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Property Rights: Florida May Refuse To Pay Its Bills

After more than 10 years of eminent domain litigation, two jury trials and a number of appeals, thousands of South Florida homeowners were recently awarded constitutional compensation for the destruction of their private property by the State of Florida. In the mid-2000's, the State destroyed tens of thousands of healthy citrus trees as part of a now-abandoned program to reduce the spread of citrus canker. The State's actions were taken for a public purpose - to protect a key sector of Florida's economy - the citrus industry. The juries in these cases effectively determined that the tree owners should not have to "donate" the value of their trees to assist in these efforts. They also concluded that the cost of canker prevention should be spread to the tax payers of Florida, just like the taking of any other private property that is used for a public purpose. Prior to this case, the State had always paid eminent domain jury awards that had been approved by the appellate courts.

Recently, however, the State added a new requirement before the owners are compensated for their lost trees. The Department of Agriculture and Consumer Services (DACS) notified the owners that they must petition the State Legislature to appropriate the money. DACS contends that Florida Statutes, Section 11.066, only requires DACS to pay the judgments if the Legislature and Governor approve such payments. While this Statute has been properly applied to certain types of actions that are subject to sovereign immunity, such as some personal injury awards, it has never been applied to a constitutionally mandated payment in an eminent domain case. The Statute, if taken to its extreme, could allow the government to take private property without compensation, which is, of course, prohibited under both the Florida and the United States Constitutions.

To be sure, DACS is in a difficult position given the current economy and difficult budgetary constraints. While many see DACS's current position as simply a way to buy time until a broader resolution is reached, it is nonetheless disconcerting to see private property rights treated in a manner that ignores the fundamental principle found in the Bill of Rights: "No person shall be... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Please contact Mark Leavitt at mleavitt@deanmead.com or (407) 841-1200, for further information. To contact other members of the Real Estate Development Industry Team, please go to <http://www.deanmead.com/industries/real-estate-development/>.