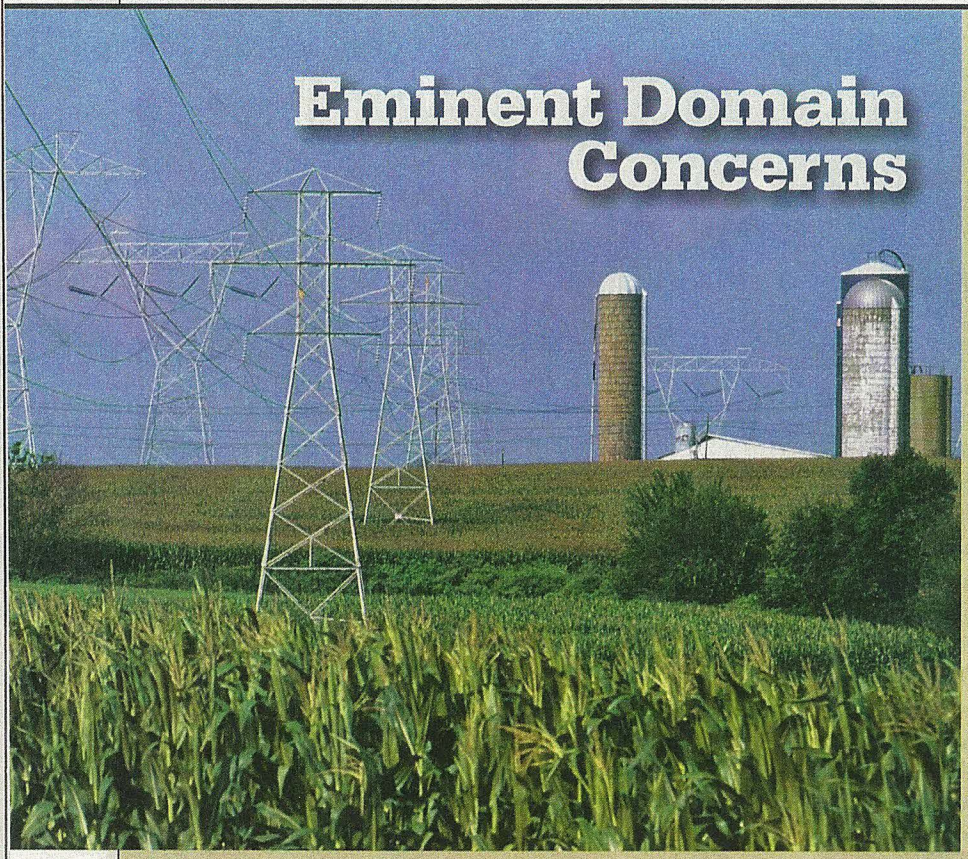
Eminent Domain Concerns



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I have received notice that a major electric transmission line will be built across my land, part of which will cross near my home, shop and barn. It is an eminent domain situation. I have two concerns. First, according to the representatives of the power line company, I can be held liable for injuries sustained by power company employees or subcontractors when they are on my land—even though I have no choice in allowing them access. Second, I am concerned about who will be on my land. Can I prevent the power company from allowing convicted felons, registered sex offenders and illegal aliens on my property? Do I have the right to require their employees and subcontractors to wear a photo ID at all times?

This is a complicated question, and one that will have to be answered in several parts. First, let's look at your potential liability in the event that representatives of the power line company bring a claim against you for being injured on your land. This would not appear to be of concern unless you knew of a dangerous condition that was not open and obvious and that you did not disclose to the injured party (such as an open pit on the premises). Nevertheless, you should always maintain adequate liability insurance to protect against such claims, since anyone can sue even if the claim proves to be frivolous.

Next, regarding the question of who can be allowed on your property in connection with an eminent domain proceeding: In my opinion, the power company could be prevented from having these people (felons, sex offenders, illegal aliens) on your land since this would constitute a potential danger to you and your family. The power company has the right to make "reasonable use" of your property to accomplish the purpose of the power line construction. However, one could argue that subjecting you and your family to potential harrn by these people goes beyond "reasonable use."

That being said, the question is how to accomplish this goal. Obviously, it would be desirable to attempt to negotiate this condition (i.e., no felons, sex offenders, illegal aliens on your property) as part of an agreed "easement" prior to the eminent domain getting to court.

But what if the eminent domain proceeding is already concluded? Unless you can negotiate some sort of agreement on these restrictions with the company holding the easement, your only remedy may be to file suit for a temporary restraining order and temporary injunction to prohibit this potential "dangerous situation" from being allowed on your place. Obviously, this would be a last resort due to the legal expenses that would be involved.

Now for the issue of requiring photo identification of the people coming onto your property: In my opinion, you should be able to require photo identification from anyone coming onto your property so you can satisfy yourself that they have a right to be there and are not trespassers. This would be a reasonable requirement of the contractor's subcontractors and employees and, again, if an agreement is not reached through negotiation, subject to a suit for a temporary restraining order and temporary injunction as mentioned previously.

Finally, because laws vary from state to state, you should confer with an attorney in your state knowledgeable about real property laws before taking any action.

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