

בס"ד

בענין מה שאחד מן המפריעים רוצה לחדש מדעתו שאין למושל העיר שום בעלות על קרקעות במדינתנו ולא יועיל שכירת רשות משכירים ולקייטם. כל מי שיש לו יד ורגל בדיני נכסי דלא נידי (Real Estate Law) במדינה הזאת יודע שהבעלות העליונה היא הממשלה לכל צורותיה. ומה שיש לבעל הבית זה רק כמה זכויות הנקראים (Property Rights) זה בא לידי ביטוי בהרבה אופנים ונזכיר פה רק הידועים ביותר (ראה הנספחים בלשון ענגליש)

(1) מי שמת בלי צוואה ויורשים הנכסים לרשות.

(2) רשות הממשלה להפקיע נכסים לאיזה צורך שירצו וקוראים לזה (Public Use) אע"פ שמשלמים ואין ביד הבעלים למחות.

(3) כח הממשלה להגביל תשמיש הקרקעות ע"י Zoning ואפילו להגביל כמה ילדים מותרים לישון בחדר אחד

(4) כח הממשלה לקרוא שם Historic Landmark לאיזה נכס ואז אין רשות להבעלים אפילו להחליף זכויות החלון בלי רשותם.

(5) והאחרון הכביד, כחם לשום מס על קרקעות ונכסים ולהפקיע כרצונם. זהו הבעלות הגדולה שאפשר כמאמר הידוע מפי שופטיהם "The power to tax involves the power to destroy"

כמובן כמו בכל מדינה מתוקנת מותר לבעלים לערער בערכאותיהם. אבל זה רק לברר אם הממשלה התנהגה ע"פ החוקים.

ויש עוד כמה מציאויות רק כתבנו המפורסמים לכל.

Wills and Trusts

What happens if I don't have a Will?

The legal term for dying without a Will is dying intestate. If you do not specify through a valid Will who will receive your property, state law controls and generally distributes your property to your spouse and/or your closest heirs. This may or may not be what you intended. Furthermore, if you fail to nominate a guardian for your minor children, the state could appoint someone you don't trust as a legal guardian of your minor children. Finally, by failing to appoint someone to carry out your wishes, the state can appoint anyone to be the administrator of your property, and the administrator may have to pay certain fees or post a bond at the expense of your estate, before he or she can begin to distribute your assets.

Eminent Domain

Eminent domain is the power of government to take private property and use it for public purposes. The power of eminent domain is recognized in the United States Constitution, which prohibits the taking of private property "without just compensation". Although the power of eminent domain is usually used to acquire land, it may also be used by government to acquire other forms of property.

Every state has a statute, or statutes, establishing how the eminent domain power is exercised.

- The federal government procedure is established in the Federal Rules of Civil Procedure.
- The state procedures vary widely in their specifics. In some states, the government is required to negotiate with the property owner before instituting eminent domain proceedings. In other states, the government may institute proceedings without prior notice to the property owner.

The federal constitutional provision recognizing the power of eminent domain implies the requirement that property be taken for a "public use". In recent decades, this term has usually been interpreted broadly to include uses which are generally beneficial to the public. "Public use" includes the traditional government activities of building roads, government and public facilities such as government buildings and parks, as well as more generally beneficial activities such as protection of scenic areas, wetlands, and historic landmarks. Under the broad view of "public use", government taking of property for redevelopment by private parties has been upheld.

The United States Constitution, as well as the constitutions and statutes of many states, require that private property owners receive "just compensation" when property is taken by eminent domain. The standard for just compensation is usually the fair market value that a property owner would receive if the property were being sold in an ordinary transaction. If the government and the private property owner are unable to agree on the fair market value, a court proceeding including the testimony of an expert witnesses is often required. Under federal law, if property is being condemned for a project using federal funds, the state or federal government must also pay moving and relocation expenses to displaced owners and provide relocation and other services to property owners and tenants. See also Zoning, Planning and Land Use: What is the Extent of Government Power to Control Land Use?, Historic Preservation and Conservation Laws.

What is the Extent of Government Power to Control Land Use?

As this discussion details, the State and Federal Governments have extensive powers to regulate the use of land by private parties. A consistent area of controversy is the extent to which those powers may impinge upon private property rights.

The right of government to control land use through the exercise of the zoning power has been upheld by the U.S. Supreme Court. The power of government to take ownership of private property has also been upheld. The U.S. Constitution, however, provides that private property may not be taken "without just compensation".

