

## A TERMINOLOGY PRIMER

Public agencies routinely acquire private property for roads, public buildings, and the like. These acquisitions frequently occur through a voluntary sale of the property. When the owner does not agree to sell, state and local governments have authority to acquire the property notwithstanding the owner's lack of consent. This authority is called the power of ***eminent domain***. To exercise this power, the government typically files a ***direct condemnation*** action against the owner. Usually, the only issue to be resolved in these actions is the amount of just compensation owed to the landowner. Direct condemnation is a prototypical taking of private property for which the government must pay just compensation under the Takings Clause.

This Handbook addresses another kind of taking, often referred to as ***inverse condemnation***. In these situations, a court decides that government action is so extreme and burdensome that it works a taking. Inverse condemnation differs from direct condemnation in three ways. First, inverse condemnation usually is inadvertent because the government does not intend to acquire private property, but merely to control its use. Second, the property owner (not the government) files the inverse condemnation suit. Third, in an inverse condemnation suit, the central issue is whether a taking has occurred at all.

There are two kinds of inverse condemnations. The first involves ***physical invasions or occupations*** of property by the government. The second kind, often referred to as ***regulatory takings***, involves government restrictions on the use of private property. The terms "inverse condemnation" and "regulatory takings" sometimes are used interchangeably, but we give them distinct meanings. As used in this Handbook, the latter is a subset of the former. In other words, regulatory takings include only those takings that arise from land use restrictions, whereas inverse condemnation includes regulatory takings and takings that arise from physical invasions.

In a small class of cases, the court may find a taking based on specific factors. These takings are called ***per se*** or ***categorical takings*** (the terms are synonymous). All other regulatory takings

cases are analyzed under an ad hoc inquiry that requires the court to consider several factors. Takings found under this multi-factor inquiry are sometimes called ***non-categorical takings***.

If a court concludes that a regulation constitutes a taking, the government has two options. It may either retain the regulation and pay compensation for a ***permanent taking***, or revoke the regulation and pay compensation for a ***temporary taking*** for the period of time during which the regulation was in effect.

That is all the terminology needed to get started. We will define others terms as appropriate in individual chapters. We outline the various categories of takings claims in Chapter 2, and we discuss each category in more detail in subsequent chapters.