

Eminent Domain: Your Rights as a Property Owner

Related Practices

Administrative and Government Law

Family Law and Divorce

- Property Division

Real Estate Litigation

Related Attorneys

Timothy "Tim" J.W. Muller

By Timothy "Tim" J.W. Muller on June 17, 2024

As a property owner, few legal concepts can be more unnerving than the government's ability to take your land through its power of eminent domain. Also known as **condemnation**, eminent domain allows certain government entities to acquire privately owned property for public use, even if the owner objects to the taking.

While this government power may seem unreasonable, the **5th Amendment** of the U.S. Constitution, as well as South Carolina state law, permits eminent domain provided the taking is for legitimate public use and the owner receives just compensation. The Just Compensation Clause of the 5th Amendment, also known as the "Takings Clause", states that, "...nor shall private property be taken for public use, without just compensation."

What Constitutes Public Use?

For the government to legally exercise its eminent domain authority, the taking must be for a legitimate "public use" such as:

- Infrastructure projects (highways, bridges, etc.)
- Public buildings and facilities (schools, offices, etc.)
- Utilities and energy transmission projects
- Public recreational spaces and parks
- Conservation and environmental protection

What is Just Compensation?

Just compensation is typically determined by the **fair market value** of the property to be condemned. Fair market value is the value of the property as determined by the marketplace. In United States v. Cartwright, 411 U.S. 546, the court defined fair market value as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."

This is an objective standard that considers what a buyer would pay to a seller if that buyer was informed and not under pressure by the seller to agree to the price. In contrast, consider what a buyer would pay if the seller was a family member or friend. In those instances, the buyer may be influenced to buy at a lower or higher rate due to the relationship with the seller.

Another important consideration is the extent of the property rights being condemned. For

example, the fair market value may be lower than expected in condemnations involving limited easement rights where a property owner continues to own the property or in situations where a property is already encumbered. On the other hand, the fair market value may be considerably different when the condemnation involves a full taking of unrestricted property with similar, expensive comparable sales.

To ensure that just compensation is properly determined in **South Carolina**, the law requires that the condemnor obtain an appraisal of the property to determine just compensation for its taking. Both the condemnor and landowner then have the right to make reasonable efforts to negotiate the compensation amount to be paid.

Your Rights as a Property Owner

As a US citizen, property owners are entitled to due process when subjected to eminent domain actions, which include a number of fundamental rights. While it is difficult for a landowner to challenge condemnation, there are circumstances in which a property owner may be able to stop the eminent domain process. Both the federal and state constitutional limitations require that the taking of private property be for either a public purpose or necessity and that the property owner receives just compensation. Absent any justification to stop a condemnation, a property owner can retain their own appraiser to ensure that the government's offer of compensation is within reason. South Carolina allows landowners to provide their own opinion of just compensation as well, but having experienced experts or an appraisal supporting a property owner's valuation is typically the better option.

Trusted Charleston Eminent Domain Attorneys

There's more to an eminent domain case than simply determining whether the government's purpose for condemning your property falls under public purpose or necessity. Depending on the project, a property owner may be entitled to certain additional benefits, such as relocation expenses. Also, the fair market value standard can be complex, so it's helpful to have someone on your side helping you negotiate and advocate for yourself to get proper compensation.

From the initial notice to the final resolution, eminent domain cases are complex legal matters requiring experienced eminent domain attorneys. Our Charleston eminent domain team leverages:

- Deep familiarity with South Carolina's eminent domain laws
- Extensive litigation experience
- Access to highly qualified real estate valuation experts and appraisers
- A commitment to protecting your property rights under the federal and state constitutions

We analyze every aspect of the government's proposed taking and diligently pursue all

remedies to limit property acquisition or compel full just compensation on your behalf.

At Rosen Hagood, our **eminent domain attorneys** ensure property owners impacted by these actions fully understand their legal rights and protective remedies. If you have received notice of a potential eminent domain action, [contact us today](#) to schedule a consultation.