

Eminent Domain Abuse SURVIVAL GUIDE

Grassroots Strategies for Winning the Fight Against Eminent Domain Abuse



Introduction

Activists nationwide have used the information in this Survival Guide to successfully protect their homes and small businesses from eminent domain abuse. Expanding on the most effective practical strategies to protect your property outside of the courtroom, the Survival Guide is designed to be a comprehensive roadmap for any grassroots battle against eminent domain for private profit. Whether you have just begun to face threats of condemnation or you are a seasoned activist, this resource contains a wealth of valuable information, effective grassroots tactics and worksheets—even the Guide itself can double as a sign for rallies and other events!

“Most impressive of all was the Eminent Domain Abuse Survival Guide, which has become a bible to me. Without this, we would have been completely lost during our nine-month fight to stop this madness.”

Debbie Kubiak
Cheektowaga, NY Activist

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I. FIRST THINGS FIRST

Get Information

As soon as you hear that a project that will affect your home or business may be in the works, you should get as much information as you can, as soon as possible. Trying to get information out of your local government can be frustrating, but don't get discouraged. This section gives some ideas of the information you should look for and how to get it.

How to get information

Finding out information about a possible project can often be difficult. It is important to be both polite and persistent. You will have to deal with the same people over and over again, so you want them on your side as much as possible. You should remember that the individuals in administrative positions at the city council or town clerk's office likely have no personal connection to the project, so don't take any anger out on them. On the other hand, don't give up if you run into a dead end.

If you saw a newspaper article about a possible project, it can't hurt to contact the reporter and ask for more information. If nothing else, the reporter may tell you where to look for more information. The reporter may also be able to provide you with contact information for others in your neighborhood that are affected by the project.

If you are on good terms with anyone in city government, from a member of the city council to someone in the tax division, that person can be helpful in finding out where you need to go for information.

Your city or town planning department may know about development plans for your area. It may also have information about whether your area has been declared "blighted" or a "redevelopment area." If your municipality has a redevelopment agency, that agency should have copies of studies and other documents.

To get copies of documents from the government, if they are not available from the library or any other easy source, or the project is in very early stages, you can do a Freedom of Information Act request. Freedom of Information Act requests are an excellent way to get information from your local government. Every state has a slightly different law, but they all generally require that the government provide information to its citizens. Two good websites you should check out for freedom of information laws are run by Reporters Committee for Freedom of the Press (www.rcfp.org/foi.html) and the University of Missouri (web.missouri.edu/~foiwww/citelist.html).

Once a project is in the planning stages, documents are often available at your local library and/or town or city administration building. This is, of course, the easiest way to find things—but remember it's best to find information as soon as possible, so don't wait until the planning stages to track down information.

Keep all the documents you receive, including notices and brochures. You will be surprised what you might need to refer back to later.

And take notes. Every time you get information from a representative of the government or a developer, write down the date, time, name of the person to whom you spoke, and what that person said. (You can take notes at the end of this Guide.) You should also keep a comprehensive list of any documents you get.

What information you need

Find out everything that has happened so far. Get copies of all documents. These may include:

CHECKLIST

- Studies conducted of your area
- Transcripts or minutes of hearings or other meetings about your area
- Reports about whether your area has been designated a “slum area,” “blighted area,” “redevelopment area,” “in need of redevelopment,” or anything similar
- Findings made by a government agency about your area
- Ordinances passed about your area
- Traffic studies or environmental studies about your area
- Development plans or proposals for your area
- Requests for proposals or “RFPs” for development of your area
- Development agreements with a private developer to develop your area
- “Master Plan” that includes your area
- “Vision Plan” or “Vision Statement” for your area

You should also get copies of the statutes governing eminent domain in your state. These are usually available through your state’s website. You can also look on FindLaw (findlaw.com/11stategov/) and follow the links to your state’s statutes. You may also need to look at local ordinances for your city or town. These should be available online or at the municipal or local law library.

Find out the process for challenging the condemnation of your property in court and construct a timeline for legal proceedings. (We’ve also provided space for this at the end of this Guide.) States vary widely on these procedures, and it is easy to miss deadlines. You absolutely must find out what the schedule is in your state. For example, in some states, you

Freedom Of Information Request

A freedom of information request is very simple. Usually, it should say “Pursuant to [your state’s freedom of information law], I request the following information:” Be very specific about what information you want. For example, you could ask for studies conducted of your area, development agreements and any master plans including your area. (See checklist.) If you live in a large city or are requesting information from the state, it’s often a good idea to call the city or town clerk first to identify the person to whom you should send your Freedom of Information Act request. That will make your request get answered more quickly. In a small town, that probably won’t be necessary. Your request can be sent to the municipality itself or, if you know the agency that has the information, you may be able to send it to the agency directly.

must challenge the designation of your area as a “blighted” or “redevelopment” area within 30 days, or you can never do so. In other states, you cannot bring such a challenge until the government actually tries to condemn your property. In some states, you must be in attendance at certain hearings or meetings in order to complain about the results later. In other states, attendance is not necessary. In a few states, you have to go to court to challenge the constitutionality of taking your property long before the property is even taken. In most states, you have to wait until the government tries to take the property. To get answers about the eminent domain process, you can read the statutes yourself, but it is usually a good idea to speak to a local condemnation lawyer. You can always get a consultation and get that person to describe the timeline to expect.

Find out the process for approval of the project. This timeline will be similar to the legal timeline, but it will include more public hearings and meetings. For example, there may be four more hearings before the project is finally approved. That gives you four opportunities to argue to the relevant bodies why the project is a bad idea. It also tells you how much time you have to mount opposition to the project and to condemnations. There may be different timelines for different approvals, so be sure to get all the information. For example, there might be one timeline for zoning, one for environmental review, one for redevelopment area designation, and one for condemnation. Again, this varies a lot by state, so be sure to check out your local procedures. To get this information, you will need to speak either to a local lawyer or to a helpful person in city government.

Consult with a Local Lawyer



You should try to find a lawyer who knows about eminent domain and who is sympathetic to the plight of property owners. One good source is Owners’ Counsel of America (www.ownerscounsel.com), an association of lawyers that specialize in eminent domain and regularly represent owners in condemnation cases. There is usually one member per state, so if the lawyer for your state has a conflict or is not geographically close enough, he or she may be able to refer you to someone else. You can also look on Martindale Hubbell (www.martindale.com) or FindLaw (www.findlaw.com) for lawyers in your area who specialize in eminent domain, but when you talk to them, make sure they have represented owners as well

as condemning agencies. Always make sure the lawyer you contact does not represent the government or the developer before you give information about your case. However you find the lawyer, the most important thing is to make sure you and the lawyer communicate well and have the same goals. Be sure to get any fee agreement in writing.

Even if you are not ready to hire a lawyer for the long term, you can arrange to have a consultation to find out basic information. If other neighbors are involved in the proposed project, you can split the legal fee, which will cut the cost and make legal advice more accessible.

The following is a list of some information that would be helpful for almost everyone to know. It is not an exhaustive list of what you should discuss with your lawyer—just some basic questions you will need answers to, whether from a lawyer or from someone else.

Questions to Ask Your Lawyer

- What is the current procedural status of this project?
- Has my property been designated as part of a redevelopment project?
- Has my property been designated as blighted?
- Is there any way to contest the designation of my property as blighted (or other legal designation that allows eminent domain)?
- If so, how would I do that and when?
- How would I go about contesting the condemnation of my property? What is the legal procedure?
- Will there be further hearings on the project or condemnation?
- When will the hearings be and what agencies will hold them?
- Will I have an opportunity to speak?
- Do I have to speak in order to preserve my rights later?
- Can I submit written objections or evidence to government agencies and how?
- What is a timeline of every hearing, report, and notice that will come out before my property is condemned?
- At which steps do I have an opportunity to object to the project or the condemnation?
- When can I expect that a condemnation action may be filed?
- How long will I have to respond after that?
- How does compensation work in my state?
- What will I be compensated for? How much are relocation expenses?
- What are legal fees for contesting a condemnation?
- What are legal fees for securing additional compensation for a condemnation?

Don't Believe False Promises

In order to effectively fight eminent domain abuse, you must be vigilant and remember to be skeptical of promises made by local officials. In our experience, city leaders often use the same catch phrases, which makes it easier for you to decipher their code words and recognize you are in danger of condemnation.

Alarm bells should go off when you hear...

