

The Power and Limits of Eminent Domain in New York

By Jason M. Penighetti, Esq.

If you own property adjacent to a main thoroughfare or near a blighted area, chances are you will eventually face a condemnation. Also known as eminent domain, condemnation is a powerful tool that allows governmental entities to acquire private property for projects benefitting the public including the construction of highways, schools, and urban redevelopment. In New York State, this authority is governed by the Eminent Domain Procedure Law (EDPL), which outlines the process for municipalities and state agencies to acquire private property while ensuring safeguards for property owners.

The Fifth Amendment of the U.S. Constitution guarantees that private property cannot be taken for public use without just compensation, a principle also reflected in state constitutions. Courts have interpreted "just compensation" to mean that property owners must be paid for damages to the "highest and best use" of the land seized. This refers to the most economically beneficial, legally permissible, and physically possible use of the property, even if it is different from its current use. The highest and best use of the property is determined by appraisers, engineers, and legal proceedings if necessary.

New York's EDPL reinforces these principles by outlining strict legal procedures and adhering to constitutional safeguards to prevent misuse. These safeguards include a requirement that the project serves a legitimate public purpose. Additional due process considerations ensure transparency through public hearings, disclosure of plans and the opportunity to challenge a taking in court.

There are two main types of formal takings at the disposal of the condemnor: total and partial. In a total taking, the government acquires an entire property. A partial taking involves acquiring a portion of the property. Additionally, a third type, known as a regulatory taking, is often referred to as an inverse condemnation.

A total taking occurs when the government acquires an entire parcel of land. This is the most direct and absolute form of condemnation, as the owner permanently loses possession of the property. Total takings are common in large-scale public projects, such as the construction of highways, bridges, and urban redevelopment projects aimed at revitalization.

A partial taking is when only a portion of a property is seized, leaving the owner with the remainder. This often results from road widening projects or when land is needed for sidewalks, easements, or utility lines. In addition to compensating the owner for the land taken, the government may be required to pay indirect damages as well if the partial taking reduces the value of the remaining property. For example, a road widening project could lead to increased noise and reduced or circuitous access, entitling the owner to further compensation.

A regulatory taking (or inverse condemnation) occurs when government regulations or laws severely limit a property's use, effectively depriving it of any economic value, even though the property itself is not physically seized. This type of taking is more complex and typically arises with zoning laws, environmental regulations, or landmark preservation efforts. Examples include rezoning preventing a property owner from developing land as originally intended, environmental restrictions prohibiting certain commercial or residential uses or historic preservation laws that limit alterations to a property.

Proving damages in a regulatory taking case is challenging. As these takings do not involve physical seizure, property owners often face an uphill battle in proving their case and many claims are dismissed unless the government's action is deemed overly restrictive. If the property owner cannot prove that the regulation has effectively eliminated all economically viable uses of the land, courts seldom award compensation. 🚧

Conclusion

Eminent domain is a powerful tool in New York State enabling governments to carry out essential public projects, but must be exercised with caution and fairness. As urban development and infrastructure needs continue to grow, the debate over eminent domain will remain a contentious issue. Whether advocating for public projects or defending private property rights, understanding the legal framework surrounding condemnation is essential for all parties involved.

This article was originally published in the New York Real Estate Journal and is reprinted with their permission.

Jason M. Penighetti, Esq.

Jason M. Penighetti is a Partner at Forchelli Deegan Terrana LLP. He serves as the chair of the Condemnation practice group and is a member of the firm's Tax Certiorari practice group. Mr. Penighetti practices exclusively in the field of real estate tax assessment and eminent domain litigation throughout New York State for the past 25 years.