

Legal Connections



LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

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Happy holidays to all. We look forward to seeing you back in person at the CBA in the new year.

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WHAT EVERY OHIOAN SHOULD KNOW ABOUT EMINENT DOMAIN

“Eminent domain” is a term most property owners hope to never hear. It conjures up images of steamrollers, bulldozers and wrecking balls, of having valuable real estate destroyed, or of losing one’s home and memories. But while virtually every property owner in Ohio is subject to eminent domain, they also have many powerful rights with which to defend themselves and ensure that they are treated fairly and made whole for what they’ve lost.

Many property owners would be surprised to learn that nearly 100 different types of entities known as “condemning authorities,” which include both government and private companies, can use eminent domain to take private property under Ohio law. Whether it be a road widening, bike path, sewer



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extension, water line, power line, pipeline, landfill, hospital or new recreational fields for the nearby school, if the project is deemed “necessary for a public use” the condemning authority behind it can take the property it needs by eminent domain.

Many property owners would also be surprised to learn how many powerful rights they

have with which to defend themselves under Ohio law. For example, the property owner can challenge the project outright as not being necessary or as not fulfilling the condemning authority’s claimed purpose. If the property owner prevails, the condemning authority will be prohibited from taking the property. If the condemning authority prevails, then the property owner is entitled to receive full and fair compensation for the property taken, plus the decrease in the

value of the remaining property—valued at the property’s “highest and best use.” This ensures that the property owner receives the maximum compensation based on the property’s most valuable possible use, regardless of its present use. In some cases, property owners can also recover for other losses, such as relocation expenses and business losses. And in many cases, property owners can recover their attorney’s fees and expenses incurred as a result of the eminent domain action against them.

However, those confronted by eminent domain may also be surprised to learn how little the condemning authority will seek to pay for their property. It stands to reason that condemning authorities generally seek to minimize the costs associated with their projects, including the costs of acquiring the necessary property. Nonetheless, property owners have powerful constitutional rights that

might entitle them to significantly more compensation than the condemning authority will offer. For this reason, it is imperative that property owners be aware of their legal rights before signing a deal with a condemning authority.

In sum, Ohio law gives property owners many powerful rights with which to defend themselves in eminent domain actions. These rights are critical to ensuring that private property is not taken unnecessarily, and that when property is taken, the property owner receives the full compensation to which they are entitled by law. The effects of eminent domain are permanent, and the property owner only has one chance to ensure that they are treated fairly and made whole for what they’ve lost. Property owners owe it to themselves to consult with an experienced eminent domain attorney as soon as they receive notice of a proposed eminent domain action against them. ■

RING IN THE NEW YEAR BY GETTING YOUR NOTARY LICENSE! THE CBA IS A ONE-STOP SHOP FOR ALL THINGS NOTARY, INCLUDING EDUCATION, TESTING, BACKGROUND CHECKS, AND SUPPLIES. LEARN MORE: CBALAW.ORG/NOTARY

CONFLICTING VACCINATION LAWS: EMPLOYERS CAUGHT IN THE MIDDLE

It has been a very challenging fall for employers trying to navigate numerous federal and state vaccination laws. On Sept. 9, President Biden announced his COVID-19 Action Plan, calling upon the Occupational Safety and Health Administration to promulgate an Emergency Temporary Standard addressing vaccinations. On Nov. 4, OSHA released an ETS that requires employers of 100 or more employees to implement policies requiring vaccination of their employees, with accommodation for qualifying medical/religious reasons. For employees who are not fully vaccinated, employers are required to oversee weekly testing and administer additional safety measures. The ETS also preempted any conflicting state vaccination laws.

The ETS became effective on Nov. 5. But, one day later, the U.S. Court of Appeals for the Fifth Circuit (in Texas) issued a temporary stay of the ETS. The court extended the stay in a decision published on Nov. 12. Thereafter, OSHA



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announced it was suspending any further implementation or enforcement of the ETS while the court action is pending. This lawsuit, and numerous other cases filed in various federal circuits, have been consolidated and transferred to the Sixth Circuit (in Ohio) for final adjudication. The timing of a final decision appears to be weeks away.

Employers who are qualifying federal contractors, or receive funds from the Centers for Medicaid and Medicare

Services, have separate federal vaccination requirements for employees. These mandates essentially require most employees to become fully vaccinated unless they can establish a disability or religious accommodation. Lawsuits have been filed challenging these mandates, and it remains unclear whether these laws will survive judicial review.

To add to the uncertainty at the federal level, numerous states have pushed back against the ETS by passing their own laws that, for example, create additional exemptions for employees to contest mandatory vaccination requirements. These states include Texas, Florida, Tennessee, Utah, Wyoming, North Dakota, Iowa and Montana. Florida’s law has some of the broadest exemptions, including: medical reasons, including for pregnancy or anticipated pregnancy; “religious reasons,” which appears to be broader than a “sincerely held religious belief” under federal law; and COVID-19 immunity, among others.

These various federal and state laws have made it nearly impossible for employers to implement a “one-size fits all” policy. As these lawsuits and state legislative efforts continue to proliferate and become increasingly complex by the day, businesses with employees in states that have already implemented a mandatory vaccination policy (or that are considering doing so) should evaluate the effect of these laws and consult with legal counsel to ensure compliance. Compliance with federal mandates (particularly the federal contractor and CMS mandates), along with new and arguably conflicting state laws, puts employers in a difficult position. Navigating potentially incompatible obligations will require employers to review their options and evaluate their risks. Unfortunately, employers in many situations currently are stuck between a rock and a hard place while the COVID-19 pandemic continues. ■



CYBERSECURITY FOR LAW FIRMS

5 Critical Steps to Protect Yourself from Cyber Attacks

Register for this course to learn how you can dramatically improve your firm’s overall security stance and reduce your chances of being targeted by a threat actor. This program will be presented on Zoom on January 25, 2022 from 10:00am-11:30am and has been approved for 1.5 Professional Conduct CLE Hours.

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1.5 Professional
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