- **“This is a great project,” and “eminent domain will only be used as a last resort.”** That just means that if the residents or businesses don't agree to sell, eminent domain will be used.
- **“We'll take care of you.”** You may be willing to move if there is sufficient compensation. That's fine, but don't be fooled by any statements as to what will happen. On the whole, while there may be a few exceptions, anything that a government employee tells you is not binding on the government agency. Even statements at city council meetings may be ignored later.
- **“We want to include you in the redevelopment project area, but you won't be condemned.”** Even a written promise that you will not be condemned can't be enforced later if the government changes its mind. For condemnation, the only protection is to make sure the agency does not have the power to condemn and that means making sure you are not in the redevelopment area or the agency is not authorized to do condemnations.

Meet Dates and Deadlines

You may receive notices or other information in the mail. You should look at these notices immediately to see if they mention that you must do something by a certain date or in a certain amount of time. Often, owners will see something like this, worry about it for a week, perhaps ask someone about it, wait another week, and then miss the deadline. **DO NOT IGNORE DEADLINES.** In law, if you miss a date to do something, you may lose important rights and opportunities and there may be no way to correct your mistake later. Some documents cannot be submitted even one day late, so if there is a deadline, you must take action immediately so that there will be time to get everything done. Find a lawyer if you need one, and give that lawyer enough time to file papers.



A typical timeline of eminent domain

The following gives a general timeline for the eminent domain process with suggestions about what to do at each stage. Bear in mind that states vary quite a bit. In your state, these stages may be in a different order, so it's important to make sure you've researched the local law. This timeline is a supplement to the information in the other sections of the Survival Guide.

Discussions between the city and developers

The first rumblings about a potential project include:

- Discussions at a redevelopment agency or city council about a possible project
- News stories about the possibility of a project
- Changes to the master plan that show a change in use in your area

When you hear these, start organizing and make it clear that there will be massive citizen opposition to any effort to take people's property. You'll likely hear many of the false promises mentioned on page 5.

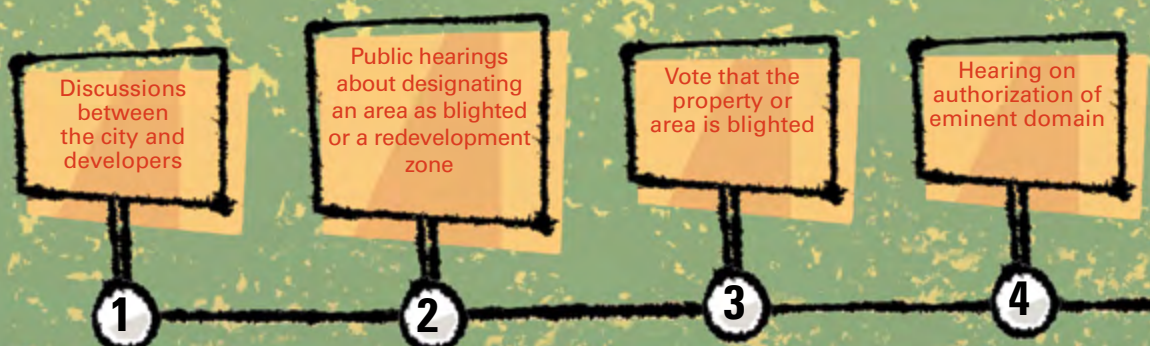
Public hearings about designating an area as blighted or a redevelopment zone

This will happen in some situations but not in others. It is possible to condemn property without a blight designation. Often, however, when the government wants to take away your property, it will designate the property as "blighted." The advantage of a blight designation (from the perspective of the government) is that once the designation is in place, the government can take any property within the area, even if the property itself is in good condition. In most states, this is called a blight designation. From the word "blight" you might think something has to be really wrong with the area, but in most states that is not true. Just about any neighborhood can be designated as "blighted." Also, states use different language—most refer to designating a property as blighted, but it could also be a designation of the area as an "urban renewal zone," "redevelopment area," or something similar.

It is very important to appear at these public hearings and object vigorously to the designation of your area and property as blighted. Introduce pictures of the properties in the area and even video to show that the area is not blighted. Think of any other evidence that would show the area is thriving, including information about retail sales, lack of crime, property taxes paid, and physical improvements you have made. You want to put all of that evidence into the record. It's helpful to have pictures, video and documents—something more than just testimony, although you want that also. If you can afford it or someone will do it for free, ask an expert to do a study showing that the property is not blighted. Finally, the developer has usually commissioned a study that will claim the area is blighted. These studies are often poorly done. Go through it with a fine-tooth comb. Then present every inaccuracy, including as much documentation as you can that the information in the study is false.

Vote that the property or area is blighted

Once there has been a vote that the area is blighted, you need to know your state's law on challenging blight designations. In some states, you have 30 days to challenge the designation. In some states, you have 60 days. And in other states, you do not bring the challenge unless and until the government tries to condemn your property. Obviously, it is very important to know what category your state falls into, because you may need to bring a legal challenge very soon. That's why it is crucial to construct a timeline.



Hearing on authorization of eminent domain

In some states, this hearing is combined with the hearing on whether the property is blighted. In other states, it is not. In any case, you obviously need to make sure you appear at the hearing and present as vocal and powerful an opposition to the authorization of eminent domain as you possibly can. Bring your neighbors—let them know that their property may also be at risk of being condemned. Cities can authorize redevelopment projects and funding without authorizing eminent domain.

Vote that eminent domain is authorized

As with the hearing, the vote authorizing eminent domain may or may not be combined with the vote that the property is blighted. In a few states, you will have 30 days, or some other short period of time, to challenge the authorization of eminent domain. In most states, you will challenge eminent domain if and when the city tries to take your property. Regardless, make sure you know if you need to bring a challenge immediately.

An appraiser comes to visit

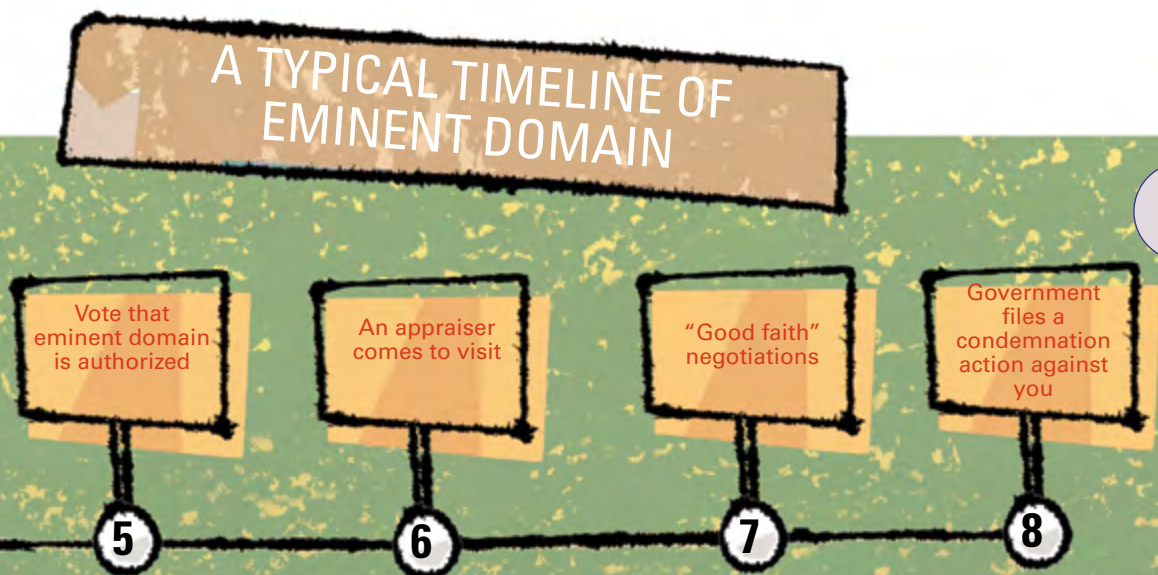
That means that the government is going to figure out how much it thinks your property is worth and then make you an offer to purchase it. In some states, the government must give you a copy of the appraisal. In others, that is not required. In most states, you must allow the appraisal to take place. However, there are some states where you can refuse. Also, if the government has no statutory authority to condemn your property at all, you may be able to refuse to let the appraiser on your property. If you want to exclude the appraiser, it's a good idea to consult a lawyer. Sometimes, an appraisal can happen much earlier in the process and signal that someone is eyeing your property for possible development.

