

responsible, to act in the best interests of the town and to avoid any conflict of interest when creating a contract for the town. As in all matters that come before the board, it is best to avoid even the appearance of impropriety. Remember, too, that while the board has the authority to purchase property on behalf of the town, it is ultimately the voters who will approve the expenditure of money to complete the purchase. In situations where a purchase opportunity comes up before the voters have appropriated the necessary funds, selectboards often incorporate a clause into the purchase agreement that makes the purchase contingent on town voter approval (at the next special or annual meeting) of the necessary funds. This guarantees that the town does not lose the opportunity to purchase the property while waiting for approval of the purchase funds.

#### **E. SALE OF LAND**

Real estate owned by the town, village or town school district may be conveyed by an agent who is either elected or appointed for that purpose. 24 V.S.A. § 1061. This office is different from that of “town agent” described in 17 V.S.A. 2646(11). The authority to sell town property derives from the same sources as the authority to purchase land that were mentioned above. In 1994, however, the Legislature took up the issue of municipal authority to sell real estate. In the end, the Legislature stopped short of taking away the selectboard’s authority to sell, but it did add several procedural steps to the process of selling town land.

These steps are found in 24 V.S.A. § 1061. According to this section, notice of the terms of the proposed sale must be posted in at least three public places in the municipality and published in a local newspaper. If petitioned within 30 days of the posting and publication, the selectboard must ask the voters at the next special or annual meeting whether or not the town should sell the property. As an alternative to this procedure, the board may go directly to the voters and present the question for approval at an annual or special meeting. For boards faced with a time constraint on a sale and interested in saving the cost of a special meeting, the first procedure is preferable (assuming no petition is filed).

There are several exceptions to the requirement that boards follow the above procedures: if the sale is directly related to highways, public water, sewer or electric systems, or if it involves real estate used by housing authorities under 24 V.S.A., Chapter 113. Also, a town or village that has provisions in its charter addressing the conveyance of real estate is subject to the charter provisions where they conflict with the statute. Finally, 24 V.S.A. § 1061 does not impair a municipality’s ability to deal with land it holds in a fiduciary capacity (i.e., holding a mortgage, land acquired through delinquent taxes, land held in trust, etc.).

Note, too, the provisions of 16 V.S.A. § 562(7), dealing with the purchase and sale by the school board of school buildings or sites. This statute requires the school board to seek voter approval before buying or selling school property.

The sale of glebe land is a special case governed by 24 V.S.A. §§ 2401 et seq. and discussed in Section B above.

#### **F. EMINENT DOMAIN**

The concept of eminent domain balances the power of the government to take private land for public use against the right of the private landowner to receive just compensation for the taking