

USER'S GUIDE

In Chapter 1, we set forth five overarching principles that should inform a government litigator's understanding of the Takings Clause and assist in convincing courts to avoid unduly expansive applications of the Clause.

Chapter 2 briefly reviews the evolution of takings jurisprudence and then addresses the first question a government litigator should ask when faced with a takings case: "What kind of claim is this?" The answer determines the precedents that govern and the analysis the court should use. This Chapter gives an overview of the various kinds of takings claims and will help you place a takings claim in its proper analytical box. It is must reading.

In Chapter 3, we discuss several preliminary issues, including insurance coverage, case review, and settlement. In Chapter 4, we explain why state court typically is the proper forum for takings claims against state and local governments, and we then address critical procedural defenses that often are dispositive in takings litigation, including ripeness, statute of limitations, and standing.

The next several chapters discuss key substantive defenses to regulatory takings claims. In Chapter 5, we analyze how to defeat a takings claim through the use of "background principles of law," or by showing that the landowner lacked a reasonable, investment-backed expectation to pursue the proposed land use. In Chapter 6, we discuss how to define the "relevant parcel" of property for takings analysis. Chapter 7 shows how to prevail by demonstrating that the challenged government action does not deprive the owner of all (or substantially all) economically viable use of the relevant parcel. It also includes a discussion of temporary takings. Chapter 8 discusses the "means-end" inquiry — whether the challenged government action adequately advances a legitimate public interest — and its evolving (and perhaps diminishing) role in takings analysis. Chapter 9 addresses how to use discovery, pre-trial motions, and expert witnesses to establish substantive defenses.

Chapter 10 discusses physical invasions and occupations. The Supreme Court found a taking based on the government's physical invasion of private property in 1872, fifty years before the Court's first regulatory takings ruling. Although physical invasion cases constitute only a small portion of takings challenges to land use controls, they use an analytical framework that sheds light on takings cases across the board. Chapter 11 addresses the defense of takings challenges to dedications, impact fees, and other development charges. These planning techniques require developers to pay their fair share of the cost of community amenities and other infrastructure needed to accommodate new development. Special rules govern takings challenges to development charges, and thus we give them separate consideration.

Finally, in Chapters 12 and 13, we discuss the availability of jury trials in inverse condemnation cases, how to determine just compensation for a taking, and whether successful claimants are entitled to monetary or equitable remedies.