

Condemnation and Eminent Domain

Eminent domain litigation raises many complex questions, particularly when confronted with government action or regulation that significantly devalues your property. Luckily for our clients, we have evaluated and extensively litigated the right to take and value of private property at the state and federal level. We have deep knowledge of property valuation methods and have developed sophisticated damage models intended to accurately compensate for losses due to condemnation proceedings.

About

Eminent Domain

The growing concern over when and how the power of eminent domain can be exercised is not slowing down.

Eminent domain is the power to take private property for public use by a governmental entity, or private person or corporation authorized to exercise functions of public character. Eminent domain law and legal procedures vary, sometimes significantly, between jurisdictions, and require a thorough understanding of constitutional principles, property rights, and property valuation, both on a federal and state level.

Eminent domain matters also require an understanding of several factors outside of the law, such as political, commercial, and special interests that need to be investigated, evaluated and thoroughly understood when advising clients. Each area, in turn, needs to be examined by counsel that is well-versed in these issues and has the experience and insight to appreciate the implications that may result from certain actions.

Direct and Inverse Condemnation

Kelley Drye has significant experience representing condemning authorities as well as railroads and other private landowners in many kinds of eminent domain matters.

Eminent domain condemnation typically falls under two categories: (1) direct; or (2) inverse.

In a traditional, direct condemnation, an entity is exercising the power to take private property for public use.

Inverse condemnation involves a private property owner claiming a government actor took their property without instituting direct condemnation proceedings. Those cases can involve a physical taking of property, or a regulatory taking of property (such as onerous regulations that reduce the value of the property). These types of claims can involve the taking of the entirety of a property, or a lesser right, such as an easement or lease. And these claims can involve government actions that cause a permanent taking, or just a temporary one. Often, multiple parties hold an interest in a property, such as a lessor and lessee, requiring careful evaluation of compensation allocation.

We have litigated a wide range of affirmative and defensive issues in the context of eminent domain matters on behalf of railroads, pipeline companies, quasi-government entities and government

entities, for plaintiffs and defendants alike, such as:

- Right to take and authority to condemn
- Whether a property interest is constitutionally protected
- Whether a government action constitutes a physical or regulatory taking
- Fair market value and just compensation
- Relocation expenses
- Permanent and temporary takings
- Easements, including flowage easements and rights of access
- Jurisdiction and statute of limitations in inverse condemnation
- Expert witness coordination on causation and valuation

We litigate these matters in state and federal court, and our team has tried multiple takings and property valuation trials. Our team also has significant experience litigating federal inverse condemnation matters before the United States Court of Federal Claims.

In inverse condemnation matters, there is often early motion practice to dispose or limit lawsuits on any number of bases such as jurisdiction, the statute of limitations, or a lack of a protected property interest. Our team is well-versed in handling complex briefing, including persuasively presenting the constitutional and policy arguments underpinning takings law and a right to just compensation.

In pursuing or defending an inverse condemnation claim, expert witness testimony is often required. Our team has worked with experts across the country in many disciplines to ensure our clients are prepared to present persuasive evidence on critical affirmative and defensive topics like causation.

Property Valuation in Condemnation and Eminent Domain Matters

Our extensive understanding of real-property damage models and creative approach to the quantification of market and economic damages can add tremendous value to property owners seeking just compensation, railroad and transportation companies involved in eminent domain matters, and government entities involved in defending against allegations of inverse condemnation. We have also worked hand in hand with expert witness appraisers and land use planners who present compelling valuation evidence in support of our clients' cases.

Our team also has significant experience litigating disputes involving the Uniform Standards of Professional Appraisal Practice (USPAP) and Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book). Our team's detailed knowledge on how to apply those standards in federal acquisitions, and state acquisitions following the same or similar standards, can provide a property owner an upper hand to seek higher compensation.

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Contacts

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