

## **Te-Moak Law and Order Code**

**DRAFT Ordinance 22-0RD-TM-**

### **Title X Chapter X Section X**

The following property is subject to civil forfeiture pursuant to the Executive Authority reserved solely to the Te-Moak Tribal Council:

(a) Any property that is defined or classified as real, tangible, intangible or personal, including cash or a cash equivalent, involved in a transaction or attempted transaction that violates the criminal laws of the Te-Moak Tribe or that is directly traceable to such property.

(b) Any property that is classified as real, tangible, intangible or personal within the territory or jurisdiction of the Te-Moak Tribe that is derived from or traceable to any proceeds obtained directly or indirectly from any violation of a Te-Moak criminal law or used to facilitate any violation of Te-Moak criminal law, including inchoate attempts and accomplices, if the offense involves:

- i. Trafficking, importation, sales, distribution or possession of a controlled substance, as defined by the Tribe or 21 U.S.C. 801 et seq., or
- ii. Any act or omission constituting bribery, graft or gifting of any consideration to any tribal officer, agent or representative; or
- iii. Any act or omission constituting theft, misuse or misappropriation of grant or program funds and tribal assets deemed unlawful by any tribal, federal or state law, including property that represents or is directly traceable to gross receipts obtained from fraud, misrepresentation or false statements related to any grant or contract provision; or
- iv. Any act or omission related to concealment of any tribal asset from the Tribal Council, Band Council, auditor or investigator, including any conservator or receiver of an insured financial institution.

(c) Any property subject to civil forfeiture under this Ordinance may be seized by the Te-Moak Tribal Council pursuant to the following procedures:

- i. After the Tribal Council files a complaint with the Te-Moak Court and the Te-Moak Court issues an *in rem* warrant based on probable cause that the property is subject to forfeiture; or
- ii. Any seizure is made pursuant to a lawful arrest or search; or

- iii. The property was lawfully seized by law enforcement, inventoried, catalogued and transferred in accordance with standard chain of custody requirements to the Te-Moak Tribal Council prior to adjudication or execution of a warrant; and
  - iv. When property is seized under this Ordinance the Tribal Council, or authorized tribal officer, agent or representative, shall: 1) Place the Te-Moak Seal on the property; 2) Remove and place the property in a designated location; and 3) Require, as soon as practicable or as ordered, the disposition and transfer of legal and/or physical title as ordered or directed by the Te-Moak Tribal Council pursuant to law.
- (d) A motion for the return of the property seized under this Ordinance must be filed in the Te-Moak Tribal Court no later than ten (10) days before final hearing on the matter that must include a sworn statement asserting any and all claims of ownership.
- (e) Property taken or detained under this Ordinance shall not be replevable and shall be deemed to be in the custody of the Te-Moak Tribal Council subject only to the orders and decrees of the Te-Moak Courts unless otherwise provided by law.
- (f) All valuable consideration obtained from the sale of seized property shall be deemed a tribal asset, subject to final disposition by the Te-Moak Tribal Council for the benefit of the Te-Moak Tribe based on the best interests of the Tribe after any costs incurred and victim restitution are deducted. Under this Ordinance any tribal asset obtained or derived from forfeiture shall be placed in an interest bearing account, with the balance and all expenditures or deductions made public no less than once each month.
- (g) The Tribal Council is estopped from distribution or final disposition if at any time the Te-Moak Courts gives notice after determining that Council action under this Ordinance will adversely affect the rights of a criminal defendant, an ongoing criminal investigation or the prosecution of a related criminal case.
- (h) Unless otherwise implicated or required the Rules of Civil Procedure shall apply to all civil asset forfeiture cases.
- (i) The provisions of this Ordinance shall not be construed to limit or supercede any other authority of the Te-Moak Tribal Council, and a certified Te-Moak Court Order of Forfeiture regarding property that is subject to seizure, including any transcripts of testimony, shall be admissible as evidence in any subsequent or related proceeding as establishing probable cause that the property forfeited by such an order is subject to forfeiture and creates a rebuttable presumption of forfeitability.