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May 10, 2013

The Honorable Sheldon Silver
Speaker, New York State Assembly
Legislative Office Building, Room 932
Albany, NY 12248

The Honorable Dean G. Skelos
Majority Leader, New York State Senate
Legislative Office Building, Room 909
Albany, NY 12247

The Honorable Jeffrey D. Klein
Leader, Independent Democratic Conference
Legislative Office Building, Room 304
Albany, NY 12247

Dear Speaker Silver and Majority Leaders Skelos and Klein:

On behalf of the District Attorneys Association of the State of New York (DAASNY), a voluntary organization comprised of the 62 elected District Attorneys in our state and the Special Narcotics Prosecutor of the City of New York, I am writing in support of S2365, A7054 (Klein, Brindisi), an act to amend the Real Property Actions and Proceedings Law (RPAPL) to authorize a District Attorney to intervene in a proceeding brought by the owner of a premises upon which the tenant's occupancy is illegal based on its use.

Currently, provisions of the Real Property Law and the RPAPL (RPL § 231(1), and RPAPL §§ 711(5) and (715) colloquially known as the "Bawdy House Laws," establish the right and procedure to evict tenants who are using property for illegal purposes. Some of the most common yet pernicious examples are apartments that are used to store and traffic drugs and weapons; warehouses that contain illegal gambling operations or are used to sell counterfeit goods; and commercial spaces that are used for human trafficking and prostitution.

Until recently, it was common practice for a district attorney to assist with these cases, many of which are necessarily connected to public safety. Indeed, the essential proof in these actions is proof that the property has been used for illegal purposes. This may, and regularly does, involve questioning police witnesses, including undercover officers. It also requires proof that the tenant has a relationship with the criminal act. District attorneys not only offer expertise in this area, they are also sensitive to concerns surrounding confidentiality and safety of undercover officers and cooperating witnesses.

The practice of district attorneys and landlord-tenant attorneys working together on these cases has reduced the burden on the landlord-tenant attorneys, expedited proceedings, and

* PAST PRESIDENT OF DAASNY

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streamlined the process for law enforcement officers testifying in court. *See Rochdale Village, Inc. v. Harris*, 172 Misc. 2d 758 (Civil Court, Queens County, 1997).

Recently, however, judges have questioned the legal authority granting district attorneys the right to appear alongside landlord-tenant attorneys in these proceedings. RPAPL § 715(1) explicitly provides a district attorney with authority to serve written notice to violators and, in the face of no remedial action, “bring a proceeding under this article for such removal as though the petitioner were the owner or landlord of the premises.” The Court has, however, held that this means that *either* the landlord *or* the district attorney, but not both, can initiate a proceeding. *See Perdomo v Morgenthau*, 60 AD3d 435 (1st Dept. 2009).

This proposal would simply amend the sections of the RPAPL that are concerned with the eviction of tenants who are using property for illegal operations enterprises such as drug sales and promoting prostitution. The bill would explicitly give the district attorney the jurisdiction to intervene, in conjunction with the landlord-tenant attorney, in cases in which a landlord seeks to remove a tenant because of illegal activity on the rented premises.

DAASNY supports S2365, A7054 and commends Senator Klein and Assembly Member Brindisi for sponsoring this legislation.

Sincerely,



Cyrus R. Vance, Jr.
President, DAASNY

cc: Assembly Member Anthony J. Brindisi