“Good faith” negotiations

The government is required to at least try to purchase the property from you voluntarily. Representatives of either the government or the developer will approach you and make you an offer to purchase your property. If you wish, you can talk to them. These negotiations may also occur sometime during the public hearings process. If you are willing to move under certain circumstances, think about conditions you may have besides money, like a similar home or business location.

Government files a condemnation action against you

You will receive a document that indicates it has been filed in court. It may be called a “notice of taking,” “statement of taking,” “statement of compensation,” or something else. This is probably the beginning of a lawsuit against you to acquire your property. It is possible but very difficult and inadvisable to defend against a lawsuit without an attorney. If you want to fight the condemnation, you should find an attorney at this point if you have not done so already.



II. PLAN YOUR GRASSROOTS CAMPAIGN



Organize With Your Allies

Every successful grassroots effort to fight the abuse of eminent domain happened because of effective organization. It is essential to your struggle, and it's not as hard as it may seem.

Find other people affected by the project

Opposing a redevelopment project and eminent domain takes a lot of work and energy. You can win, but you need allies. Start with the people who are directly affected by the project. If you don't know them, you can go door-to-door or hold a neighborhood meeting to discuss the situation. Pass out flyers to all your neighbors to get them to attend. In situations involving small businesses, you should approach customers and suppliers, since the loss of your business to eminent domain will mean the loss of goods and services for them as well. In large projects, there are usually some people who are willing to sell and others who are not. After you have talked to the other people affected, you will have an idea of the lay of the land. There also may be other people who are not in the area directly affected but live nearby and care enough to help you.

Form a citizen group

Once you have a sufficient number of supporters, it is useful to have a community group with a name. That group can then hold events and be listed on press releases. It gives legitimacy to your cause and also serves as a point of contact for any media who are interested in your story, since your group will likely be considered to speak for the local home and small business owners who are fighting to stay.

Contact community and policy organizations

Start talking to all kinds of community groups and local organizations to see if any of them will support you on this issue. Local policy networks, think tanks, historical societies, religious organizations, cultural groups and seniors' organizations may be interested in supporting your position. Remember that no group is too small—whether it's the bridge club or the PTA—because you are likely to pick up members and spread the word about eminent domain abuse. Homeowners in Pittsburgh formed their own community organization and secured support from The Allegheny Institute (a local policy organization) and a historical society. In Mississippi, owners secured help from The Southern Christian Leadership Conference and the local chapter of the National Federation of Independent Business. In both instances, broadening the base of support proved crucial to fighting eminent domain abuse.

It may also be helpful to contact state and national policy organizations. Groups that are members of the State Policy Network (www.spn.org) usually are interested in opposing eminent domain for private use. Try their website to find out if there is a member organization in your state. If the area is historical, try some historical preservation or

historical societies. If the area is rural, contact the American Farm Bureau (www.fb.org). If the area contains primarily businesses, try the National Federation of Independent Business (www.nfib.org) and other business organizations. It may also be useful to contact organizations that represent minority groups such as the National Association for the Advancement of Colored People (www.naacp.org), Southern Christian Leadership Conference (www.sclcnational.org) and the League of United Latin American Citizens (www.lulac.org). If the property is a house of worship, you may want to contact the National Council of Churches (www.ncccusa.org). If the area is primarily residential, residents may have connections to local and national groups that can offer support. Chances are, you won't be able to get support from all or even most of the organizations you try, but even two or three can make a huge difference in the end—and you'll get invaluable focusing your message.



Build a coalition

In building a coalition to defeat eminent domain abuse, you should first establish the foundation of your coalition and then build upon it. Your core group should include the people who are able and willing to dedicate the time and energy that it will take to achieve your objectives. Once your leadership is established, you can build your coalition from that foundation, branching off in as many directions as possible. Your group should have a clear and concise mission or goal, and effectively organize to achieve it.

Every community includes a number of political, residential, business, academic, religious and community organizations. Work with these already-established groups (see page 22), garner their support as allies, and use the infrastructures that already exist within these circles to spread your message. Sometimes, something as simple as asking another organization to contact their members about a given issue can go a long way.

With increasing momentum against eminent domain abuse spreading throughout the nation, you'll probably find it useful to work with other local activists in your state. When it comes to grassroots politics, you will all be more likely to achieve your shared goals if you work with one another. The next page has a basic coalition diagram, which is provided as a standard model for you to tailor and individualize to your own unique community and battle.

Fundraise

Raising money for your fight against eminent domain abuse can be one of the most challenging and important tasks you'll face. The politicians and developers trying to take your property often have lots of money, and you'll need funds for literature, events, signs, billboards, T-shirts and other costs associated with spreading your message. This is especially true if your battle goes to the ballot box—if you start a local initiative or referendum, for example.

You should start fundraising as early as possible, and do so while the issue is hot. Use every opportunity to ask for support from people who sympathize with your position and are in a position to contribute to the cause. Sometimes, it is very effective to host events—especially because those events will help you raise awareness and give you the opportunity to solicit financial support at the same time. Activists have held bake sales and car washes. These help to bring attention to your campaign, but they are not usually big sources of funds. Activists have said that the most profitable events are house parties, dinners, dances, social events, raffles and silent auctions.

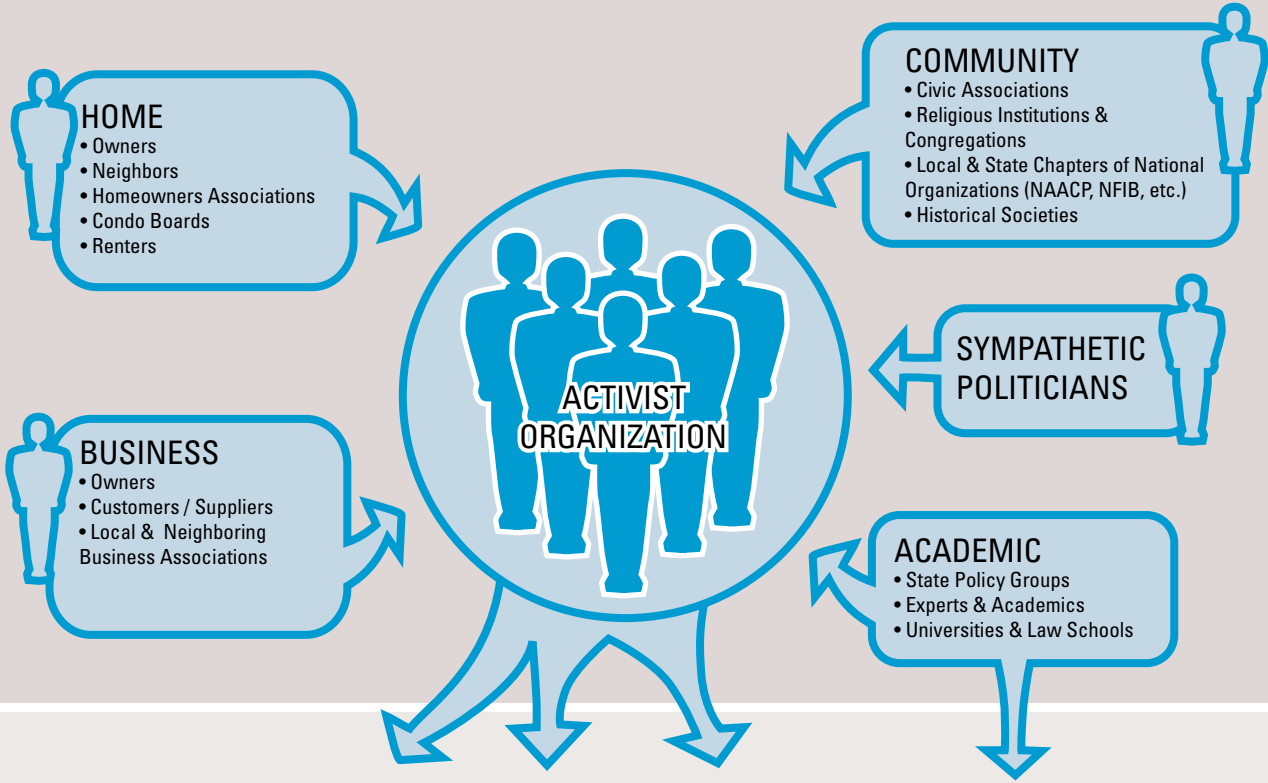
Some activists have “passed the hat” at community affairs, places of worship (with permission, of course) and town halls. Others have even incorporated their grassroots organization as a registered non-profit, making all donations tax-deductible under state and/or federal law. However, this type of registration may place certain limits on the organization's ability to lobby for legislative reforms so it may be wise to speak with someone knowledgeable on the issue. You can ask supporters for in-kind contributions—things like office supplies, computers, printers and ink. You can ask local printers for discounts. Be creative, and remember to use every opportunity to ask for money.



