

Eminent Domain

For a sample case list, [click here](#).

The Eminent Domain Process

Introduction

Eminent Domain is the power of the government to take private property for a public purpose. Eminent domain is also referred to as condemnation. Federal, state and local governments all have the power to condemn private property. The power of eminent domain has also been delegated to governmental agencies such as the Florida Department of Transportation and public utilities.

Your Rights

The Florida Supreme Court has referred to the power of eminent domain as being one of the harshest remedies known to law. Eminent domain is the only legal proceeding where the government can force you, the property owner, to court without even an allegation that you have done anything wrong. Under Florida law, when the government attempts to take private property, you are entitled to:

- Contest the taking of the property.
- Full compensation if a judge determines that the property may be taken.
- Full Compensation requires a practical attempt to put you back in the same financial condition after the taking that you were in before the taking.
- Be represented by an attorney and engage expert witnesses, such as appraisers, engineers, and accountants who specialize in eminent domain matters.
- Have the condemning authority pay for your attorneys' fees and expert witness costs.

Florida has a rich tradition of protecting the right to own private property. The rationale for requiring the condemning authority to pay for your attorneys' fees and expert costs. This levels the playing field to put you on equal footing with the condemning authority.

Three Phases Of The Condemnation Process

There are three (3) distinct phases of the condemnation process. They are: (1) Pre-condemnation planning; (2) Pre-suit acquisition; and (3) Condemnation litigation.

1. Pre-condemnation Planning

Pre-condemnation planning begins when the government considers what type of public improvement it wants to construct and where it should be located. The planning process can take from a few months to many years. Typically, the process involves at least one open hearing where the public will get an opportunity to voice their comments on the type of project or route selection. When making a route selection or deciding on what land to condemn, the agency must consider the following factors: availability of alternative routes, costs, environmental factors, long-range planning, and safety considerations before proceeding to the acquisition phase.

It is also critical for you to do pre-condemnation planning. At this stage of the process there are a number of things that you can do that will either increase or decrease the likelihood of a successful outcome.



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- Seek the advice of an experienced eminent domain attorney. The government has its attorneys and experts working on the case, you should too. Because your actions or inaction during the pre-condemnation phase can either help or hurt your case, you should assemble your team of professionals to ensure that your existing property rights are properly protected.
- Maintain the appearance of the property. Even to a sophisticated professional, appearances are important.
- The value of your property may be enhanced by successfully petitioning for a zoning or land use change. For purposes of condemnation, however, your property is valued at its "highest and best" use and a zoning change may not be necessary. Before applying for any change in either zoning or land use, you should consult with your attorney to weigh the benefits versus the effect that a denial would have on your condemnation case.
- Review any mortgages or leases on the property. These documents contain condemnation clauses that will impact the division of any final award.
- Make sure that the property remains free from any contamination, or if the property is contaminated, consult with your attorney to discuss your options for cleanup and remediation.
- Avoid taking any actions, especially in writing, which can be used against you later. For example, if you challenge your tax assessment, the government may use that against you if you claim a higher value in the condemnation case.
- Do not provide the government or any of its experts with any information (leases, tax returns, financial statements, old appraisals) without first consulting with your attorney. Anything you provide might be used against you to lower or possibly eliminate your claim.

2. Pre-suit Acquisition

Pre-suit acquisition begins when the condemning authority formally notifies the owner how much property it is seeking to acquire and makes its initial offer to purchase the property. Typically, you will receive a letter from the condemning authority stating how much property it is seeking to acquire. That letter is followed up with a letter from the condemning authority's real estate appraiser who has been hired to value your property. Remember, be careful providing the appraiser with any information until you discuss it with your attorney. Once the appraisal is complete, the condemning authority will make an initial offer based upon the appraised value of the property.

If you are operating a business on the property, you may also be entitled to make a claim for damages to your business caused by the taking. The business owner has 180 days after being notified by the condemning authority that the property is being taken. The business damage offer must:

Include an explanation of the nature and amount of the claim.

- Be prepared by the business owner, CPA or business damage expert familiar with the operations.
- Provide business records that substantiate the claim.
- If no offer is made, the court must strike the business owner's claim unless good faith justification is found for failure to submit the offer.

The condemning authority then has 120 days to respond with a counter offer. If either the business operator or property owner is able to negotiate a settlement, then a closing is scheduled and your case is concluded. In the event that a pre-suit settlement cannot be accomplished, then the condemning authority will file a lawsuit to condemn your property.

3. Condemnation Litigation

In the event that a negotiated settlement cannot be reached between the condemning authority and the property or business owner, the next step would be for the condemning authority to file a lawsuit to "take" the property. Condemnation litigation is generally a 2-step process. The first step involves the right to take your property, and the second step determines the amount of compensation you will receive.

If the court grants the right to take your property, then the condemning authority will be required to deposit its appraised value into the registry of the court and title to the property transfers. You have the right to withdraw the deposit and still claim that you are entitled to more money.

If the parties are still not able to negotiate a settlement, then the case will be tried in front of a 12-person jury. Each side

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will present its case, and then it is up to the jury to determine the amount of compensation to be awarded.