

NEW ORLEANS PROPERTY OWNERS' RIGHTS

AFTER HURRICANE KATRINA

If you are a property owner affected by Hurricane Katrina, you should take steps to protect your rights. Although plans for redeveloping New Orleans and other areas are still unclear, they are likely to either temporarily or permanently interfere with the rights of many property owners. Plans may include demolishing buildings that are declared unsafe and temporarily or permanently interrupting property owners' rights to access or use their property. In general, the United States Constitution and other laws guarantee that, in nearly all circumstances, property owners whose rights have been interfered with are entitled to:

- **Notice** (information about government plans for your property);
- **Due process of law** (a chance to challenge the government's plans or to show your property should not be included in them); and
- **Adequate compensation** (payment for the lost value of your property).

Whether these protections cover you depends on the government's plans for your property *and your efforts to be sure the government observes these rights.*

FREQUENTLY ASKED QUESTIONS

Due to the various proposals regarding the reconstruction of property in New Orleans, there are many questions about what to expect and how to best protect your property rights. Some of these questions include the following:

BULLDOZING - WHAT ARE MY RIGHTS?

Q: Do the Louisiana and United States Constitutions protect my property rights?

A: Yes, both constitutions provide that, in most instances, a homeowner receive due process – that is, notice and an opportunity to be heard – before the government either demolishes or takes property.

This brochure does not provide legal advice, but merely provides information about general property rights. It was prepared by the Lawyers Committee for Civil Rights Under Law, a non-profit, non-partisan civil rights organization. It is not a legal solicitation and is not presented in affiliation or conjunction with the City of New Orleans or any state or federal government entity.

Q: Can the government bulldoze my home or other building on my property?

A: The New Orleans Municipal Code states that, if there is a determination that the building is structurally unsafe or poses a public health hazard, the City can demolish that building. The City of New Orleans has put red tags on the buildings it believes pose such a hazard. The City, however, has stated on its Web site that it will not demolish any buildings before discussions with the owners.

Q: How do I know if the City plans to demolish my home?

A: You can find out the City's "Damage Assessment" of your property at www.cityofno.com and clicking on "Find my damage assessment report." A list of all the properties the City proposes to demolish (the "Red Danger List") is available from the City and the Lawyers' Committee for Civil Rights Under Law.

Q: If the government determines that my house or building is to be bulldozed, what are my rights?

A: Under the New Orleans Municipal Code, the City must inspect the building to determine whether it is a threat to public health or safety. The City must notify you if it has determined that the building is uninhabitable and you have 10 days from the "attempted delivery" of this notice to challenge this determination. If the City does not change its mind, you still have an opportunity to fix what health and safety problems the City has found. Only then can it demolish your building. These requirements, however, have changed somewhat due to the recent settlement of a lawsuit regarding bulldozing against the City of New Orleans.

Q: What does the recent settlement of the lawsuit against the City require the City to do if it plans to demolish my property?

A: The recent settlement of the lawsuit called *Kirk v. City of New Orleans* requires the City to provide you with certain notice if it intends to demolish your home. The requirements depend on whether your home has been identified as (1) a threat to public safety and blocking a road, (2) a threat to public safety, (3) later determined to be in danger of collapse, or (4) otherwise found to be a threat to public health or safety.

Q: What are my rights under the settlement if my home has been found to be a threat to public safety and blocking a road?

A: If the City has found that your property is a threat to public safety and is also blocking a street, the settlement requires the City to give you each of the following forms of notice:

- written notice by U.S. Mail at least 7 working days before the date the City intends to take action with respect to your property;
- written notice in the *Times-Picayune* for at least 3 days identifying the property at issue and what the City intends to do with it; and
- notice on the City's Web site identifying the property and what the City intends to do with it.

You have 7 working days from the date of the notice to object to the City's finding that your property is a threat to public safety. Your objections must be in writing and must be sent to the Department of Public Safety and Permits of the City of New Orleans.

Q: What are my rights under the settlement if my home has been found to be a threat to public safety but NOT blocking a street?

A: If the City has found that your property is a threat to public safety but the property is not blocking a street, the settlement requires the City to give you each of the following forms of notice:

- written notice by U.S. Mail at least 10 working days before the date the City intends to take action with respect to your property;
- written notice in the *Times-Picayune* for at least 3 days identifying the property at issue and what the City intends to do with it; and
- notice on the City's Web site identifying the property and what the City intends to do with it.

