*This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.*

# Help! The Government's Trying to Take My Nonprofit's Property

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Since before the time of ancient Rome, the deck has been stacked against citizens when a government seeks to take private property for public purposes (referred to herein as a "**taking**"). While you are unlikely to be able to stop the Government[1] when the taking is for a legitimate public purpose, this article explores potential avenues for challenging or limiting a taking, together with practical advice in the more likely scenario where your nonprofit is negotiating for fair compensation with minimal disruption to its operations. It is critical to be proactive in reading through the materials the Government provides and noting any deadlines in the process to maximize your negotiating leverage.

**Is the Government able to take the property?**

The short answer: likely yes. It is a fundamental power of the Government to be able to take land (or other property) for public purposes.

The good news is that the Founders of America built protections into the Bill of Rights to ensure that citizens would be justly compensated should their property be taken by the Government. Furthermore, following Connecticut's taking of private houses merely for a developer to improve an economically distressed area[2], states like Georgia passed further protections to ensure that the power of eminent domain would be used only for truly public purposes (rather than for indirect ones, such as economic revitalization or development).

It's worth noting that protections under U.S. and Georgia law apply not just to seizures of owned property but also may apply to takings affecting a lease or aspects of land use such as zoning, easements, parking, existing uses, and access points, even if temporary. Furthermore, under Georgia law, owners are entitled to compensation not just for takings but also damages to property.

**Is there anything I can do to stop the taking?**

Not likely. The two most common ways to challenge the taking of the property are by arguing that (1) the taking isn't for a valid "public purpose" or (2) the Government didn't follow the required process.

**Requirements for Takings**

1. Public Purpose Requirement: The taking must be for a valid "public purpose"

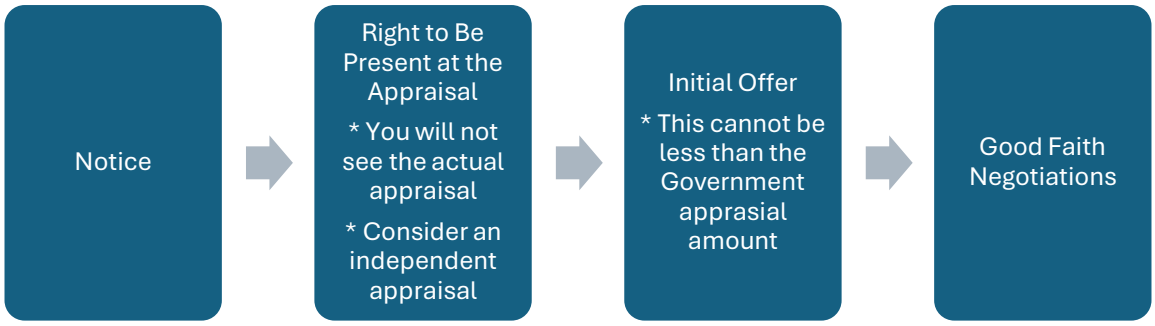
[1] We use the term "Government" generally: a taking of property may be initiated by the State of Georgia, any branch or department thereof, the Georgia Department of Transportation (GDOT), counties, municipalities, public utilities, and private utilities with delegated power (e.g. Georgia Power or a fiber company) and, less commonly, even the federal government

[2] The taking was upheld by the U.S. Supreme Court (***Kelo v. City of New London***, 545 U.S. 469 (2005)) leading to national outrage


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a. *Typical public purposes*: public use (such as for parks or government buildings), utility purposes, transportation purposes, etc.
    i. The property must be put to public use within five years[3] and the use cannot be converted from public to private within 20 years
    ii. There is an absolute bar on takings solely for private development / ultimate private benefit
b. *Blight:* If the taking is to remove blight, it is limited to the government's addressing specific, dangerous conditions affecting the public (<u>not</u> aesthetics)
    i. The threat must fall into <u>multiple</u> and specific categories (e.g. structural/physical issues, unsanitary/unsafe, illegal use, repeated code violations, etc.)
    ii. Blight must be determined specifically to the parcel
    iii. Given the high threshold, it might be particularly beneficial to consult an attorney
c. The Government has the burden to prove the taking complies with this Requirement #1
d. The term "eminent domain" refers to the power of the Government to take land. "Condemnation" or "taking" is the process by which they exercise the power of eminent domain. "Condemned property" is a term sometimes used in nonlegal contexts to describe blight, as mentioned above. For the purposes of this article, we will focus on the condemnation process, or taking, of properties for public use.

