

ECONOMIC BRIEF NO. 22

# *Understanding Private Property*

This series of economic briefs explores fundamental concepts in economics and community and economic development.

Private property is fundamental to a market economy. Indeed, without private property there would be nothing to buy and sell in a market economy. But what is property?

A great many persons have a notion of property as something absolute. The statement "By darn it's my property and I'll do with it as I dang well please" represents a widespread, but mistaken understanding of what property is.

A proper understanding of

routine basis.

Fundamentally, property involves the legal right to use a thing for one or more beneficial purposes and to call upon the power of the state to exclude others from using that thing for those purposes. Without law, there is no property. Without government, there is no property.

So it follows that a person does not own a thing itself but rather owns a set of rights for exclusive use that are recog-

nized and sanctioned by law and enforced by government. That set of rights might be quite large, as it is in the fee-simple ownership of land, or very small, as in the case of a transit easement across a field. Yet in no case does that set of rights extend so far as to entitle a property owner to do things with property that threaten the public health and safety.

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While all property rights are exclusive, no property right is absolute. The owner of property has rights to use it in certain ways, but does not have the right to use it in any ways that threaten public health and safety. Just what threatens the public health and safety de-

pends upon circumstances and is often open to debate. Placing a pig pen behind one's house or keeping chickens might not threaten the public health and safety if one lives in a rural area without close neighbors. But these actions might threaten the public health and safety after neighboring land is subdivided and filled with families.

Restrictions on property owners to protect the public health and safety do not deprive those owners of their property rights since they never had the rights to threaten public health and safety in the first place. On the other hand, the U.S. Constitution forbids governments to take private property for public benefit without due process and just compensation. The key phrase is public benefit. Government can restrict property owners from doing certain things that cause public harm, and the property owners are not due any compensation because they never had the right to cause public harm. But if government wants to create a public benefit like a highway or a park, it is a different matter. Then owners of property used in creating the benefit must receive full and fair compensation because something that they once had is being taken.

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property must focus on two attributes of all property:

- 1) To the extent that there is any property right, it is an exclusive right, that is, a right to exclude. There is no point to owning something if anyone who wants to use it can do so at will.
- 2) A true property right must be enforceable at law. What one holds and possesses only by his or her own strength is not property; the sheriff or the police must be available to defend one's rights on a