Governor Murphy Signs Executive Order 113 Authorizing the Taking of Private Property to Combat the COVID-19 Crisis

Client Alert

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By: Paul L. Croce and James A. Robertson

On April 2, 2020, New Jersey Governor Phil Murphy issued Executive Order 113, which authorizes the New Jersey State Director of Emergency Management, in consultation with the Commissioner of the New Jersey Department of Health, to exercise the full authority afforded to the Governor under the New Jersey Civil Defense and Disaster Control Act to take or use personal services and personal and real property for the purpose of protecting or promoting the public health, safety or welfare.

Neither Executive Order 113 nor the Disaster Control Act identify the specific property to be subject to taking, other than to indicate it may include "medical resources." Rather, the Disaster Control Act provides broad authority to commandeer and utilize any services or property "necessary to avoid or protect against any emergency." Executive Order 113 references the Governor's previous Executive Orders, however, providing insight into the types of property which are likely to be taken.

Executive Order 109 requires all businesses and non-hospital healthcare facilities to submit an inventory to the State of the Personal Protective Equipment (PPE), ventilators, respirators, and anesthesia machines in their possession that are not required for the provision of critical healthcare services. Similarly, Executive Order 111 requires all healthcare facilities to report, on a daily basis, data concerning their capacity and supplies, including available beds, ventilators and PPE. It appears that the reporting requirements in the previous Executive Orders were intended to identify the location and scope of the property which may be commandeered under Executive Order 113. While the items identified in the previous Executive Orders are the most likely to be commandeered under Executive Order 113, it is unlikely they will be the only such items.

Those whose property is appropriated will not be left without recourse, as both Executive Order 113 and the Disaster Control Act require the payment of just compensation for any property taken. The Disaster Control Act establishes emergency compensation boards for each county. Any party believing it is entitled to compensation

for property or services taken under Executive Order 113 may file a petition, naming the State as a defendant, with the emergency compensation board in the county where property was located when taken. A copy of the petition must also be served upon the Attorney General. The emergency compensation board will schedule a hearing to fix the amount of any award, to be paid within one year of the board's decision.

To the extent a petitioner believes they have been aggrieved by the decision of the emergency compensation board, they may file an action for such compensation against the State in the Superior Court of New Jersey pursuant to the practices and procedures applicable to condemnation proceedings.

While the State has set a procedure for obtaining compensation for any property taken, an aggrieved party must not sit on their rights. Indeed, a petition for compensation shall only be permitted to be filed with the emergency compensation board for a period of one year following a declaration by the Governor that the emergency period has ended. Accordingly, time is of the essence in seeking compensation.

Related Attorneys

Paul L. Croce

Counsel

973.577.1806

Email

James A. Robertson

Partner

973.577.1784

Email