

## **COVID-19, Governmental Powers, and the Taking of Property Rights**

We are in unimaginable and unprecedented times. Every day, Americans are seeing new measures taken by the government to slow the spread of the coronavirus, also referred to as “COVID-19.” As national, state, and local government officials attempt to navigate these uncharted waters, we are starting to see a surge in the exercise of eminent domain powers. Eminent domain laws, as they relate to national emergencies, are somewhat unclear. The Stafford Act, officially in play as of March 13, 2020 when President Trump declared COVID-19 a national emergency, allows the Federal Emergency Management Agency (FEMA) to seize any buildings, land, and even supplies (such as medicine, masks, food, equipment), immediately. Just a few days ago, a county in Washington State purchased a motel to convert it into a quarantine center. In California, Governor Newsom issued an executive order which, among other things, allows for state agencies to commandeer hotels, medical facilities, and the like, to support quarantine efforts. In New Jersey, Governor Murphy issued a similar order to commandeer and utilize private property in response to this emergency. In our state of Louisiana, Governor Edwards has started contracting to temporarily use and build out hotels in order to provide additional hospital beds. He has additionally requested 100% federal funding for emergency work under the above-mentioned Stafford Act. Those are just a few examples.

Certainly, the health and welfare of the country as a whole should be a priority; but, to be clear, the implementation of the Stafford Act should not change the Fifth Amendment guarantee that private property shall not be taken for a public use without just compensation. In that regard, the United States Supreme Court could not have been clearer—some people should not bear public burdens which, in all fairness and justice, should be borne by the public as a whole. *Armstrong v. U.S.*, 364 U.S. 40, 49 (1960).

You should also be aware that, while most government takings occur through an intentional act, the government can take your property or property rights through less direct means. The government may encroach on your property or cause damages to your property without your permission and sometimes without filing a formal action in court. If this occurs, you might have what is called an inverse condemnation claim. Other acts could give rise to an inverse condemnation claim as well, such as a closure order which denies you the physical use of your property. *Penn Central Transportation v. New York City*, 438 U.S. 104 (1978). Such a claim could be filed directly in federal court in light of the recent U.S. Supreme Court case of *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019). Smith & Fawer, LLC is

intimately familiar with the recent *Knick* case and the ways to traverse these complicated, potential claims.

In that regard, we have protected private property owners' interests for over 25 years, and we do not intend to stop now. Not only is Smith & Fawer, LLC experienced in handling these types of complex expropriation matters, but the firm is also very knowledgeable in navigating the media, which may become another concern in sensitive situations like the above. The law for emergency-type takings, such as these, is complex. We are here to help you. Feel free to contact us should your property rights be placed in jeopardy.

Randall A. Smith

Sole Louisiana Member of the [Owners' Counsel of America](#)