

Overview of the Eminent Domain Process

Eminent domain, also known as condemnation, is the power of the state, its agencies, municipalities, and certain private companies to take property from a private owner and convert it into a public use.

Brief History of Eminent Domain

Contrary to public belief, the right of eminent domain in the United States did not stem from the U.S. Constitution. When the American colonies became a sovereign state, they retained all the powers of the British Parliament and therefore, became vested with the power of eminent domain. This power, along with the requirement of just compensation, was well established in England by the time of the American Revolution.

The manifestation of eminent domain power limited by public use and just compensation was enshrined in the U.S. Constitution in 1789. Since each state is free to appropriate property using its own court systems, State Constitutions and Statutes further limit the ways in which the power of eminent domain is exercised.

The law provides governmental bodies with the power to take property for “public use”. Examples of endeavors which satisfy the public use requirement include roads, parks, schools, other public buildings, and blighted property (in most states) where the criteria for determining blight varies from state to state.

Blight as a Public Use

The US Supreme court ruled in the 1950's that the remediation of blight qualified as a public use and consequently, this designation has been and continues to be used by government authorities to acquire private property for redevelopment or economic gain. The practice of acquiring blighted property for redevelopment and economic gain was taken a step further when the City of New London, CT successfully used condemnation to acquire property that was not blighted for the sole purpose of economic gain. Property owners appealed the case to the Supreme Court, who ruled in *Kelo v. City of New London*, that each state has the authority to determine whether or not they will allow the use of eminent domain solely for economic gain. Since that case, 43

states have enacted legislative reform in an effort to help curb eminent domain abuse. In a few states, blight was statutorily removed from the public use category.

The beginning procedures: Parities within an eminent domain suit

It is important to know that eminent domain law provides a significant amount of protection for the property owner – protection to make certain that the eminent domain process is not abused and the property owner is justly compensated for their loss. However, it is the responsibility of the property owner to assert these rights.

In an eminent domain lawsuit, the two parties consist of the condemnor or condemning authority (a governmental or quasi-governmental body) and the condemnee (you, the property owner).

The condemning authority can be a federal or state government, a state government agency, a local government, municipality, or any government or quasi-government unit that can exercise the power of eminent domain.

The process begins when a governmental entity attempts to negotiate for the acquisition of all or a portion of your property rights for a public use. If initial negotiations do not result in the consensual purchase of the property, then the condemning authority will exercise eminent domain. Depending upon the laws of each state, the condemning authority will proceed under one of two procedures: the petition procedure or the administrative claims procedure.

Under the petition procedure the taking is initiated by the condemning authority petitioning the court for an order to transfer title to private property if negotiations are not reached to transfer the title consensually. When that order is issued, the property owner no longer owns the property. In most states that follow the petition procedure the condemnor is usually required to make a deposit to the property owner or to the court in the amount that they determine to be just compensation before title to the property transfers. At this point, the property owner may then file a claim for additional damages in the lawsuit which was initiated by the government's petition.

Some states utilize the administrative claims procedure. If negotiations do not result in the consensual purchase of the property, the condemnor will file a document with the local property recording authority (register of deeds, county recorder or the like). Upon the filing of that document and payment to the property owner, the title of the property will then be passed to the

condemnor. Under this scenario, the property owner must file and initiate a separate independent claim (lawsuit) to recover any additional damages. This procedure has strict deadlines. If the property owner does not file a claim within the required deadline, the right to a claim is waived and lost. These deadlines vary from state to state.

What does this mean to me, the property owner?

The government has the right to take your property for a public use by exercising its power of eminent domain. Although the governmental body may have the right to take your property, this power is limited by the US Constitution, which requires the payment of just compensation, and further limited by specific procedural processes defined in state constitutions and statutes.

Remember, eminent domain laws can be favorable to a property owner and exist to help prevent the abuse of the power of eminent domain. However, the property owner must assert those rights in order to be treated fairly in the process.

Dan Biersdorf is the principal attorney and founder of Biersdorf & Associates, a nationwide eminent domain law firm. To contact Dan or to schedule a consultation, please call him toll free at 866-339-7242. Also, visit us on our website at: www.condemnation-law.com.