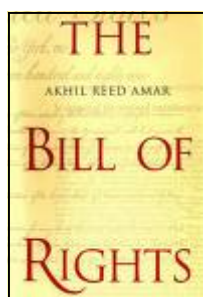


# PRIVATE PROPERTY: RIGHTS, RESPONSIBILITIES AND LIMITATIONS

UC UC Cooperative Extension  
CE Land Use Fact Sheet Series

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Property rights are a concern for many landowners and are on legislators' agendas even more than ever.



This publication addresses frequently asked questions about property rights in land in order to dispel myths and misunderstandings, and generate thoughtful discussion.



Property ownership entails not only private rights, but also obligations to the public.

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September 2007

## I can do whatever I choose with my land, right?

Not always. Although landowners generally may do what they please with their land, **there are limits**. *Zoning laws may restrict how you use your property*. You must develop your property in accordance with the allowable uses of your property's zoning district (See fact sheet #3). Landowners are prohibited from using their property in a fashion that may injure their neighbors or the environment.

**Property rights in land are often described by being compared to a bundle of sticks.** Each stick

represents a right. Each stick may be separated from the rest of the bundle. For instance, a landowner may rent his land to one person to farm and transfer the underground mineral rights to another entity. The landowner in this situation still holds other sticks in the bundle (like the right to sell the land), though a sale may be subject to rights extended to others.

In all circumstances, government agencies at the local, state, and federal level hold other rights, like the right to tax. Some sticks in your neighbor's bundle, like the right to use her property in a beneficial fashion, for example, may also affect your property.

## Do Zoning Regulations affect property rights?

Yes. The United States Constitution and court cases give government entities the power to pass laws to protect the health, safety, welfare, and morals of their citizens. This power is called the "police

power" and it is delegated to local government units like cities and counties. Most local governments exercise their land use police powers through zoning ordinances. **Zoning restrictions are intended to protect the health, safety, welfare, & morals of citizens plus the environment.**

Typical zoning ordinances divide the locality into districts. Within each district certain land uses are allowed, and certain other land uses are prohibited. For example, all single family houses would be together and not beside a cement factory. Zoning laws are



intended to avoid nuisances by prohibiting land activities that are potentially offensive to others. The United States Supreme Court has ruled that zoning

ordinances may be valid exercises of the police power of state and local governments.

## Can zoning prohibit me from putting a trailer on my property for my elderly parents to live in?

Yes. Zoning may prohibit using property in the way in which you want or in the way that may be most profitable to you. The standard a court usually applies to determine whether zoning prohibitions are appropriate is the "arbitrary and capricious" standard. In other words, when local governments are acting to protect the health, safety, welfare, and morals of their citizens, the courts allow them broad discretion.

Funding provided by Renewable Resources Extension Act



A court will usually overturn the local government's zoning decision (for example, the denial of a request for a variance) if the decision is unreasonable and not supported by any facts. **A court will not interfere with a land-use plan simply because a landowner has identified a more profitable use than is permitted by the plan.**

Courts will also determine whether a zoning ordinance is for the public good, rather than for private gain. If the ordinance is for private gain, it is not valid. Again, one must look not only at a landowner's property rights, but how the exercise of those

property rights will affect neighbors and the community at large.

**How could my land uses "injure" the neighbors?**

Just as a property owner possesses rights to use his property, he also holds rights to prevent others from using their land in a manner that harms him or his property. **"Nuisance"** describes a situation in which one landowner is using his property in a way that unreasonably limits the use of his neighbor's land.

A *"private nuisance"* interferes with a relatively small number of people in their use of land, i.e. if one neighbor plays her radio very loudly, especially during times that others sleep.

A *"public nuisance"* causes distress to a large number of persons (an entire neighborhood or community) in the use of their land. An example is a cement factory, which discharges large amounts of smoke and dust.

**Who decides whether a particular activity is a nuisance?**

The first step in deciding whether a landowner is injuring his neighbor is a complaint by the neighbor. Property rights depend in large part on whether persons are being good neighbors. The preferred way to resolve property rights disputes is to talk to your

neighbor before you engage in an activity that may be offensive. **If neighbors cannot agree, mediation** by a zoning administrator, a grievance

committee, **or some other type of arbitrator may be helpful.** A zoning administrator may issue a notice of zoning compliance and perhaps a penalty to the offending neighbor, or may grant a special use permit if the non-compliance is not injurious to others. A grievance committee set up to deal with a specific ordinance may help parties to come to an agreement.

For example, Calaveras County has an ordinance covering Agricultural Tourism operations that guides the planning commission in nuisance complaint decisions; El Dorado County has adopted a Right to Farm Ordinance to define and limit cases where farming may be considered a nuisance.



If this does not resolve the dispute, the offended neighbor may file a nuisance lawsuit. Then, a court will decide.

**How does a court decide if an activity is a nuisance or not?**

In determining whether one landowner's use of land is an "unreasonable" interference of another property owner's use of land, **the court must weigh many factors.** They must consider the extent of the harm, the character of the harm, the type of use being interfered with, and whether the use interfered with is appropriate to the area. The court must also consider the benefits (income to the landowner, jobs, and tax revenue) provided by the offending use, whether the harm can be avoided with the continuation of the activity, and whether the offending use is suitable in that area. Courts balance these factors and consider other factors to resolve a dispute.

**What can courts do if they find a nuisance?**

If a nuisance exists, **the court has options in deciding what to do.** The

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remedies may include money damages and/or an injunction. Money damages **compensate the landowner** for the interference with the use of his property. If the court orders the offending activity stopped, then the damages may be only for past injury. If the court allows the activity to continue, the damages may cover past and/or future injury.