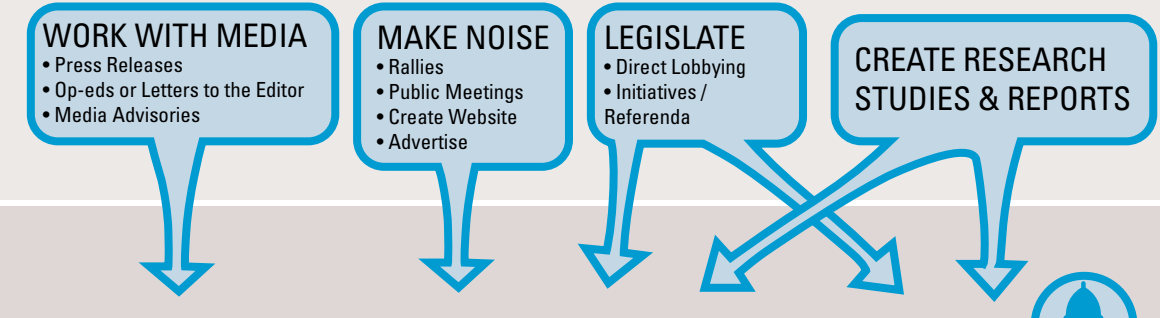
BUILDING a COALITION

TO FIGHT EMINENT DOMAIN ABUSE

ORGANIZE



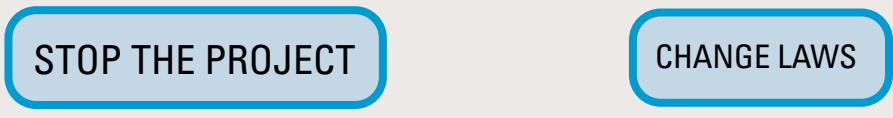
ACTION



INFLUENCE



RESULTS



Make Noise

When it comes to eminent domain, the meek definitely do not inherit the earth. If you want to prevent the condemnation of your property, you will have to turn up the heat and make the condemnation into a major political and public relations headache for the powers that be. When you speak out and write against eminent domain abuse, make sure that you remain truthful and accurate. After all, you already have the moral high ground, and that is crucial to winning the public's support.

This section suggests some of the actions you can take to draw attention to your situation. But you will undoubtedly think of others. The more creative you are, the more people will remember your efforts and your cause.

Speak out at public meetings

Attending public meetings can be boring and repetitive, but it is important to let politicians and bureaucrats know that they will not sneak this project by without their citizens noticing. Bring as many people as you can to every single meeting, and speak at each one. At meetings, just as at every other step of the way, be sure to speak to the heart of the issue, be concise and avoid going off on tangents. Some meetings will be more important than others, and some meetings may even have legal significance. Be sure to find out the impact of each meeting. In a few states, for example, you must present evidence against a project at a particular meeting if you wish to challenge it later. That is not necessary in most states, but it is important to get this information in advance, as advised in the first chapter of this Guide.

You can also put various documents into the record at a public hearing. That means that the city council or redevelopment agency (whoever is holding the hearing) must consider your items. A picture can speak louder than words, so you may want to take pictures of your home or business, your kids playing on the lawn, or your employees at your business. You can give the city a videotape of the area or other documents showing what a positive force your business is on the community. Be imaginative.



Ardmore, Penn., activists testify at a public meeting in Philadelphia.

Courtesy of The Evening Bulletin



PLAN YOUR GRASS-
ROOTS CAMPAIGN

When it comes to eminent domain, the meek definitely do not inherit the earth.



Hold a rally

If you think you have enough people, organize a rally in front of city hall, in front of the offices of the government body doing the condemnation, or in front of the developer's office. Be sure to get any assembly permits that you need. Distribute flyers before the event. Carry signs—no more than 5-8 words. You should have only a few speakers, and each should speak for no more than a few minutes. They should tell who they are, what their personal attachment is to their property, and why they want to stay.

Organize other events

Be creative. There are all sorts of events you can hold, depending on the project itself. For example, in New Rochelle, N.Y., the city had plans to condemn homes and businesses for an IKEA. The activists organized a demonstration outside the Swedish embassy. They also held a "drive-in," where they demonstrated the effect of increased traffic in the area based on the amount of increased traffic estimated in the development plan. In New London, Conn., activists invited members of the press to tour the area, and one of the restaurants slated for condemnation created a special menu on which all items were named after people involved in the project. In Mississippi, activists held a prayer vigil before an important day in court. In Minnesota, one elderly woman invited the members of the city council over for tea. And, in Lakewood, Ohio, residents held a "Blighted Block Party."

These events can also serve to raise money to ensure that you have the funds necessary to effectively wage your grassroots campaign. Be sure to tell us about these events in advance and we'll put them on our website for everyone to see.



Create a website

These days, a very easy way to tell people about the possibility of eminent domain is to create a website. You can post stories about the neighborhood and show the community pictures of the properties the government wants to take. This method allows you to control the content and message—an ability you don't always have in other forums. You can also use the site to advertise your rallies and events.

If you're not familiar with the ins-and-outs of web design, there are a number of user-friendly (and free!) websites that take you through the process, every step of the way. Perhaps start by checking out www.blogger.com or www.geocities.com. Your website can be as simple or as fancy as you like—the important thing is to make your information available to the public. It will also save you room on your flyers and signs, since you won't need to explain all the details of the

situation, but can instead direct people to your site.

Advertise outdoors

You should fill your neighborhood with signs that speak out about the abuse of eminent domain in the community. Design a simple sign to put in the window of local businesses and homes. Such signs should have no more than 5-10 words. Make your own or buy some from the Institute for Justice's Freedom Market (www.IJ.org/freedommarket).

You should also consider using other advertising methods. Lawn signs can be very effective and low-cost. For example, in Ardmore, Penn., a local merchant painted the side of his building, which happens to face the local government building. In Pittsburgh, billboards effectively conveyed the anti-eminent domain abuse message. Whatever method you choose, it must be short and sweet.



Place an ad

An advertisement can be a great way to increase the visibility of organized opposition to eminent domain. It can bring new people into your coalition, tell people their property is in danger, and also increase media interest. It can also help bring a large number of people to a crucial public hearing.

TIPS FOR DESIGNING NEWSPAPER ADS

Rally to Save the Fort Trumbull Homeowners!



RALLY!

Stop the City of New London from throwing Fort Trumbull residents out of their homes.

When? Tuesday, July 5, 2005 at 6 p.m.
Immediately before the City Council meeting at 7 p.m.

Where? New London City Hall, 181 State Street in New London

Outraged by the U.S. Supreme Court decision upholding the abuse of eminent domain in New London?

The Supreme Court's decision in the Kelo case allowed the use of eminent domain for private business development. The government can now take YOUR home or small business for an office park or big box store. The residents of Fort Trumbull stand to lose their homes to private developers.

Now is the time to stop eminent domain abuse in New London! On July 5 when the City Council meets for the first time after the decision, we MUST send them a clear message: let these people stay in their homes! The

City does not need their property for new development projects. The Fort Trumbull homeowners are American heroes who should be honored, not evicted.

Join the Institute for Justice's Chip Mellor, Scott Bullock and Dana Berliner, who argued the Kelo case before the Supreme Court, as well as homeowners Susette Kelo, Michael Cristofano and many other property owners and their community supporters!

www.IJ.org
www.CastleCoalition.org



Headlines should be short and compelling. You'll want to get to the heart of the issue and do it in fewer than 12 words.

A picture is worth a thousand words. Photos of homeowners will invoke empathy, and photos of "blighted" homes can counter a claim that a neighborhood is deteriorating.

Critical facts should be easy to read. Don't bury meeting times or places deep in text and don't use too many words.

Any additional information that is wordy should be added toward the end in smaller print. If you've successfully engaged your audience with your headlines and photos, then they'll read on.

ADDITIONAL TIPS

- Use only a couple different fonts in any ad.
- Use the same fonts and design elements from one ad to the next so a viewer easily recognizes materials that are from your campaign.
- Include your web address to give the viewer a chance to read more.

