What is Condemnation?

The term “condemnation” is used to describe the formal act of the exercise of the power of eminent domain to transfer title to the property from a private owner to the government through the court system. This use of the word should not be confused with its sense of a declaration that property is uninhabitable due to defects. Throughout these proceedings, the property owner has the right of due process. After the condemnation action is filed the amount of just compensation is determined in the appropriate county or district court system.

Eminent Domain Protects Citizen’s Rights

Eminent domain is meant to protect the rights of private property owners. For example the Fifth Amendment to the U.S. Constitution was drafted to protect property rights by explicitly mandating limitations on the exercise of eminent domain: “just compensation” must be paid for private property acquired for “public use.” The Fourteenth Amendment established the “Due Process Clause.” This specifies when governments acquire private property they are required to follow well documented procedures. Property must then be devoted to a public use and the property owner must be quickly compensated, making the owner as whole as possible through restoration or remuneration.

How is Compensation Determined?

American courts have held that the preferred measure of “just compensation” is “fair market value,” i.e., the price that a willing buyer would pay a willing seller in a voluntary transaction, with both parties fully informed of the property’s features. Also, this approach takes into account the property’s highest and best use (i.e., its most profitable, legal, and economically feasible use). Just compensation is determined through a process of certified review of a real property appraisal or approved valuation methods.

The Uniform Act

The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, often referred to as the Uniform Act or the URA, was written to ensure fair treatment of those displaced by federally-funded programs.

It also was intended to make the process of determining just compensation standard and uniform. Most states, including Nebraska, have enacted similar legislation which mirrors the language of the URA.

The Negotiation Process

When property is being sought for right-of-way acquisition, the Nebraska Department of Transportation (NDOT) agents will assist in guiding and advising the owner through this process. The procedure starts when an agent sends a packet of information to the property owner(s) and tenant(s). This packet includes a design plan map and the appraisal of the property; additionally a contract, deed, and additional materials are included to help inform you in the acquisition and payment process. If you find the offer satisfactory, the property owner can sign the documents in the indicated places and return them in the postage prepaid envelope.

An agent should call within a few days of the mailing to ensure the offer packet has arrived. The agent will ask to meet with you to explain the details of the project, the valuation and the offer. While the offer is based on the fair market value as established by the appraiser, and just compensation set by the reviewer, it is the property owner’s right to disagree with their findings. The agent may address those concerns and discuss solutions to make the owner’s property rights “whole” again. The owner may present a reasonable and prudent counter-offer.

While the agent has been given deadlines to meet to complete the project, the URA specifically requires the property owner be given a reasonable amount of time to contemplate the offer. In general this reasonable time has been interpreted to be about a month; however the property owner should never feel harassed, pressured, or deceived into making a decision. Occasionally an agreement cannot be reached even after a reasonable amount of time and several contacts between property owner and agent. In those cases the file will be turned over to the Nebraska State Attorney General’s office to file eminent domain procedures.

What is the Eminent Domain Procedure?

This is a general outline of the steps taken to acquire property by eminent domain. This statement should not be considered as a complete statement of all laws and procedures governing eminent domain.

When agreement with the property owner cannot be reached, appropriate documents commencing eminent domain proceedings are filed by the State Attorney General on behalf of NDOT with the County Court where the property is located. The Judge then appoints three local property owners, who are familiar with local real property values, as a Board of Appraisers.

After proper notification to the landowner of the time and place of hearing, the appointed Board of Appraisers views the property and listens to statements of the landowner or his representatives as to their opinion of land value and damages and to statements of the Department of Transportation’s representatives. The appointed Board of Appraisers then files a formal report of their findings of value with the County Court.

While the landowner is not required to attend the hearing, it is in your best interest to do so. The landowner may elect to present a statement to the Board of Appraisers or may wish to retain an attorney to represent him. Unless the landowner elects to retain an attorney, the above described hearing is conducted at no expense to the landowner.

The State shall deposit with the County Court and make available to the property owner the amount of the appraiser award before the State shall take physical possession of the property. If neither party appeals to the District Court, the money is available to the landowner after 30 days from the filing of the award by the Board of Appraisers. The landowner should make inquiry of the County Court as to when the award was filed.

If either the landowner or the Department of Transportation is not satisfied with the report, either may appeal to the District Court for a determination of value by a jury. In the event of such an appeal by either party, it is the usual practice of the landowner to retain an attorney to represent him/her for the jury trial in District Court.

Prior to the hearing date, the landowner may accept the Department of Transportation's offer, and the eminent domain proceedings will be dismissed.



EMINENT DOMAIN

"NDOT understands our responsibility to private property owners. In designing and constructing the most efficient and safest roads systems possible, the department does everything it can to avoid new acquisitions for right-of-way..."

NEBRASKA
Good Life. Great Journey.
DEPARTMENT OF TRANSPORTATION

NDOT Right of Way Division
P.O. Box 94759
Lincoln, NE 68509-4759
1-800 764-0422

What is Eminent Domain?



Eminent Domain is the power of a government agency to acquire private property for public use, following the payment of just compensation to the owner of that property. Action via eminent domain indicates the government is taking ownership of the property or some lesser interest in it, such as a temporary easement. The most common uses of real property acquired through eminent domain are for public utilities, or transportation purposes such as highway right-of-way (ROW).