



# Condemnation: What Property Owners Need to Know

Eminent domain is the power a government exercises to take private property for a public purpose. The taking of that property is a condemnation. It is not a transactional process; whether or not you want to sell is immaterial.

However, property owners do have rights when their properties are subject to condemnation. Those rights include “just compensation,” a civil right under the Constitution. State law provides similar protections. Just compensation is generally interpreted as the fair market value of the property.

We have represented clients on both sides of eminent domain actions, giving us the perspective to understand the options and help clients navigate a successful outcome.

## **What should I do if I learn of a potential condemnation?**

Check your leases and loan documents:

- Leases should contain a “condemnation” clause, which will state whether the landlord or the tenant will receive just compensation or other damages as a result of the condemnation and the conditions that may affect which party may claim those damages.
- A condemnation may trigger clauses in the lease that affect rent, permit a tenant to terminate, or impact your or your tenants’ rights in other ways.
- Loan documents usually require the borrower to protect the value of the collateral, which may give the lender the right to step in and protect that value.
- If a condemnation occurs and a lender determines that you are not effectively protecting the asset, the lender will step into your shoes, defend against the condemnation, and make a claim for just compensation.

## What do I do if I receive notice of potential condemnation?

A condemnor will publicly announce a project that may affect your property. That notice may arrive years before the project begins. Some things to consider:

- The condemnor may have prepared materials, including preliminary plans that show possible acquisitions of property along a projected route. Review these materials.
- The condemnor may need to enter the property for tests and studies.
- If your property is shown in the project area, consider the following:
  - Does the proposed taking potentially trigger lease provisions affecting tenancy, rent, parking, or other items of concern?
  - Will the project affect access, storm water, or other environmental or zoning issues at the property?
  - Does the proposed taking or the nature of the project affect the use of your property?
  - Will the news or planning of the project affect the use of the property, even if there has been no physical taking of property?
  - Has notice of the condemnation affected your ability to finance a project or plans for your property?

## What do I do if the condemnation already has occurred?

- Review the condemnation documents filed with the court or administrative body to determine whether there are any defenses or objections to the condemnation.
- Determine whether the government's offer of just compensation is fair or should be challenged.
- Review the project plans and determine whether your claim requires engineering or planning witnesses.
- Obtain an appraiser familiar with valuing property affected by eminent domain.
- Just compensation usually considers the fair market value of the property, which is based on the highest and best use of the property—even if that use is not the current use.

The attorneys in Ballard Spahr's Eminent Domain Group handle all aspects of condemnation—including pre-taking planning, acquisitions in lieu of condemnation, regulatory and *de facto* takings, and trial, settlement, and appeals of just compensation and relocation benefits claims.

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