Start a petition

If you are thinking about spreading a petition, you should first explore the reasons a petition can be used. You may have only one chance to gather a large number of signatures, so you need to have a specific goal in mind. If it's possible to start a local initiative or referendum in your community by gathering petition signatures, be sure your petition meets all legal requirements and specifications (see page 24). You'll probably need to talk with an election attorney to be certain. Where an initiative or referendum is not possible, petitions can serve as a conversation starter—a vehicle to raise awareness about eminent domain abuse and explain the local situation. It is important to note that other than getting initiatives and referenda on the ballot, petitions generally do not have legal status, and this is typically not the best use of time if your resources are limited.

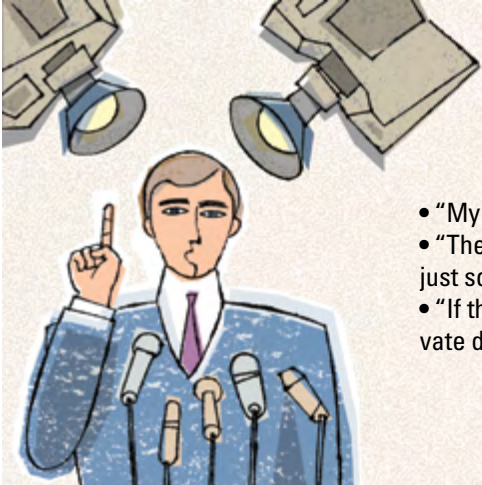
If you do decide to start a petition outside the initiative or referendum context, it should have a short statement to which people will be signing their name, like "I am opposed to using eminent domain to take [your area] and give it to [the private developer]." There should be a space for people to identify their city and state as well. Again, while this kind of petition does not have legal status, it can give you a sense of public sentiment, garner media attention and possibly give politicians some pause. If you get a lot of signatures for your petition, be sure to introduce it into the record at one of the public meetings and give copies to the government officials who will be voting and, of course, the press.

Work with the Media

There is truth to the saying, "the pen is mightier than the sword." There is a great deal of public interest in the issue of eminent domain abuse and it is essential for any organization or activist group fighting for their neighborhood to create a media strategy that involves the following components.

Prepare talking points or "SOCOs"

Before talking to the media, it is important that you and your citizens group hone your message to journalists. You should know exactly what you want reporters to write about your situation—and tailor your ideas into talking points or, as we call them, SOCOs (Strategic Over-riding Communications Objectives). These are more than sound bites. SOCOs are prepared statements you deliver with punch and passion that advance the themes you wish to convey. Crafting these messages together and before communicating with the media ensures that you are consistent and effective in getting your point across. And, you may find that this is an effective way to put your thoughts into words when writing letters to the editor, op-eds, media advisories and press releases. Make sure that your SOCOs focus on just one or two main issues about your battle to keep your home or business.



Examples of SOCOs

- "My home is not for sale."
- "The city shouldn't take my home/business just so someone else can make more money."
- "If the government can take my home for private development, then no one's home is safe."

Write letters to the editor

After any story about which you think you might have something relevant to say, you can write a letter to the editor. The best letters are short, typically around 150 words, making one or two points in clear, attention-getting language.

EXAMPLE LETTER TO THE EDITOR

April 9, 2006

**Letters Editor
Hartford Courant
Slow To Protect Property Rights**

Dear Editor:

At the April 3 New London City Council meeting, a proposal was voted on that, had it passed, would have returned to the former owners the Fort Trumbull properties taken through eminent domain. As someone who attended the meeting, I can say that this rejection of a solution to the Fort Trumbull tragedy was a foregone conclusion.

After the first couple of testimonies, one of the councilmen got up and left the room. But the reason for this rejection only became evident afterward, as several people discussed "the word" from Hartford.

"The word" around New London is that the General Assembly is purposely stalling on eminent domain protection to give New London a chance to carry out its plans. Whether "the word" is true - or even applies in this case - misses the point.

This national eminent domain storm started here in Connecticut. Since the U.S. Supreme Court ruling last year, 47 states have introduced (and some have already passed) eminent domain protection for their citizens. But not so in Connecticut.

Is it any wonder that people see this as a conspiracy or that city councils take this as their cue to continue abuse?

The tragedy continues - and spreads far from New London.

Joseph D. Wactowski
Bloomfield

Write op-eds

An op-ed is a longer piece, published opposite the editorial page of a newspaper. It can range from 400 to 800 words, depending on the newspaper. You can make about three points in an op-ed. It needs a snappy introduction, colorful language (but don't be shrill), and simple points. Although an attorney's op-ed can focus on the law, a layperson's op-ed should focus on the injustice of what is happening. You want the op-ed to be about what you know and have experienced personally. That makes it much more engaging for the reader. To submit an op-ed, call the paper's editorial page editor and ask what the rules are for submission, how long the piece can be, and to whom you should submit it. Op-eds are typically exclusive to one paper, so if your piece hasn't run (it can take up to two weeks, so be patient), contact the paper again and withdraw the piece. You are then free to take your op-ed to another paper.

EXAMPLE OP-ED

Home of a Century Gone in a Heartbeat at the Hands of NLDC

By Matt Dery

As you read this, you're probably sitting at home with a cup of coffee and flipping through the newspaper at your own kitchen table. Imagine there's a knock at the door and someone tells you your home isn't yours anymore. You'll have to move. Even if you refuse to sell, they'll take your home through eminent domain so you might as well pack your bags.

This very message arrived on our doorstep—along with those of all of our neighbors—one morning three years ago when real estate agents descended on Fort Trumbull like a pack of hyenas. From that day forward, my family and my neighbors have been mistreated by the City of New London and the NLDC. They've behaved as if the razing of Fort Trumbull were a foregone conclusion, even as we've fought for our homes. From the beginning, it has been psychological warfare with the NLDC threatening us with eminent domain. All along we've been stuck in the middle, struggling to stay while preparing to go.

My family has lived our entire lives in Fort Trumbull. My great grandmother's family moved to this neighborhood from Northern Italy in 1895. My mother was born in her house at 87 Walbach Street in 1918, and she has lived there her whole life. In this house, she married my father in 1944, and they've lived there for 56 years. She saw three of her four children die in this house—including her first in childbirth and my brother in a tragic fire. This house is not just a building on a plot of land, but a home for her lifetime of memories.

My grandmother opened a grocery store on our threatened property in 1917. She extended credit to everyone in the neighborhood when they needed it, and when the property went into receivership during the Depression, she worked until 1958 to earn it back. Through good times and bad over the course of the past century, we've been good neighbors and good citizens. We were good enough to pay taxes for more than 100 years, and we put up with the stench of a substandard sewage plant until Pfizer came to town. Any town should want residents like us, but now New London has decided that they want better people here, so they are trying to move us out.

One incident exemplifies the arrogant bullying we've received at the hands of the NLDC. My family used to own a five-stall garage next to our homes, but now it has only four stalls. The NLDC acquired the property next to the garage and proceeded to demolish the home there. Debris from the demolition struck our garage and took out one of the stalls. The only offer of reparations the NLDC has made was one half of the lowest estimate for repair. We've finally been compelled to sue for compensation to restore our property.

People who've never experienced this sort of treatment at the hands of the government should realize that this could happen to them, especially if we should not prevail in our lawsuit filed by the Institute for Justice. As Americans, we should all be willing to fight this kind of robbery in the guise of economic development. You take for granted that, in America, you own your property until you choose to sell it, but that's not the way it is in New London. If the City and the NLDC are allowed to get away with their unjust abuse of eminent domain in New London, no property owner in Connecticut will be safe. The knock at your door could be next.

602 words

Matt Dery and his family are fighting eminent domain takings of their homes in New London.



Issue a press release

Your group should issue press releases to comment on significant events or call for specific action. A press release reads like a news story. The headline needs to demand the attention of the editor in just a few words. It should be catchy, informative and well-written. In the opening paragraph, introduce the who, what, where, when, why and how; in other words, summarize the news you are reporting with a “hook” that an editor is likely to determine is newsworthy. Often, a hook can be as simple as “At last night’s city council meeting, the [insert group] demonstrated the flaws in the city’s ‘blight’ study.” Throughout the body of the press release, add details and insert quotations from your group where appropriate. Be sure to include contact information of your spokesperson for media contacts.

