

Hey, Earl, here's an interesting article on **Eminent Domain** – Mitch Dozier, Montgomery

States review eminent domain

By Dennis Cauchon, USA TODAY

More than 30 state legislatures are considering limits on the power of local governments to condemn private property and transfer it to real estate developers to spur economic growth.

Lawmakers are responding to a Supreme Court ruling in June that permitted eminent domain powers to be used in New London, Conn., to confiscate waterfront homes to build an office complex and condominiums. The 5-4 ruling prompted property rights advocates to take their case to state legislatures.

Five states enacted small changes last year, but most legislatures were not in session after the court ruling.

"This is the crucial year for the eminent domain issue," says Larry Morandi, who tracks eminent domain legislation for the National Conference of State Legislatures.

Bills to restrict eminent domain have moved forward in Georgia, Virginia, Indiana, Kentucky and several other states, but none has become law yet. In New Mexico, the state Senate and House both approved limits, but the bill died when the legislature adjourned before giving final approval.

Eminent domain is the power of government to take private property for "public use" if the owner is fairly compensated. It has been used to build roads, schools and utility lines. Cities also have used it to transfer property from unwilling sellers to developers who want to build shopping malls, offices or other projects. Baltimore's Inner Harbor and New York's Times Square were revamped by eminent domain.

Legislatures' strategies

1. **Explicit bans.** Some bills would ban the use of eminent domain for economic development. Others would do so indirectly by stating when it can be used and leaving commercial development off the list.
2. **Narrower rules.** Many states are considering making it harder for cities to declare a neighborhood "blighted" just for economic development.
3. **Economic penalties.** New York and Indiana are among states considering making eminent domain more expensive. The government would have to pay 25% or 50% above market value when it confiscates a property for commercial development.

After the Supreme Court decision, legislatures in Alabama, Texas, Delaware, Michigan and Ohio took modest steps to restrict eminent domain. Michigan approved a constitutional amendment that will be on the ballot in November. Ohio approved a one-year moratorium on eminent domain for economic development. Congress also is considering restrictions. (Related story: Ohio town tests eminent domain)

"There's been an explosion of outrage by people across the country and across the political spectrum about what can be done under eminent domain," says Scott Bullock of the Institute of Justice, a libertarian public interest law firm.

Last month, Charlotte-based BB&T, the nation's ninth-largest bank, announced it would not lend money to developers who used eminent domain to acquire property. The Rhode Island Economic Development Corp., a quasi-public agency headed by the governor, announced last month that it would no longer use eminent domain for economic development.

Donald Borut, executive director of the National League of Cities, says state legislatures should not rush to act because careful study would show that abuses are rare. "We all feel sympathetic for someone who is losing a home," he says. "But we also have to consider the faces of people of all income levels who benefit from the job creation these projects bring."

Response from Earl:

Thanks Mitch. It's an interesting article. I believe the Supreme Court Kelo case that everyone talks about, the case that allowed the taking of a middle class neighborhood in New London, Connecticut, was really more about states rights than whether it was right to take private land for no other public use than to generate more tax revenue. I think the federal court simply let that state's Supreme Court decision stand, saying in effect, "this is a matter for the states, not federal." Naturally, as the article stated, this has started the mad rush to get new state laws on the books everywhere. In most states it is probably a good thing.

Of particular interest to me is the proposed option 3 mentioned in the article you sent that would give private owners more money if ownership is being taken for a commercial use. I don't believe that dog ought to hunt. A person's home should be sacrosanct. It is *priceless* insofar as another private person's coveting it is concerned. However, society as a whole may need it for the actual benefit and use of all society such as for roads, access, power, sewer, public buildings open to all, etc.

Then the owner ought to get fair market value, including something more for the inconvenience of being forced to part with his property. I firmly believe it is still a violation of basic private property rights for a government to take someone's property forcibly where the ultimate owner of the real estate in the future will be someone other than the general public. If pushed to the wall I might agree to public acquisition of land for private development but only if the public retained the fee interest forever and leased the ground to a developer for a fair market rent plus a piece of the gross income of the improvements. And the income was used to reduce everyone else's ad valorem property taxes.

Having said that, I must admit that I am also not against allowing the public repair or demolition of improvements to real property that have been allowed to physically deteriorate below a reasonably established standard or code. And, like taxes, I would file a lien on the property for the cost to the public of the improvements and if that cost is not repaid, upon proper procedural judgment; sell the property to a new private owner - but at public auction. This would clear away the blighted areas but would also do away with the backroom wheeling and dealing by politicians and bureaucrats with big-time developers about who would be the new owner.

That's enough philosophizing. Back to work.