BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

EMINENT DOMAIN: FREQUENTLY ASKED QUESTIONS

What is 'eminent domain'?

Eminent domain is the power to take private property for a public purpose against the will of the property owner.

Eminent domain is also called ‘condemnation,’ and the entity taking the property is also called a ‘condemnor’ or ‘condemning authority.’ Condemnors are usually part of the government or are utility companies.

How can I fight back?

Condemnors can take property, but you still have many rights with which to protect yourself legally:

You have the right to hire lawyers of your choice

You do not need to face eminent domain alone. Lawyers who are experienced and knowledgeable about eminent domain can help you.

You have the right to insist on full compensation for your property and/or business damages.

Condemnors often make low or unfair offers when they take property, adding insult to injury. You can demand more. Depending on the circumstances, you may also have the right to be paid for damage caused to your remaining property and/or damage caused to your business as a result of the taking of property.

You have the right to have all of your legal expenses paid for by the condemnor, without any reduction in the amount of money you ultimately receive.

Under Florida law, you do not have to pay your lawyer or legal costs in eminent domain cases — the condemning authority must pay these expenses for you.

You have nothing to lose, and you may have everything to gain by fighting back. There is no reason not to hire lawyers to protect your property rights.

What do I need to know to get started?

First, know your rights!
You can research the law yourself, but we recommend that you seek the advice and assistance of lawyers who are knowledgeable and experienced in eminent domain law. Hiring lawyers will not cost you anything and may help your case substantially.

Second, understand the reason for the taking, and how it will affect you:

- Why is the property being taken?
- How much property is being taken?
- If only some property is being taken, what part?
- How does the taking affect any remaining property and/or your business?
- Could a change to the taking or to the construction plans help you?
- Has the condemnor considered any alternatives?

Lawyers who are knowledgeable and experienced in eminent domain can help you find the answers to these questions and more.

Who can take property?

Generally, all levels of government — federal, state, and local — can take property through eminent domain, as well as some utility companies. But the law limits eminent domain to protect people.

Why can property be taken?

Condemnors are only allowed to take property when necessary for public purposes, such as to build roads, schools, or parks, or to install utilities. They must also prove to a judge that such a purpose exists.

How does an eminent domain case work?

While condemnors have the power to take property under Florida law, the law also imposes many strict requirements on condemnors.

First, the condemnor must appraise the property. They must give you — the owner or tenant — advance notice that the condemnor's appraiser will conduct an inspection. You have the right to be present at the inspection and to have your lawyers present. The appraiser will send a report to the condemnor; you may also have a right to a copy of the report.

Then, based on the appraisal, the condemnor must make an initial 'good faith' offer to buy the property from the owner. If you are the owner, and you think that their offer is too low, you have the right to refuse to sell.

The next step for the condemnor is to go to court to use the power of eminent domain to take the property.

The condemnor must prove to a judge that it has the right to take the property. If it succeeds, the judge will only allow the taking if the condemnor deposits an amount of money no less than the 'good faith' offer with the court. The owner of the property is entitled to take that money as soon as it is deposited (subject to applicable taxes, liens, and mortgages), as a sort of down payment for the property. If you are the owner, accepting the money does not mean that you agree with the amount and does not harm your case or limit your right to get more.

Now it's your turn: You, your lawyers, and other members of your legal team, such as appraisers, accountants, engineers, and land planners — all paid for by the condemning authority at no cost to you — will work to determine the true value of the property. We will work with you to choose the best team members so that you have a strong case.

Armed with this information, you can negotiate with the condemnor if you wish. You have the right to have your lawyers help you do so, and you can negotiate informally or through formal mediation. Again, all expenses are paid for by the condemnor. Most eminent domain cases are resolved this way.

If the case is not settled by agreement, you can go to court and a jury of twelve people will decide how much compensation you will receive.

What goes into determining full compensation?

- The market value of the property taken
- The cost of any damage to remaining property and the cost to make changes to reduce that damage
- Damage to or destruction of your business
- Cost to relocate your home or business
- Any engineering, drainage, access, or other issues important to you

What about harm to my business?

If the taking will harm your business, and your business is eligible under Florida law, compensation for business damages is available. The law is not as protective of businesses as it is of land so many conditions apply. Lawyers who are knowledgeable and experienced in eminent domain law can tell you if your business is eligible.

If your business is eligible, you must take the first step, by preparing and filing a claim for compensation within an appropriate time period. We routinely work with skilled experts who can help prepare your claim at no cost to you. It is often helpful to begin planning as early as possible.

Once you submit a claim, the condemnor can make a counteroffer. As with property, the claim can be resolved by negotiation, mediation, or trial.

What happens if my case goes to trial?

Eminent domain trials usually last two to five days. Twelve-person juries determine awards. The condemnor goes first, as it has the burden of proving its case. After the condemnor shows its evidence of what it claims your property is worth, your lawyers present your case, including any business damage claims. Both sides have experts who testify as to the value of the property as well as to the harm to the business and to the remaining property, if any. The jury will decide how much you are owed based on the evidence they hear. The court will generally see that you are paid within 30 to 60 days after the trial. Appeals may be possible.

Where can I learn more about the eminent domain process?

- Florida Department of Transportation - Right of Way Office
- Florida Department of Transportation - Acquisition Process Resources
- Florida Department of Environmental Protection - Utilities and Eminent Domain

Attorneys

Sidney C. Bigham, III

Joshua S. Stratton

Charles S. Stratton