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EMINENT DOMAIN: HOW YOUR GOVERNMENT CAN TAKE YOUR PROPERTY FOR PUBLIC USE



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Imagine the scenario:

A large pharmaceutical company chooses Meadville as a future location of a three hundred million dollar research facility, projected to employ 1,500 people and create hundreds of thousands of dollars in tax revenue for the County and City. The City creates a task force that determines such a project could help the area recover from recent job losses in manufacturing, and outlines a ten square block area in downtown Meadville for the project. The pharmaceutical company begins buying buildings in the designated area.

But then a problem develops: Not everyone wants to sell their business or their home in the ten square block area. One elderly couple, who has lived in the same house for over 60 years, the same house the wife was born in years earlier, refuses to sell their house because they wish to spend their last days there. Other home and business owners also decide not to sell to the company. The City, however, has determined that the project is good for the economic development of the community. SO, the City uses the power of Eminent Domain to condemn and take the private property, paying the owners fair market value. The City takes the property, forcing the private property owners out, and then immediately sells the property to the pharmaceutical company in the name of economic development.

Think it can't happen? Think again. In the recent case of Kelo v. City of New London, the Supreme Court of the United States, in a sharply divided 5-4 decision, approved a City's use of eminent domain in this exact situation, to take property from private individuals under the banner of economic development, and give the property to another private party, a large pharmaceutical company. Many people agree with the

decision, and with the proposition that government can serve the greater good by taking property and redistributing it to other private parties to promote economic development. Other people vehemently disagree, and feel that the decision further erodes the rights of private property owners. Whether you agree or disagree, understanding eminent domain and the ramifications for property owners is important.

What is Eminent Domain?

Eminent Domain is the process by which our government can take private property for public use, provided just compensation is paid. It is not a new theory: the Founding Fathers provided for eminent domain in the Fifth Amendment of the Constitution, which provides that private property shall not be taken for public use, without just compensation. This is sometimes referred to as the "Takings Clause" of the Fifth Amendment. The limitation was designed to protect the security of property, which Alexander Hamilton described as "one of the great objects of Government", according to the Court. The "Public Use" requirement promotes fairness and security and is a strong limitation. It mandates that the government may only compel an individual to forfeit his property for the public's use, not for the benefit of another private person.

But where is the line between "public" and "private" property use? That was the question the Supreme Court addressed in Kelo v. City of New London.

The Court noted that historically, some categories of Takings of private property are straightforward and relatively uncontroversial. One category would be the government taking private property and transferring it directly to the public, such as for a road, public hospital or a military base. Another category would be when the government takes property and gives it to a private party for the public's direct use, such as a public utility or a stadium.

In Kelo, the Court was faced with a different type of taking: the government taking property from one private party, to give to another private party, in the name of economic development. Writing for the majority, Justice Stevens discussed the Court's deference to local legislatures in determining what is best for a community or a state. As he wrote, "For more than a century our public use jurisprudence has wisely eschewed rigid formulas and intrusive scrutiny in favor of affording legislatures broad latitude in determining what public needs justify the use of the takings power. . . . When the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of the takings-no less than debates over the wisdom of other kinds of socioeconomic legislation-are not to be carried out in the federal courts."

The majority of the Court concluded that because the City's plan projected economic development, including tax revenue and jobs, and arguably would provide appreciable benefits to the community, that such purpose satisfied the Public Use requirement of the Fifth Amendment.

But there was strong dissent from four justices, who argued that that the Court's decision in Kelo v. City of New London was wrong. As Justice O'Connor wrote in dissent, "Today the Court abandons this long-held limitation on government power. Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded-i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public-in the process. . . . The Court rightfully admits, however, that the judiciary cannot get bogged down in the predictive judgments about whether the public will actually be better off after a property transfer. In any event, this constraint has no realistic import. For who among us can say she already makes the most productive or attractive possible use of her property? The specter of condemnation hangs over all property. Nothing is to prevent the State

from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

Notwithstanding Kelo v. City of New London, each State retains the ability to regulate eminent domain, and to restrict takings for economic development. For example, in Pennsylvania, the eminent domain power is detailed in the Eminent Domain Code, Title 26 Pa.C.S. § 1-101 et. seq.. The statute provides that the state, and its designated agencies, may use eminent domain to take property for public use, provided just compensation is paid. Specific procedures are in place whereby a landowner can timely challenge and object to a proposed taking or the compensation offered for it. The Court of Common Pleas has jurisdiction to determine challenges to proposed takings. In addition, homeowners may be entitled to additional monies designed to compensate for their displacement. As with most legal matters, if you are faced with a proposed taking of your property by eminent domain, it is best to contact an attorney you trust to advise you and protect your interest.

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