NAR Issue Summaries

Environment / Eminent Domain

NAR Committee:

Land Use, Property Rights and Environment Committee

What is the fundamental issue?

The Fifth Amendment of the Constitution provides the federal government the authority to use eminent domain to take private property, as long as the taking is for a "public use", and "just compensation" is provided to the property owner.

I am a real estate professional. What does this mean for my business?

Used carefully and judiciously, the power of eminent domain can help communities invest in projects that are necessary for them to function effectively, such as roads, bridges and water management systems. These kinds of projects help preserve property values and create the conditions for robust economic growth.

Improper or incorrect use of eminent domain can harm property rights and destroy trust in public institutions.

NAR Policy:

Supports eminent domain authority only for a public use (e.g., ownership by a public entity), as well as a broad interpretation of "just" compensation, to include all reasonable and necessary costs which result from exercise of such authority, not just the value of the property condemned. States, not the federal government, should establish their own rules and laws governing eminent domain. Governments must also show evidence that projects have a reasonable chance of being created if eminent domain is used to take private property.

Opposition Arguments:

Governments should be allowed to utilize the power of eminent domain for the broader "public good", not just for the more narrow "public use". Use of this authority for the public good will result in many more public benefits, such as a cleaner environment and, in the case of taking mortgages, a stronger economy.

Legislative/Regulatory Status/Outlook

NAR is active in an on-going,broad-based coalition of financial, banking and real estate organizations, closely monitoring all developments in this area and will mobilize when circumstances warrant.

A recent Supreme Court ruling related to "equity theft" was a win for NAR and property rights. The SCOTUS recently ruledin favor of a94-year-old woman over her claim that a Minnesota county violated the

500 New Jersey Avenue, NW
Washington, DC 20001
(800) 874-6500
nar.realtor

Constitution by keeping a $25,000 profit when it sold her home in a tax foreclosure sale.

The court concluded unanimously that Geraldine Tyler can pursue her argument that Hennepin County's decision to keep the surplus violated the takings clause of the Constitution's Fifth Amendment, which requires that the government pay compensationwhen property is taken.

NAR submitted an amicus brief to the U.S. Supreme Court in one of the most important property rights cases in a decade. Tyler v. Hennepin Countyaddresses the practice of "home equity theft," where state and local authorities take foreclosed homes for tax sales, no matter how small the amount of taxes due or how large the amount of accrued equity.

Local governments nationwide have the right to take people's homes when they don't pay their taxes. In most states, extra money from tax sales goes back to the former owners. If a family owes $10,000 and the government sells their old home for $150,000, they can get $140,000. But in about a dozen states, the government keeps all $150,000.

Geraldine Tyler, a 93-year-old woman on a fixed income, owned property in Minneapolis. When she could not pay her $2,300 property tax bill, which eventually turned into nearly $12,700 with interest and fees, Hennepin County seized and sold her property to pay the bill. But instead of keeping just the $12,700 owed, the county kept the entire $40,000 from the sale — because Minnesota is one of 14 states that allows itself to take all the proceeds from tax foreclosures.

This practice often affects the poor and elderly who own their homes free of a mortgage but don't have enough discretionary income to pay property taxes. In another example, a Michigan family underpaid their property taxes by $144, spurring Wayne County to take two homes and sell them for $108,000, with the county keeping the remainder.

After Minnesota seized her assets, Tyler sued, arguing that the county unconstitutionally took her property without just compensation in violation of the Fifth Amendment's Takings Clause. The 8th U.S. Circuit Court of Appeals affirmed the district court's dismissal of her case because Minnesota law declared that the home equity was not Tyler's private property, so there was no taking.

NAR's amicus brief focused on the fact that permitting the government to erase these vested property rights by the stroke of a pen undermines a core premise of property ownership. These takings significantly impact the real estate industry because they divest property owners of hundreds of millions of dollars in equity each year. REALTORS have an interest in seeing that property owners are not stripped of their equity interests without the just compensation required by the Fifth Amendment.

During the oral arguments, Hennepin County told the Supreme Court that Tyler hadfive years to pay the taxes or sell the property. And, it argued, Tyler couldn't have recuperated the surplus money – and therefore doesn't have standing to sue because she owed a mortgage and backhomeownerassociation fees.

Few people deny the government's power to take property to satisfy the owner's debts, subject to due process and other protections, but a government should not be allowed to take more than it is owed.

Current Legislation/Regulation (bill number or regulation)

None at this time.

Legislative Contact(s):

Ryan Rusbuldt, rrusbuldt@nar.realtor, 202-383-1196
Russell Riggs, rriggs@nar.realtor, 202-383-1259

Regulatory Contact(s):

Russell Riggs, rriggs@nar.realtor, 202-383-1259