

Commissioners' Award

The amount set forth in the commissioners' report is known as the "commissioners' award." If the condemnor pays the award into court, the condemnor takes title to the property. The condemnee may seek distribution of the award to him or her, subject to payment of liens, mortgages, taxes or judgments, and may remain in possession of the property for a limited time. After 10 days, the condemnor may ask the court to transfer possession to it. The court may allow up to 90 days for the property owner to remain in possession. In the case of a primary residence, the condemnee automatically receives 100 days to vacate the property. The condemnee typically has the right to relocation benefits under federal, state or municipal laws, depending on the nature of the project.

Exceptions

A party may challenge the fairness of the commissioners' award by filing "exceptions" to the amount of the award. By filing exceptions, a party asks for a jury trial to determine the amount of just compensation. The parties have 30 days after the court sends them notice of the award to file exceptions. The jury will hear the case without any information as to the amount of the award made by the commissioners. In the event the jury returns a verdict higher than the commissioners' award, the condemnor must pay the additional amount, with interest. In the event the jury returns a verdict lower than the commissioners' award, the condemnee must pay back the difference, with interest. After the commissioners' award, both the condemnor and the property owner may file exceptions to the amount of the award if they disagree with the amount. These exceptions must be filed within 30 days after they receive notice from the court that the award is filed. By filing exceptions, either

party may ask for a trial to determine the amount of just compensation. The jury hears the case without any information as to the amount of the award made by the commissioners.

Right to a Lawyer

The condemnor usually hires lawyers before beginning negotiations with property owners, and will always have the assistance of counsel once court proceedings commence. These lawyers are generally very well-versed in eminent domain law. Property owners should seriously consider employing lawyers to represent them early in the proceedings. If the matter goes to court, property owners are strongly discouraged from proceeding without an attorney because the case proceeds as any other suit for damages, subject to all procedural and evidentiary rules. The Missouri Bar includes members with a great deal of experience in representing property owners in eminent domain cases. The property owner should ask his or her general attorney whether that attorney will handle the case and, if not, whether he or she can recommend an attorney well-versed in this field.

Condemnors hire lawyers to protect the public's interest in preventing excessive awards. The property owner's interest should also be protected to ensure that the owner receives no less than the just compensation guaranteed by the United States and Missouri Constitutions.

Revised 8/07

Eminent Domain

The Missouri Bar



Legal Facts

Published by
The Missouri Bar
Post Office Box 119
Jefferson City, MO 65102

Eminent Domain

The government has the power to take private property for public use. In addition to public bodies, other entities such as utility companies, railroads, and redevelopment corporations also possess this power, known as eminent domain. The legal process through which a public or private body exercises the power of eminent domain is known as “condemnation.” The “condemnor” is the entity exercising the power of eminent domain. The “condemnee” is the owner of the private property being taken or damaged by the condemnor.

Public Use

The Constitution restricts the power of eminent domain to permit only takings for a “public use.” Courts have interpreted “public use” to mean “public purpose.” Recognized public purposes justifying the exercise of eminent domain include the building of roads, railroads, airports, utility lines and distribution centers, parks, or military bases, as well as takings to remedy blight and foster economic development. The condemnor makes the initial determination that a use is public, subject to review by the courts. Because of the controversy over economic redevelopment projects, in 2006 Missouri implemented legislative reforms that prohibit the taking of private property “solely” for economic development purposes. However, takings for redevelopment projects that serve other public purposes, such as remedying blight, continue to be permitted. The 2006 reforms increased the burden on a condemnor to establish blight and strengthened the courts’ role in reviewing a blighting determination.

Just Compensation

The Constitution guarantees the right to “just compensation” for the taking of a condemnee’s

property. Under Missouri law, “just compensation” means the “fair market value” of the property – what a willing buyer would pay a willing seller in a voluntary transaction. If the condemnor takes only part of the property, the condemnee may receive compensation for damages to the property that remains, with damages measured as the difference between the fair market value of the whole property before the taking and the fair market value of the property remaining after the taking.

The 2006 reforms increased just compensation for certain properties taken through condemnations commenced after December 31, 2006. If a condemnor takes the primary residence of a condemnee, just compensation will increase to 125% of fair market value. If a condemnor takes property that a family has owned for 50 or more years, just compensation will increase to 150% of fair market value.

Pre-Condensation Proceedings

Before it can file a condemnation petition, a condemnor must be authorized, by statute or ordinance, to take the property for a specific public purpose. The condemnor must send the condemnee a written notice of the condemnor’s intent to acquire the property at least 60 days before filing a condemnation petition in circuit court. The written notice must contain information required by law, including the property being acquired, the purpose for which the condemnor needs the property, and a list of certain rights the condemnee has, such as the right to counsel at the condemnee’s expense and to receive just compensation, with an explanation of the legal process. The condemnor must also try to acquire the property through “good faith negotiation” with the condemnee. This merely requires the condemnor to make an unconditional offer to buy the property, which must be in writing and

remain open for 30 days. If the condemnee rejects the offer, or if 30 days pass without acceptance by the condemnee, the condemnor can file its condemnation petition, commencing formal court proceedings to take the property.

Court Proceedings

The condemnor commences court proceedings by filing its petition in eminent domain. The petition must be served on the condemnee and all parties that may have an interest in the property, such as mortgage holders and tenants. The court will hold a hearing, with notice given to interested parties, to determine the lawfulness of the condemnation. The court must find that the taking is necessary for a public use, that the condemnor is duly authorized to take the property, and that the condemnor satisfied the prerequisites of notice to the condemnee and good faith negotiations. The court then enters its order of condemnation, allowing the matter to proceed to the question of just compensation.

Condemnation Commissioners

When it enters the order of condemnation, the court appoints three disinterested “commissioners” to determine just compensation. The law requires the commissioners to view the property within 45 days of their appointment. The commissioners must notify the interested parties at least 10 days in advance of their viewing of the property that the parties may accompany the commissioners on their viewing and may present information to the commissioners relating to the issue of damages. The commissioners’ viewing and consideration of information from the parties occurs in an informal setting. After viewing the property and hearing the positions of the parties, the commissioners return their report to the court, setting forth the amount of damages due the condemnee.