



Practical Tips for Protecting The Landowner's rights In an Eminent Domain Proceeding:

What Is Eminent Domain & What Is A Property Owner Entitled To In Nevada?

Eminent domain is the power of the government (or other quasi governmental entities, such as public utilities and transportation commissions) to take or condemn property for "public use," without the landowner's consent, upon paying "just compensation." Only in rare circumstances has the power of eminent domain been abused and private property has been taken for a non-public use. In Nevada there are now specific constitutional provisions designed to prevent such abuse. However, the property owner is *always* entitled to "just compensation" for the taking, which may include a number of damages, such as:

- The fair market value of the land taken defined as the highest price the property would bring on the open market;
- Improvements on the property, such as fixtures and equipment;
- Business losses suffered as a result of relocation;
- Costs to relocate;
- Damages resulting from excessive delay or unreasonable conduct by the government;
- Damages to any remaining property negatively affected by the taking; and,
- Interest, costs (such as appraisal fees), and, potentially, attorneys' fees.

What To Expect: The Property Owner's Rights, and Practical Tips For Dealing With The Government

When the government is interested in taking private property through eminent domain, a property owner can expect the following events to typically occur:

- The government agency will express interest in your property and typically send you written correspondence of its intent to appraise your property. The agency will then conduct an appraisal of your property to determine its value. Your first contact regarding the government's interest in acquiring your land may be through its hired appraiser or right of way agent. You have the right to accompany the appraiser during his or her inspection of the property. The property owner must be

given copies of all appraisals of their land prepared by the government before it obtains possession of your land.

- When a property owner suspects the government will take his/her land it is important to keep detailed records on any contact with the government. Protect yourself, keep any information given to you by the government related to its project or your land and make notes of who you talk to, when you talk to them, and what was said. Also, remember the government is taking your land, it has duties to you the property owner, not the other way around.
- The government agency will make a written offer to purchase your property for what it deems “just compensation” based on its appraisal. The government’s initial offer does not have to be accepted and is usually below true just compensation. A property owner should always consult an attorney familiar with the practice of eminent domain before agreeing to any offer made by the government.
- When the government seeks to take private property for a public use through eminent domain the property owner is entitled to “just compensation.” In Nevada, just compensation is defined “as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.” The property owner’s land must be valued at the “highest price the property would bring on the open market” based on its “highest and best use.”
- Typically, the government agency will adopt a “Resolution of Need and Necessity” at a public hearing, which is the government’s formal decision to acquire property by eminent domain. In order for the resolution to pass, the agency must determine that the project: (1) requires your property; (2) is necessary and in the public interest; and (3) is located in a manner that will provide the greatest public good and the least private injury.
- Once the agency has authority to condemn, the government agency typically files a lawsuit in court and deposits with the court the government’s estimate of “just compensation” based on its initial appraisal. The agency usually requests to take immediate occupancy of your property by motion to the court. You are entitled to withdraw the agency’s deposit and proceed in court to an ultimate determination of just compensation. Receipt of the deposited funds waives your right to challenge the necessity or public use element of the taking, but not your right to seek additional just compensation.
- The court sets a trial date while you and the government agency exchange appraisal and valuation data and prepare for a trial on the issue of just compensation.

What Is “Just Compensation”?

- In Nevada, just compensation is defined “as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.” The property owner’s land shall be valued at the “highest price the property would bring on the open market” based on its “highest and best use.”
- Fair market value is an objective test to be determined by the jury. Any special affection you have for the property is typically not taken into consideration. However, a property owner is entitled to testify to their opinion of the value of their land and/or damages. The value is usually determined by real estate appraisers, and market participants such as real estate brokers. It is possible that appraisers may disagree in their opinion of fair market value.

What Other Compensation Am I Entitled To?