You have 10 working days from the date of the notice to object to the City's finding that your property is a threat to public safety. Your objections must be in writing and must be sent to the Department of Public Safety and Permits of the City of New Orleans.

Q: What are my rights if the City finds my property to be in danger of collapse in the near future?

A: For all properties that the City finds to be in near-term danger of collapse, the City must provide you with all of the following forms of notice:

- written notice by U.S. Mail at least 30 working days before the date the City intends to take action with respect to your property;
- written notice in the *Times-Picayune* for at least 3 days identifying the property at issue and what the City intends to do with it; and
- notice on the City's Web site identifying the property and what the City intends to do with it.

You have 30 working days from the date of the notice to object to the City's finding that your property is a threat to public safety. Your objections must be in writing and must be sent to the Department of Public Safety and Permits of the City of New Orleans.

Q: Where will the City send the written notice required by the settlement?

A: In all circumstances, the City will send written notice to the property owner's last known address.

Q: How can I be sure I receive notice of any action the City plans on taking for my home or building?

A: To be sure you receive notice, you must make the City aware – in writing – of your current residence if you are not at the property in question so you can receive this notice. Provide the City with as much contact information as possible, including: your identity, the property you own, your current residence (if not at this property), home, work, and cellular telephone numbers if you have them, and any e-mail address you have. If you do not intend to abandon your property, tell the City that you have not abandoned your property. Notify the City of New Orleans, in writing, that you expect the City, any person or firm acting on its behalf, and all other governmental entities, to strictly comply with all state and federal laws and constitutional requirements as they apply to your property. And keep a copy of the letter you send to the City.

Q: What is the importance of the flood damage percentage and how does it apply to my property?

A: The flood damage percentage applies to houses that are below the minimum flood elevation and have been damaged. It is important because, if the value of the damage to your home is over 50% of its value, it will be demolished unless you can satisfy the City's elevation requirements for the house. In other words, you will not be given a permit to rebuild your house unless you commit to raising the property several feet above the ground. Having a flood damage percentage under 50% allows the owner to receive a permit to rebuild without having to spend the money on elevating the house.

Q: How does the City determine the amount of damage to my house?

A: City building inspectors determine the amount of damage to your house. Typically, if your house had 2 to 7 feet of water, it will automatically be determined to be more than 50% damaged. Depending on the extent of damage, however, an inspector can determine that your home is over 50% damaged even if it was flooded by less than 2 feet of water.

Q: Can I appeal the flood damage percentage the City assigns to my house?

A: Yes, you can appeal a damage assessment that is over 50% at the New Orleans Department of Safety & Permits located at City Hall. To do so, you will need the document(s) with the flood damage assessment the City has assigned to your property and evidence that the damage to your home is not more than 50% such as pictures of your home or a repair estimate from a contractor. Your chances of a successful appeal are greater the closer the damage estimate is to 50%. Reports have stated that those who appeal an inspector's flood damage determination are successful nearly 90% of the time. Even if you are successful with your appeal, however, it does not mean that permits have been given to others in your neighborhood as your neighbors may not appeal or may not be successful. As a result, there may be very few, if any, houses in your neighborhood aside from your own. More importantly, a successful appeal does not necessarily mean that you will be able to acquire flood or other insurance.

Q: What can I do if the City incorrectly designates my property for demolition?

A: If the City incorrectly designates your property for demolition, you need to file an objection and appeal with the City. A sample Objection and Appeal of Demolition Order is attached for your convenience. The completed form should be delivered to the following address:

City of New Orleans
Department of Safety and Permits-City Hall
Room 7E07-1300 Perdido Street
New Orleans, Louisiana 70112
Tel: 504-658-7130
Fax: 504-565-6143

If possible, hand deliver this form and any accompanying documents to the address listed above and have your copy time-stamped to show receipt. If you cannot hand deliver your paperwork to the City, be sure to send the information by U.S. Certified Mail-Return Receipt Requested or by Federal Express and keep your receipt of delivery.

Q: What if I want the City to demolish my property?

A: Under the requirements of the recently filed lawsuit against the City, the City will demolish damaged property if the owner wants but the owner must request this in writing through a form provided by the City of New Orleans.

Q: How long do I have to remove personal belongings from my property before it can be demolished?

