

Eminent Domain

From Lakewood to Telluride, Eminent Domain has been in the news lately. In order to expand “FasTracks” westward out of the City of Denver, the Regional Transportation District (RTD) has exercised this constitutional right known as Eminent Domain to acquire properties for a rail station, rail corridors, pedestrian bridges and even a parking garage. This act of forced condemnation of private property for a public good can be applied to many circumstances. Telluride won a lengthy eminent domain struggle when the Colorado Supreme Court ruled it could take 570 acres of private property known as the Valley Floor for open space and recreation. This taking by a home-rule city of Telluride was on property outside of its boundaries.

Of course, anger and angst is expected between the condemning property owner(s) and the governmental entity doing the taking usually revolving around the owner’s future plans for development or future business opportunities versus just compensation. Many property owners along the “Fastracks” corridor feel RTD may low ball offers when working on “fair market value” when the economy is in a slump and appraisals are coming in low. However, a Delta County jury found the value of the 570 acres to be \$50 million when the City of Telluride only contributed \$25 million... the difference was made up by residents and friends of Telluride.

What has caused much bad publicity for the act of condemnation by government is the taking of private property for “redevelopment” purposes for private development which increases tax revenues to government bodies. In June of 2005, the U.S. Supreme Court ruled that state and local governments can seize homes to make way for private development (Kelo vs. City of New London). City fathers commonly identified properties as “blight” to create the justification for the act of condemnation in many cases by stating that the elected officials are acting on the behalf of the entire community.

In Colorado, the Legislature in 2006 passed HB 06-1411 which defines public use not to include the taking of private property by the State of any political subdivision for transfer to a private entity for the purpose of economic development or enhancement of tax revenue. In addition, any condemnation action, the burden of proof is on the condemning authority to demonstrate by a preponderance of the evidence that the taking is for a public use, unless the condemnation action involves a taking for the eradication of blight, which case the burden of proof is on the condemning authority to demonstrate, by clear and convincing evidence, that the taking of the property is necessary for the eradication of blight.

A title policy makes an exclusion from coverage for the government police action or the rights of



...continued from front

eminent domain. In the most recent American Land Title Association promulgated forms (2006), protection is provided to lenders and owners if notice of evidence of the exercise describing any part of the insured land is recorded in public records.

Again, Eminent domain is defined as the power of the sovereign to take private property for public use upon just compensation. The right of eminent domain is strictly an involuntary conveyance and is exercised in a statutory procedure. This right is given to the following entities through state legislative action:

- a. state government
- b. county government
- c. city government
- d. school boards
- e. housing and redevelopment authorities
- f. public corporations
- g. quasi-municipal political subdivisions
- h. and in some rare, limited cases, to private companies including utilities

When the Federal government takes property by means of condemnation, power to take is acquired through the constitution and congressional legislative action. The condemning entity should include in the petition for condemnation a statement describing the purpose of the taking and the benefit for the public. The property acquired through

condemnation must be within the territorial jurisdiction of the condemning party. The process begins with the filing of a petition with the court containing usually the following:

- a. legal description of property being condemned
- b. names of the parties whose interest is to be taken
- c. statement as to the interest taken
- d. prayer for relief
- e. reference to the statute permitting the taking
- f. statement of purpose and that the purpose is for the public good
- g. outline of the interest owned by the parties

In some cases, an easement right may be taken while in other cases a fee simple title may have been taken away from the private owner. When insuring a condemned easement or a condemned fee, a title insurance policy will probably make an exception for the terms, conditions and provisions of the easement being condemned and the final decree being recorded. An examination of the proceeding would be necessary.

© 2008 Security Title Guaranty Co., All Rights Reserved

Disclaimer: Legal, accounting or other expert advice should always be obtained from a competent professional.