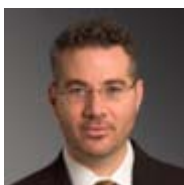




WHITE COLLAR COMPLIANCE UPDATE

September 2011



Robert Feinberg

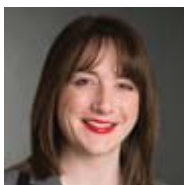
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As a former criminal prosecutor and deputy county attorney, Robert Feinberg has a wide-ranging criminal defense practice, including white collar and internal corporate investigations involving theft, fraud and other misconduct, DUI, DWI and other traffic offenses, allegations against juveniles (criminal court and school disciplinary actions), possession of prohibited substances, theft and property crimes.



Asset Forfeiture in Criminal and Civil Matters

By Robert Feinberg and Sara Agne

A complex web of federal forfeiture laws allow the government to seize property from people convicted of crimes, as well as from those never even charged. Federal forfeiture laws have expanded since the 1990s and the government continues to flex its muscles, sparking recent media attention as in *The Wall Street Journal*.

The dollar value of assets seized by the federal government has grown exponentially, more than doubling in five years to top \$2.5 billion in 2010. While some proceeds are returned to crime victims, state and local law enforcement agencies that assist with federal seizures may keep up to 80 percent of the fruits of forfeiture efforts. Overall, the federal government paid out more than \$500 million last year to local agencies.

Arizona received more than \$6 million in fiscal year 2008 alone, according to a 2010 report by The Institute for Justice.

In a criminal forfeiture proceeding, the property owner is typically convicted of a crime and assets are forfeited in connection with the conviction.

Civil forfeiture, however, holds the asset itself as the "defendant," meaning the government must prove that the property was connected to illegal activity.

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Sara Agne's practice is concentrated in health care litigation, compliance and regulatory matters, including professional liability defense. Her experience includes criminal defense for health care professionals and others, including those charged with controlled substances violations, DUI, DWI and other traffic offenses.

Arizona's forfeiture laws provide incentive for law enforcement to cast the seizure net widely — up to 100 percent of the proceeds from civil asset forfeiture are distributed to seizing agencies. Further, Arizona has one of the lowest standards of proof to take assets: forfeiture may occur if the assets are "more likely than not" connected to illegal activity. In the event those assets cannot be located, have been transferred to a third party or placed beyond the jurisdiction of the court, have been substantially diminished in value by the defendant, commingled with other property or are exempt from forfeiture, the court may order seizure of substitute assets of equal value.

Arizona, like many other states, essentially forces the owner of the assets seized to prove his or her innocence. Meanwhile, the state can seize property for up to seven years without proving its connection to illegal activity.

Arizona's criminal code provides a list of 30 "racketeering" offenses for which the government may seize property, regardless of whether the offense was actually charged or indicted. These offenses run the gamut from homicide to illegal gambling. The statute provides that the conduct, except for terrorism, animal terrorism or ecological terrorism, must have been aimed at financial gain.

Due to the breadth and depth of federal and state forfeiture laws, individuals and businesses with even the most tenuous connection or alleged connection to potential illegal activity can face law enforcement action that seizes first and asks questions later.

Asset forfeitures may be challenged in court. An owner can seek return of all property or negotiate a settlement for partial return. Under some circumstances, seizure can be avoided altogether. Knowledgeable counsel, versed in government actions and the criminal justice system, may be able to assist in navigating the turbulent waters of criminal and civil asset forfeiture.

If you have any questions about the content of this newsletter, you may contact the authors or another Snell & Wilmer attorney by email or by calling 602.382.6000.

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