

Eminent Domain

Know your rights



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NEAL & LEROY is one of the oldest and largest law firms practicing in the field of eminent domain/condemnation. The unique perspective of our lawyers is based on years representing property owners, as well as condemning authorities.

Our unique comprehension of the law from both the property owners' side, as well as from the side of the condemning authority, gives us the knowledge, experience and wisdom that set us apart from other firms. Our familiarity with the condemning authority's procedures allows us to negotiate quickly and effectively on your behalf. This ability to act expeditiously minimizes the disruption to your business or home.

We are proud of our accomplishments, and pledge to deliver the same superior, quality and cost effective legal services to you.

The material enclosed is to assist you in better understanding the acquisition process. If you have any questions, please do not hesitate to contact our office to arrange for one of our attorneys to come out and meet you to discuss these matters further.

Please note this booklet is for educational and informative purposes only and does not constitute legal advice.

NEAL & LEROY, LLC

ARE YOU ABOUT TO HAVE YOUR PROPERTY TAKEN
BY THE GOVERNMENT? IF THE ANSWER IS YES,
YOU HAVE RIGHTS THAT YOU NEED TO KNOW.

You may have received a registered letter, been contacted by a government agency, or received a call from an appraiser informing you that your property is subject to eminent domain or condemnation.

The reasons for the government's acquisition of your property can be varied. Schools, parks, roads, highways, police and fire stations, public buildings, subways or even redevelopment of blighted areas are examples of projects in which the government acquires property through eminent domain.

The letters and notices may leave you feeling as though you do not have much say in the matter. The truth of the matter is, you have rights.

Our firm's primary practice is eminent domain. We have litigated cases for both property owners like you, and for government entities who have acquired property. Our attorneys are experienced and are well-versed in the many legal issues presented in such cases.

In this booklet we'll answer frequently asked questions that we've encountered while representing property owners in eminent domain cases. You'll also find important tips for actions that you can take immediately to protect your interests. Additionally, to help keep track of information

and contacts important to your case, we have included a convenient log section.

The following Frequently Asked Questions (FAQ's) are general questions concerning eminent domain law. Since each case is different, the general answer may not apply in all cases and should not be taken as legal advice.

If after reading this booklet there are any additional questions that we can answer for you, please feel free to contact us without obligation.

Frequently Asked Questions

What is Eminent Domain?

Eminent domain, also referred to as condemnation, is the right of the government to take private property for a public use. The Constitution requires the government to pay you just compensation if it takes your property. You have these rights regardless of whether you own a business or a home. You also have these rights regardless of whether you own or lease the property the government is seeking to acquire.

Does the government have the right to take property even if I don't want to move or sell my property?

In most cases, yes. The constitution allows governments to acquire properties for public projects necessary for the functioning of government. Such projects include public roads, school sites, police stations, libraries, military bases and sanitation facilities. In other cases certain utilities may

also use eminent domain through the government to acquire properties for rights-of-way. If a government attempts to exercise eminent domain for improper purposes or has not followed the correct procedures, the owner may challenge the government's right to acquire the property. If successful, the property owner may be entitled to reimbursement by the government for attorneys' fees spent on the case.

Will I receive prior notice of the government's decision to acquire my property?

Usually, no. In some cases, a government agency makes a decision without public discussion about where to locate a project and which properties are to be acquired. In other cases, the local legislative body, such as the village board or city council, makes the decision at an open meeting. However, many times there is no process by which an owner may participate directly in the decision to acquire property, or know about it in advance.

What are my rights as a property owner?

You have the right to be represented by an attorney who is familiar with issues of real estate valuation, complicated legal issues, government procedures and individual property rights. In government acquisitions, the property owner will be faced with government attorneys and government staffed real estate agents whose full time job is land acquisition. For most property owners, legal representation is advisable. You also have a right to negotiate just compensation along with other terms of the government's taking of your property. You have the right to notice before your property is taken.

Will the government offer a fair price for my property?

The government will offer a price, based on a fair market value appraisal. Since there are many variables involved, the thoroughness and accuracy of the appraisal may be challenged. An appraisal is not a science and even qualified government appraisers may make mistakes or undervalue the property. It is always wise to scrutinize the government's offer carefully and seek a second opinion from an expert.

Will I be required to go to court?

Not necessarily. In most cases, the government and the property owner can agree on the amount to be paid for the property and other settlement terms through negotiation. Cases go to court when the government and property owner have different ideas about what is fair. If you go to court you have the right to have the amount of compensation determined by a judge or a jury.

Should I get an appraisal?

You are entitled to retain your own appraiser even if the government already has an appraisal, which it almost always does. An appraisal is an opinion of value given by an expert, typically a professional real estate appraiser. It's a very good idea to obtain an opinion of value from a person experienced in condemnation appraisals. An experienced attorney can assist in the selection of the right professional appraiser or real estate expert. This will help you and your lawyer determine the appropriate value to be put on your property, whether in negotiations or in court.

