

LANDOWNER RIGHTS UNDER EMINENT DOMAIN LAWS

Occasionally, private property must be acquired for projects that benefit the community as a whole, such as the construction of roads or public utilities. When a landowner refuses to sell property needed to allow the project to proceed, the eminent domain process may be initiated.

Following is a general description of how state agencies, local government, and some private entities use the condemnation process in North Dakota.

Eminent Domain

Eminent Domain, also called “condemnation,” is the power to take private property for public use. Under state law, condemnation proceedings can be used for only projects which have a public use or public purpose. The law does not require a “public use” project be for actual use by the general public.

Private property cannot be taken:

- For economic development projects, including an increase in tax base, tax revenues, employment, or general economic health;
- For the benefit a private individual or entity except as necessary for conducting a common carrier (such as telecommunications) or utility business.

Eminent Domain Proceedings

The process begins when the condemnor (the government agency or private entity that has the power to take private land) determines that construction of a public project will require the use of private property. To get to that point, however, the condemnor often does surveys and studies to determine exactly which parcels of land are needed. If the property is damaged during the study period, the condemnor must compensate the landowner (the person who owns or leases land subject to eminent domain proceedings). If the landowner refuses to sell property identified as necessary for the public project, the property may be condemned.

- Before beginning condemnation proceedings, the condemnor must make a “reasonable and diligent effort” to negotiate and buy the property from the landowner.

First the condemnor must establish an amount which it believes to be “just compensation” for the property. The condemnor must give the landowner a copy of a written appraisal of the property (if one was done) or a written summary showing how the just compensation was determined.

- The landowner has the right to request a list of at least ten neighboring landowners to whom offers are being made for the same project. If fewer than 10 are affected, then a list of all landowners must be provided.
- The landowner also has the right to examine and copy any map in the condemnor’s possession showing the property affected by the project, and to demand from the condemnor a list of any other landowners within the county or adjacent counties whose property must be taken for the project.

If the landowner and condemnor cannot reach an agreement, the condemnor may use its condemnation powers to acquire the property. At this point the eminent domain procedure differs depending upon what entity is acquiring the property and to what use that property will be put.

The “Quick Take” Procedure

Certain state and local government entities have the power to use the “quick take” procedure to acquire property for right of way. The quick take procedure allows the government entity to take possession of the property by following negotiation procedures set out in statute (if required). Should these negotiations fail or they are not required for that government entity, the property may be acquired upon offering to buy it and depositing the amount of the purchase offer with the clerk of the district court in the county where the property is located. The clerk must notify the landowner that the money has been deposited. If the landowner disputes the taking of the property or the amount offered for it, the landowner must appeal to the district court.

- In all other situations, the condemnor is not allowed to take possession of the property until the amount of “just compensation” has been determined through the court system and that amount has been paid to the landowner or deposited with the court. The court process begins when the condemnor serves the landowner with a Summons and Complaint.

Use or Necessity

Landowners may challenge the “use” or “necessity” for taking the land. A judge must decide the legal question of use or necessity. The court will schedule a separate hearing to determine these questions. If they are not happy with the judge’s decision, the landowner or condemnor may have the ability to appeal to the North Dakota Supreme Court. To determine if there are grounds for an appeal, the interested party should consult an attorney in private practice.

- After the use or necessity issue has been resolved by the court, a trial will be set to determine the amount the landowner should be paid for the property - the “just compensation.”

Just Compensation

Just compensation is payment made by the condemnor that is intended to compensate the landowner for the fair market value of the property taken and any severance or consequential damages. The determination will be made by a jury or, if the landowner waives the right to a jury, by a judge. At the trial, both the landowner and condemnor present their opinions on the amount of just compensation. Both sides are allowed to have witnesses, expert appraisers, exhibits and other evidence to support their claims.

- The amount of just compensation is determined after the judge or jury has listened to the evidence and considered all the documents presented by both sides. If either side is dissatisfied with the amount determined at trial as just compensation, that party might be able to request a new trial, make an appeal made to the ND Supreme Court, or both. The dissatisfied party should consult an attorney in private practice to determine if any of these options are applicable.

- While an appeal is pending, the trial court judge may allow the condemnor to take possession of the property after depositing the amount of just compensation awarded at trial. The amount ultimately decided to be due to the landowner will be paid when the appeals are finished.

Damage Award

The landowner has the right to be compensated for the value of the property taken, including the value of any improvements to the property, as well as payment for certain additional damages:

- Severance Damages - awarded if the property to be taken is part of a larger parcel of land and the remaining land loses value or is damaged because it is severed from the part taken in the condemnation process.
- Consequential Damages - awarded if property not taken by condemnation is damaged by construction of the public project.

Occasionally, the construction of the public project improves or enhances the remaining property not taken. In that case, the value of such improvement is deducted from the amount of damages due to the landowner. These improvements do not reduce the value of the property taken or the amount of just compensation.

Attorney Fees

Most courts order the condemnor to pay the landowner's "reasonable" costs and attorney fees associated with the trial.

- The court decides what is reasonable, so the landowner may not be fully reimbursed for all actual costs and attorney fees.

The court may also require the condemnor to pay the landowner's attorney fees and costs associated with an appeal. However, if the landowner appeals or requests a new trial and does not win, the court may impose the costs of appeal or the new trial on the landowner.

A Summary of Landowner Rights

A landowner has the right to:

- Negotiate with the condemnor before condemnation proceedings begin;
- Receive a copy of the appraisal done by the condemnor or a written statement and summary showing the basis of the condemnor's offer;
- Request and receive a list of neighboring property owners to whom offers have been made, including a map of the affected property and the list of adjacent landowners whose property is affected by the project;
- Ask a judge to decide whether the property the condemnor wants to take is necessary for the proposed use;
- Have a judge or jury decide the amount of just compensation;
- Appeal a court decision regarding public use, necessity, or just compensation; and to ask for reimbursement of attorney fees and costs.

The foregoing general information is not intended to describe every right a landowner may have or cover every situation. It also does not address the eminent domain process used by the federal government or by a private entity which gets condemnation power from federal law.

- The Office of Attorney General is prohibited by law from giving legal advice or assistance to private businesses or members of the public. For legal advice or more information, please consult an attorney in private practice.