

**PHILADELPHIA BAR ASSOCIATION
RESOLUTION SUPPORTING LEGISLATION
TO ABOLISH CIVIL ASSET FORFEITURE**

WHEREAS, the Philadelphia Bar Association, the oldest association of lawyers in the United States, is committed to advancing the fair and effective administration of justice; and

WHEREAS, Pennsylvania's civil asset forfeiture laws, which include the Pennsylvania Controlled Substances Forfeiture Act, 42 Pa.C.S. §§ 6801-6802, other statutes, and judicial common law, authorize law enforcement to forfeit property alleged to be connected to a crime in a civil *in rem* action against the property; and

WHEREAS, over the last decade, Pennsylvania law enforcement has seized and forfeited over \$100 million in private property using state civil asset forfeiture laws; and

WHEREAS, in Philadelphia County, civil asset forfeiture is used to forfeit approximately \$5 million worth of homes, cars, money, and other property of thousands of property owners every year; and

WHEREAS, civil asset forfeiture permits the government to forfeit property without convicting the property owner of a crime or even charging the owner—or anyone else—with a crime; and

WHEREAS, individuals whose property is the subject of a civil asset forfeiture proceeding do not enjoy the constitutional protections applicable to criminal defendants such as the right to counsel and strong evidentiary burdens requiring the government to affirmatively prove its case; and

WHEREAS, criminal defendants may be unable to challenge a civil forfeiture without undermining their ability to assert their constitutional rights in their criminal case, such as the Fifth Amendment privilege against self-incrimination; and

WHEREAS, many property owners are unable to afford counsel and lack the legal expertise to effectively challenge the forfeiture of their property; and

WHEREAS, Pennsylvania's civil asset forfeiture laws authorize law enforcement to forfeit property by default if a property owner fails to answer a forfeiture petition or misses a court appearance in the forfeiture proceeding, whether or not the property owner received notice of the proceeding; and

WHEREAS, innocent property owners often have little incentive to contest the forfeiture of their property because the costs of defending their property against forfeiture often vastly outweigh the value of the property at stake; and

WHEREAS, as a result of the above, approximately 80 percent of civil forfeitures in Philadelphia County end in default, with prosecutors never having to offer any evidence to a judge that supports the forfeiture or confirms that notice was properly served; and

WHEREAS, Pennsylvania's civil asset forfeiture laws authorize law enforcement to retain for its own use all property and proceeds derived from forfeiture proceedings; and

WHEREAS, the direct financial incentive for law enforcement to aggressively seek forfeiture undermines public trust in the fair and impartial administration of justice; and

WHEREAS, civil asset forfeiture disproportionately affects low-income people of color; and

WHEREAS, civil asset forfeiture of innocent owners' property hurts neighborhoods, because forfeited real property is often unmarketable due to the difficulty of obtaining title insurance, which increases the risks of vacancy and blight; and

WHEREAS, the Coalition for Forfeiture Reform, a broad-based partnership of national and local organizations and community groups, has asked the Pennsylvania General Assembly to reform our state's forfeiture laws to require that property owners first be convicted of a crime before their property is forfeited and to end the profit incentive for law enforcement to seek forfeiture.

NOW, THEREFORE, BE IT RESOLVED that the Philadelphia Bar Association calls on the Pennsylvania General Assembly to take immediate and effective steps to abolish civil asset forfeiture in Pennsylvania and to ensure:

1) that forfeiture occur under state law only after the property owner is convicted of a crime, as part of the underlying criminal proceeding, which will guarantee:

a) that no property is forfeited by default, and that in every case the government proves the connection between the property and the crime for which the property owner was convicted; and

b) that property owners receive adequate notice of the government's intent to seek forfeiture in the criminal charging document; and

c) that property owners have a right to appointed counsel when contesting forfeiture; and

d) that people convicted of crimes can challenge forfeiture of their property without sacrificing their constitutional rights in their criminal case; and

2) that all proceeds from forfeiture are deposited into the state treasury where there is transparency and accountability, instead of accruing directly to the very law enforcement agencies that are charged with making decisions about when to pursue forfeiture;

AND BE IT FURTHER RESOLVED that the Philadelphia Bar Association authorizes the Chancellor or the Chancellor's designee to communicate the content of this resolution to members of the General Assembly, the Governor, state and local public officials, other bar associations, and the public at large, and to take such other action as may be appropriate.

**PHILADELPHIA BAR ASSOCIATION
BOARD OF GOVERNORS
ADOPTED: March 26, 2015**