

## Forfeiture Law

### a. What are the key differences between civil and criminal forfeiture?

#### i. Civil Forfeiture

1. Civil forfeiture actions proceed in rem against the property being forfeited.<sup>1</sup> In its traditional fashion, civil forfeiture law was used as a means of enforcing customs and revenue laws.<sup>2</sup>
2. However, the use and impact of forfeiture laws drastically increased in 1970 when they were conscripted as a weapon in the fight against the growing narcotics trade.<sup>3</sup> Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970.<sup>4</sup> The Drug Act provided for the forfeiture of all money or other things of value furnished in exchange for controlled substances<sup>5</sup> and all real property used in any way to facilitate a violation of the controlled substances laws.<sup>6</sup>
3. One of the principal advantages the forfeiture provisions of the Drug Act gave prosecutors was based in the civil nature of the penalty. Under the civil forfeiture provisions, prosecutors need not obtain a conviction in order to impose a forfeiture penalty.<sup>7</sup> The government need only show probable cause that the asset it is seeking to seize has the require connection to the illegal activity.<sup>8</sup>

#### ii. Criminal Forfeiture: Unlike civil forfeiture, criminal forfeiture requires an underlying criminal conviction and defendants are provides all of the usual protections of the criminal justice system.<sup>9</sup> For example, in imposing

<sup>1</sup> See, supra note 30.

<sup>2</sup> 19 U.S.C. 1703 (2000).

<sup>3</sup> William J. Snyder, *Reigning in Civil Forfeiture and Protecting Innocent Owners from Civil Asset Forfeiture*: U.S. v. 92 Buena Vista Avenue, 72 N.C. L. Rev. 1333, 1333-34 (1994).

<sup>4</sup> 21 U.S.C. 881 (2000).

<sup>5</sup> 881(a)(6).

<sup>6</sup> 881(a)(7).

<sup>7</sup> *Nnadi v. Richter*, 976 F.2d 682, 686 (11th Cir. 1992).

<sup>8</sup> *Nnadi*, 976 F.2d at 686.

<sup>9</sup> See Snyder, supra note 42, at 1363.

sentence on a person convicted of an offense in violation of §§ 1956 or 1957, the court shall order that person to forfeit to the U.S. any property involved in the offense or any property traceable to such property.<sup>10</sup>

iii. Key differences<sup>11</sup>

1. First, civil forfeiture is not dependent on the conviction or the initiation of a criminal action against the defendant; whereas criminal forfeiture is dependent on the conviction of the defendant;
2. Second, criminal forfeiture requires the government to prove beyond a reasonable doubt that the defendant committed the crime and by a preponderance of the evidence that the property was involved in the crime;
3. Third, hearsay evidence cannot be used to establish the government's burden or to rebut the claimant's allegations; and
4. Fourth, criminal forfeiture statutes generally allow for the *substitution* of a defendant's *legitimate* property where the defendant has placed his illegitimate assets beyond the reach of the government or has commingled illegitimate with legitimate assets.

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<sup>10</sup> 18 U.S.C. § 982(a)

<sup>11</sup> See Richard, *supra* note 30, at 197.