NAR Issue Summaries

Environment / Private Property Rights

NAR Committee:

Land Use, Property Rights and Environment Committee

What is the fundamental issue?

It is a foundational tenet of NAR that governments should not infringe on the basic right of the individual to acquire, possess and freely transfer real property, and must protect private property rights.

Federal ownership of public land can have a negative impact on property rights, especially in states that already have high federal land ownership, such as Utah or Nevada. Ownership of land by the federal government reduces the amount of land available for use by the private sector and reduces local tax revenues.

Transferring land to the private sector will encourage economic development and better management of the land for multiple uses, such as resource extraction, ranching and wildlife management. It will also help the federal government prioritize and better manage the land they have left and strengthen property rights in states with high public land ownership.

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

The freedom to buy, sell and utilize property, as protected in the 5thAmendment, underlies all real estate transactions and markets.Any restrictions placed on a property owner from realizing the highest and best use of that property hinders economic growth and development and reduces freedoms inherent in our society.

NAR Policy:

Governments shall not arbitrarily infringe on the basic right of the individual to acquire, possess and freely transfer real property, and shall protect private property rights as referred to in the 5th and 14th Amendments of the United States Constitution.

NAR supports legislative implementation of the 5th Amendment's guarantee of compensation when property rights are taken. Every person should have the right to acquire real property with confidence and certainty that the use or value of such property will not be wholly or substantially eliminated by governmental action at any level without just compensation or the owner's express consent.

In addition, NAR supports legislation that will provide property owners expeditious access to administrative and judicial systems at all levels - local, state and federal - to pursue 5thAmendment takings claims or relief from other property rights violations.

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

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NAR recognizes the need for all levels of government to be able to exercise legitimate police powers in the regulation of private property to protect the health, safety and general welfare of its citizens. However, when government actions or regulations are not founded within legitimate police powers, the government should be required to pay compensation for the inordinate burden levied on the property owner.

The federal government should not establish criteria for the use of eminent domain by state and local governments. Each state should establish its own rules and laws governing eminent domain without interference from the federal government.

Likewise, when a government entity exercises its eminent domain power to condemn private property for public use, the government should provide - as required by the 5thAmendment - "just" compensation to affected property owners that covers not only the value of the property condemned but also all other reasonable and necessary costs generated by the condemnation action including, but not limited to, hiring legal counsel, obtaining temporary housing, lost business revenue, severance damages.

Furthermore, when a government entity exercises its eminent domain authority, it should do so only when necessary to materially advance a real public use. The government should provide persuasive, objective evidence that the project, and the resulting public use, will be realized.

Opposition Arguments:

Property rights should be balanced with other societal needs, such as environmental quality and economic development. Lands should stay under the ownership of the federal government because only public ownership will allow for the most efficient and multiple use management of these lands.

Legislative/Regulatory Status/Outlook

None at this time

Current Legislation/Regulation (bill number or regulation)

None at this time.

Legislative Contact(s):

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

Regulatory Contact(s):

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

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