

# CLIENT ADVISORY

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## THE RIGHT TO APPEAR AND SPEAK AT ANNUAL MEETINGS

A recent decision in a completely different context sheds some light on an issue that sometimes arises at cooperative corporation annual meetings: may a shareholder bring his or her lawyer, relative or friend to address the meeting on the shareholder's behalf?

In Prestopnik v. Whelan, 2003 WL 1678580 (N.D.N.Y., Mar. 26, 2003), a teacher who had been denied tenure retained a lawyer, who appeared at a public meeting of the school board and sought to ask the board to reconsider the tenure decision. When permission for the lawyer to speak was denied (he was invited to address the board in writing), he brought suit on his client's behalf. The Federal Court dismissed the case, holding that there is no right under the First Amendment of the United States Constitution to appear through an agent (including an attorney) at a regularly scheduled non-adversarial board meeting at which no action was going to be taken with respect to the teacher's property rights. In such a meeting, the Court said, there is no need or right to be represented by counsel and the teacher's right to speak to a public meeting was personal and not delegable to an agent.

At corporate annual meetings, similar principles should apply: a shareholder is entitled to attend, vote and address the meeting, subject to rules of good order. Whether the shareholder may have his lawyer, mother or best friend speak on his behalf, however, is in the discretion of the Chairman of the meeting. There frequently may be good reason to permit the surrogate speaker, who may be more articulate and concise and less emotional than the shareholder, but it is not required. If permission is refused, however, the corporate shareholder has a remedy that was not available to the teacher in the Prestopnik case: he may give his proxy to his chosen agent, who may then speak (and vote) on his behalf. A good example of this long-standing principle is In re Petition of Manacher, 205 Misc. 513, 133 N.Y.S. 2d 265 (Sup. Ct. N.Y. Co. 1954), in which a shareholder's proxy agents were not permitted to speak at a corporate meeting because the stockholder himself was also present. The Court annulled the meeting, holding that where the stockholder's presence was for the purpose, among others, of confirming rather than revoking the proxy, there was no basis for refusing recognition of his representatives.

## EVICITION AND FORFEITURE BECAUSE OF CRIMINAL ACTIVITY

Some years ago, a local District Attorney notified one of the cooperatives that we represent that one of its tenant-shareholders had been convicted of a narcotics felony and demanded that the board commence eviction proceedings. If not, the notice warned, the District Attorney's office

would prosecute such proceedings itself, charge the cost to the apartment corporation and also seek to fine it. Although we were able to resolve that matter without substantial cost to the corporation, anyone involved in ownership or management of multiple dwellings should be aware that both State and Federal law provide draconian remedies of eviction from and forfeiture of property that is connected to drug offenses or other criminal activities.

New York's **Real Property Law, §231**, provides that the use of any building or premises by a lessee or occupant other than the owner for any "illegal trade, manufacture or other business" renders the lease void and that the owner who knowingly permits such use is jointly and severally liable with the tenants or occupants for any damage arising from it. **Real Property Actions and Proceedings Law, §715(1)** permits the owner of neighboring property, certain social service organizations and any state or local law enforcement agency to serve a written notice on the owner of the property "requiring" action to remove the offending tenant or occupant. If the landlord fails to respond diligently, the demanding person or agency may commence an eviction proceeding. Although these statutes were originally aimed at prostitution and gambling, they have been invoked by local prosecutors for other criminal businesses (e.g., the manufacture of counterfeit goods), as well as drug-related offenses. The District Attorney is typically the driving force behind such cases, even where the nominal petitioner is the landlord or cooperative board.

Even more drastic remedies are available in some situations. New York law provides for "criminal" forfeiture of an interest in real property as part of certain narcotics prosecutions (N.Y. Penal Law, Article 480), as well as a separate "civil" forfeiture that may be obtained after conviction (N.Y. Civil Practice Law and Rules, Article 13-A). In both the criminal and civil versions, real property that constitutes the instrumentality *or proceeds* of the crime is subject to forfeiture under certain specified circumstances. The Federal Food and Drug Laws (21 U.S.C. §881[a][7]) also provide for forfeiture of any interest in "the whole of any lot or tract of land and any appurtenances or improvements" used to commit drug-related crimes. For example, in **United States v. 464 Myrtle Avenue and 181 Washington Avenue, Brooklyn, N.Y.**, NYLJ March 28, 2003, p. 28, col. 3 (E.D.N.Y.), the United States District Court recently permitted the Government to confiscate a building on the ground that it had been used for drug trafficking by the owner's son, who lived in one of the apartments above his parents' grocery store. Having found that she had remained "willfully blind" to what her son and his associates were doing in and around the property, the Court held that the forfeiture was not "grossly disproportionate" to the gravity of her conduct and that the protection of the Eighth Amendment to the United States Constitution against "excessive fines" was not available to her. Similarly, in **United States v. 16 Clinton Street, New York, New York**, 730 F.Supp. 1265 (SDNY 1990), the Federal Court refused to dismiss a forfeiture claim against an entire five-story building based on drug sales that occurred only in the ground floor stores, rejecting the Constitutional arguments of the absentee landlords. Although such draconian remedies as forfeiture are rarely sought against a cooperative corporation, a board should act promptly to enforce its rights against any shareholder who is engaged in criminal activity.