

What you should know about eminent domain and condemnation

In certain cases, the government has the right to take your property for the construction or development of a public project. These public projects commonly include highway or roadway expansions, redevelopment projects, utility easements, parks and schools, and a number of other public improvements. The government's power to take private property is referred to as the power of eminent domain, and the procedure by which the property is taken is ordinarily called the condemnation process.

This pamphlet will try to answer some of the questions you might have if you are confronted with this situation.

Frequently Asked Questions

What should I do if the government tells me that it intends to take all or part of my property?

As a general rule, there is no harm in cooperating with the government, within certain limits. Feel free to confirm basic or public information about your property, or to grant access to the property so that the government may perform an appraisal. However, we suggest that you exercise care in providing detailed financial information at this early stage. At the same time, obtain from the government as much information and documentation about the project as possible. You should photograph your property to document its condition before the construction begins.

Beyond these general guidelines, you should consult with an attorney early in the proceedings. Our firm will not charge you for an initial consultation.

Can I stop the government from taking my property?

The answer to this question is usually "no." The government has the power to take your property if it is needed for a legitimate public project. The courts will usually defer to the government's decision that your property is necessary for its project. That said, there are cases where the government has clearly overstepped its authority, and we have successfully opposed public projects in those cases.

Recently, the Legislature changed the law so that now the government may not take property solely for economic development purposes. Before property can be taken for development purposes, the government must show that the property is blighted or that it will serve some other public use or purpose.

So what are my rights?

The short answer to this question is that, in most cases, you have the constitutional right to receive "just compensation." This constitutional guarantee means that you are entitled to recover the "fair market value" of your property loss. If all of your property is being taken (i.e., a total take), you should receive the fair market value of your entire property. If only part of your property is being taken (i.e., a partial take), you are entitled to receive the fair market value of any and all losses caused by the partial taking of your property. Most condemnation cases end up as a dispute over the compensation you are entitled to receive. The government will make you a formal written offer based on its estimate of the damages, but—in our experience—this offer frequently will not fully or fairly reflect all of your damages.

What is the process if I do not accept the government's offer?

If you believe the government's offer is too low, you can and should try to negotiate a better deal. The reality is, however, that in most cases it will be to your advantage to retain an attorney. Your attorney will probably recommend that you hire your own appraiser to conduct at least a preliminary evaluation of the damages. This evaluation will usually provide a more favorable basis for trying to settle the case. If it turns out that the case cannot be settled, the preliminary evaluation provides the groundwork for the more detailed appraisal that you will need in order to proceed with the case.

If the case cannot be settled, a judge will appoint three condemnation commissioners to conduct a hearing to determine your damages. These commissioners (who are experienced in real estate matters) will, after the hearing, file an award of

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damages. If either you or the government are unhappy with the commissioners' award, then you or the government may appeal for a jury trial. Historically, about 90% of the cases that go through a commissioners' hearing settle before they go to a jury trial.

How much will it cost to hire an attorney?

Most firms will work with you to arrive at a fee agreement that makes sense for your case. In some cases, you will be better served by retaining an attorney on an hourly rate basis. In other cases, you may prefer a contingent fee agreement, where your attorney will only receive a percentage of your recovery in excess of the government's offer for your property. It might also make sense to enter into a combination hourly rate/contingent fee arrangement. You should raise this question at your initial meeting with your attorney.

NOTE: You may be entitled to reimbursement of your attorney and appraisal fees if your award for damages is more than \$25,000 and the award is at least 20% higher than the government's last written offer before filing the petition to condemn your property.

How much will it cost to hire an appraiser?

You may want to hire your own appraiser to conduct at least a preliminary evaluation of your damages. In most cases you will be reimbursed up to \$1,500 for residential property and \$5,000 for other property for this expense (unless the case goes to trial, in which case the court may award you additional amounts for this expense). The actual cost to the property owner will vary considerably, depending on the type of property involved, what appraiser you hire and whether or not the case can be settled at an early stage. We can recommend appraisers who would be best for your particular case.

What if I have to move my business or home as a result of the government project?

If you are displaced by a government project, you may be entitled to the loss of going concern value of your business, including patronage and customer goodwill.

Also, you are entitled to receive a variety of relocation benefits and monetary payments. These payments are "over and above" the just compensation you will receive for the taking of your property and loss of going concern. The relocation benefits are set forth in detailed federal regulations. Our attorneys have received extensive training in the federal regulations and have handled relocation cases for both businesses and homeowners.

Move ahead confidently

For several decades Leonard, Street and Deinard has represented property owners to make sure that they are treated fairly when the government takes property.

We hope that this pamphlet answers some of your questions about eminent domain, and that you will consider allowing us to represent you if your property is in the path of a government project.

Please contact any of the following attorneys if you have any further questions:

- James R. Dorsey (612) 335-1631
- Marc D. Simpson (612) 335-1504
- Stuart T. Alger (612) 335-1873

You can also learn more at www.leonard.com.

This brochure is intended to provide general information on eminent domain and condemnation. Do not rely upon the information in this brochure as legal advice, either for general legal purposes or in connection with a particular case. Receipt of this brochure does not create an attorney-client relationship between Leonard, Street and Deinard and the recipient.

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