

One's Home is One's Castle: or is it?

“Nor shall private property be taken for public use, without just compensation.”

Most of us have heard this phrase, found in the Fifth Amendment to the United States Constitution, and known as the “Takings Clause”, but how many really understand what it means?

The government’s constitutional power to take private property for a public use is known as the power of “eminent domain”. When the government “takes” property, it is said to “condemn” the property. Although eminent domain is a broad constitutional power reserved to the government, the power of eminent domain is limited by both state and federal laws, which are meant to protect and preserve our fundamental property rights. Both the federal and Pennsylvania Constitutions prohibit the taking of private property without a public use and without just compensation being paid to the private property owner. Government officials, be it at the local, state or federal level, do not automatically have the power to take (condemn) any property, without restriction. First, there must be an express statutory authorization which permits the taking, defines what the appropriate “public use” is and which sets forth procedure that must be followed.

For example, the city, borough or township you live in may condemn private property in order to create a public park, widen a road or install a sanitary sewer system only in strict compliance with statewide laws adopted by the Pennsylvania legislature. In addition, school districts have the right to condemn property in order to build schools. A local redevelopment authority may condemn private property that has become blighted (typically unsafe and deteriorated) in order to eradicate the blight to protect the public health and safety. These are all traditional functions of government and generally viewed as necessary for community advancement. Pennsylvania law allows eminent domain to be exercised in these situations, but only if the safeguards set forth in the statute are followed.

In recent years, major problems have arisen in the area of eminent domain when the government attempts to take private property to benefit another private (rather than public) entity. Many Pittsburghers may recall the billboard slogan “Eminent Domain was meant for roads, not for Tiffany’s” which graced the city in the Fifth and Forbes Corridor Debate a few years ago. This cry hit home for many because the notion of the government taking property from one private citizen, only to give it to another, goes against fundamental notions of property rights. The laws governing when such a taking is appropriate are complex and continue to undergo transformation. In recent years, many municipalities and redevelopment authorities have sought to expand legitimate eminent domain powers in the name of economic progress.

Condemnations for economic development purposes often raise public use concerns. Some states permit the exercise of eminent domain for economic development purposes where the project has some public component to it, such as the eradication of blight. Private property

may not be taken if the government is simply going to give the property to another private owner for a different private use without any public benefit.

In 2008, lawyers at GRB won a resounding victory for property owners when the Pennsylvania Commonwealth Court issued a unanimous decision to stop the Redevelopment Authority of Lawrence County from condemning homes which were in good condition for the sole purpose of turning them over to other private individuals for commercial development. The decision of the Commonwealth Court analyzed the now famous Connecticut case, known as *Kelo v. City of New London*, where the United States Supreme court upheld a similar condemnation action but ruled that individual states are free to adopt more restrictive positions, thereby giving their citizens greater protection from such governmental actions. Prior to *Kelo*, Pennsylvania had already restricted the use of eminent domain. Subsequent to *Kelo*, Pennsylvania adopted even more protections for property owners. Pennsylvania requires that some clear public benefit must be involved before eminent domain may be used.

If the government is able to establish a legitimate public use, then it must pay the property owner “just compensation” for the property. Recent legislative amendments have sought to further define the appropriate measure of “just compensation” and to ensure that property owners are adequately protected.

The power of eminent domain, properly exercised, is an integral part of our legal system. Attorneys at GRB represent both property owners and government bodies, such as townships and school districts, in various eminent domain matters. GRB is familiar with all facets of the law of eminent domain in Pennsylvania and sensitive to balancing the concerns property owners have about protecting their fundamental property rights, and the very important right retained by government to take private property to provide public services, such as roads, sewers, parks and schools.

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A significant portion of Michael's work focuses on the counseling and representing of individuals and small businesses in real estate conveyancing and municipal land use approval processes. Included in his real estate practice is the representation of both, landowners and municipalities in eminent domain disputes.

In addition to his real estate work, he also maintains an active Estate Planning & Administration practice.



In addition to an active Municipal and Municipal Creditors Rights practice, Mandi represents corporate and individual clients in transactional and litigation-related oil and gas matters. She has represented, at different times, property owners and the oil and gas industry in lease and other contract negotiations, as well as the litigation related to title disputes and similar matters.