

# Eminent Domain



## When Your Property May Be Taken

by Frank F. Rennie, IV

The U. S. Constitution allows governmental authorities to condemn property for "public use" provided that the landowner is paid "just compensation" for the property being taken. If your property is being considered for condemnation or eminent domain, you may want to consider some of the following items:

**Public Hearing:** Most eminent domain projects in Virginia will have public hearings prior to plans being finalized. It is important to attend these hearings to get as much information as possible about the planned project, its location and the timing of construction.

**Limited ability to relocate project, but may be influenced:** During the public hearings and at other times during the planning cycle, there may be opportunities to influence the timing, location and necessity of the project. It is important to voice any issues or concerns that you may have during the planning process. Once the project is approved, it is very difficult to change the planned condemnation. It is also important to note the final approval comes through the Commonwealth Transportation Commissioner (road projects), State Corporation Commission (public utility projects) and the County Board of Supervisors (any county project such as schools or utilities). Expressing the public's sentiment to these authorities is important and a necessary part of the planning process.

**Eminent Domain v. sale of property:** Many localities and authorities would prefer to have a voluntary purchase of property rather than going through the court condemnation process which requires approval by elected officials. If an authority is determined to purchase property rather than condemn property, the land owner may be in a position of greater bargaining power.

**Inspecting, surveying, preparing for condemnation:** Virginia law gives a condemning authority permission to inspect and survey property prior to the condemnation project, including soil testing and determining suitability for condemnation purposes. This entitles the landowner to compensation for any disturbance or damage caused by such inspections and surveying.

**Condemnation must be for public purpose:** A few high profile cases have recently highlighted the need for condemnation to be for "public purposes". This is required by the U.S. constitution and has been confirmed by the Virginia legislature. If you have any concern about whether the project is for public purposes, you should consult an attorney who is experienced in condemnation matters.

## Issues to Consider In Determining Compensation

**Correspondence/meeting with agents for condemning authorities:** A condemning authority will usually retain an agent to meet with the landowner to discuss the proposed condemnation and the compensation that the authority is willing to offer. The landowner should be comfortable with all issues before beginning to discuss compensation with the agent, including receiving a copy of the appraisal.

**Necessity of making a firm offer:** Virginia law requires a condemning authority to make an effort to resolve a condemnation case prior to filing any papers in court. This effort includes an offer to pay the land owner for the value of the land taken. The value should be based upon the condemning authority appraisal and should be in writing.

**Appraisal by condemning authority/appraisal by landowner:** Virginia law requires the condemning authority to make an offer that is not less than the appraisal that the condemning authority has received from its appraiser. The condemning authority should also allow the landowner to retain their own appraiser and perform an independent appraisal of the value of any property that is being proposed to be taken. In certain circumstances, the independent appraisal will be paid for by the condemning authority. Having an independent appraisal gives the land owner peace

of mind that the proper value has been represented.

**Elements of compensation:** The landowner's compensation includes two elements:

**1. Value of take:** This is the fair market value of the property that has actually been taken from the landowner for the project. An appraisal is necessary to determine the value of this property. Appraisers' value can differ greatly depending upon circumstances. An independent appraiser is always recommended before agreeing on the just compensation.

**2. Damage to residue:** The second element of just compensation is to determine whether any remaining property has been devalued as a result of the condemnation project. If the landowner's remaining property has been devalued, the condemning authority is required to pay any such devaluation as part of "just compensation". Damage to the remaining property can be calculated by an independent appraiser.

**Issues to be considered:** The following are several issues that should be considered in determining the value of the property taken or damage to the remaining property:

- **Dividing property/road frontage:** Often a condemnation project will divide an owner's property into two separate pieces. This division often results in a devaluation of the entire parcel. This overall devaluation is part of the "just compensation" that is due to the land owner.
- **Curtail/impair development plans:** Often a landowner has development plans that could be affected by the condemnation project. Any devaluation of property as a result of the curtailment of development plans is compensable.
- **Increased/Decreased traffic:** Often when a road project is planned, the volume of traffic will be changed. If this change in volume affects the overall value of the property, this should be compensable.
- There are several other issues regarding valuation that a condemnation attorney can discuss with the land owner.

**Filing a Certificate of Deposit:** After a bona fide offer has been made but a resolution cannot be obtained, the condemning authority is required to file a certificate in order to be able to proceed with condemnation project. Most condemning authorities will file this in the Circuit Court for the jurisdiction in which the property is located. After the money is placed in the court, the landowner is permitted to withdraw the money. The landowner may challenge the amount of just compensation that is due by requesting a jury to determine the value.

**Responding to condemning authority:** If at any time the landowner is uncomfortable with any proposals made by a government or condemning authority, he or she should seek independent legal advice. Many attorneys are skilled in dealing with condemning authorities and in negotiating just compensation for the land owner. Additionally, if a jury is impaneled to make the decision of just compensation, many landowners prefer to have their own legal representation. All condemning authorities have legal representation and most landowners feel that obtaining independent legal advice is critical to obtaining the compensation that they are due.

If your property is being considered for a public project and you would like to discuss your rights, please feel free to contact Frank F. Rennie, IV, a partner at CowanGates, PC. Mr. Rennie has practiced extensively in this area for over 20 years.



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