



Land Tenure Limitations in the United States

By Rick Norejko, CMS, TEAM Consulting

Ownership of real property in the United States comes with a bundle of rights. A bundle of rights refers to the beneficial interest or rights attached to the ownership of property. Generally, they fall into these broad categories:

- The right of possession: the property is owned by whoever holds title.
- The right of control: within the law, the owner controls the use of the property.
- The right of exclusion: others can be excluded from using or entering the property.
- The right of enjoyment: the owner can enjoy the use of the property in any legal manner.
- The right of disposition: the titleholder can sell, rent, or transfer ownership of the property at will.

In addition to any written limitation to the bundle of rights, society as represented by federal, state and local government units reserves rights in all privately-owned land. Those reservations or limitations are the rights of taxation, condemnation, police powers, and escheat. These reservations stem from governments' right to carry on essential functions of governance. This article will provide an in-depth explanation of those societal and governmental limitations.

Taxation

Taxation is defined as *a means by which governments finance their expenditure by imposing charges on citizens and corporate entities.*

Since the vast majority of early American colonists came from England, they were familiar with the tax systems of that country. Therefore, the tax practices that prevailed in the 17th and 18th centuries were naturally applied in the colonies. In Britain, as in most other European countries, the early practice had been to levy land taxes on the gross produce of the soil, commonly called a quit-rent.

In the early days of the American colonies there wasn't a great need for real property taxation. The English crown and Parliament asked no assistance from them. Revenue in the form of a quit-rent satisfied the demands of the American proprietor or the charter company, since the public needs from a governing body was simple and easily supplied.

Also, because of the scarcity of currency and the plenteousness of unoccupied lands, it was a common practice in very early colonial days to compensate governmental officials and others for public service with grants of land rather than a salary from tax revenue. This had been practiced in England but was limited to an endowment for extraordinary services to the crown and was a relic

of feudalism.

Early colonial settlers had to undergo all of the expenses of clearing vacant land as well as cultivating the soil. As a rule, they were consequently in no position to pay a property tax, or even a quit-rent, on the land. The colonies, therefore, for the most part, resorted to other means of obtaining necessary revenues. Even in the case of quit-rents, provision was generally made that no payments would be demanded until a few years of occupancy had elapsed.

What were quit-rents?

During the Middle Ages, the villeins (a medieval term for the lower-class workers) of England gradually commuted their food and labor dues to the lord of the manor into an annual monetary payment, which came to be known as a quit-rent. The quit-rent became a fixed and heritable charge upon the land. The Statute of Quia Emptores, the scarcity of labor resulting from diseases, the Black Death, and declining land values due to the rise of industry, accelerated the process of converting feudal dues of produce, livestock and trade services into fixed monetary quit-rents. By the beginning of the 16th century payment in the form of money had become the custom.

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This feudal notion that the soil belonged to the crown, therefore eligible for quit-rents was carried to the British colony in America. The Royals granted lands to proprietary groups, large stock-trading companies and private individuals, who were to develop their own methods of enticing settlers to venture to America. Those settlement methods varied widely; consequently, some colonies collected quit-rents, while others did not. The chartered Puritan colonies of New England, principally Massachusetts, never accepted the practice while the southern colonies found it difficult, if not almost impossible, to collect them. By the time of the American independence, their collection had become so difficult that in many places only halfhearted endeavors to collect were made.

From the settlement years to a few years just before the Revolution, England was content to use the colonies mainly as a source of raw material and a market for manufactured products rather than direct Royal revenue through taxation of land. The reason for this policy was that the Royal Crown simply wanted to settle and develop the colony. Contrary to the Crown's policy, several proprietors in the colonies looked upon quit-rents as a basic source of personal income. However, as the colonies assumed more and more of the responsibilities for government, the need to levy taxes to meet necessary local expenses increased. Arguments for payment of quit-rents to engross some proprietor or some stock company became less pertinent in the mind of its citizens.

Quit-rents disappeared in America with her Declaration of Independence. By 1776 they were so obnoxious to New Englanders that they refused to pay it. It wasn't successful in the southern colonies, not because the colonists resented paying

for the support of the government; they just resented payments made for the personal comfort and pleasure of colonial lords and stockholders. Therefore, local property tax as we know them today, as a source of revenue for a governmental entity, evolved after Independence.

Land Taxation in the Early Constitutional Period

The American Revolution and the formation of a constitutional federal government effected very little change, if any, in the system or methods of taxation within states and local governments. There was no reason for the states to alter substantially their tax laws, and the federal government refrained from resorting to such method of taxation, largely because the constitutionality of it, which limited the methods of property taxation to the newly established states in America.

The first study of taxation in the United States was made in 1796 under the direction of Oliver Wolcott, then Secretary of the Treasury. Wolcott's report pointed out the diversity among the states both to the objects and principles of taxation and the methods of assessing, apportioning, and collecting the property tax. He found that in seven states a principal revenue source was a uniform poll tax that did not exist in the other six states. He also found that "land was taxed in one state according to quantity, and another according to quality, and in third not at all."