**An injunction** is an order from a judge to stop an activity or a command that a certain action may begin or continue. In the nuisance context, the judge most often orders the landowner to cease the nuisance activity. However, **courts may combine damages** and a partial injunction which would order the landowner to cut back the offending activity to a certain level. For example, if a judge found that a large hog operation was a nuisance, the judge may limit the farmer to a smaller number of hogs.

**The law allows judges great flexibility in fashioning creative remedies.** In an Arizona case, the judge ordered a large cattle feedlot to move, but made the developer of the adjoining residential subdivision pay for the move because the feedlot was there first. The solution to a nuisance case may involve a balancing process to be fair, similar to the balancing used to determine whether a nuisance exists.

### What if the government takes some of my land to build a road or other government facility?

Federal, state, and local **government agencies possess the power of eminent domain.** A California statute says private utilities may also possess the power of eminent domain for projects that benefit the public. Any agency seeking to acquire private property rights for public use must follow steps in the law.

**Property owners may take action to insure fair compensation, or perhaps avoid the taking of their property in selected cases.**

The property owner must be paid a fair price. If the owner and the agency cannot agree on a price, then a procedure exists for the court to set the price, usually after testimony from professional appraisers and due consideration to both sides.

Contact your lawyer for more



information on eminent domain, condemnation, and property rights.

### Does the government have to pay when a regulation or law reduces the value of my property?

Local, state, and federal governments may regulate land and land uses. Most members of society recognize this legal fact. However, just as the law places limits on the ability of landowners to use their land as they please, legal constraints exist on a government's ability to regulate land. How much may a government regulation reduce the value of a particular piece of private property before a "taking" occurs?

**When a government goes "too far" in regulating private property, it must pay just compensation.**

The courts have struggled to define the point where governments have gone "too far" in regulating property. If the regulation is not for a "public purpose," the government must pay compensation to the private landowner. **A government regulation may not exist only to further private interest.**

The requirements imposed by the regulation **must be directly connected to the public purpose.** Only on rare occasions does a taking result from lack of public purpose.

For example, in the 2005 Supreme Court decision, *Kelo v. City of New London*, the court held that there was no constitutional protection for a property owner whose **property was seized for private economic development.**



Eminent domain pertains to the power of authorized agencies to acquire rights in private property to use for public purposes, even if the owner does not wish to sell.

The Fifth Amendment of the United States Constitution provides that "... private property [shall not] be taken for public use, without just compensation."

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A good neighbor policy of consulting with and giving advance notice to adjoining landowners can prevent many property rights disputes.

Property rights must be balanced against the needs, rights, and concerns of all parties involved.

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Ms. Kelo's property and the properties of other protesting owners were in good condition and occupied as the residence of many of them. Their properties were going to be transferred by the city and its agencies to a private corporation for an office research park. Why? The city had determined that to "promote economic development" their land should be taken and transferred to another private party.

**The court rationalized its result by changing the "public use" test**, which had been used to take private property for use by a railroad or a utility or a city to a "public purpose" test. The public purpose of New London was economic development.

**Two other situations automatically merit compensation** for the landowner. First, when the regulation acts to physically invade private property, such as requiring a landowner to allow cable television wires on the landowner's property, compensation must be paid. **Any type of physical invasion**, regardless of how small, warrants compensation.

Second, **when the regulation makes a piece of property "worthless,"** – compensation must be paid. A significant reduction in value, though, may not entitle the landowner to automatic compensation.

If the regulatory taking does not fall into one of the categories mentioned above, a court considers the other factors to determine whether an unlawful taking has occurred:

- the economic impact of the regulation on the landowner;
- the landowner's investment backed expectations; and
- the character of the government activity.

**No hard-and-fast rules exist** to guide either the court or landowners in applying these factors. **However, two examples may help illustrate the concepts involved.**

First, suppose that the state government passes a law to protect wetlands. The law prohibits anyone from building, farming, or conducting any other activity on a wetland or within 1,000 feet of a wetland. Suppose you own a piece of land that is primarily wetlands. After this law is passed you cannot put a building

anywhere on your land, farm the land, or do anything with your land. In this case, the law has made your land worthless and an unconstitutional taking has occurred. The government must pay you for your land.

Now consider a situation in which you own farmland in California. First it is zoned to allow you to use the property for offices or commercial purposes. Then it is rezoned so that now you may only build single-family dwellings. The land still retains value, so you may not assume that a total taking has occurred. The value of the land is much less than prior to the rezoning, however. In a suit for compensation, the court would have to balance the three factors listed above. A court would likely determine that no taking has occurred in this situation.



### CONCLUSION

The law regards property rights very highly and jealously guards their sanctity. **Each landowner possesses the right to use his or her land in a reasonable manner.** This right may be affected by a neighbor's use of his or her property. In these cases, where valid property rights of two or more persons exist, the respective property rights must be balanced to determine which right will prevail.

Similarly, the federal, local, and state governments may regulate land use. When there is a total or near total taking of one's property, the law provides for compensation at fair market value. A drastic reduction in the value of your land due to a new regulation does not automatically entitle a landowner to compensation. **Property rights must be balanced against the needs, rights, and concerns of all parties.**

Adapted from Purdue University Cooperative Extension Service 4 pg pub (ID-229). Authors: Jesse J. Richardson, Jr. Urban Affairs and Planning,

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