

## **What You Don't Know About Eminent Domain Could Cost You More Than Your Land and Business.**

**A question and answer session to help you understand your rights when the government uses its condemnation powers to take your land.**

### **1. *What is Eminent Domain/Condemnation?***

Eminent Domain/Condemnation is the authority of your local, state or federal government to take private land for public use. The government must pay "just compensation" for your land. The power of Eminent Domain/Condemnation provides the government the authority to take your land even though you do not wish to sell it.

### **2. *What is a "public use" for which the government might be able to take your property?***

Nevada Revised Statute ("NRS") 37.010 defines the public uses for which eminent domain may be exercised. Such public uses include:

- a. All public purposes authorized by the federal government;
- b. Public buildings and grounds for the use of the State, the Nevada System of Higher Education and all other public purposes authorized by the Legislature;
- c. County, city, town and school district activities;
- d. Bridges, toll roads, railroads, streets, highways and similar uses;
- e. Ditches, canals, dams, domestic uses, irrigation and reclamation;
- f. Mining, smelting and related activities;
- g. Byroads leading from highways to residences and farms;
- h. Lines for telegraph, telephone, electric light, electric power and sites for plants for electric light and power;
- i. Sewerage;
- j. Water for generation and transmission of electricity;
- k. Cemeteries or public parks;
- l. Pipelines of beet sugar industry;
- m. Pipelines for petroleum products and natural gas;
- n. Airports and aerial rights-of-way;
- o. Monorails;
- p. Video service providers; and
- q. Redevelopment.

Pursuant to NRS 37.010(2), the government can use its Eminent Domain powers to take your property for a private entity. However, that private entity has to develop that condemned land for a public use.

**3. *What is "just compensation"?***

The landowner is entitled to **just compensation** for the government's taking of private property and has the burden of establishing the value of land so taken. Just compensation is determined by the property's market value "by reference to the highest and best use for which the land is available and for which it is plainly adaptable." However, such use must be reasonably probable.

Another term often used in connection with condemnation is "Fair Market Value" which is defined as the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a purchaser, who is ready, willing and able to buy, if both the seller and the purchaser had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

In determining value, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property.

**4. *What property can the government take?***

The government can take:

- a. All real property belonging to any person, company or corporation;
- b. Lands belonging to the State, or to any county, or incorporated city or town, not appropriated to some public use;
- c. Franchises for toll roads, toll bridges, ferries and all other franchises, but such franchises shall NOT be taken unless for free highways, railroads or other more necessary public use;
- d. Basically, all rights-of-way for any and all purposes mentioned in the answer to Question 2 above; and
- e. All classes of private property not enumerated may be taken for public use when such a taking is authorized by law.

**5. *What conditions does the government have to meet in order to enforce its powers of Eminent Domain?***

No judgment of condemnation shall be entered unless the court first finds that:

- a. The use to which the property is to be applied is a public use;
- b. The property is necessary to such public use; and
- c. If the property is already appropriated to some public use, the public use to which it is to be applied is a more necessary public use.

6. *What if you do not want to sell your land to the government?*

You do have the right to challenge the government's ability to take your property. A successful challenge of the government's right to take your property is the exception and not the rule. If the court determines that the condemning authority followed all necessary procedures and that all the conditions for eminent domain are met, then the court will approve the government's eminent domain action against your property.

7. *Do you have to accept the government's offer for your property?*

**ABSOLUTELY NOT.** In the Eminent Domain proceedings, you can assert a higher value for your property. With proper legal representation, you should be able to receive from the court, within a matter of weeks, the amount which the government initially offers and also simultaneously appeal to get an even higher amount from the government. This is precisely the reason you want to make sure you are properly represented.

8. *What is the procedure for an Eminent Domain Proceeding?*

First, you need to know that in Nevada, Eminent Domain proceedings take precedence over certain other proceedings and **MUST** be quickly heard and determined. The proceedings are as follows:

a. The government must file a **verified complaint** in the district court in which your property is located. The complaint must contain:

1. The name of the court in which the action is commenced;
2. The name of the corporation, partnership, association, commission or person in charge of the public use for which the property is sought, who must be named as the plaintiff;
3. The names of all owners, occupants and claimants of the property, if known, or a statement that they are unknown. As the property owner, this would be you and you would be named as the defendant;
4. A statement of the right of the plaintiff;
5. If a right-of-way is sought, the complaint must show the location, general route and terminal points, and must be accompanied with a map thereof, so far as the right-of-way is involved in the action or proceeding; and
6. A description of each piece of land sought to be taken, and whether it includes the whole or only part of an entire parcel or tract.

b. The government/plaintiff shall serve a summons with the complaint, as in a civil action, and you will have **30 days** after service of the summons and complaint to appear and file an answer. You need to file an answer and appear or you could be subject

to a default condemnation. If that happens, you will **have waived all defenses** and objections to the sufficiency and validity of the eminent domain action **and you will have given up your right to challenge the sufficiency of the government's offer to take your land.**

c. Before the government/plaintiff takes possession of your property, they **MUST** provide you a copy of all appraisals of your property they obtained.

d. The government may then file a motion with the court to take possession of your property pending the outcome of the eminent domain litigation. This is called an **Occupancy Hearing.**

e. At the **Occupancy Hearing**, this is where the court makes the determination if the government met the conditions to take your property for public use. You do not have to challenge the government's right to take your property at the **Occupancy Hearing.** You will still preserve your right to challenge the monetary compensation you will be given for the taking of your property.

f. If at the **Occupancy Hearing**, the court determines the government has the right to take your land for public use, then the judge will demand that the government execute and file a bond in court to you, with sureties, to be approved by the court in a sum not less than **double the value of the premises** sought to be condemned and the damages which will ensue from condemnation and occupation. The State of Nevada in its eminent domain actions does **NOT** have to post a bond.

g. In lieu of the bond, the government, with the consent of the court, may deposit with the clerk of the court a sum equal to the value of the premises plus damages, as appraised by the plaintiff. **You may then petition the court for release of that money to you.**

h. The fact finder must hear legal testimony from both parties to determine the **value** of your property and damages associated with the taking of your property. Ordinarily, the **date of the value of your property** is the date of the first service of the complaint and summons.

i. In Nevada, you can receive compensation for a loss of **GOODWILL.** This is the value attributed to the reputation, loyal customer base, ability to attract new customers and location of a business. **GOODWILL** does **NOT** include the loss of anticipated profits or lost of business opportunity.

j. After final judgment has been reached on the Occupancy Hearing, the government has **30 days** to pay you the money you are owed. In certain situations, you could also receive interest on such money.

**9. What will hiring competent legal representation cost you financially?**

Most Eminent Domain cases are handled on a contingency fee basis. The contingency is based upon the amount you receive that is greater than the government's initial claim of value. You will not be responsible for legal fees unless you obtain a greater amount than the government initially offered in which case the legal fees would be taken out only as a percentage of such increased amount.

**10. Why should you use competent legal representation?**

In most cases, your property is the most significant investment you might have. The eminent domain process can be a complex and arduous undertaking. Without competent legal representation, the government might take your property without paying you the full monetary benefit you deserve. You need to hire legal counsel that has the experience and knowledge to aggressively represent your interests against the government's eminent domain proceedings.

If you would like more information, please do not hesitate to email us through the "Contact Us" feature of our web site [www.klnevada.com](http://www.klnevada.com) or by telephoning us at (702) 889-7764.