.

I therefore waive all claims I may have to this property. I stipulate there is probable cause for its forfeiture because the property was used or intended to be used in any manner to facilitate conduct in Johnson County, Kansas giving rise to forfeiture, or was the proceeds of conduct giving rise to forfeiture, as set out in [K.S.A. 2015 Supp. and amendments thereto](#). I agree to forfeiture of the property to the City of Overland Park for disposition according to law; waive all claims to the property and further notice in any proceedings necessary to obtain a judgment of forfeiture; and consent to a district court judge conducting all proceedings necessary for forfeiture of the property, including the entry of judgment pursuant to [K.S.A. 2015 Supp., and amendments thereto](#).

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Witnesses:

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