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BODY:

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What is eminent domain?

Federal, state and local governments can buy private property, but unlike a private person who has to find a willing seller, governments can force unwilling persons to sell private property to the government. And this power to force persons to transfer private property to the government is called eminent domain. This eminent domain power, to take private property, is embodied in the Fifth Amendment to the federal Constitution, the so-called takings clause, which states simply "nor shall a private property be taken for public use, without just compensation."

What is a public use?

The United States constitution requires a taking to be for "public use," and on its face you would think that the term "public use" would mean that property taken must be for the government to use in some traditional governmental function: roads, power lines, sidewalks, sewers, etc. ... But since the 1920s the U.S. Supreme Court has interpreted public use quite broadly. ... Now state court rulings have also allowed governmental entities to take land and immediately turn it over to private companies in the hope that these companies will create jobs and increase tax revenues. But in recent years, more cities and towns have been accused of abusing this authority, razing nice homes to make ways for parking lots or casinos and other tax-producing businesses, for example. The supreme court might well clarify this issue in a case called Kelo (Kelo v. New London, Conn. A decision by the top court is expected this month).

What does "fair market value" mean?

The takings clause mandates that reasonable compensation be made when the government takes private property. This reasonable compensation, or as it's normally called, fair value, is usually considered to be the fair-market value, that is the highest price someone would be willing to pay for the property were it in the hands of a willing seller. At times this fair value can actually include more than just the price of an item or property or parcel of real estate. If a business is operating from the

condemned real estate, then the owner is ordinarily entitled to compensation for the loss or disruption of the business resulting from the condemnation. But normally what they end up doing in some sort of condemnation proceeding is that both sides will hire appraisers and try and come to an agreement about what the fair price is before having to resort to a court to decide that.

When is eminent domain most often used?

The most traditional and by far the most wide use of eminent domain historically has been used for what people would think of being public uses: power lines, sewer, sidewalks, etc. ... But as I mentioned there's a growing power of using eminent domain to provide a private company with property to be developed with the hope of creating new jobs and a larger tax base. I think this will only increase unless the Supreme Court in the next month or so puts a halt to it.

Who can use the power of eminent domain?

Federal, state and local governments can use the power of eminent domain. The power of local governments to use eminent domain is derived from the state government generally either in its constitution or a legislative act. They can also give a private entity the power to use eminent domain, and you see this most often in utilities. Most public utilities have the right of eminent domain to go in and take land to build power lines, etc. ...

How often do government agencies use the power?

To my knowledge there are no firm statistics on this. One survey found that between 1999 and 2002 more than 10,000 condemnations in 41 states involved the transfer of property from one private party to another private party and this is over and above the sort of more traditional private-to-public transfers. These private-party transfers to another private party have certainly been on the rise in the last 10 to 20 years.

How often does the agency or a property owner win?

I don't know the answer to that. I haven't seen any statistics on that. Right now it's very difficult for a property owner to keep a governmental agency from taking (his or her) property. What the fights usually are about, are about value and what their value should be for takings purposes. I would suspect that it's very rare that a landowner is able to keep a government from taking (his or her) property all together.

Can one quasi-government agency use eminent domain to take land from another quasi-government agency?

I think that would probably not have an effect one way or another in the case. They can do it whether this was a governmental agency or a quasi-governmental agency. I suspect that won't play a role.

5 eminent domain cases in Syracuse

1. The city of Syracuse condemned several downtown buildings, including the Cronin and Dorset buildings, in the early 1980s to make way for the Galleries project.

2. Thirteen homeowners were forced to move for rerouting of Interstate 81 between Hiawatha Boulevard and Seventh North Street in the early 1980s.

3. The Syracuse Industrial Development Agency began condemnation procedures in 1989 against oil tanks and a gas station in the Oil City district to make way for Carousel Center. The city

went after more oil tanks in 1992. The oil companies sued but later reached a deal with developer the Pyramid Cos. and moved to the TED Park in Van Buren.

4. The city began condemnation proceedings against three businesses for the Franklin Square renovation project in the late 1980s. The businesses agreed to sell and the city put in new roads, sewers and a park.

5. The Onondaga County Legislature voted in June 2003 to take ownership of the 2.4-acre parcel across from the OnCenter Convention Center to build a hotel. The parcel is the site of a Murbro parking lot. The courts upheld the county's actions, but left open the issue of how much compensation must be paid to the owner of the property and the operator of the business on the property.

GRAPHIC: PHOTO NO CREDIT Turnipseed PHOTO John Berry/Staff photographer
SOLVENTS & PETROLEUM Service Inc. on Brewerton Road could be displaced by the second phase of the Destiny USA research park project.

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