

UNDERWRITING MEMORANDUM 00-06

TO: All South Carolina Agents

FROM: South Carolina Office

DATE: August 16, 2000

RE: **Civil Asset Forfeiture Reform Act of 2000**

Attached is a [Memorandum on the Civil Asset Forfeiture Reform Act of 2000](#) from our home office.

Please contact the South Carolina State Office if you have any questions.



UNDERWRITING BULLETIN

Underwriting Department

CHICAGO TITLE INSURANCE COMPANY
171 North Clark Street, Chicago, Illinois 60601-3294

To: Principal Underwriters

Date: August 16, 2000 Bulletin No.: 05-00

From: Richard J. Pozdol Telephone No.: 312-223-2896

Subject: **Civil Asset Forfeiture Reform Act of 2000**

The Civil Asset Forfeiture Reform Act of 2000, Public Law 106-185, was signed by President Clinton on April 25, 2000 and applies to any forfeiture proceeding commencing on or after August 24, 2000. This new act clarifies the protections available for persons owning real property through the innocent owner defense, and creates new procedural requirements for the forfeiture of assets such as real property.

The act establishes a uniform definition of innocent owner that will apply to all civil forfeiture cases. The definition states that an innocent owner is one who either did not know of the conduct giving rise to the illegal activity or upon learning of the illegal activity, did all that reasonably could be expected under the circumstances to stop the illegal use of property.

In addition to the innocent owner defense, the act adds a section to all civil forfeiture situations covering the forfeiture of real property. It is now required that real property must always be forfeited through judicial proceedings. For the first time, the burden of proof is shifted to the government, so that the government will have to bear the burden of proving that property is actually subject to forfeiture.

Section 985. Civil forfeiture of real property provides:

“(a) Notwithstanding any other provision of law, all civil forfeitures of real property and interests in real property shall proceed as judicial forfeitures.

“(b)(1) Except as provided in this section –

“(A) real property that is the subject of a civil forfeiture action shall not be seized before entry of an order of forfeiture; and

“(B) the owners or occupants of the real property shall not be evicted from, or otherwise deprived of the use and enjoyment of, real property that is the subject of a pending forfeiture action.

“(2) The filing of a lis pendens and the execution of a writ of entry for the purpose of conducting an inspection and inventory of the property shall not be considered a seizure under this subsection.

“(c)(1) The Government shall initiate a civil forfeiture action against real property by –

“(A) filing a complaint for forfeiture;

“(B) posting a notice of the complaint on the property; and

“(C) serving notice on the property owner, along with a copy of the complaint.

“(2) If the property owner cannot be served with the notice under paragraph (1) because the owner –

“(A) is a fugitive;

“(B) resides outside the United States and efforts at service pursuant to rule 4 of the Federal Rules of Civil Procedure are unavailing; or

“(C) cannot be located despite the exercise of due diligence, constructive service may be made in accordance with the laws of the State in which the property is located.

“(3) If real property has been posted in accordance with this subsection, it shall not be necessary for the court to issue an arrest warrant in rem, or to take any other action to establish in rem jurisdiction over the property.

“(d)(1) Real property may be seized prior to the entry of an order of forfeiture if –

“(A) the Government notifies the court that it intends to seize the property before trial; and

“(B) the court –

“(i) issues a notice of application for warrant, causes the notice to be served on the property owner and posted on the property, and conducts a hearing in which the property owner has a meaningful opportunity to be heard; or

“(ii) makes an ex parte determination that there is probable cause for the forfeiture and that there are exigent circumstances that permit the Government to seize the property without prior notice and an opportunity for the property owner to be heard.

“(2) For purposes of paragraph (1)(B)(ii), to establish exigent circumstances, the Government shall show that less restrictive measures such as a lis pendens, restraining order, or bond would not suffice to protect the Government’s interests in preventing the sale, destruction, or continued unlawful use of the real property.

“(e) If the court authorizes a seizure of real property under subsection (d)(1)(B)(ii), it shall conduct a prompt post-seizure hearing during which the property owner shall have an opportunity to contest the basis for the seizure.

“(f) This section –

“(1) applies only to civil forfeitures of real property and interests in real property;

“(2) does not apply to forfeitures of the proceeds of the sale of such property or interests, or of money or other assets intended to be used to acquire such property or interests; and

“(3) shall not affect the authority of the court to enter a restraining order relating to real property.”

RJP/skn