- As part of and in addition to the fair market value paid as “just compensation” for your property you may also be entitled to other elements of “just compensation” which include: business losses, compensation for fixtures and equipment, precondemnation damages, relocation benefits, and interest, costs, and attorneys’ fees (in some circumstances).
- **Business Losses:** A business may accrue “goodwill” as a result of location, reputation for dependability, skill or quality, and ability to acquire and keep patrons. Compensation for business goodwill may be awarded if a business loses these benefits as a result of the taking. In order to recover goodwill, you are required to show a loss from the taking which cannot be prevented by relocation or other steps. Not all businesses possess goodwill. The Law Offices of Kermit L. Waters successfully established this unique element of damages in Nevada.
- **Fixtures & Equipment:** You are entitled to compensation for all improvements pertaining to realty. This includes items installed for use on the property that cannot be removed without substantial damage to the property.
- **Precondemnation Damages:** Where a government agency excessively delays in commencing the condemnation action after announcing its intent to take your property, or the agency engages in other unreasonable or oppressive conduct, you may be entitled to “precondemnation damages.” For example, you may be entitled to precondemnation damages if tenants leave because the government has announced its intent to condemn your property and then delays its condemnation leaving your

property vacant. The Law Offices of Kermitt L. Waters successfully established this claim in Nevada in two separate Nevada Supreme Court Opinions.

- **Relocation Benefits:** If the property is occupied with a business, residence, or farm the property owner is entitled to reasonable costs to relocate. This includes, among other things, moving costs, expenses in finding a replacement site, printing new stationary, and costs to reinstall and reconnect machinery and equipment. The government is also responsible for finding and providing you information regarding possible relocation sites.
- **Interest, Costs, Attorneys' Fees & Appraisal Fees:** The government agency is usually required to pay interest on any award of "just compensation." The property owner is also entitled to recover costs actually incurred which are related to and part of the litigation. The property owner's Attorneys' fees may also be recoverable in certain situations.

What If The Property Is Rented?

- Anyone with an interest in your property, such as a tenant, is entitled to receive just compensation for his or her interest. However, many leases contain a "condemnation clause" which determines how the compensation between the owner and the tenant will be allocated. A tenant's just compensation may include business goodwill, fixtures and equipment, relocation costs, and possibly any increases in rent paid as a result of relocation. Typically in Nevada, all interests in the property are valued at one time and at one amount at the trial, and the Court will later determine how the just compensation is divided among the claiming interests.

What If Only Part Of The Property Is Taken?

- Frequently, the government agency only takes a portion of your land. For example, an agency may take a strip of land needed for a drainage channel, a utility line, or a street widening leaving the property owner with remaining land. In these types of cases, the property you retain may suffer damages because the partial taking diminishes the value of the portion not taken. You are entitled to the value of the land taken and any damages to your remaining property. The damages to your remaining property are called "severance damages." Severance damages are usually measured by the decrease in the market value of the remaining portion caused by the taking.

What If The Government Takes My Property Without Filing A Lawsuit?

- Where the government agency takes or damages your property without filing a lawsuit, you may bring a lawsuit against the government. This is known as "inverse condemnation." In law established by the Law Offices of Kermitt L. Waters, inverse condemnation is the constitutional equivalent to a direct eminent domain action filed by the government. An inverse condemnation action occurs in situations

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such as where the government places overly restrictive conditions on your property, allows the public to utilize your private property, impairs access to your property, floods your property or interferes with your land's stability. In an inverse condemnation action, the property owner is required to establish that the government is liable for a taking before a determination of just compensation can be made.

What Should I Do?

- Eminent domain is a rapidly developing and complex area of the law. You will likely obtain a better result when experienced counsel represents you. The Law Offices of Kermitt L. Waters has successfully represented hundreds of property owners and lessees in all aspects of eminent domain, including inverse condemnation, precondemnation delay, and loss of business goodwill. Our office and its courtroom success consistently earn substantial statewide attention for its protection of private property rights. The Law Offices of Kermitt L. Waters has been practicing exclusively in the field of eminent domain for over 40 years and has argued nearly all of the recent case law adopted by the Nevada Supreme Court and drafted most of the statutory law passed by the Nevada Legislature governing eminent domain actions in Nevada.
- Contact us at 702.733.8877.