

# FLORIDA EMINENT DOMAIN: Knowing and Protecting Your Property Rights



Eminent domain involves the taking of private property for a public purpose without the owner's consent. The exercise of eminent domain, which is sometimes referred to as condemnation, is limited by Article X, Section 6 of the Florida Constitution which provides, "no private property shall be taken except for a public purpose and with full compensation therefor paid to each owner . . ." This constitutional right to "full compensation" is important to all Floridians because it puts the owner on equal footing with the government and is intended to make the owner "whole." The following suggestions may assist the owner in protecting this constitutional right.

## **1. SEEK THE ADVICE OF EXPERTS.**

Under Florida law, in state court condemnations, the owner's reasonable attorneys' fees and expert costs are generally paid by the condemning authority as part of the right to full compensation. Among other things, this allows the owner to seek early consultation with an attorney and other experts experienced in eminent domain

matters, which can have an important impact on the outcome of the case.

## **2. LOOSE LIPS SINK SHIPS.**

It is very important for the valuation portion of an owner's case to choose words carefully with regard to the value of the property. Specifically, the condemning authority may attempt to use positions taken by the owner – such as statements to local media or at public hearings, listings of the property or ad valorem tax challenges – against the owner during the valuation trial in an effort to reduce the owner's recovery.

## **3. CLEAR CONDEMNATION CLAUSES IN LEASES.**

Florida law recognizes the rights of both fee owners and tenants in a condemnation action. The jury returns one verdict representing the value of all interests in the property and the trial judge then determines the amount of the verdict to be allocated to each interest. Generally, lease provisions addressing condemnation will be enforced by the judge, so lessors and lessees should

carefully draft and address their respective rights to apportionment in the event of condemnation.

## **4. TAKE CARE IN EARLY ACQUISITION PROGRAMS.**

Some condemning authorities seek to acquire property under an early acquisition program saying that the property is needed now for a future project. On occasion, they indicate that a limited number of properties are eligible for acquisition on a "willing seller" basis under the program and do not advise the owner of their rights to have attorneys' fees and expert costs paid by the condemning authority if the matter moves forward to eminent domain. What is important to know is that an owner is under no obligation to sell the property, even though the condemning authority has indicated a future need. While an early acquisition program may be useful to some, care should be taken and the owner should consider whether consultation with an attorney experienced in condemnation matters would be beneficial in assessing the early acquisition offer.

By following these suggestions, property owners can safeguard their constitutional rights, and solidify their positions in the event their property is condemned. <sup>1</sup>



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