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Connecting Lawyers and Communities

## CLR e-Briefs

A legal information resource for Community Legal Resources' clients

August 12, 2005

This issue of CLR e-Briefs focuses on the recent cases regarding the state's eminent domain power, resources available from the State Bar, and upcoming tax-foreclosed property auctions.

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### **Eminent Domain in Michigan: Where do we stand now? *Poletown, Hathcock & Kelo***

Eminent domain is the government's inherent power to take privately owned property for its own use. This power is limited by the Fifth Amendment to the U.S. Constitution, which provides, in pertinent part: "nor shall private property be taken for public use, without just

compensation." Many state constitutions, like that of Michigan, contain a parallel "public use" provision. (Mich. Const. art. 10, Sec. 2 (1963).) It is the parallel provisions of the U. S. Constitution and the Michigan Constitution combined with two recent decisions interpreting these provisions, *Kelo* and *Hathcock*, respectively, that generate questions about where Michigan stands now.

### [Kelo \(2005\)](#)

Recently, the U.S. Supreme Court issued its decision in *Kelo v. City of New London (Kelo)*, affirming the City of New London's taking of private property consistent with an economic development plan. The court found that the taking of private property consistent with such an economic development plan satisfied the U.S. Constitution's public use requirement. Headlines read "Justices Uphold Taking Property for Redevelopment" (New York Times) and "When Your House Can Become Someone Else's Home" (Washington Post).

### [Poletown \(1981\)](#)

The *Kelo* decision is similar to the *Poletown Neighborhood Council v. City of Detroit* decision issued by the Michigan Supreme Court in 1981. In *Poletown*, a majority of the Michigan Supreme Court approved condemnation of property by the City of Detroit to permit General Motors to construct its Poletown Plant on the basis that it was "primarily to accomplish the essential public purposes of alleviating unemployment and revitalizing the economic base of the community" with the benefit to a private interest as "merely incidental." Thus, under *Poletown*, a condemning authority could justify seizing property for development by private parties by finding that it furthered "economic development."

### [Hathcock \(2004\)](#)

The recent *County of Wayne v. Hathcock* (2004) decision issued by the Michigan Supreme Court expressly overruled *Poletown*. The case arose when Wayne County sought to condemn property near Detroit Metro Airport for a business and technology park that was to be developed by private parties.

The court did not limit its rejection of *Poletown* to cases where the taking is primarily for the benefit of other private parties, but went further to find that a mere showing that the economy will generally benefit from the condemnation is not sufficient to establish a public use. Although the court was divided in its views on the precise meaning of "public use," it did indicate that condemnation could be justified when the "controlling purpose" is to "remedy urban blight for the sake of public health and safety."

### [What does Kelo mean to Hathcock?](#)

The *Kelo* opinion specifically acknowledges that states have the right to place further restrictions on the exercise of their takings power, specifically mentioning Michigan's *Hathcock* decision. In response, many states are considering legislation imposing restrictions on the exercise of takings powers.

However, legislation is not necessary in Michigan since, under *Hathcock*, Michigan's Constitution is more restrictive than the U.S. Constitution. Since *Kelo* interpreted the U.S. Constitution's "public use" provision, while *Hathcock* interpreted the Michigan Constitution's "public use" provision, taking into account the circumstances at the time the current version of the Michigan Constitution was approved by the State's voters, there is no reason to believe that the *Kelo* decision will have any impact on the views of the Michigan Supreme Court as expressed in *Hathcock* -- even though both decisions were interpreting similar language. Thus, based on Michigan Constitutional limits, a condemning authority cannot solely rely on an "economic development" justification to justify a taking.

## County Auctions of Tax-Foreclosed Property -- Many Coming Soon

### Wayne County Auction September 6-12

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Every year counties throughout Michigan offer property for sale via auctions conducted by the State or the office of the County Treasurer. The property sold at auction is property the County has acquired through tax foreclosure. In most counties, the major sale takes place each fall.

Check the website of your County Treasurer for information about local auctions. A few of the major auctions are listed below:

- [State of Michigan](#): The State's auctions on behalf of 51 of Michigan's 83 counties will be held the week of August 29, 2005.
- [Wayne County](#): The largest county in the state, Wayne County annually auctions over a thousand properties. The vast majority of the properties auctioned are in the City of Detroit. **Sept. 6-9 & 12.**
- [Genesee County](#): Minimum bid auction in September.
- [Jackson County](#): September 20 & November 15.
- [Oakland County](#): October 11.

## Michigan Bar Real Estate Section Provides Educational Brochures

### Topics Include Predatory Lending, Landlord-Tenant, and Land Contracts

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The Michigan State Bar Real Property Law Section's Pro Bono Committee drafts and distributes educational brochures on various real estate-related issues. Currently, the following brochures can be found at its [website](#):

- [Mortgage Loans & Predatory Lending](#)
- [Homeowner Liability and Insurance](#)
- [Purchase and Sale of a Home](#)
- [Landlord Tenant Information: Security Deposits & Property Maintenance](#)
- [Landlord Tenant Information: Eviction, Illegal Eviction & Utility Access](#)

- [Land Contract Information](#)
- [Delinquent Property Taxes](#)

These two-page brochures can be downloaded directly off the website and printed for your information or for distribution.

## SAVE THE DATE: TUESDAY, NOVEMBER 15

### CLR's Annual Recognition Event

Please save Tuesday, November 15, 2005. We've scheduled our Annual Recognition Event for 5:30- 7:30 on this night.

We're excited to announce that this year's event will highlight another Detroit gem: [PuppetART - The Detroit Puppet Theater](#)

The event will be held at the PuppetART Center at 25 E. Grand River Avenue in Downtown Detroit. Invitations will be sent in the fall.

## Contact CLR with any questions or legal needs

**Request Assistance**

Community Legal Resources (CLR) provides free legal assistance to community-based organizations.

Contact us at 313-964-4130 or visit our [website](#) for more information.

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