

# PUBLICATION

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## Can the Government Commandeer My Hotel to Fight COVID-19?

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### With the COVID-19 pandemic in full swing, can the government take private hotel rooms to expand the capacity to care for individuals with or exposed to the virus?

Governmental entities at every level are taking unprecedented steps to fight the COVID-19 pandemic as they work to slow transmission of the virus and to prevent health care facilities from reaching overcapacity. Given that many health care facilities are nearing capacity already, it is easy to envision a world where governmental entities could appropriate private property to help respond to the crisis until the efforts are able to “flatten the curve.”

The federal government has already taken the formal steps to allow the appropriation of private property. When President Trump declared a national emergency under the Stafford Act on March 13, 2020, he authorized the administrator of the Federal Emergency Management Agency (FEMA) to exercise the right of eminent domain to acquire both physical facilities and supplies. Even though FEMA is required to compensate owners, the Stafford Act also allows for an immediate right of possession. Accordingly, FEMA could immediately appropriate buildings, land, food, medicine, testing supplies and medical equipment, parts, fuel, etc.

Local governments are also acquiring private property to limit the spread of the coronavirus. Here are some examples of what we have seen thus far:

- The City of Kent, Washington acquired a branded, two-story, 85-bed motel that was listed for \$4.2 million for two months before the county acquired it for \$4 million. After the motel was acquired, the property was debranded and members of the media were offered the opportunity to tour a room before it was opened.
- The City of Philadelphia attempted to acquire the closed Hahnemann Hospital for coronavirus patients. In the past, the hospital had as many as 400 beds. However, the City and the current hospital owner were unable to come to terms and the City ultimately abandoned its efforts.
- In New York, officials are talking to a wide range of hotel owners about housing patients and health care workers. To date, certain hotels have offered rooms for non-critical patients while others are offering free rooms for medical workers. All of these deals were negotiated by agreement.

At this point, certain operators are choosing to voluntarily house COVID patients and medical workers in an effort to fill vacant rooms and generate goodwill. However, as the pandemic progresses, it is possible that the economic environment will change and operators will need to demand that they be fully and fairly compensated for the taking and damaging of their property. When that happens, it is important that the owner understand:

- Fair market value of what was taken

- That state and federal law provide for compensation if they do not wish to enter an agreement with government
- Their procedural rights, which may vary depending on the governmental entity acquiring the property

As the pandemic progresses, it is possible that properties proximate to hospitals or other health care facilities could be acquired through eminent domain. It is also possible that other governmental entities may attempt to acquire through eminent domain limited rights, like property leases for the duration of the emergency.

If you are approached by a governmental entity to acquire, lease or use your property, be sure you contact an attorney experienced in eminent domain and condemnation matters immediately so you can bargain on equal footing. Attorneys with experience in this area can help protect your interests while we all try to protect each other from the spread of COVID-19.

For more information specific to this topic, please contact [Ivy Cadle](#) or visit our [Eminent Domain page](#) to learn more about our eminent domain experience. Also, please visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.