

## **WRITTEN MOTION FOR RETURN OF SEIZED PROPERTY**

Use the attached form motion if law enforcement seized and took custody of your property in a criminal matter. Law enforcement can seize and take custody of property for safekeeping, as evidence in a crime, or the property is alleged to be contraband and may be subject to forfeiture. Both the Tribe's Constitution and the Indian Civil Rights Act (Federal Law) prohibit the Tribe from denying any person of their property without due process of law.

### **1. Law Enforcement Seizure of Property for Safekeeping.**

Property seized for safekeeping and is not evidence or contraband should be returned to you when you are released from custody. If Law Enforcement fails to do so the Court should grant your motion without a hearing but should not deny your motion without a hearing on your motion. The only reason the Court would deny your motion is if there is some question of whether the seized property is evidence and the case and the time for appeal has not run or whether the seized property is alleged to be contraband.

At a hearing you may have to prove that you own the property and that it is not or no longer evidence in the case. If the Tribe argues the seized property is contraband, the Tribe has the burden of proving that the seized property is contraband. If the Tribe does not prove the seized property is contraband it will returned to you.

### **2. Law Enforcement Seizure of Property as Evidence of a Crime.**

Law Enforcement may seize and retain custody of property the Tribe plans on using as evidence in criminal proceedings. The Court will not entertain your motion for return of property until the case is completed and the time for appeal has run.

If you are convicted the Court may declare seized property to be contraband and order that it be forfeited without a hearing. If you are found not guilty, you are entitled to notice and a hearing if the Tribe alleges the seized property is contraband and should be forfeited.

### **3. Law Enforcement Seizure of Property Alleged to be Contraband and Subject to Forfeiture.**

The Tribe's Forfeiture law allows for the forfeiture of the seized property if the property is found to be contraband by the Court.

The Forfeiture law, in essence, defines contraband as property which was or is used to violate any law, ordinance or resolution of RST (for example if you use your vehicle to commit a crime the vehicle could be declared contraband and forfeited), any property that is possessed in violation of any law, ordinance or resolution of RST (for example if you are arrested for possession of illegal firearm such as a sawed off shotgun, the weapon could be declared contraband and forfeited), or any property that was obtained in violation of any law, ordinance or resolution of RST (for example if you are arrested for possession of an illegal drug or paraphernalia, these items would be considered contraband and forfeited).

There are several ways seized property can be declared contraband and ordered forfeited.

If the property was seized pursuant to a lawful arrest and you are convicted of the crime(s) associated with the seized property, the Court may declare seized property to be contraband and order that it be forfeited without a hearing.

If the property was seized pursuant to a lawful arrest and you are found not guilty, you are entitled to notice and a hearing if the Tribe alleges the seized property is contraband and should be forfeited. The Tribe has the burden of proving that the seized property is contraband. If the Tribe does not prove the seized property is contraband it should be returned to you.

If the property was not seized pursuant to a lawful arrest and you are convicted of the crime(s) associated with the seized property, a hearing must be held within 10 days of seizure to determine if the seized property is contraband. The Tribe has the burden of proving that the seized property is contraband. If the Tribe does not prove the seized property is contraband it should be returned to you.

More than likely, the Tribe will file a petition or motion to declare the property contraband and for forfeiture. If they do filing this motion would be unnecessary.

**CAVEAT:** If another agency has custody of your property, such as the FBI, Tribal Court cannot order your property returned to you. This must be done in Federal Court.

**INSTRUCTIONS FOR FILLING OUT THE FORM.** To fill out the attached form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the motion:

(1) on this line insert your name. If you are charged with a crime(s) you are the defendant.

(2) on this line insert the date you were arrested on the charges you are being held on.

(3) on this line itemize the charges you are currently being charged with.

(4) on this line list and describe the seized property you want returned. You may attach a separate sheet of paper if you run out of space.

(5) on this line insert the date

(6) on this line sign the motion

Note: Your motion must be signed and dated before the Clerk can accept it for filing and service

(7) on this line date the day you mailed a copy of the motion to the RST Prosecutor's office. You are required to serve a copy of the motion on the RST Prosecutor's office.

(8) on this line sign your name to certify you mailed a copy of the motion on date you inserted on line (7).

**NOTE:** You must file your motion with the RST Clerk of the Criminal Court and mail a copy to Tribe's Prosecutor's office.

ROSEBUD SIOUX TRIBAL COURT)  
ROSEBUD SIOUX RESERVATION ) SS  
ROSEBUD, SOUTH DAKOTA )

IN CRIMINAL COURT

Rosebud Sioux Tribe, Plaintiff,  v.  (1) _____, Defendant.	DOCKET #CR _____  MOTION FOR RETURN OF PROPERTY
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Comes now, the above-named Defendant who moves this honorable Court for its order returning the Defendant's property seized by RST Law Enforcement and currently in its custody for the following reasons:

1. That on (2) \_\_\_\_\_ I was arrested on the charges of (3) \_\_\_\_\_.

2. The following property was seized by and is now in the custody of RST law enforcement (4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

3. That the seized property was either seized for safekeeping or seized as evidence of a crime and the case has been completed..

4. That the seized property is not contraband as that term is defined by Tribal law.

5. That the defendant is entitled to a return of his or her seized property.

6 Article X Section 1(f) of the RST Constitution and 25 USC Section 1302 (a)(8) of the Indian Civil Rights Act both prohibit the Tribe from denying any person of their property without due process of law.

7. The continued custody of the defendant's property deprives the defendant of his/her property without due process of law if he/she is not given a hearing on this motion.

WHEREFORE, the Defendant prays this Court:

1. Release the defendant's seized property, or in the alternative
2. Schedule a hearing on this matter consistent with due process

(5) \_\_\_\_\_

(6) \_\_\_\_\_  
Defendant

CERTIFICATE OF SERVICE

The defendant hereby certifies that on (7) \_\_\_\_\_ I did serve a true and correct copy of the Document in the above matter by mail on the Rosebud Sioux Tribal Prosecutor's Office at P.O. Box 500, Rosebud, SD 57570.

(8) \_\_\_\_\_  
Defendant