

Attorney Article

A Property Owner's Guide to the Condemnation Process and Just Compensation in the State of Tennessee

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Introduction

This guide is to give you a basic understanding of what is involved in the condemnation process. While we hope this guide will prove helpful to you during your case, there are some important matters that you should keep in mind:

The questions and answers in this guide are -- by necessity -- general and not intended to apply specifically to your case. The facts of every case vary. Please utilize this guide as it was intended to be used: as a general overview and not a precise opinion on any particular issue in your case.

This guide should not serve as a substitute for consultation with an attorney. This summary is intended to serve as only one of several means of providing you with the information you need to understand your case and enable you to make well-informed decisions. Whenever you have a specific question about the condemnation process or the particulars of your case, always discuss it with a qualified eminent domain attorney.

What is condemnation?

Condemnation is the power to take private property for a public purpose. The power of condemnation is also known as the power of eminent domain.

Who can take my property?

Federal, state and local governments have the power to condemn private property, and this power has been delegated to many governmental agencies. Thus, the Tennessee Department of Transportation may have the power to condemn your property. The government has also delegated the power of eminent domain to public utilities and in certain, very limited, situations to private companies and individuals.

Can the state take my property for any reason?

No. The condemning authority may only take your property for a public purpose, not a private purpose.

Who decides whether the condemnation of my property is for a public or private purpose?

Only a judge can decide. Even if the condemning authority believes the condemnation is for a public purpose, a judge can rule otherwise and deny the government the right to take your property.

How will I know whether the government really wants to take my property?

In most cases, you will learn far in advance of the proposed construction date of a project which may require the taking of your property. Your first knowledge of the project may come from reading a newspaper article or talking to a neighbor.

In many cases, the public agency will hold a public hearing at which the agency will describe the boundaries of the project, so that you will be able to determine whether your property is needed for the project.

The condemning authority will also generally give you a written notice that your property is needed and will give you a written offer to purchase your property prior to filing a condemnation action.

Does the state or condemning authority have the right to take my property?

It depends. The state of Tennessee has the power of eminent domain. Many counties and most cities in Tennessee also have the right of eminent domain. In addition, many state and local governmental agencies and public utilities have the power of eminent domain. In many cases, it is important to review the condemning authority's right to exercise the power of eminent domain.

While a specific governmental body or public utility may have the power of eminent domain, that does not necessarily mean that it has the right to take your specific property.

If you do not want your property taken, only the court can require that your property be condemned. If the Tennessee Department of Transportation, for example, claims that it needs a portion of your property to construct a road, it may not take your property unless you give your consent or the court enters an order allowing the taking.

If you do not consent to the condemnation, the condemning authority must prove to the court that your property is reasonably necessary for a public project. The burden on the landowner challenging a condemnation is very high. While condemning authorities have most often prevailed in litigation to take property, there have been several occasions in which the courts have denied the condemning authorities the right to take the property they seek.

Should I be doing anything before my property is condemned?

Once the taking actually occurs and papers are filed, it may be too late to make critical decisions that could have an impact on your ultimate compensation. Documents establishing the legal status of ownership and any leasehold interests, for example, should be reviewed and sometimes modified up front. Under your attorney's guidance, input from an appraiser or other consultants can often be obtained quite inexpensively. Your response even to preliminary overtures from government representatives can affect the final outcome.

The impact of a road project often involves more than initially meets the eye. Beyond the value of the square footage taken, often overlooked are such things as environmental problems and a serious reduction in value of the property that remains.

In general, it is wise for an owner to seek the advice of an attorney when considering precondemnation actions, since the actions a property owner takes before the property is condemned may have a significant impact on the outcome of the case.

The property owner should avoid taking positions, especially written positions, which may be used against him or her in the condemnation proceeding. If the property owner contests the tax assessment, for example, stating that the property is worth less than the county's or city's estimate, that appeal might be used against the property owner if, in the condemnation case, the property owner asserts a higher value.

Careful consideration should be given to entering into contracts of sale or sale offers that might attach a value to the property in a condemnation proceeding. If the property owner decides to obtain an appraisal of his or her property that is the subject of a taking by eminent domain, it is important to hire a qualified real estate appraiser who knows how to appraise property in a condemnation proceeding.

Leases and other agreements signed by the property owner prior to condemnation may reduce the portion of the final award to which the property owner will be ultimately entitled. The property owner's attorney should be consulted on condemnation clauses contained within these documents.

The property owner should maintain the appearance and condition of the property. Visual impressions, even to sophisticated professionals, are important, and the condemning authority's appraisers will be inspecting the property long before it is condemned. The property owner should always keep the property looking as good as possible and never defer maintenance. Landscape and curb appeal are important. Improvements made to the property will affect its fair market value, upon which just compensation is based.

Favorable land use permits often enhance the value of the property. Where it is practical and prudent, the securing of a rezoning, plat approval, or building permit may result in a higher valuation of the property. The property owner should not interrupt development plans solely because of a pending condemnation. The decision of whether to apply for land use permits must always be weighed against the effect that a potential denial will have on the case. It is thus wise to seek the advice of an attorney before proceeding with a land use application.

How is the property appraised?

Appraisers generally use three methods of appraisal to estimate the value of real estate: the market approach, the cost approach and the income approach. Appraisers also determine, during partial takings by the condemning authority, the extent (if any) of damages to the remaining property.

Often the greatest element of compensation is not for the property taken, but for damages to the remainder. This is particularly true in road widening cases and instances where the condemning authority is only acquiring an easement. It is important that you retain an appraiser who understands the concept of damage to the remainder and will include this damage in his or her appraisal.

If I don't agree with the condemning authority's offer, who decides how much money I get?

In Tennessee, state law allows the landowner to request that a jury of twelve (12) people in the community determine the amount of just compensation to be paid to the owner for the taking of his or her property through condemnation and incidental damages, if any, caused to the owner's remaining property. The jury determines the amount of compensation due the owner for the taking of property.

Do I pay taxes on my award?

It depends. A condemnation is considered an involuntary conversion under the Internal Revenue Code and is treated differently from other sales of property.

You will have a period of time to reinvest the proceeds of the case and defer your tax obligation until a later date.

If a portion of your award is considered severance damages (compensation for damages to property you continue to own), you may be able to defer the payment of taxes on that portion of your award.

Portions of the award attributable to interest are taxed as ordinary income.

The tax-deferral benefits of condemnation are also available to sales in lieu of condemnation. You may thus defer the payment of taxes on a sale to the condemning authority even if you settle the dispute without the government being required to file condemnation action. However, it is important that any such settlement confirms that the property was transferred under threat of condemnation.

You should consult with your accountant and/or your attorney about the tax consequences before agreeing to the sale of your property to a condemning authority.