

What Is Eminent Domain And What Am I Entitled To If The Government Seeks To Condemn My Property?

**A SURVIVAL GUIDE TO
EMINENT DOMAIN FOR PROPERTY OWNERS**

*Compliments of Nossaman's
Eminent Domain and Valuation Practice Group*



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The Basics

Eminent domain is the power of the government to take or condemn property for “public use,” without the land owner’s consent, upon paying just compensation. The “government” includes most federal, state, and local government agencies (e.g., a County, a City’s Redevelopment Agency, etc.). For purposes of eminent domain, the “government” also includes certain quasi-public entities, such as public utility companies, that possess the power of eminent domain even though they are technically private companies (e.g., Southern California Edison, Pacific Gas & Electric).

You have the right to oppose to the government’s right to take your property. However, without special circumstances, challenging the government’s right to take a particular property is generally unsuccessful.

Whether or not you challenge the government’s right to take your property, you are entitled to compensation for the taking, which may include a number of damages, such as:

- The fair market value of the land taken;
- 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; and
- Interest, costs, attorneys’ fees, and appraisal fees.

What Can I Expect & What Are My Rights?

When the government is interested in taking your property through eminent domain, the following events typically occur:

The Initial Contact

Though the government may hold meetings and engage in other less formal contacts with you about the proposed project, the first formal expression of interest in your property occurs when the government sends you a written “Notice of Decision to Appraise.”

The government agency will then conduct an appraisal of your property to determine its value. You have the right to accompany the appraiser during his or her inspection of the property.

Following the appraisal, the government agency will make a written offer to purchase your property for what it deems “just compensation” based on its appraisal. You do not have to accept the government’s offer, and you have a right to receive a summary of how the government arrived at its offer. Public agencies are also required to offer to pay up to \$5,000 in reasonable expenses for you to obtain an independent appraisal of the property.

The Resolution of Necessity

If you do not reach an agreement with the government following its written offer, the government agency will adopt a “Resolution of 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:

- Requires your property;
- Is necessary and in the public interest; and
- Is located in a manner that will provide the greatest public good and the least private injury.

The agency’s findings are usually conclusive.

You have the right to receive notice of the public hearing, and you have 15 days after the notice was mailed to file a written request to appear and be heard at the hearing.

At the hearing, you or your counsel may appear and raise objections about the steps the government has taken to acquire your property, and you may request that the government take additional steps before proceeding with the condemnation action. The government often ignores such requests, and proceeds to adopt the Resolution of Necessity, authorizing the condemnation action.

The Initial Stages of the Lawsuit

Once the government adopts a Resolution of Necessity, it files a lawsuit and, usually, deposits with the court the probable amount of “just compensation” based on its initial appraisal.

You are entitled to withdraw the agency’s deposit of probable compensation after filing an application with the court and waiting at least 20 days.

If the government agency wishes to take possession of your property before the lawsuit ends, it must serve you with a motion for possession. The court will usually set a hearing on this motion for 60 days after you have been served if the property is unoccupied and 90 days after if the property is occupied. You have 30 days to oppose the motion. If you do not oppose the motion within 30 days, the court can grant the motion with only a minimal showing by the government. If you oppose the motion, the government must prove that it needs possession of your property before the end of the lawsuit, making it more difficult for the government to take possession early.

If the court grants the government's motion for possession, it will issue an order that will require you to leave the property with minimal notice (within 10 days for unoccupied property; within 30 days for occupied property). A relocation agent should contact you to assist in relocating your residence or business.

The Trial Proceedings

The court will hold an evaluation conference and sets trial dates while you and the government agency exchange appraisal and valuation data.

By this time, you will need to have an appraiser of your own to prepare an appraisal of your property.

Before trial, you and the government will exchange final offers to see if you can reach an agreement. The Court may also hold a settlement conference to assist the parties in settling the case.

If no agreement can be reached as to the compensation to be paid, a trial will occur, where a jury will determine "just compensation."

What Is "Just Compensation"?