The conclusion of his congressional report was that there was both laxity and neglect in the collection of taxes, specifically in property taxes because local counties and towns found sufficient revenues from indirect rather than direct property tax sources to carry out their public services.

From the beginning of the 19th century through the period of the Civil War and thereafter, the United

States witnessed an industrialization that diversified and intensified the various forms of property and wealth. With the increase of wealth and the demand of more and more governmental intervention and supervision, localities relied more and more on the taxation of land and improvements. Thus, from these humble beginnings the main source of revenue, real property taxation for local governmental subdivisions, began.

The Right to Condemn—Eminent Domain

Under English law, a land owner whose property was physically taken by the sovereign had no right to compensation. In England it was called "compulsory purchase" or "appropriation." American law calls it by its continental civil law name: "eminent domain." Eminent domain is defined as *a right of a government to take private property for public use by virtue of the superior dominion of the sovereign power over all lands within its jurisdiction.*

Even before the Revolutionary War, eminent domain in the American colonies was quite different than in England. Although not legally obligated to pay, the colonies usually provided compensation when taking land for public use. The main exception to this practice involved the condemnation of rural land for a public highway or roads, where payment was rarely provided. Yet even here the affected land owner received indirect compensation; the new highway typically increased the value of his remaining land.

History reflects that James Madison drafted and proposed the "Takings Clause" as one of several suggested amendments to the Constitution. However, the reasons for such proposal remain unclear. It has been suggested that Madison was responding to popular outcry against a frequent practice of the American army during the

Revolutionary war. Both General Washington's staff and Congress would seize privately owned food, supplies, and other personal property necessary for the war effort without compensation.

Yet Madison's writings suggest that the Takings Clause was intended to serve a broader economic and political goal. It would protect large property owners against government-mandated redistribution of wealth and other arbitrary actions. Even if poor or impoverished citizens someday formed a majority, they could not use the machinery of government to confiscate property without payment.

Similarly, Madison firmly believed that the ownership of property was fundamental to political freedom. Democracy could prosper only if individuals were sufficiently independent from government pressure and influenced to act in the best interest of the nation. In Madison's vision, the political independence stemmed from private property, and the landowner who could support his family growing crops on his own land had no reason to sacrifice the national good for personal gain. By protecting private property through fair compensation, the Takings Clause would help to safeguard democracy.

The Fifth Amendment to the Constitution clarifies the role of government. The key provision is the final sentence of that amendment, commonly called the Takings Clause. It states: "[N]or shall private property be taken for public use, without just compensation."

Literally, the Takings Clause only restricts the federal government, but its provisions have been held equally applicable to state and local governments through the conduit of the 14th Amendment. Section 1 of said amendment says: "No state shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law..." In addition, all state constitutions contain parallel provisions that directly bind state and local governments to just compensation.

A Supreme Court ruling affirmed the condemnation and Takings Clause via eminent domain with the 1875 case of *Kohl v. United States*. In this case, property owner Kohl challenged the power of the United States to condemn land in Cincinnati, Ohio, for use as a custom house and post office building. Supreme Court Justice William Strong's response was to affirm the authority of the federal government to appropriate property for public uses "essential to its independent existence and perpetuity." *Kohl v. United States*, 91 U.S. 367, 371 (1875).

Police Powers

Land tenure in the United States is controlled on a legal basis by the concept of "police powers." The formal definition of police powers is:

the authority conferred upon the states by the 10th Amendment to the United States Constitution and which the states delegate to their political subdivisions to enact measures to preserve and protect the safety, health, welfare and morals of the community.

Police powers or the more familiar term, zoning, existed even in colonial America. Ten of the 13 original colonies had colonial regulations regarding wood fencing protecting vegetable gardens from free-range livestock and to keep unruly animals confined. These local laws also outline damages to be paid to property owners if a breach occurred. For instance, the requirement for a good fence varied widely from colony to colony but generally fencing had to

be 4 feet 6 inches to 5 feet in height and was inspected on a regular basis by "fence inspectors."

Police powers took a giant step forward with America's industrial revolution. More stringent zoning laws began with the Los Angeles zoning ordinance of 1908 and the New York City zoning resolution of 1916. Los Angeles's zoning ordinance established both residential and industrial districts. The New York ordinance was a height and construction ordinance for high-rise apartment buildings.

In the early 1920s, the United States Commerce Department drafted a model zoning and planning ordinance in order to facilitate states in drafting their own zoning regulations. The Standard States Zoning Enabling Act of 1924 created a relatively uniform zoning process in American cities, although depending on their size and function, there were definite differences in the complexity and scope of zoning schemes.

The constitutionality of zoning ordinances was upheld in 1926 by the United States Supreme Court. The zoning ordinance of Euclid, Ohio, was challenged in court by a local land owner on the basis that restricting use of property violated the 14th Amendment to the United States Constitution. Although initially ruled unconstitutional by lower courts, it was ultimately upheld by the Supreme Court in the case of *The Village of Euclid, Ohio v. Ambler Realty Company*.

