

Realtors[®] Positions on Current Issues
Property Rights
(November 2005)

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

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

In addition, we support legislation that will provide property owners expeditious access to administrative and judicial systems at all levels – local, state and federal – to pursue Fifth Amendment takings claims or relief from other property rights violations.

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

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

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

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