Will the government pay the fees of my attorney and appraiser?

No, except in the rare case that the government does not complete the acquisition.

Do I need to hire an attorney?

A property owner may represent himself or herself in negotiating with the government. However, an attorney, particularly an attorney experienced and knowledgeable in eminent domain, can offer guidance and counsel. In addition, an attorney is familiar with the procedures and practices of government and is able to identify the appraisers and other experts who will be most helpful in representing the owner's case.

Aren't attorneys expensive?

Attorneys are paid for their work. Frequently, however, the attorney's work pays for itself. This is because the attorney may be able to obtain a faster price for the owner's property and negotiate a relocation plan (and reimbursements, if available) that better suits the owner. Moreover, attorneys usually do not require a fee payment in advance. Attorneys' fees are frequently handled in the same way as in injury actions.

After an offer has been made, will I be able to negotiate before I am forced to give up my property?

Yes. Although the government's decision to acquire your property is often made without involving the property owner, the government usually makes the first official contact by having the government's appraiser get in touch with the owner. In all cases, the government must first make an offer and attempt to negotiate the just

compensation award before going to court. Before going to court, a settlement can be negotiated. The government hopes to avoid court costs and therefore has some leeway in what it provides. This is particularly true when the owner can provide evidence that the government's offer does not represent the true value of the property. An experienced attorney can be valuable in positioning your case during negotiations for a satisfactory result.

Are there other concerns to be negotiated other than the financial settlement?

Yes. Many areas of the settlement are negotiable. For instance, if a given square footage of your property is being acquired for an access road, an attorney who has experience negotiating with government highway appraisers might be able to move the entrance to a more convenient location or maybe additional landscaping could be negotiated to block the view of the proposed access road. Perhaps the government might be persuaded to acquire less of your property or you may be able to negotiate a later (or an earlier) date to surrender your property to accommodate your particular needs. For example, if you have children who must finish school or if you have a seasonal business, you may be able to negotiate a later date to leave the property. Put simply, the more experience your attorney has at negotiating condemnation cases, the better your chances are of getting a positive resolution of your case.

Will the government take all my property?

Often, particularly in acquisitions for highways and roads, the government may take only a portion of the property, such as a certain number of feet adjacent to a right of way for a roadway widening.

Frequently, the remainder of the property will become less valuable because of the loss of the part taken, such as loss of access, or because the remaining property is less useful than it was prior to the taking by the government. In such a case, the government must pay not only for the amount of property actually taken, but also for the damage occurring to the value of the remainder of the property.

When do I have to move?

Under Federal law, an owner or occupant of real property must be given at least 90 days notice to vacate the property. Illinois law does not provide any minimum. For both Federal and State condemnations, an owner typically may expect to move six months to two years after the acquisition process begins.

Will the government pay my moving expenses?

For Federal or Federally-funded projects, the government must reimburse moving expenses and certain other related costs. This applies to both homes and businesses, whether or not you are an owner or a tenant. Reimbursements are subject to certain rules and limits. For most State and local projects without Federal funding, the government does not usually pay for relocation costs. However reimbursement may be available for installed equipment and machinery, such as walk-in coolers and manufacturing equipment.

What if I can't afford to buy a new home?

For certain low income persons displaced by Federally assisted and some other projects, there are programs that make available housing assistance or even access to new homes.

Must I pay taxes on the award I am given?

Yes, but taxes may be deferred. Generally the money obtained from the forced sale of property to the government in condemnation is treated like money from any other sale. However, a special tax law allows you, subject to certain procedures and exceptions, to invest the money in a new property. Taxes are then deferred until the sale of the new property.

My family and I have lived in this home for generations, we have a strong emotional attachment to it, we would never sell it voluntarily, are we entitled to extra compensation?

Unfortunately, the law only requires the government to pay market value for the property. Market value is measured by what knowledgeable persons would pay for similar property in a voluntary transaction. The government pays for land and buildings, but not for businesses (if businesses can be moved elsewhere) or for sentimental value.

Should I continue to pay real estate taxes and can I continue to collect rent from my tenants?

Yes. You are entitled to collect all the benefits of your property, like rental income and must pay all expenses until the government takes possession or pays for the property. In eminent domain court actions, the government is required to refund real estate taxes from the date of the court filing.

Contact Log

While building and negotiating a case, it is very important to keep a record of everyone you talk with, the date and time you talked and the subject discussed. Use the following log to keep a record of this important information. Copy additional pages as necessary.

Type of contact - phone, personal, mail, e-mail

Date/Time:

Contact Name:

Contact Title:

Contact Phone:

Contact Address:

Subject Discussed:

Type of contact - phone, personal, mail, e-mail

Date/Time:

Contact Name:

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