Escheat

According to English law, escheat is defined as *the reversion of property to a government entity in the absence of legal claimants or heirs*. It was commonly utilized in two possible scenarios: the failure to have heirs or what was called "container of blood," or if the tenant was convicted of a felony. In colonial America, escheat

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also included failure to conform to the conditions of the land grant. Important conditions in the grant included failure to plant and seat, permitting the land to remain vacant, or nonpayment of either quit-rent or the purchase price.

Escheat for the failure to plant and seat was more prevalent in the middle and southern colonies. Many land patents had specific instructions of how long the patentee had before he had to occupy or utilize the property for agricultural purposes. It was common to reserve a three-year period for planting and seating a parcel before it reverted to the Grantor for failure of compliance.

Land also could not be vacant in respect to an owner of record. Who's going to pay the property tax? Sometimes it was impossible to locate the rightful owner of the land; he might have moved off and left the land vacant, disclaiming any rights to it, or have died intestate and his heirs could not be located. This happened frequently owing to poor communication and faulty colonial records.

Another reason for escheat was a failure to pay the balance of the purchase price to the either the federal government, with regard to land in the federal territories, or the state treasury for land within state boundaries. Western land-seeking immigrants were usually given months or years to fully satisfy the purchase of the special warrant or certificate to public lands. Non-payment could result in escheatment to the sovereign.

Perhaps the best way to understand escheat and its practice throughout history is that statement, "Who's going to pay the property tax?" In other words, throughout history land had to be productive. Production in this connotation does not mean growing crops, grazing livestock

or cutting timber; rather it means generating revenue for governance. All property falls within some type of governance, be it a monarchy, dictatorship or democracy.

Payment in kind for services from that governance has varied widely throughout human civilization. In the United States we utilize property taxes as a major source of payment for local governance; therefore, it is imperative that the land be listed for taxation to some owner of record. Failure of listing property to the heirs of some ownership entity reverts the property back to a sovereign. In feudalistic England that sovereignty was the king. In America that sovereignty is the state. If property escheats to the state, they simply put it back on the tax rolls. In other words, convey it to an entity that will pay the property taxes, thus keeping it productive.

These and other principles of

property law are covered in the workshop series **Real Property Law for Maintaining Assessment Cadastres** taught by Rick Norejko. ❖



Rick Norejko

Rick Norejko, CMS, has over 40 years of experience in all aspects of cadastral mapping. He is a nationally recognized keynote speaker, lecturer author

and teacher in the field of cadastral mapping. To learn more about Rick and the classes he teaches, visit the Instructors page on the TEAM website, <http://teamconsulting.cc/instructors.html>

To set up classes, email Rick at richardnorejko@bellsouth.net or Fred Chmura at fchmura@teamconsulting.cc.

Travel Squad



The map above indicates where TEAM workshops were taught in 2018. Is your state missing? (Map provided by Keith Cunningham.)

It was a typical year for TEAM working toward our goal of providing education: Classes in 24 states and over 50 cities, with 1,500 students and 7 instructors. Let us know how we can help your location with teaching or developing a workshop/series of workshops or other professional assistance. Visit our website at <http://www.teamconsulting.cc/>. You can also contact Fred Chmura at fchmura@teamconsulting.cc or 860.974.1354 or Rick Stuart at rstuart17@cox.net or 785.259.1379.

Workshop Updates Continue

TEAM strives to keep our workshops updated with current market data and related articles. The following workshops have been updated effective January 1, 2019.

- Valuation of Lodging Properties
- Valuation of Manufactured Homes
- Appraising After a Disaster or in Traumatic Events

For more info on these and other TEAM workshops, visit the Workshops page on our website: <http://teamconsulting.cc/workshops/workshopsoverview.html> ❖



2019 IAAO Annual Conference

The 2019 IAAO Annual International Conference on Assessment Administration set for September 8-11, 2019, in Niagara Falls, Ontario Canada and complete registration for the conference will start in early March.

Traveling from the United States? Remember to have your passport ready! Canadian law requires that all persons entering Canada carry both proof of citizenship and proof of identity. A valid U.S. passport, passport card, or NEXUS card satisfies these requirements for U.S. citizens, however a U.S. Passport Card is only valid when crossing the U.S./Canadian border by car. It is not a valid ID for entering or exiting Canada by plane.

To learn more about this year's exciting conference, select the Events tab at www.iaao.org. ❖

Interesting Buildings

By Rick Stuart, CAE, CDEI

Over the years, I have collected a very large number of "interesting building" photos. If you have picture(s) of building that have piqued your interest, email them to me at rstuart17@cox and I will add to the file and the newsletter.

There are a few extra photos this issue thanks to Tim Wilmath, MAI. Like Tim, I found the trash dumpster home interesting.

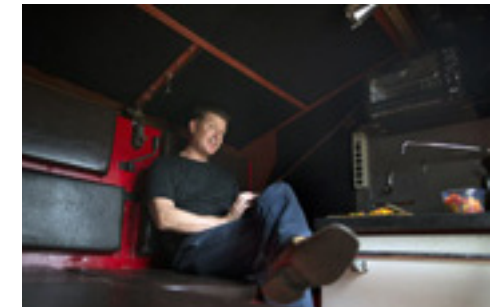


Manchester Civil Justice Center, UK

The Trash Dumpster Home



North Arkansas Pyramid Home



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