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When Government Wants Your Property

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Condemnation (aka eminent domain) is the power of government to take private property for public use. The process is largely summed up with two questions. Is the taking for a proper public use? If not, it shouldn't occur. If proper, what is the just compensation for the property taken?

Projects for public use are likely an appropriate exercise of condemnation powers and courts often give wide discretion to the government for those projects. Condemnation for public-private ventures, to remove "blight", or similar actions may not be appropriate. Occasionally, a project that appears to be for public use, may be for private use and therefore inappropriate. There can also be a "taking" of private property through noise, limiting access to property and similar actions. Often, no compensation has been given so a claim for inverse condemnation may be necessary to obtain just compensation.

The amount of compensation is usually debatable. Government agencies often hire consultants to negotiate the value of property. They attempt to buy the property at the lowest price which may be drastically under the fair market value. Offers may not take into account damage to the portion of property not taken by condemnation but which is impacted. One tactic used by government to encourage acceptance of an offer is threatening litigation if the offer is not accepted. However, litigation is often favorable to those impacted by condemnation, contrary to the usual negative aspects of litigation.

State law may require the government to provide monies to review offers of compensation. Failure of government to make a good faith offer under statutory parameters may result in reimbursement of attorney fees incurred to obtain the fair market value. In some instances, the right to compensation may also extend to tenants and businesses affected by the condemnation. When signing lease agreements, tenants and landlords should understand how a lease may limit or waive rights if a condemnation occurs.

In rare instances, with specific and strict limitations, a private person may condemn an easement on another person's property for necessary access to property and other statutorily allowed items. Just compensation is required in those instances too.

Condemnation is a powerful tool of government that benefits our community. Because of that power, the laws governing it are strict and provide substantial rights to those affected. An attorney can help insure those rights are not ignored.