PROTECTING YOUR PROPERTY RIGHTS

What are my property rights and how are they protected?

- US Constitution
  - Fourth Amendment says: “The rights of people to be secure in their persons, houses, and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue, but upon probable cause . . .”
  - Fifth Amendment says: “Nor shall [anyone] be deprived of life, liberty, or property without due process of law; Nor shall private property be taken for public use without just compensation.”

- Virginia Constitution
  - Article I, Section 11 says: “No person shall be deprived of his life, liberty, or property without due process of law and the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. No private property shall be damaged or taken for public use without just compensation to the owner thereof. No more private property may be taken than necessary to achieve the stated public use. Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. The terms “lost profits” and “lost access” are to be defined by the General Assembly. A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services.”

- Virginia State Code 56-49.01 (Wagner Bill-2004) Natural gas companies; right of entry upon property
  - Gives natural gas companies the right to survey private property without owner permission to “satisfy any regulatory requirements” and to select “the most advantageous location or route of its works” if certain conditions are met. (Conditions language so jumbled it can’t be met.)
  - Certified intent to survey and intent to enter letters must be sent to the landowner in a specified timeframe and must give dates of the intended entry for survey. (Two court cases filed.)
  - If conditions met, entry will not be deemed a trespass. The natural gas company must reimburse the owner for any actual damages resulting from the entry.

Will Dominion survey my property if I did not give them permission?

- Dominion has said they will not survey without owner permission. They say they will try to negotiate with the landowner or get a court order to enter the property.
- Important to send a written letter to Dominion clearly stating that you do not want your property surveyed and you will consider it a trespass if they do so without your permission.
- If Dominion gets a court order, it is not because you have done anything illegal. Quite the contrary, they are getting it because they do not think Virginia law clearly gives them the right to enter your property without your permission. They know only a court can determine if they have that right.
- Refusing survey hinders the utility company’s ability to chose a route and meet regulatory requirements.

What does eminent domain mean and when can Dominion use it?

- Eminent domain authority can only be granted by a government agency.
- It is used when private property is taken for public use.
- The taking can only be done through due process and the owner must be justly compensated.
- The Federal Energy Regulatory Commission (FERC) is the only one who can grant eminent domain authority for interstate natural gas pipelines. Dominion can only use eminent domain if FERC approves the Atlantic Coast Pipeline (ACP). Earliest possible approval and use of eminent domain is 2016.

If the ACP should be approved by FERC, do I have to accept what the utility company offers me for my property?

- NO. You can ask for a judge or jury to decide the just compensation for your property.
- Eminent domain lawyers do not get paid in advance. They are compensated by taking an agreed to percentage of the settlement you receive from the utility company.
- Telling the utility company that you plan to take them to court could help convince them to use an alternate route or discontinue the project altogether. It is costly (time and money) for the utility company to take landowners to court—that is why they will try to get you to settle out of court.
SENATE BILL NO. 663
Offered January 23, 2004

A BILL to amend the Code of Virginia by adding a section numbered 56-49.01, relating to natural gas companies' right of entry upon property.

--------
Patron-- Wagner
--------
Referred to Committee on Commerce and Labor
--------

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-49.01 as follows:

§ 56-49.01. Natural gas companies; right of entry upon property.

A. Any firm, corporation, company, or partnership, organized for the bona fide purpose of operating as a natural gas company as defined in 15 U.S.C. § 717a, as amended, shall have the power to cause to be made such examinations, tests, borings, appraisals, and surveys for its proposed line or location of its works as are necessary (i) to satisfy any regulatory requirements and (ii) for the selection of the most advantageous location or route, the improvement or straightening of its line or works, changes of location or construction, or providing additional facilities, and for such purposes, by its duly authorized officers, agents, or employees, may enter upon any property without the written permission of its owner if (a) the natural gas company has requested the owner's permission to inspect the property as provided in subsection B, (b) the owner's written permission is not received prior to the date entry is proposed, and (c) the natural gas company has given the owner notice of intent to enter as provided in subsection C.

B. A request for permission to inspect shall (i) be sent to the owner by certified mail, (ii) set forth the date such inspection is proposed to be made, and (iii) be made not less than 15 days prior to the date of the proposed inspection.

C. Notice of intent to enter shall (i) be sent to the owner by certified mail, (ii) set forth the date of the intended entry, and (iii) be made not less than 15 days prior to the date of mailing of the notice of intent to enter.

D. Any entry authorized by this section shall not be deemed a trespass. The natural gas company shall make reimbursement for any actual damages resulting from such entry.

Legislative Information System