

LANDOWNER'S BILL OF RIGHTS

1. Article 1, section 17 of the Texas Constitution guarantees Texas landowners the right to receive "adequate compensation" when their private property is taken for public use.
2. Texas private property can only be taken for a public purpose.
3. Only governmental bodies with the necessary statutory authority may take a Texas landowner's private property. Under certain circumstances, private entities are authorized to take private property under the same method afforded to the government.
4. Texas landowners have the right to receive notice when the government or any other condemning authority proposes to acquire their private property.
5. The entity proposing to acquire private property must provide property owners with an assessment of the "adequate compensation" they are due for their land.
6. The entity proposing to acquire private property must make a good faith effort to negotiate with the landowner before it files a lawsuit to condemn the land.
7. Landowners may at their own expense, consult an attorney to help them negotiate with the condemning authority.
8. Landowners may at their own expense, consult an appraiser to help them assess the value of their private property.
9. Texas landowners whose land is condemned are entitled to a hearing before a court-appointed panel that includes three special commissioners. This specialized hearing panel must fairly consider and calculate the amount of compensation that the condemning authority owes the landowner for the private property it condemned. The commissioners must also consider what compensation, if any, the landowner is due for damage to the remaining property's fair market value.
10. Texas landowners have the right to a trial, by either judge or jury, if they are unsatisfied with the compensation awarded to them by the Special Commissioners. Landowners who are dissatisfied with the trial court's judgment may file an appeal, just as they can appeal any other civil court proceeding.

CONDEMNATION PROCEDURE

"Eminent Domain" refers to the inherent right of State to take private property for a public use. Private property may only be taken by a governmental entity or corporation that has the statutory authority to do so [also known as a "condemning authority"]. Those governmental entities with eminent domain powers include state agencies, counties, cities, school districts, and other governmental authorities and districts. The Texas Legislature has also granted eminent domain authority to certain corporations or associations organized to provide necessary public services such as common carrier pipeline companies, gas and electric corporations, telephone corporations, water and sewer service companies, and railroads. Texas statutes unique to each governmental entity or corporation provide express grants or limitations on that entity's eminent domain powers.

Under the Texas Constitution, private property may only be taken for public use. Texans' property may not be taken without a justifiable public purpose. According to Section 2206.001 of

the Texas Government Code, a governmental or private entity may not take private property through the use of eminent domain if the taking is for economic development purposes, unless the economic development is a secondary purpose resulting from urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas. There are exceptions to this requirement listed in the Government Code.

Article 1, section 17 of the Texas Constitution provides that no Texan's property may be taken without the landowner being paid adequate compensation. Adequate compensation is defined by the courts and the statutes of this State to include both the market value of the property being taken and damages, if any, to the landowner's remainder property that result from the acquisition itself and the uses to be made of the condemned tract of land.

If property needs to be acquired for a public purpose, Texans have the right to be notified of the agency's interest in acquiring your property. Before a condemning authority begins negotiating with a property owner to acquire real property, the condemning authority must send this Landowner's Bill of Rights Statement by First Class Mail or otherwise to the last known address of the person in whose name the property is listed on the most recent tax roll of any appropriate taxing unit authorized by law to levy property taxes against the property.

After making a determination that private property or a portion of private property is needed for a public use, a condemning authority must make a good faith effort to negotiate with Texans and reach an agreed-upon purchase price for their property. As defined by the courts and the statutes of this State, "good faith effort to negotiate" means that the condemning authority must make an offer to purchase your property that is based upon a reasonably thorough investigation and honest assessment of adequate compensation for a landowner's private property. Adequate compensation is defined as the fair market value of property acquired and damages to the remaining property, if any.

At the time the offer is made, the condemning authority must disclose any appraisal reports it has produced or acquired relating specifically to the property and that are used to determine the amount of its offer to acquire the property. The landowner is required to disclose to the condemning authority, no later than ten days prior to the Special Commissioners' hearing, any appraisal reports used to determine the landowner's opinion as to adequate compensation.

"Condemnation" is the legal process or procedure used for such a taking. Chapter 21 of the Texas Property Code governs the condemnation process. If the condemning authority is not able to agree with a property owner on a purchase price for their private property, the condemning authority is entitled to begin a condemnation proceeding by filing a petition in the proper court. The petition will be filed in the landowner's county of residence, if the landowner resides in a county in which part of the property being condemned is located. Otherwise, the petition can be filed in any county in which at least part of the property being condemned is located.

After the condemning authority files a petition and the condemnation proceeding is started, the judge of the court in which the petition is filed will appoint three disinterested landowners who live in the county where the condemnation proceeding is filed, as special commissioners to assess the amount of adequate compensation due you as a result of the condemnation of your property. After being appointed, the special commissioners must promptly schedule a hearing on the condemnation at the earliest practical time and place after they are appointed. The hearing location must be as near as practical to the property or at the county seat of the county in which the proceeding is being held. The special commissioners are required to provide the landowner no less than 11 days written notice of the time and place of the hearing. After providing notice of the hearing, the special commissioners must conduct the hearing at the scheduled time and place.

At the hearing, the special commissioners will admit evidence on the value of the property, the damages to remainder property, any value added to your remaining property as a result of the project, and the uses to be made of the property being taken. Landowners can and should consult an appraiser to help them assess the value of their private property.

After hearing evidence from all interested parties, the special commissioners will determine the amount of money to be awarded to the landowner as adequate compensation. The special commissioners will sign and file a document with the court that is called the "Award." The Award must be filed with the court no later than the next working day after the day the Award is signed. Not later than the next working day after the day the Award is filed, the clerk of the court will send written notice of the Award to all parties.

The special commissioners are allowed to adjudge the costs of the condemnation proceeding against any party. The condemning authority will be responsible for the costs if the Award is greater than the amount the condemning authority offered to pay the landowner for their property before the condemnation proceedings began, or if the special commissioners' decision is appealed and a court determines damages in an amount greater than the Award. Landowners are responsible for the costs if the Award, or the court's determination of damages, is less than or equal to the amount the condemning authority offered to them before the condemnation proceeding began.

After the Award is filed, the condemning authority may take possession of the property being condemned pending the results of further litigation if the condemning authority pays the landowner the amount awarded by the special commissioners, or deposits the amount of the Award into the registry of the court. Private property owners have the right to withdraw the deposited funds from the registry of the court.

After the Award is filed, if either the landowner or the condemning authority is dissatisfied with the amount of the Award, either party can object to the Award by filing a written statement of objections with the court. The objections must be filed on or before the first Monday following the 20th day after the Award is filed with the court. If neither party timely objects to the Award, the court will adopt the Award as the judgment of the court and issue the process necessary to enforce the judgment. If either party timely objects to the special commissioners' Award, the court will try the case in the same manner as other civil cases. You have the right to a trial by judge or jury. Either party may appeal any judgment entered by the court after the trial.

A condemning authority may file a motion to dismiss the condemnation proceeding if it decides it no longer needs your property. If the court grants the motion to dismiss, the case is over and you are entitled to recover your reasonable and necessary fees for attorneys, appraisers, and photographers, and for the other expenses you incurred to the date of the hearing on the motion to dismiss. If a landowner files a motion to dismiss a condemnation proceeding on the grounds that the condemning authority does not have the right to condemn the property, and the court grants the landowner's motion, or otherwise renders a judgment denying the right of the condemning authority to condemn the property, the court may make an allowance to the landowner for reasonable and necessary fees for attorneys, appraisers, and photographers, and for the other expenses incurred to the date of the hearing or judgment.

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