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THE STATE OF OKLAHOMA

# LANDOWNER'S BILL OF RIGHTS

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## STATE OF OKLAHOMA LANDOWNER'S BILL OF RIGHTS

This Landowner's Bill of Rights applies to any attempt by the government or a private entity to take your property through a condemnation or other legal proceeding. Generally, the laws applicable to the Landowner's Bill of Rights can be found in Titles 27 and 66 of the Oklahoma Statutes.

- ◆ You are entitled to receive just compensation if your property is taken for a public use.
- ◆ Your property can only be taken for a public purpose.
- ◆ Oklahoma law prohibits the taking of your property solely for economic development.
- ◆ Your property can only be taken by a governmental entity or private entity authorized by law to do so.
- ◆ The entity must notify you that it wants to take your property.
- ◆ The entity proposing to take your property must make a bona fide effort to negotiate to buy the property before it files a lawsuit to condemn the property – which means the condemning entity must make a good faith offer that conforms within Titles 27 and 66 of the Oklahoma Statutes.
- ◆ You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.
- ◆ You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.
- ◆ Before your property is condemned, you are entitled to a copy of the commissioners' report which determines the injury you may sustain by the condemnation of your property and the amount of just compensation entitled to you.
- ◆ If you are unsatisfied with the compensation awarded by the commissioners' report, or if you question whether the taking of your property was proper, you have the right to a trial by a jury or review by the district court judge. If you are dissatisfied with the trial court's judgment, you may appeal that decision.

## **CONDEMNATION PROCEDURE**

Eminent domain is the legal authority certain entities are granted that allows those entities to take private property for a public use. Private property can include land and certain improvements that are on that property.

Private property may only be taken by a governmental entity or private entity authorized by law to do so. Your property may be taken only for a public use. That means it can only be taken for a purpose or use that serves the general public. Oklahoma law prohibits the taking of your property solely for economic development.

Your property cannot be taken without just compensation. Just compensation includes the market value of the property being taken. It may also include certain damages if your remaining property's market value is diminished by the acquisition itself or by the way the condemning entity will use the property.

## **HOW THE TAKING PROCESS BEGINS**

The taking of private property by eminent domain must follow certain procedures. First, the entity that wants to condemn your property must notify you. Since additional requirements apply to entities using government funds when exercising eminent domain, the entity must also specify to you whether they intend to use government or private funds for the taking.\*\*

Second, the condemning entity must make a bona fide effort to negotiate with you to purchase the property. You have the right to discuss the negotiation with others and to either accept or reject any offer made by the condemning entity.

## **CONDEMNATION PROCEEDINGS**

If you and the condemning entity do not agree on the value of your property, the entity may begin condemnation proceedings. Condemnation is the legal process that eligible entities utilize to take private property. It begins with a condemning entity filing a petition for condemnation in district court, in the county where the property is located.

## **COMMISSIONERS' REPORT**

After the condemning entity files a condemnation claim in court, and after ten (10) days' notice to you, the judge will appoint three disinterested landowners to serve as commissioners. These commissioners must take an oath to perform their duties impartially and justly. The commissioners are not legally authorized to decide whether the condemnation is necessary or if the public use is proper. Their role is limited to assessing just compensation for you.

After being appointed, the commissioners will inspect the property and consider the injury you may sustain by the taking. The commissioners must make a report in writing which determines the quantity, boundaries and just compensation of your property that is being taken. The commissioners must give their report to the district court clerk, who will file and record the

report. Once the commissioners' report is filed, the district court clerk has ten (10) days to forward a copy of the commissioners' report and a notice of time limits for review and appeal to all parties. After the commissioners' report is filed, the condemning entity may take possession of the condemned property, even if either party seeks judicial review of the award. To take possession of your property, the condemning entity must first pay the county clerk the amount assessed and reported by the commissioners.

The commissioners' report is significant to you not only because it determines the amount that qualifies as just compensation, but also because it impacts who pays the cost of the condemnation proceedings, as noted in the next section.