You are entitled to "just compensation." This means you should receive the fair market value of your property. Fair market value is the highest price that would be agreed to by a willing buyer and seller.

Fair market value is an objective test to be determined by the jury. Any unique value or special affection you have for the property is not taken into consideration. The value is usually determined by real estate appraisers, although appraisers may disagree in their opinions of value.

What Other Compensation Am I Entitled To As The Owner Of The Property?

As part of and in addition to “just compensation,” you may also be entitled to business losses, compensation for fixtures and equipment, precondemnation damages, relocation benefits, and interest, costs, attorneys’ fees and appraisal fees.

Business Losses

If you operate a business on the property, you may be able to recover for lost “business goodwill” and other business losses. Compensation for business losses is described more fully under the heading “What If I Own A Business On The Property, But Not The Underlying Property?”

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, such as machinery, fencing, or other equipment.

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 conduct, you may be entitled to “precondemnation damages.” For example, you may be entitled to precondemnation damages if you are unable to rent your property at market rents because tenants are unwilling to move in as a result of the condemnation announcement. You may also be entitled to recover damages if your property decreases in value during the excessive delay.

Relocation Benefits

You are entitled to reasonable costs to relocate. This includes moving costs, expenses in finding a replacement site, printing new stationary, and costs to reinstall and reconnect machinery and equipment.

Interests, Costs, Attorneys’ Fees, and Appraisal Fees

The government agency is usually required to pay interest on any award of “just compensation.” You are also entitled to recover normal “court costs,” such as filing fees, deposition fees, and some witness fees. Attorneys’ fees and appraisal 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.

What If Only Part Of The Property Is Taken?

Frequently, the government agency is only taking 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. 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.

What If I Own A Business Operating On The Property, But I Do Not Own The Underlying Property?

If you own a business but do not own the property, you may not receive the government’s “Notice of Intent to Appraise,” notice of the hearing on the “Resolution of Necessity,” or any written offer of compensation. This does not mean you are not entitled to compensation. If you own a business that is displaced or otherwise suffers from lost “business goodwill” as a result of the taking, you are entitled to be compensated for your losses.

A business may accrue “goodwill” as a result of its location, reputation, 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. For example, business goodwill is recoverable if your business’ profitability decreases as a result of being forced to move. Goodwill is usually determined by expert business appraisers who consider factors such as the nature of the business, reputation, length of time in the business, length of time at the location, and customer base. 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.

You may also be entitled to recover relocation costs, the value of lost “Fixtures and Equipment” and, depending on the lease terms, may also be entitled to part of the compensation for the real property.

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.”

Inverse condemnation can occur in many different situations in which government action damages your property rights. Typical inverse condemnation claims involve situations where the government:

- Places overly restrictive conditions on your property and your right to develop it;
- Impairs access to your property;
- Floods your property; or
- Interferes with your land stability.

What Should I Do?

Eminent domain is a rapidly developing area of the law. You will likely obtain a better result if you are represented by counsel. Nossaman LLP has successfully represented hundreds of property owners and business owners in all aspects of eminent domain proceedings, including:

- Precondemnation planning that may start years before the government even sends out its initial Notice of Decision to Appraise;
- Representation during the government’s public hearing on the Resolution of Necessity and, if necessary, challenging the government’s right to take the property;
- Representation during the initial phases of the litigation, including assisting with relocation issues and in the selection and preparation of appropriate appraisers and experts; and
- Representation during the trial on “just compensation,” asserting claims for the value of the property, precondemnation damages, fixtures and equipment, and business losses.

Our eminent domain team and its courtroom success consistently earn substantial statewide attention.

About Nossaman

Nossaman LLP is a California-based national law firm with over 60 years of experience in providing strategic legal direction to public entities and private businesses.

Our Eminent Domain and Valuation Practice Group has a distinguished track record of success in representing California landowners and business owners. Nossaman has a prominent, state-wide reputation for creative, competent and efficient representation of the targets of eminent domain. Nossaman attorneys -- who comprise one of the largest eminent domain groups in the State -- regularly achieve top-notch results in litigation.

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