EXAMPLE PRESS RELEASE

Ohio Citizens Launch Buckeye Coalition for Eminent Domain Reform

FOR IMMEDIATE RELEASE: March 1, 2006

CONTACT:

Julie Wiltse or Lynn Farris
(555) 555-5555

Lakewood, Ohio—The Buckeye Coalition for Eminent Domain Reform is an organization of concerned citizens from across Ohio – 100 members and growing – that have joined together to fight the abuse of eminent domain. The group is focused on ensuring that the Legislative Task Force on Eminent Domain makes recommendations to the Ohio General Assembly that will provide real protections for property owners in the Buckeye State.

Representatives of the Buckeye Coalition will attend every meeting of the Task Force and report back to its membership. Task Force meetings are tentatively scheduled for March 2, March 16 and March 30, and its preliminary report is due April 1, 2006. The Coalition will also provide the Task Force with information about the abuse of eminent domain in Ohio, including personal testimony.

The group is concerned with the unbalanced nature of the Task Force. “One member, Richard Tranter, has an obvious conflict of interest,” said Julie Wiltse, co-founder of the Buckeye Coalition. Tranter’s law firm is representing developer Jeffrey Anderson in *City of Norwood v. Horney*, an eminent domain case now before the Ohio Supreme Court. “The recommendations of this Task Force could have far-reaching effects on his client, his law firm and himself,” Wiltse said.

Along with their neighbors and other concerned Lakewood citizens, co-founders Julie Wiltse and Lynn Farris defeated a bogus blight designation in Lakewood in 2003. The city declared more than 50 homes in their neighborhood blighted, and thus eligible for eminent domain for private development, because, among other things, the homes didn’t have two full bathrooms or three full bedrooms. The story received national attention (including a feature on *60 Minutes*) as an example of how eminent domain is abused to benefit private developers. Because of a successful referendum and initiative campaign, the neighborhood still stands.

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Issue a media advisory

At least 24 hours before any event that you hold, you should issue a media advisory. It should be no longer than one page and should contain the following information: (1) date, time and location of the event—surprisingly, many press releases or media advisories accidentally omit one of these key pieces of information; (2) a short description of the issue, including what government agency is doing the condemnation, who will benefit and who will lose; (3) a short description of the event and who the speakers will be, if any; and (4) a contact number for questions. The release/advisory should go out to all local media. You can usually find fax numbers and email addresses online, but try to do some research so that you’re sending the information to the person who actually covers these sorts of events or assigns coverage.

EXAMPLE MEDIA ADVISORY

MEDIA ADVISORY

EVENT: *Kelo* Attorney to Testify Before Michigan House
On Eminent Domain Reform

TIME/DATE: 10:30 a.m./Tuesday, November 29, 2005

PLACE: House Office Building
Room 326
Lansing, MI

PARTICIPANTS: Scott Bullock, Senior Attorney, Institute for Justice

CONTACT: John Kramer, Vice President for Communications
Institute for Justice, (703) 682-9320

SUMMARY:

On Tuesday, November 29, at 10:30 a.m., the Government Operations Committee of the Michigan House of Representatives will hear testimony about the need to change the state’s eminent domain laws to protect private property rights.

The committee is considering legislation drafted in response to the recent U.S. Supreme Court ruling – *Kelo v. City of New London* – that gives local governments a green light to seize homes and small businesses for private development. Eminent domain reform legislation has already passed the Michigan Senate.

Institute for Justice Senior Attorney Scott Bullock will testify at the committee hearing to call for reform of Michigan’s eminent domain laws. The Institute for Justice represents Susette Kelo and the other New London, Conn., homeowners who stand to lose their homes to private developers as a result of the Court’s ruling. Bullock was co-counsel in and argued the Kelo case before the U.S. Supreme Court. In the wake of the ruling, the Institute launched a \$3 million “Hands Off My Home” campaign to combat eminent domain abuse at the state and local level.

Contact your local paper

Newspapers are almost always interested in the issue of condemnation of property for the benefit of other private parties. Try to find an interested reporter with whom you have a good relationship. Focus on essential facts—too many side issues will just get reporters confused. Going off on tangents is one of the most common mistakes people make with reporters. You should pick a few good spokespeople to talk to the media. Your spokespeople should be folks whose home and/or business is being condemned. When you first call a reporter, be sensitive to the fact that he might be on a deadline to complete another story. If he is, ask if there is a better time to call back.

(Typically, the worst time to call a reporter is late in the day.) Make sure when you first talk to a reporter that you describe the situation in just a few sentences. For example, “I live in Anytown, USA. The City is talking about taking my home so that someone can put a shopping mall here. The City won’t even tell us what is happening. I’ve lived here for 20 years and I don’t want to move for a shopping mall.”

Make a press packet

Your press packet, which you can hand out at rallies and press conferences, will be a set of documents that you send to the media whenever you want to introduce someone to the issue. The point of a press packet is to give enough information for someone to be able to write a story based on what you have given them or at least be able to write most of the story, with a little bit of follow-up.



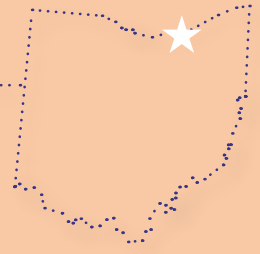
Start a Local Referendum or Voter Initiative to Stop the Project

Not all localities have a mechanism for conducting referenda or initiatives. Usually you will need to get 10 percent to 15 percent of the voters in your area to sign a petition in order to get something on the ballot, though it’s good to get even more than that to be safe. Also, the rules for gathering signatures can be very strict. For example, there are very specific items that need to be on each signature page and that must be submitted when the signatures are turned in. If you do not follow every requirement exactly, your proposed referendum or initiative may be disqualified. To find out about voter referenda or initiatives, you can look on the internet, contact your state legislator or contact a supportive city councilperson. Initiatives and referenda are sometimes governed by state law, sometimes by county law, and sometimes by city or town law, so there may not be a central place to check. And, of course, where you do the initiative may also depend on which political body is doing the condemnation.

It would be a good idea to speak with a local attorney and/or a group that has done initiatives or referenda in your community in the past. They can provide you with specific information on your jurisdiction and point you in the right direction.

The good thing about citizen-driven legislation is that you have control over the language. While it requires hard work and perseverance, you can use your grassroots organization to fundraise; campaign; make signs, flyers and billboards; and promote your cause through speaking engagements. Property owners around the country—in places like Baltimore County, Md., and Lakewood, Ohio—have successfully used these methods to stop the abuse of eminent domain.

Lessons from Lakewood, OH



Running a Successful Local Referendum or Initiative Campaign

General Principles

- Organization—Establish a leadership structure and assign clearly delineated roles to everybody participating in the campaign.
- Filing Referendum or Initiative Language and Circulating Petitions—Look up all legal requirements, dates and deadlines, and make sure to prepare the language for the initiative or referendum as early as possible. Make sure an attorney reviews the language to ensure that, if you win, the law will actually reflect your objectives. Once this is done, divide the group into signature-gathering teams, give each team a target number of signatures to collect, and be sure that the total number of signatures is more than the minimum required by law.
- File Papers—Protect your group by filing papers for election monitoring and polling observation. For events, be sure to obtain any permits you need from the city. Consult a local attorney with experience in local elections.
- Always Follow the Rules—Regardless of what the opposition does, every member of your group should always maintain the moral high ground and follow every rule and law. Sometimes, staying ethical when the other side does not is enough to garner support for your position from the voters.

Facilitating the Campaign

- 1 Organize Your Grassroots—Start by holding a strategy meeting, where your group can brainstorm and debate which events will play out best in your community. Divide yourselves into teams with team leaders, and take advantage of special skills and contacts each member has.

Lesson from Lakewood: Homeowners knew the general manager of a local pizza place, the owner of a printing shop, a carpenter, musicians and a DJ. By utilizing these contacts, they reduced costs on campaign materials and drew crowds by providing entertainment and free food at public events.

- 2 Reach the Community—Take advantage of already-established community groups for speaking opportunities and literature drops. These organizations may include religious congregations, community service networks, cultural groups and even local schools.