The requirement of just compensation means that if a government entity takes private property for a public use, it must pay the owner for the property. See the article [Real Estate Law: Eminent Domain](#). The principle that compensation is required if government "takes" private property has been extended beyond the actual assertion of ownership of property to government actions that are something less than an assertion of ownership.

For example, the U.S. Supreme Court has recognized that zoning and other forms of regulation may be so stringent that they are the equivalent of an actual taking of property requiring compensation. In a recent case, the Supreme Court held that a "regulatory taking" occurs when government regulation of private property is so stringent that no economically beneficial use of the property is possible.

Another issue concerning government authority to control property use arises when governments use the zoning power to limit certain specific kinds of uses. Some governments have attempted to eliminate certain types of businesses by zoning them out of their localities. The courts generally permit towns to regulate the location of these types of business to a small area, but not to zone them out entirely. Other types of uses that are protected under various legal principles are churches, health care facilities, and certain other kinds of institutional uses such as group homes for the disabled.

Historic Preservation and Conservation Laws

Government engages in a variety of activities aimed at preserving historic, cultural, and environmental assets. By exercising the power of eminent domain, both federal and state governments can preserve land or historic buildings for the future by:

- Taking the property and paying for it
or
- Simple outright purchase of property from the property owner

However, condemnation and outright purchases are limited by available funds. Therefore, state and federal governments also attempt to preserve these assets by imposing restrictions on their use and development without actually purchasing them.

In the case of historic buildings and landmarks, the authority of government to prohibit the demolition of these structures and landmarks, and to require that they be preserved in a historically accurate fashion, has generally been upheld.

For example, some states have historic districting laws permitting the establishment of historic districts and empower historic commissions to review any improvements or changes to historic properties within the district. In some cases, historic commissions may pass upon the types of windows that may be installed on an historic property and even the paint color that is used on the exterior of the property. However, if limitations imposed on historic properties are so restrictive that they interfere with any economically viable use of the property, they may constitute a taking and require compensation to the property owner.

Increasingly, governments and private organizations have sought to utilize limited restrictions on private property through transfers of development rights. For example, a historic preservation society may pay a property owner for the development rights on a historically significant building. Under such arrangements, the property owner retains the use and occupancy of the building, and may sell it to another owner who is bound by the agreement limiting the development of the property to historically sensitive uses. This kind of device may also be used for the conservation of environmentally important areas and for the preservation of farmland. See Agriculture Law: Farmland Preservation.

Farmland Preservation

As farmland is rapidly being converted to nonagricultural uses, state and federal governments, as well as private parties, have sought ways to preserve farmland for future agricultural use.

Some of the preservation methods in use have a long history such as special tax assessments of agricultural property. Other methods involve creatively applying existing legal concepts to the problem (e.g., conservation easements).

Agricultural support laws on both the federal and state levels can be viewed as forms of farmland preservation, to the extent that they seek to make the farming lifestyle financially viable in an increasingly urban and suburban American landscape.

Agricultural Property Tax Assessments

Most states have statutory provisions for the special assessment of agricultural property. Under these laws:

- Agricultural property is assessed specially for purposes of property taxation.
- The property is assessed at its agricultural value rather than its usually higher fair market value.

These laws vary in their specific provisions, and are usually implemented on the local (county or municipal) level. The States that do not have special assessment laws give a state income tax credit to those who make property tax payments on agricultural land.

Right-to-Farm Laws

Throughout the century, urban and suburban communities have encroached on agricultural land. The farming activities that take place on this land create noise and odors, and often utilize pesticides and other chemicals. The proximity of suburban housing developments to these kinds of farming activities resulted in court actions brought attempting to curb farming activities they considered objectionable. These actions were often brought under the law of nuisance.

Nuisance Law

Under the common law (judge-made law) of nuisance, people have a right to enjoy their property without interference by the activities of a neighboring property. If a person whose right to enjoy their property is unreasonably interfered with by the activities on a neighboring property, they may bring a legal action to curb the offending activities. For example, the homeowners in a suburban housing development adjoining a farm might bring an action to curb the odors resulting from manure piles created by farm animals.

"The Power To Tax"

By: Jack Warren Wade, Jr.

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When Chief Justice John Marshall wrote, "The power to tax involves the power to destroy," he was referring to the imposition of taxes, but he could just as well have been referring to the collection of taxes. Today the tax collection powers of the IRS are virtually without limit. Without a court order, revenue Officers - the tax collectors of the IRS - can seize and sell practically everything a citizen owns. Perhaps the most ominous and frightening reality of all, under powers legally granted by Congress, the IRS can assess taxes and seize property immediately without any warning, or notice. They can do this not only when the taxpayer hasn't filed a tax return, but even when the tax year hasn't ended.