## **OBJECTION TO THE COMMISSIONERS' REPORT**

If either the landowner or the condemning entity disagrees with the commissioners' award, two options are available. Either party may file written exceptions or objections with the district court clerk's office within thirty (30) days after the report is filed. If an exception/objection is filed, the court must confirm the awarded amount, reject the awarded amount, or order a new appraisal if either party shows good cause. Alternatively, either party may submit a written demand for a jury trial with the district court clerk's office, within sixty (60) days after the report is filed. If you wish to make this objection, you must file it in writing with the court. If either party demands a jury trial, the trial will be conducted in the same manner as other civil actions are conducted in district court and the jury will assess the amount of damages from the taking. If the party demanding the jury trial does not receive a verdict more favorable to him than in the commissioners' report, then that party may be required to pay all district court costs. This means, if you demand a jury trial and the jury determines the commissioners' award was sufficient, you might be required to pay all the district court costs related to the jury trial.

Either party may ask the court to extend the time limit for filing an exception or demand for jury trial if the court clerk failed to give notice within ten (10) days from the report filing. The court may extend the time for filing to up to twenty (20) days after the application is heard.

## **RIGHT TO APPEAL**

After trial, either party may appeal any judgment entered by the court to the Supreme Court of Oklahoma. If you appeal the judgment, you will be liable for the costs of the appeal, unless the Supreme Court determines you are entitled to a greater amount of damages than the commissioners awarded.

## **\*\*EMINENT DOMAIN WITH GOVERNMENTAL FUNDS**

When an entity uses federal, state, or local funds to acquire your private property for public use, the entity must comply with additional procedures before beginning the condemnation process. First, the entity must appraise the real property before initiating negotiations to purchase your property. The entity must give you the opportunity to accompany the appraiser during the

inspection of your property, unless a federal law provides an exception. Second, after the appraisal, the entity must promptly offer you an amount reasonably believed to be just compensation. This amount cannot be less than the amount of the approved appraisal of the fair market value of the real property. The entity must provide you a written statement of the established just compensation amount they are offering you and a summary of how the entity came to this conclusion. If it is determined that damages to your remaining property will occur, the just compensation offered to you for those damages must be stated separately.

You will not be required to surrender possession of your real property to the condemning entity, even if you accepted the approved offer price or, after the condemnation proceedings, the compensation award amount has been determined, until the condemning entity pays the agreed purchase price or deposits the purchase price with the state court.

If the property taken is your dwelling, business or farm operation, the condemning entity must give you at least ninety (90) days' written notice from the date you are required to move from your dwelling or move your business or farm operation to another location.

The statute forbids the condemning entity from taking any coercive action to compel you to agree on the price of your property. This means that the entity cannot advance the time of condemnation nor can the entity postpone depositing the fund in court for your use.

You have the right to donate your property or compensation paid, if you choose, after you have been fully informed of your right to just compensation.

If private property was condemned with the use of governmental funds, and the property is not used for the purposes for which it was condemned or for another public use, this property is called surplus property. You have the right of first refusal to the surplus property. This means you have the right to purchase the surplus property at the appraised value or the original price at which the entity purchased that portion of the property, whichever is less, before anyone else.

### **REIMBURSEMENT OF EXPENSES AFTER ACQUISITION**

The condemning entity must, as soon as practicable after paying the purchase price, reimburse you for certain expenses you incur as a result of the taking. These expenses include: 1) recording fees, transfer taxes and similar expenses incidental to conveying your real property; 2) penalty costs for prepaying your preexisting recorded mortgage; and 3) their pro rata portion of real property taxes paid.

### **REIMBURSEMENT OF EXPENSES IN OTHER INSTANCES**

The court may also determine that the condemning entity must reimburse you for your reasonable attorney, appraisal, engineering and expert witness fees, you actually incurred because of the condemnation proceedings, if the entity abandons the proceedings or where the final judgment is that your property cannot be acquired through condemnation. The court may also award these expenses if the jury award exceeds the commissioners' award by at least ten percent (10%).

## **DISCLAIMER**

The information in this statement is intended to be a summary of the applicable portions of Oklahoma state law as required by HB 1562, enacted during the Oklahoma 2012 Regular Session. This statement is not legal advice and is not a substitute for legal counsel.

## **ADDITIONAL RESOURCES**

Further information regarding the procedures, time-lines and requirements outlined in this document can be found in Oklahoma Statutes Title 27 Eminent Domain and Chapter 2 of Title 66 Railroads. Other Statutes regarding eminent domain can be found in Oklahoma Statutes Titles 11, 52, 60, 69, 70 and 74.