

HEY, YOU CAN'T HAVE THAT!!!!

*A Guide to Understanding the NC Land Condemnation Process
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LAND CONDEMNATION– WHAT IS IT?

When most folks hear the word “condemnation”, they think of run-down houses that the government “condemns” as unfit to live in. We recognize, and are even okay with the government’s authority to regulate and get rid of these eyesores. After all, it’s the owner’s fault that he didn’t take care of his property.

But then one day you are at a public meeting watching a presentation about the location of a new highway and you suddenly realize that the road is coming through your property. You are quick to point out the error and the government officials explain that they will need to acquire property for the project. You smile and tell them that they can’t have your property. They smile back and tell you “yes we can”.

Certainly governments do “condemn” and tear down uninhabitable structures. But “condemnation” also refers to the process a government uses to take land from private citizens so that it can be used for a public purpose.

LAND CONDEMNATION– WHO CAME UP WITH THAT IDEA?

Hundreds of years ago, all land belonged to the King. You just got to use it until the King decided to take it back. Over the centuries, the United States has managed to get rid of its kings and form a democracy where the Constitution gives the people the right to own property. But our forefathers did give the U.S. Government the authority to take land away from private property owners, **but only if** (a) the land taken is used for a public purpose and (b) the government pays “just compensation” for it.

The authority that gives the government the power to take private land for a public purpose is called “eminent domain”. The process by which the government uses its eminent domain authority is called “condemnation”. The two terms are often used interchangeably. In this handout, we will simply refer to both the authority and the process as “condemnation”.

LAND CONDEMNATION – WHO HAS THE POWER?

Over the years, the U.S. Government has shared its condemnation authority with the individual state governments, and the states, in turn, have passed their authority on to cities, counties and even private entities such as electric, gas, railroads or telephone companies.

The State of North Carolina, through the Department of Transportation (“DOT”) has the authority to take private property for public roads and highways. North Carolina cities and counties have the right to condemn private property for a variety of public purposes; including

sewer, water or storm water systems, hospitals, cemeteries, libraries, city halls, fire stations, utilities, historic properties and even public wharves. Additionally, cities also have the authority to take property for streets, sidewalks and highways.

School boards have the authority to condemn property for schools. Private entities such as rail roads, gas companies, phone companies, or electric companies have the right to condemn for the purpose of providing their services to the public.

In this Guide, we will refer to any organization that has the authority to condemn or “take” private property as a “**condemnor**” or “**condemning authority**” and anyone who has property taken from them as a “**condemnee**”, “**land owner**” or “**property owner**”.

LAND CONDEMNATION – WHAT IS THE PROCESS?

STAGE 1 – PLANNING

Generally speaking, the first step to any condemnation case is the planning phase. This is when the condemnor decides a particular project is necessary for the public good. It can be a sewer line, sidewalk or highway project. A “plan” for the project is created. The plan shows the location of the project and guides the condemnor in determining what property it will need to acquire in order to construct the project.

Prior to finalizing the particular location or route of a project, the condemnor will hold one or more public meetings to introduce the plan to the public. It is at this stage that property owners have the opportunity to suggest alternative routes for the project or even contest the need for the project.

Only in rare cases are property owners able to stop a project. In most cases, the benefit of the public project to the community as a whole will outweigh the negative impact it may have on individual property owners. But just because a particular project can’t be stopped does not mean the property owners affected shouldn’t be fairly compensated for their damages.

STAGE 2 – NEGOTIATIONS

Once the plan for a project has been approved, the condemnor will begin purchasing the land it needs to construct the project. During this stage the condemnor will hire surveyors and appraisers to determine how much property is needed and estimate its value. Based on the surveyor’s calculations, the appraiser will determine the amount of “damages” or “compensation” that the condemnor should offer the land owner.

After your property has been appraised, real estate agents (called “Right of Way agents”) employed by the condemnor will approach the property owners and try to “buy” the land the condemnor needs for the project by offering property owners “compensation” based on the condemnor’s appraisal. In land negotiations, verbal offers are not legally binding. All compensation offers or special conditions negotiated should be in writing.

LAND CONDEMNATION PROCESS (cont.)

Property owners DO NOT have to accept the Right of Way agent's offers. Prior to even considering an offer, the property owner should have complete knowledge, not only of the value of the property being taken, but also of the impact of the taking on remaining property. Taking a strip of land off the front of your property for a road widening could cause your office building to become non-conforming under the relevant Zoning Ordinance. Slope and utility easements look innocent enough on the constructions plans but can cause access, maintenance and visibility issues once the project is complete.

If the offer is accepted by the property owner, the property owner will sign a deed or other document giving the condemnor ownership of the property it needs. If the property owner and the Right of Way agent cannot agree on the amount of compensation, the condemnor will file a lawsuit to acquire the property it needs.

STAGE 3 – LAWSUIT IS FILED

If an agreement cannot be reached between the property owner and the agent, then the condemnor will file a lawsuit (also called a “condemnation action”) in Superior Court of the County wherein the property is located. Being involved in a lawsuit can be a scary step for the property owner, especially since the condemnee has done nothing wrong. However, it is often necessary to fight for “just compensation.”

The condemnor prepares and files the condemnation action in the County where the property is located. At the same time as the lawsuit is filed, the condemnor is required to deposit with the Clerk of Court the amount of money that the condemnor estimates is “just compensation” for the property taken. Unless the property owner plans on challenging the condemnor's authority to take the land, the property owner is free to apply for, and receive the deposit money, without giving up the right to fight for more compensation.

Once the lawsuit is filed, the property owner will receive a Summons, Complaint, Notice of Deposit and Declaration of Taking. These documents are also referred to as “pleadings”. The property owner will usually receive these pleadings by registered mail. Occasionally the Sheriff's Department will bring them to the property owner.

The day the property owner receives the pleadings is called the “date of service”. The date of service is important because it starts the clock ticking on the time within which you have to “answer” the Complaint. The time frame will be either one hundred and twenty (120) days or twelve (12) months from the date of service, depending on the condemnor and the project. If you have any questions about the length of time you have to answer the Complaint, you should consult an attorney.

LAND CONDEMNATION PROCESS (cont.)

Answering the Complaint requires a written document to be filed with the Court. You cannot answer the Complaint by telling the condemnor's attorney that you want more money and/or by continuing to negotiate with the condemnor. If the property owner does not properly answer the Complaint within the required time frame, the property owner loses his right to argue that he is entitled to compensation greater than the deposit.

After the Complaint is answered, the discovery period begins. Discovery is when both sides exchange information about what each side thinks the property is worth and why. Negotiations will generally continue through the discovery period and often times a settlement can be reached.

STAGE 4 – MEDIATION

North Carolina law requires all parties to a lawsuit to engage in some form of Alternative Dispute Resolution before going to trial. Most people choose mediation. Both sides agree on a mediator who then works with them to try and reach a settlement.

If a settlement is not reached during mediation, then the case proceeds to trial. Prior to trial, the parties can continue to try and negotiate a settlement. .

STAGE 5 – TRIAL BY JURY

At trial, a jury of twelve people will determine the amount the property owner is entitled to recover from the condemnor.

The jury will hear testimony from witnesses on both sides. These might include appraisers, brokers and/or engineers. The property owner has the right to testify about the amount he/she considers to be just compensation for the land taken. In a condemnation action, the only questions that the jury gets to decide at trial are 1) the fair market value of the property before the taking and 2) the fair market value after the taking. The difference between these two numbers is the amount of "just compensation" or "damages".