



Three “Must Know” Areas Of The Law For Right Of Way Acquisition Agents

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There is one inevitable moment in every negotiation for property rights with a property owner during the eminent domain process where an agreement on price is reached and the owner asks the right of way acquisition agent, “Ok... what’s next?” Securing an agreement on price with a property owner is only the first of many detailed steps in completing the sale of real estate rights to a public entity. The purchase and sale of real estate by a public entity from a private property owner involves several areas of the law. The success of these transaction will depend directly upon the abilities of the acquisition agent to identify and circumnavigate the legal complexities involved.

The first step to a successful acquisition on behalf of a public agency is knowing and understanding the important areas of the law. Three of the fundamental areas of the law that acquisition agents must have a good working familiarity: real estate, contract and escrow.



Real Estate

Real estate law, or real property law, generally refers to the laws concerning the ownership and use of land. Real estate law involves the right to own, possess, use and enjoy land and the attached improvements. Real estate law identifies and clarifies ownership rights, regulates the transfer of those rights and how to effectively provide notice of property transfers by recordation with a local Recorder's Office. Within the eminent domain process, there are laws that govern the requirements for public agencies acquiring property and accepting the rights as an agency-owned asset. There are also laws that govern the issuance of title insurance policies, the impacts of takings from subdivisions and standards for professional surveys.

Real estate-related case law defines and limits the regulatory ability of public agencies to require property owners to dedicate property rights in exchange for issuance building permits or to provide public access across their property to get to a public beach or park. At a minimum, the acquisition agent's working knowledge of these various areas of real estate law will help to identify legal issues within the acquisition process.

Contract

A contract is simply an agreement specifying the rights and obligations between two or more parties. To be legally binding as a contract, a promise must be exchanged for adequate consideration. Contracts for real estate and eminent domain matters must be in writing and are essentially a promise to sell property rights in exchange for a promise to pay "just compensation." Contract law is found in the Constitution, statutes and case law.

An interesting and necessary part of public agency acquisitions is the development and use of standard contracts, most commonly called purchase and sale agreements. Typical purchase and sale agreements are very complex and well beyond the simple promises to exchange money for property rights. For example, these agreements contain terms that identify the specific property rights being acquired by the public agency, the type and timing of compensation being promised, each party's representation of the ability to perform the contract tasks, the measure and scope of what issues are being resolved by this agreement, waivers of rights to assert future claims, disclosure of adverse conditions, attorney fees and cost recovery, the completion date for the agreement tasks, penalties for non-performance and how disputes over the agreement are to be handled. The two simple mutual promises to buy/sell easily morphs into a 30+ page document requiring verified party signatures and attorney verifications of form and content.

Invariably, property owners request that the standard contracts be modified. Commonly requested promises include specific contractor tasks to be performed during project construction, assurances of access maintenance, changes to the scope of property rights being acquired, etc. Additionally, most public agencies prefer resolution of all issues by global settlement. Global settlements seek to confirm that all claims, actual and potential, are resolved by this agreement.

Consult with your assigned attorney and be prepared to explain to a property owner why the following legalese laden phrase is required in your agreements:

Except as provided otherwise herein, Seller acknowledges and agrees that payment and receipt of the just compensation from Buyer, includes, without limitation, full payment of, for and including, without limitation, just compensation, lease bonus value, business goodwill, furniture, fixtures and equipment, pre-condemnation damages, claims of inverse condemnation, attorneys' fees, appraisal and other expert costs, loss of rents, lost profits, interest, and any and all other damages in complete settlement of all claims (known and unknown), causes of action and demands of Seller against Buyer because of Buyer's purchase of the Property Rights and for any and all claims (known and unknown) arising from or relating to the purchase and sale which is the subject of this Agreement.

Escrow

The corollary to the role of real estate law and contract law in eminent domain transactions is need for escrow to facilitate the execution of the terms of a purchase and sale agreement. The contracting parties remain on adverse and opposing sides of the agreed sale transaction. Entrusting one party or the other to singularly execute the agreement is avoided by use of an escrow. Escrow assists the parties in completing the agreement terms, by acting as a neutral party engaged and tasked with tracking and executing the agreed terms all the way through the release of funds to the contracting Seller and the recordation of the deed transferring title to the public agency Buyer. There are state and local laws that govern the formation and business operation of escrow companies. The law requires that they have separate trust accounts for maintaining any monies received. Escrow companies are also required to be licensed and bonded in the event disputes between the parties to an escrow arise. Notably, most title insurance companies also provide escrow services.

Miscellaneous

Some other important areas of law include the Uniform Act, relocation assistance, environmental and administrative hearings. Continuing education for acquisition agents should include an honest evaluation of one's strengths and knowledge gaps. Next articles will cover the three "Must Know" areas of the law for relocation agents and appraisers. ⚡



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