A: You have until May 1, 2006 to remove your personal belongings. However, you must fill out the sample Objection and Appeal of Demolition Order and request that the City delay demolition of the property until the time specified by you (not to extend past May 1, 2006).

Q: Am I entitled to compensation from the government if it demolishes my house or other structure on my property?

A: Not necessarily. The New Orleans Municipal Code allows the City to demolish houses or structures it determines to be substandard without compensation to the property owner. In some cases, in fact, the City has the power to fine property owners for the substandard condition of their building(s). As a result, if the government bulldozes a building on your property without taking control over your property, this act may not be a formal "taking" under the United States or Louisiana Constitutions.

TAKINGS – WHAT ARE MY RIGHTS?

Q: What is a “taking”?

A: A “taking” means that the government is using its power (called the power of “eminent domain”) to take ownership or use of your property for another purpose. While no specific plans to redevelop New Orleans have been approved yet, several government agencies may try to use their authority to take private property and use it for something else. Several government agencies might be able to use this power, including the City of New Orleans, the Louisiana Recovery Authority, and, possibly, a federal corporation called the Louisiana Recovery Corporation that Congress is considering creating.

Q: Can the government “take” my property for a public use?

A: Yes, but under the Constitution, “public use” can be defined very broadly to include a variety of things, including “economic development” (uses by private parties for purposes determined to benefit the public).

Q: Am I entitled to notice if the government takes my property?

A: Yes, although the notice may not necessarily come before your property is taken. As with notice with respect to the demolition of buildings on your property, you should let the government know – in writing – of how you should receive notice if you are not living at your property in New Orleans. You should provide your identity, current residence, and identify the property you own. Provide the City with as much contact information as possible: your physical address, a mailing address if different, home, work, and cellular telephone numbers if you have them, and any e-mail address you have. If you do not intend to abandon your property, tell the City that you have not abandoned your property.

Q: How should I communicate with the government?

A: All communications with the City or any governmental entity should be in writing. You should keep a copy of letters you send them, as well as any letters they send you. If you have any telephone conversations about your property, you should take notes identifying who you spoke with (including name and what government branch or department that individual is employed by), noting when the conversation took place, and recording what was said.

Q: How should I challenge any plans with respect to my property?

A: For all action the City notifies you that it intends to take with respect to your property, contact the New Orleans Department of Public Safety and Permits. You may also be able to get assistance from the Lawyers' Committee for Civil Rights Under Law (the Committee's Web site is www.lawyerscomm.org, and its telephone number is (202) 662-8600) or the Advancement Project (whose Web site is www.advancementproject.org, and telephone number is (202) 728-9557). [we should include local legal aid offices as well as the agency designated under the recent Supreme Court of LA order to provide pro bono assistance]

Q: If the government takes my property, am I entitled to compensation?

A: Yes, both the Louisiana and United States constitutions provide for the right to compensation if your property is taken.

Q: How is compensation for property calculated?

A: In the past, when the government has taken property, courts have used many different ways of calculating what "just compensation" for the property is. Those ways have included the market value of the property just before the time of taking as determined by the value of similar properties, the value of the best use of the property, or the cost of replacing the property.

ACCESS

Q: What if I do not have access to my property?

A: In any letter you write to the City, you should request that the City tell you in writing whether you can access your property to inspect it, and if not now, when you can do so.

OTHER GOVERNMENT PLANNING POWERS

Q: Does the government have other powers that may affect me?

A: Yes. Local, state, and federal governments are considering implementing other programs that may affect your property. Currently, each of these programs is meant to be offered on a voluntary basis only. These programs include a voluntary sale of your property to the government and a concept known as “usufruct.” Under a usufruct proposal, the government would rebuild the homes of property owners without the money or desire to do so. After rebuilding, the government will rent the property to essential workers and their families and possibly to other citizens for a set period of time. After that period of time, the property owner can return to his or her property but must repay the government for all improvements made to the property. If the owners choose not to or cannot pay for the improvements, the government would sell the property and share in the profit or loss with the owners. Such a plan is intended to be offered on a voluntary basis. At the present time no such plan has been adopted but there are such plans under consideration.

Although you are guaranteed certain rights with respect to your property, you should take at least the steps identified above to protect your rights and demand that they be respected. You should do this whether you have real estate or significant personal property located in areas affected either directly or indirectly by Hurricane Katrina.