2. <u>Process</u>: The Government must follow the required processes, in good faith, to assess fair compensation. At a high level, the compensation negotiation process is typically:




If a deal isn't reached, the Government can move forward with the condemnation proceeding, and the compensation is resolved much later in a lawsuit.

Consult with an attorney if you suspect the Government hasn't adequately followed required processes or isn't acting in good faith to negotiate compensation. To show that the Government is not acting in good faith, a nonprofit would be required to prove the Government acted with "conscious wrongdoing motivated by improper interest or by ill will or fraud." The whole process can take months, or even years if a deal is not reached and a condemnation proceeding is contested in court.

[3] The nonprofit may have the right to buy the property back under this scenario

**What kind of compensation is my nonprofit entitled to receive from the Government?**

Georgia law requires "just and adequate" compensation as part of the condemnation process. This may include:[4]

1. Fair market value of the property (including any improvements, such as buildings, that will be taken or damaged) at the time of the taking
2. Consequential damages. If only part of a property is taken, this may include diminished value of and/or damages to the remaining property. This may also include zoning and other compliance issues created by the taking (as mentioned above)
3. Business losses if the business is unique to the property (e.g. couldn't be operated elsewhere)
4. Costs to cure (e.g. finding alternatives to enable the business to operate the same way)
5. Relocation costs

Attorneys' fees may be awarded only in limited situations such as if the taking is abandoned or the Government loses the final judgment (in other words, as a general rule, do not expect to recoup them). Compensation must be paid prior to the taking of property; however, in certain circumstances the Government may deposit its proposed valuation and take the land subject to final resolution.

**How do I ensure that my nonprofit is properly compensated by the Government?**

During the negotiation phase with the Government, a nonprofit should address the following:

1. Learn more information from the Government, such as:
    a. What are they trying to acquire?
    b. What is the public purpose associated with the taking?
    c. How long do the parties have to negotiate?
    d. When will construction begin?
2. Ensure that the taking won't create any zoning or other legal issues with the property or its intended use (i.e. will the nonprofit be able to fully use the property for current and future programming purposes?). For example, if the Government takes a portion of a nonprofit's land, zoning laws may prohibit making improvements on the remaining land (which can complicate future development).
3. Consider whether there will be any construction and if it might disrupt the nonprofit's operations. The Government is typically willing to negotiate construction conditions, such as ensuring that road access points remain open at critical times and that certain construction activities are only conducted at specific times.
4. Consider getting an independent appraisal. The Government's initial offer may not be less than the Government's appraisal amount. A challenge to the Government's appraised amount can be successful, especially when the property owner has obtained an appraisal concluding that the fair market value of the property is higher than the Government's appraised value.

This introduction to eminent domain is intended to empower nonprofits to identify how to engage with the Government regarding a taking of property: ensuring proper public use, the following of required procedures, and that the organization receives appropriate compensation for the property

[4] Official Code of Georgia Annotated Titles 22 and 32

taken. Remember: the Government is often willing to negotiate from its first offer of compensation and to work with property owners regarding their non-monetary concerns.

Nonprofits should take a proactive approach to the negotiation and consider engaging counsel if (1) the property to be taken is critical to the organization, (2) the property to be taken is minor but the taking would significantly affect the organization's operations (e.g., the taking of a parking lot or driveway), or (3) the taking process appears inconsistent with any of the requirements discussed in this article.

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**Know You Rights: Checklist for Eminent Domain**

☐ Make note of required deadlines and requirements
☐ Understand details and timelines around the proposed taking and related construction
☐ Ensure the taking is proper (serves a public purpose + required procedures followed)
☐ Consider getting an independent appraisal to evaluate the Government's initial offer
☐ Preserve all documents and take photos of the property
☐ Engage in negotiations to come to a deal with the Government
- Consider the financial impact to the nonprofit and any potential other losses
- Ensure adequate compensation for property given fair market value and impact to the nonprofit's operations
- Seek to minimize any disruptions to the nonprofit's operations through non-monetary protections such as access, construction timing, signate, parking, and relocation

☐ Consider hiring an attorney if there are any potential issues or to help negotiate the compensation