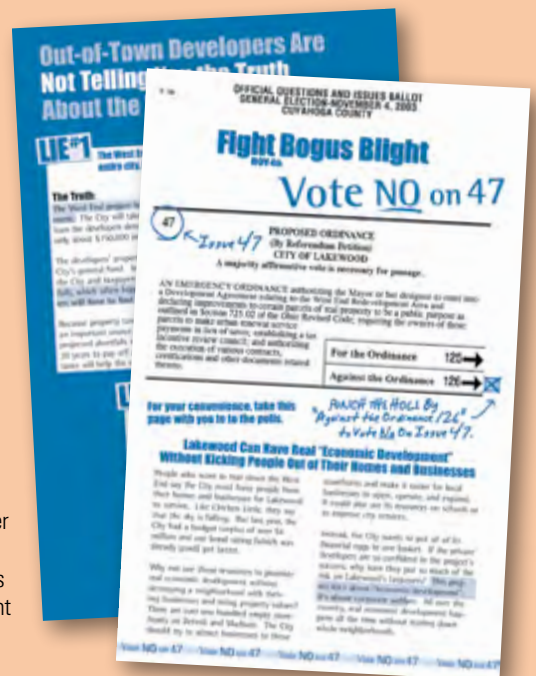
Lesson from Lakewood: Activists spoke before local Kiwanis and Rotary chapters and spread awareness at local high school football games. They also organized neighborhood “coffee klatches” at different homes.

- 3 Establish a Calendar—This should include all dates and deadlines for advertisements, billboard reservations and campaign events.

Lesson from Lakewood: Activists held a symbolic protest in which they used 1,000 Christmas lights to demonstrate that 1,000 people would be displaced by the city’s wrecking ball. They also hosted a tailgate party on a day without a football game, held a candlelight vigil, and attended opposition events such as press conferences and rallies. By calendaring every step of the way, they were as effective and efficient as possible.

- 4 Advertise and Work with Media—Be sure to create yard signs, information pamphlets, signs, direct mailings and SOCOs (see page 16). Invite the media to all major events by sending out Media Advisories and Press Releases (see page 19), and take pictures to submit to newspapers after the fact.

Lesson from Lakewood: Activists made everything from yard signs to a voter information guide for voters to take to the polls on Election Day. Their SOCOs were catchy (e.g., “Fight Bogus Blight”), and they used every opportunity to repeat them to the media.



PLAN YOUR GRASS-ROOTS CAMPAIGN

III. REFORM EMINENT DOMAIN LAWS



Advocate for Legislative Reform

The abuse of eminent domain happens not only because of bad decisions, but also because of bad statutory law. Legal change through legislation can be very effective and provide lasting protection to people throughout your area or state. And in many states it can be less expensive and have a better chance of success than battling in court, so it's important to explore this option.

Lobby

There is a great deal of political interest among state and federal legislators in reforming eminent domain laws, so you should work to get a different eminent domain statute passed. Almost any restriction on eminent domain will be an improvement over the total discretion usually given to government agencies. As a voter, you can motivate your legislators to change your state's laws to protect property owners in several different ways. While a one-on-one meeting can have the greatest impact, writing a letter, sending an email or making a phone call can also effectively move your legislator to action. In time-sensitive cases, such as the day of a vote, a phone call works best. At other times, a letter will get more attention.

Make an appointment

When contacting your legislator's office, identify yourself as a constituent and immediately state your reason for wanting to meet with your legislator. Explain that you'd like to discuss the status of eminent domain laws in your state. Indicate how much time you think you'll need and any other constituents you expect to attend the meeting. If the legislator is not available, politely ask to meet with a staff member who handles eminent domain issues. Have several dates and times to recommend. Be sure to thank the scheduler for his time. Since legislators' schedules often change, you'll want to call the legislator's office to confirm the meeting time and place as it draws near.

Be prepared

Think about what you want to say to your legislator before your meeting. It's best to use your own words because they are more personal and genuine. Remember that legislators often hear from lobbyists that are paid to walk the halls of the Capitol. Your story is real, so make sure they know that. Canned letters and form emails don't go nearly as far as something that comes straight from you.

Learn if your state legislator has a stated position on eminent domain and if he has voted on this issue before. If your legislator does not share your views, you'll want to educate him on the importance of stopping eminent domain abuse. You'll want to explain how eminent domain affects you, your community and his constituency. Anticipate questions, and be prepared to discuss any pending legislation that concerns you. If you're urging your legislator to introduce a bill, check our Legislative Center for model legislation (listed above).

Bring supporting information and materials, but choose them carefully; too many materials can overwhelm your legislator. If you have time, write a one-page bullet-point summary of the issues and points you plan to make during the meeting. You'll want to leave this summary with your legislator at the end of the meeting or attach it to an email or enclose it with a letter (see page 24).

Coordinate and be on time

If other constituents are attending the meeting, coordinate beforehand to make sure that you understand each other's position and to avoid any miscommunication during your meeting.

While your legislator might be late, it is important that you arrive on time. Be flexible. If your appointment is cancelled or interrupted, politely ask to speak with a staff member or reschedule for another day.

State your purpose and make your case

After introducing yourself (and other members of your group, as necessary) as a constituent to your legislator, state your reason for visiting and make your most important points first, especially since meetings often get cut short. Explain the personal effect of eminent domain abuse on you and the rest of his constituents. Educate your legislator on the importance of stopping it. If you have a position on a pending bill, tell your legislator the bill number, when it's slated for a vote and the reasons you oppose or support it. If you are urging your legislator to introduce a bill, bring in your model legislation or articulate an alternative.

You should be concise and stick to the point. Whether you are meeting in person, speaking over the phone or writing a letter or email, try to say what you want in as few words as possible. If you have another issue you'd like to address, be sure to speak about that separately or at another time. Otherwise, you risk confusing the issues.

Always be polite and positive. Arguing or lecturing will not win your legislator's support. Discuss the issues. Encourage questions. Be responsive. If you don't have an answer, don't be afraid to say, "I don't know, but I can get back to you."

Don't be afraid to ask your legislator to take action and support legislation that protects your home and community from eminent domain abuse. (If you don't ask, you won't get it.) But do not demand that your legislator support your views. If your legislator does not have a position or is non-committal, ask that he favorably consider your position. You must be sure to thank the legislator and any staff for their time.

Follow up

After any personal meeting, immediately follow up with a thank you letter. State the reason for your visit and the important points you made. Include any additional information that your legislator requested. Encourage your legislator to contact you to further discuss the issue. If there are staff members who helped you schedule your appointment, be sure to kindly thank them as well. It never hurts to foster a good relationship with the staff.

Start a Statewide Referendum or Initiative

Similar to using local referenda and initiatives, some activists have launched campaigns to bring these measures to the state ballot. They are beneficial because you have control over the language of the proposed legislation and you avoid the general problem of the legislature watering down a proposed bill due to political considerations. That said, these campaigns are immensely time-consuming and difficult to win because of the often-huge financial resources pumped in by the other side—so it may be worth thinking twice if you have limited time and/or resources. If you do start a campaign of this nature, be sure that you follow procedures exactly.

Sometimes, you need specific information on each signature page, you often need to meet inflexible dates and deadlines, and if you do not follow every requirement, your initiative or referendum may be disqualified.

A Rough Timeline of a Referendum or Initiative



IV. STOP EMINENT DOMAIN ABUSE

Become a Success Story

By following this Guide, you'll be well-equipped to stop the illegal and immoral land grab happening in your community. We can't say that it will be easy, since you will be facing long odds against well-financed foes. But Goliath can be beaten, and has been time and time again by political novices and communities of limited means. As Thomas Paine remarked, "the harder the conflict, the more glorious the triumph." With determination and hard work, you can triumph over eminent domain abuse.



Jim and JoAnn Saleet successfully protected their home from the government's wrecking ball.

V. Appendix

On the Web

Reporters Committee for Freedom of the Press
(see page 1)

www.rcfp.org/foi.html

University of Missouri (see page 1)

web.missouri.edu/~foiwww/citelist.html

FindLaw State Information (see page 2)

findlaw.com/11stategov/

Owners' Counsel of America (see page 3)

www.ownerscounsel.com

Martindale-Hubbell (see page 3)

www.martindale.com

FindLaw Attorney Search (see page 3)

www.findlaw.com

State Policy Network (see page 9)

www.spn.org

American Farm Bureau (see page 10)

www.fb.org

National Federation of Independent Business (see
page 10)

www.nfib.org

National Association for the Advancement of
Colored People (see page 10)

www.naacp.org

Southern Christian Leadership Conference (see
page 10)

www.sclcnational.org

League of United Latin American Citizens (see
page 10)

www.lulac.org

National Council of Churches (see page 10)

www.nccusa.org

Blogger (see page 14)

www.blogger.com

Geocities (see page 14)

www.geocities.com

Institute for Justice Freedom Market (see page
14)

www.IJ.org/freedommarket

Record of Communications

Date:

Time:

Spoke With:

What Was Discussed:

Date:

Time:

Spoke With:

What Was Discussed:

Date:

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Spoke With:

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Date:

Time:

Spoke With:

What Was Discussed:

Contacts

Property Owners and Activists:

Local Journalists and Members of the Media:

Talking Points / SOCOs

Important Dates and Deadlines

Glossary of Terms

Bad faith: This refers to having improper motives for some action. In the context of eminent domain, if a court finds that the government acted in bad faith, it will refuse to allow the condemnation of property.

