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Condemnation and COVID-19: When National Emergencies and Eminent Domain Collide

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Federal, state and local governments are already taking unprecedented steps to “flatten the curve” of COVID-19 (commonly referred to as the coronavirus) to slow transmission and keep our health care system from surging past capacity. While we all hope that the worst case-scenarios do not come to pass and the number of cases stays manageable, we’ve already seen one Washington county purchase a motel to convert into a quarantine center. We can all imagine a world where other federal and state agencies will take similar measures — either to procure supplies or buildings or even take over businesses.

On March 13, 2020, President Trump declared a national emergency under the Stafford Act. The Stafford Act allows the administrator of the Federal Emergency Management Agency (FEMA) to, among other things, exercise the right of eminent domain to acquire not only the physical facilities it needs (for example, buildings and land), but also supplies (medicine, food, equipment, parts, etc.) and to take possession of them immediately. Under the Act, the FEMA administrator is also authorized to procure biological, chemical and radiological monitoring equipment for emergency disaster preparedness.

In short, the Stafford Act gives FEMA broad powers to get the facilities and materials it needs to address a national emergency quickly. When it comes to the government's response to COVID-19, the FEMA administrator may have the power not only to condemn property for use as quarantine/treatment centers, but also to condemn food, medicine, respirators and other supplies to treat patients and help ease the burden on afflicted communities. But such wide-ranging power does not eliminate statutory and constitutional protections for property owners, such as the requirement of just compensation. If any government entity reaches out about acquiring or using your property, it is important to contact experienced eminent domain counsel immediately. Attorneys with experience in this area can help protect your interests while we all try to protect each other from the spread of COVID-19.

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