

This Land's Not My Land? Eminent Domain Research in Virginia

by Marie Summerlin Hamm

The U.S. Supreme Court in 2005 held in *Kelo v. City of New London* that economic redevelopment constitutes a permissible public use under the Fifth Amendment takings clause. Reaction to *Kelo* was swift and unprecedented. Virginia and more than forty other states enacted eminent domain reform legislation. This article does not delve into the complex and controversial substance of eminent domain, but seeks to introduce basic research tools to those unfamiliar with the topic.

Primary Resources

The ease with which the law of eminent domain is summarized contrasts sharply with the difficulty of application. The takings clause of the Fifth Amendment, made applicable to the states by the Fourteenth Amendment, states that “private property [shall not] be taken for public use without just compensation.” Article I, Section 11 of the Virginia Constitution declares that “no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law . . . whereby private property shall be taken or damaged for public uses, without just compensation.” The section charges the General Assembly with the task of defining “public uses.” Newly enacted Va. Code Ann. § 1-219.1, “Limitations on Eminent Domain,” sets out six qualifying public uses—and that is where simplicity ends. The question of whether a taking is indeed for a public use is, of course, a judicial question. From a research perspective, locating Virginia’s major eminent domain cases is as simple as using an annotated code.

Gleaning a clear picture of the complexities of eminent domain directly from those cases would be difficult at best.

Secondary Resources

That’s where the advice offered countless times by law librarians comes into play: Start with secondary sources. Written by experts, secondary sources in print and online usually include a table of contents that provides an immediate overview of the subject area, as well as an extensive index for ease of access.

Michie’s Jurisprudence provides a relatively comprehensive discussion of eminent domain, complete with extensive footnotes referencing both primary authority and relevant articles published in Virginia law reviews. The *Virginia Law Practice Handbook, Eminent Domain: State and Federal*, by Hugo A. Blankenship and Paul B. Terpak, remains an excellent resource for an introduction to the topic. *Nichols on Eminent Domain* is a combined treatise and practice guide that provides in-depth analysis of all aspects of condemnation practice and procedure, including discovery, jury instructions, and examination of experts. It explores the origins, nature, and extent of the eminent domain power and considers issues related to valuation and damages. Publisher Matthew Bender offers *Nichols on LexisNexis*, in CD format and a print multivolume treatise, which is updated quarterly. Special alerts are issued as necessary to ensure currency. In May 2010, *Special Alert: Responses to Kelo — Eminent Domain Reform Legislation and Select Recent Cases* was published. A handful of other relevant treatises are

available, including *The Law of Property Rights Protection* by Jan Laitos (Aspen) and John Martinez’s *Government Takings* (West).

Continuing legal education publications offer quick immersion and a practical approach. The most current treatment of the topic is included in the 2010 supplement to *The Virginia Lawyer: A Deskbook for Practitioners* (3rd ed.). Chapter 12 is devoted entirely to eminent domain. Co-authors Henry E. Howell III and Paul B. Terpak provide a concise history of eminent domain power and limitations; offer an excellent overview of procedure under Title 25.1; address the Virginia Department of Transportation distinctions, including the “quick-take” power; discuss the role of redevelopment and housing authorities; and consider valuation.

Another CLE publication, *Eminent Domain Updated* (Sept. 22, 2006) focuses on litigation. The course material includes a wealth of litigation tips and techniques from the perspectives of both condemnor and property owner. Researchers are cautioned, however, to update the aging material.

In April 2010, Virginia hosted CLE International’s Fourth Annual Eminent Domain Institute. The faculty for the program included many of the most recognizable names in Virginia eminent domain practice. The course material, *Eminent Domain: Condemnation, Compensation, and the Constitution*, is available for purchase on the CLE International website, <http://www.cle.com/>.

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Internet Resources

The Internet offers myriad new resources on eminent domain. Blogs focusing exclusively on the subject abound. The *New York Times* website includes a page dedicated to eminent domain articles, feeds, and resources. (http://topics.nytimes.com/topics/reference/timestopics/subjects/e/eminent_domain/index.html) Even YouTube has gotten in on the act. In terms of Virginia-specific information, *The Fee Simple*, (<http://www.vsb.org/sections/rp/newsletters.htm>), the newsletter of the Real Property Section of the Virginia State Bar, regularly publishes eminent-domain-related articles, including several recent articles by members of the eminent domain subcommittee.

Conclusion

Kelo has sparked renewed interest in the legal, theoretical, political, and economic issues relating to eminent domain. For researchers, this translates into a wealth of new material to peruse and ponder.