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An Introduction to Fifth Amendment Takings

Few topics draw more attention from the national media and stir as much dinner table debate about the legal and inherent rights a person has in our country than cases involving the death penalty and abortion. Even though these cases have dominated media coverage for decades, private property—and the rights that attach to it—received the spotlight after the U.S. Supreme Court issued its decision in Kelo v. City of New London.[1] More than two years after Kelo, legal scholars and commentators from coast to coast are still debating the decision and its social and legal impact. This issue of The Federal Lawyer explores the aftermath of Kelo and other aspects of Fifth Amendment takings.

Before delving into this issue, a few basics about Fifth Amendment takings may be helpful. The Takings Clause of the Fifth Amendment states, "nor shall private property be taken for public use, without just compensation."[2] Other than purchasing property from a voluntary seller, the federal government usually takes private property in one of two ways.

First, the government can take private property by exercising its power of eminent domain, also referred to as direct condemnation. These cases are usually styled *United States v. Acres of Land* and filed in the district court where the real property is located. Generally, the only issue involved in these cases is the amount of just compensation a landowner is due. In other words, what is the monetary value of the property taken?

Second, the government can also take property by inverse condemnation. This type of taking can occur when the government has not exercised its power of eminent domain, but has physically invaded property or imposed a regulatory restriction on a particular use of the property. Inadvertent flooding by a public works project and the denial of a landowner's permit application to fill wetlands are examples. In inverse condemnation cases, the federal government sits in the defendant's shoes, and the issues before the court include liability as well as just compensation. Federal district courts have jurisdiction over inverse condemnation claims up to $10,000, and the U.S. Court of Federal Claims has jurisdiction over claims for more than $10,000.

Whether involved in the lawsuit as plaintiff or defendant, the government's power to take private property has been scrutinized since the *Kelo* decision. This issue of *The Federal Lawyer* presents three perspectives on state and federal legislative initiatives following *Kelo,* as well as a review of a recent book that discusses the case. Another article reviews the history of takings law and a recently published takings treatise. For those interested in more information about inverse condemnation, this issue includes an overview of the law in this area and an in-depth discussion of threshold questions to consider in inverse condemnation cases. Finally, one article provides a wealth of information regarding the history of the U.S. Court of Federal Claims.

We hope you enjoy exploring this complex and fascinating topic. **TFL**

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Endnotes
[1]545 U.S. 469 (2005).
[2]U.S. Constitution, Amendment V.

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