Blight: Most states have a statutory definition of “blight.” Often, nothing has to actually be wrong with an area or a property for the government to designate it as blighted. For example, a blighted area might have homes without electricity or plumbing, but it might also be an area that is “economically under-utilized,” or that has inadequate parking, “inadequate planning” or too-small yards. The advantage of a blight designation (from the perspective of the government) is that once the designation is in place, the government can take any property at will within the area, even if the property itself is in good condition. Because state and local blight definitions vary so widely, it is important to look at state statutes to understand this term in one’s own state. Declaring an area to be blighted or a “slum” (see below) is often one of the first steps a municipality will take toward condemning property and then transferring it to a private party. A locality may also use a different label (like “redevelopment area” or “deteriorating area”), but that label has the same effect.

Condemnation: This is the general term that means forcible government acquisition of property for any reason. It includes eminent domain, where property is taken for a public use and just compensation must be paid. In some states, the term condemnation can also include taking land for tax delinquency or for building code violations. The government does not have to pay compensation when it condemns for this type of reason.

Condemnee: The person or business whose property is taken.

Condemnor: The government body or private party who files the eminent domain lawsuit seeking to acquire private property for “public use.” Condemnors are usually government agencies. In most states, private utility companies can also be condemnors. In a handful of states, private developers or development corporations have been given the government’s power to condemn private property for private economic development.

Defendant: The person who gets sued. In condemnation cases, the defendant is usually the owner of the property being condemned. However, if an owner brings his own lawsuit to prevent a condemnation, the government can be the defendant.

Development corporation: Private corporations that engage in property development. (Occasionally, a government agency will call itself a “development corporation.”) In a handful of states, private development corporations are authorized to condemn property. In other states, the government may transfer land to a development corporation after condemnation or just work with the development corporation in creating a development plan.

Easement: A property interest that allows the use of the land by someone who does not have title to it.

Economic development: Some states allow condemnation and transfer to private parties only to eradicate slum or blight. Other states have statutes that allow local governments to condemn for “economic development.” That means that the result of the new project will benefit the local economy. In this situation, the government doesn’t need to even claim there is anything wrong with the property or area to condemn it.

Eminent domain: Eminent domain is the power to take land for “public use” and with “just compensation” and the process for taking it.

Fair market value: The amount that a willing buyer would pay a willing seller for a piece of property. In eminent domain situations, because there is no willing seller, appraisers make estimates of how much the property is worth. Fair market value does not include any increased value that will occur as a result of the development project.

Good faith offer and good faith negotiations: Many states require that before a piece of property is condemned, the government must make a “good faith offer” to purchase the property. That usually means that

the government must get a reasonable appraisal of the value of the property and offer to purchase it for that amount before condemning. Certain states require “good faith negotiations,” which means that the government should try to negotiate with the owner about price before condemning.

Goodwill: Businesses usually have a base of customers who know them and people who identify them with a particular location. For example, a restaurant that has been in the same spot for 25 years has business goodwill in the form of regular customers and identification with that location. If the restaurant is forced out by eminent domain, it will probably lose business. The government does not compensate for that loss.

Highest and best use: This term has two different uses in the context of eminent domain. When property is condemned and the parties are arguing about just compensation, the rule is almost always that the property must be valued at its highest and best use. So, if a piece of land is vacant but zoned industrial, it is valued as potential industrial land rather than potential residential land. The other way that governments sometimes use the term is that they will argue that property is not being used at its “highest and best use” and that it should therefore be condemned and redeveloped according to its full potential.

Initiative: A law that originates with citizens, as opposed to the legislature.

Injunction: An order from a court requiring a person or entity to do or not do something. In eminent domain cases, owners often seek injunctions to prevent the government from taking their property or tearing down their buildings before a final court decision.

Just compensation: The U.S. Constitution and all state constitutions require that when the government takes property by eminent domain, it must pay “just compensation.” Although the features of compensation vary from state to state, generally it includes the value of land and buildings, but not business goodwill or money to buy a comparable property. Most states and the federal government also provide some compensation for relocation costs.

Necessity of taking: Requirement that a taking be “necessary” to achieve the public use. For instance, it’s not necessary to condemn six blocks of homes in order to erect a small post office on one block. Sometimes, when owners challenge the public use of a condemnation, they also argue that the takings are not necessary. Generally, courts give even more deference to government findings of necessity than to government findings of public use. However, owners still sometimes win these claims.

Ordinance: A law passed by a local legislative body, like a city council, that is written down and on the books.

Plaintiff: The person who brings a lawsuit. In condemnation cases, the plaintiff is usually the government. However, if an owner brings his own lawsuit to prevent a condemnation, the owner can be the plaintiff.

Pretextual taking: When a government agency claims it is taking property for one purpose but the actual purpose is something else. If a taking is pretextual, many courts will refuse to allow it.

Primary public benefit: Many states hold that if a taking has a “primary” public purpose, then “incidental” benefit to private parties doesn’t make the taking unconstitutional. On the other hand, if the primary purpose of the taking is to benefit a private party, then the taking cannot be justified by only incidental public benefit. Unfortunately, courts have never defined either primary or incidental. Those terms are analyzed by the courts in each case based on the facts of the case.

Private use: Under federal law and in every state, property may be condemned for public use but not for private use. However, there is no universal definition of “private use.” Some state courts seem to find that everything is a public use and nothing is a private use. Other state courts will find that property cannot be condemned for ownership by private parties. Most states fall in between and try to weigh the evidence that the purpose of the project is public against the evidence that it is private. Private use thus gets determined on a case-by-case basis in court.

Public purpose: Although the federal and state constitutions require that takings be for “public use,” many states have interpreted “public use” to mean “public purpose” or “public benefit.” A public purpose is one that

is justified by the beneficial effect it is expected to have on the public.

Public use: The U.S. Constitution and all but a handful of state constitutions have explicit language that says that property can be taken “for public use.” In the few states that do not have such language in their constitutions, the state courts have read it in, so all eminent domain must be for “public use.” Until the middle part of the 20th century, public use was interpreted fairly literally—used by or available to the general public or owned by the government. Federal courts and the courts of many of the states now interpret “public use” to mean “having a public purpose or benefit.” In *Kelo v. City of New London*, the U.S. Supreme Court ruled that tax revenue or job creation sparked by economic development constitutes a public use.

Quick take: In many states, there is a specific procedure that allows the government to deposit with the court the amount it thinks the property is worth and then take possession of it very quickly. Sometimes there is no opportunity for a hearing before the government takes possession.

Redevelopment: Changing an area that has already been developed by removing the existing homes, businesses, and other buildings and replacing them with something else.

Redevelopment agency: Governments usually have a particular agency that is in charge of redevelopment, and it usually is responsible for conducting studies pertaining to redevelopment, overseeing the creation of a redevelopment plan, voting on the plan and supervising the implementation of the plan. The redevelopment agency is often the actual condemnor.

Redevelopment area: Usually the same as a “blighted area.”

Redevelopment plan: After a city has designated a blighted or redevelopment area, it then comes up with (or asks a private consultant to come up with) a plan for redeveloping the area. These large documents are then supposed to guide the course of future redevelopment.

Referendum: A measure that appears on the ballot where voters get to decide whether an ordinance or statute will remain in effect. Citizens decide whether to undo a law that the government has passed.

Slum: Declaring an area to be a slum or “blighted” is often the first step a municipality will take towards condemning a property and then transferring it to a private party. Most states have a statutory definition of “slum.” Generally, it is an area that has physical deterioration and crime, but state definitions vary considerably. Definitions of the word “slum” can be as broad as those for “blight.” Courts routinely hold that using eminent domain in slums is for public use, whatever the eventual use of the property, because clearing away the slum is a benefit to the public.

Statute: A law that was passed by the federal or state legislature and that is on the books.

TIF (Tax Increment Financing): A technique for financing development projects. Cities can designate an area a TIF district and use the surplus tax revenue generated in comparison to previous years to pay for the current project. These usually pay for bonds or new development.





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