Eminent Domain and Condemnation Law

GrayRobinson's eminent domain and condemnation attorneys have handled thousands of eminent domain law cases on behalf of our public and private clients. Our Florida eminent domain attorneys have represented owners from the Panhandle to the Florida Keys. While we primarily represent property owners, our experience "on the other side of the fence" (representing condemning authorities) gives our eminent domain law team insight into the issues and concerns that are considered by a taking authority in compensating our clients. As a result, in many instances we are able to present the property owner's case in a manner that the taking authority better understands, appreciates, and can justify. This is particularly true in providing the justification necessary for substantial settlements for property owners. Our attorneys are prepared to handle every stage of your case.

Representing Property Owners

Our eminent domain lawyers focus on two goals: first, we coordinate with the condemning authority to lessen the impact of the taking on our clients' properties and businesses. Second, we work diligently to secure the highest amount allowable under the law to compensate our clients. We utilize cutting-edge technology to prepare and explain your case, and we work with specialized expert witnesses to present the strongest case possible.

Representing Condemning Authorities

While we primarily represent property owners, our experience "on the other side of the fence" (representing condemning authorities) gives our condemnation attorneys insight into the issues and concerns that are considered by a taking authority in compensating our clients. As a result, in many instances, we are able to present the property owner's case in a manner that the taking authority better understands, appreciates and can justify. This is particularly true in providing the justification necessary for substantial settlements for property owners.

The Depth to Handle the Issues

Engaging GrayRobinson, one of Florida's largest law firms, affords our clients another unique advantage - namely, immediate access to lawyers who concentrate on a number of practice areas. GrayRobinson's lawyers and consultants, particularly those who practice in government relations, land use, tax, real estate and environmental law, are an invaluable resource for both the eminent domain law team in preparing a case and the client in mitigating impacts of the taking. Beyond the GrayRobinson eminent domain lawyers, we engage and work closely with appraisers and engineering experts throughout the state and nation and can assemble an experienced team for our clients.

Eminent Domain and Condemnation Law Frequently Asked Questions

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- How do I know if the Condemning Authority's offer is too low? Aren't they required to treat me fairly and pay fair market value?
- Why should I have GrayRobinson represent my rights in an Eminent Domain lawsuit?
- A friend recently hired an attorney for a car accident and the attorney kept 30% of the award. If I hire GrayRobinson, will a portion of my award go towards the fee?
- I cannot afford/I do not want to pay an attorney to defend my rights. Does that mean I should accept the government's offer?
- The government is only taking part of my land. How is this valued?
- I have a mortgage on my property. How does that change a condemnation?
- Aren't appraisals all the same? Can't I just use the appraisal done for my mortgage to show the value of my property?
- What are the penalties for refusing to take the government's offer?
- What if the taking causes my property to become nonconforming with zoning, setbacks and the like?
- I am/there is a tenant at the property. Does this matter?
- The government is only taking a few parking spaces from the front of my business. What's the big deal?

What is eminent domain law?

Eminent domain is the ability of the government to take your private property provided the government pays full compensation and the property is necessary for a public purpose. Florida and the United States Constitution provide that the compensation owed is the value of the property taken plus the diminution in value to the remaining property, if any.

Can the government really take my private land?

For the vast majority of cases, the answer is yes. All land is held subject to the power of the government to take it if the land becomes necessary for a public purpose. However, this power comes with a price: the condemning authority is required to pay you full compensation for your property.

Is it possible to stop the government from taking my land?

There are limited instances where it is possible to stop a project from going forward. For example, the Florida Legislature has prohibited the use of eminent domain for the benefit of private companies. However, the vast majority of cases are for well recognized public purposes

(roads, transportation, schools, etc.) and are much more difficult to defeat. In these instances, we focus on helping our clients receive the maximum compensation possible. These issues must be raised at the Order of Taking Hearing (see below) as that is the one and only time a property owner will have to challenge the government's right to take property.

How does the eminent domain law process work in Florida?

While the first contact a property owner will usually have with a condemning authority is the first offer, the condemning authority has been working on the project for months or even years prior to this offer. The condemning authority is required to base the first offer on an appraisal and have plans in a relatively final format before proceeding. In the typical eminent domain law case, if the property owner does not accept the first offer, the condemning authority will file suit and the owner would be required to appear before a judge to have what is known as an Order of Taking Hearing. At this hearing, the condemning authority will argue that the compensation offered is fair and will work to convince the judge that they should be allowed to deposit that amount with the Court and take immediate possession of the property in question. If the Judge grants the Order of Taking, that is precisely what happens: the property is transferred to the condemning authority and value is left for a later date. If after mediation and negotiation a settlement still cannot be reached, the property will be valued by 12 jurors with the property owner and the condemning authority both presenting valuation experts who present the jury with their opinion of value. The jury is then allowed, within certain boundaries, to have the final say on what should constitute full compensation.

Who can condemn property?

While the majority of condemnation in Florida is done by the Florida Department of Transportation, counties, cities and other entities have been granted the power of eminent domain. Examples include the Florida Turnpike Authority, various local expressway authorities, water management districts, canal authorities, port and airport authorities, and school boards. Additionally, the Florida Legislature has granted certain private corporations the right to use eminent domain law, including power companies, railroads, pipeline companies and other utilities.

What type of property can be taken?

The majority of eminent domain cases are filed for raw land and the structures on that land. However, any property subject to ownership is potentially subject to the power of eminent domain. Notable examples brought before the Florida and U.S. Supreme Courts include vehicles, water rights, bald eagle feathers, cedar trees, citrus nursery stock, and interest from certain types of bank accounts.

What does "full compensation" mean?

The Florida Constitution requires that a taking authority provide a property owner with "full compensation." Subsequent courts have held that this constitutional right includes the fair market value of the property taken, any damages to the remaining property, attorneys' fees for the eminent domain case and reasonable expert fees in preparing that case.

What is fair market value?

Fair market value is generally understood as the price a willing seller will pay a willing buyer, neither under any duress, for the property in question. In each eminent domain law matter our eminent domain attorneys handle, a well-qualified appraiser is retained to assist our team in determining the fair market value of the property being taken.

I received a letter from the government saying they want to buy my land or condemn it. What should I do?

If you accept their offer, it is the end of your case. As stated elsewhere, rarely is the government's first offer their best offer. Once you have received a letter of this type, the condemnation lawsuit is not far behind if you do not accept their offer. This is a good time to select an eminent domain attorney and legal team. As the next answer explains more fully, hiring an eminent domain law team sooner rather than later gives landowners great advantages over those who wait. Remember: it costs you nothing to retain GrayRobinson to assist in your eminent domain law case, so why not put the GrayRobinson team to work for you as early as possible?

The government's project has been planned for years and still appears to be years away. What is the point of retaining an attorney now?

The earlier an eminent domain attorney is retained in an eminent domain lawsuit, the better for the property owner. GrayRobinson attorneys monitor the projects from inception to construction and update our clients on the latest news and schedule for the project set to impact their property. Further, an attorney can assist the property owner in "precondemnation planning" which includes ensuring the property and documentation maximize the potential value of the property. Finally, eminent domain attorneys may be able to assist owners who have unique circumstances in negotiating early acquisition, modifying a proposed taking to lessen the impact or gaining other non-monetary concessions from the taking authority which benefit the property owner.

Do I have to accept the condemning authority's offer for my land?

Absolutely not. It is your legal right to challenge the valuation the condemning authority places on your property. But in order to be successful, you need expert testimony relating to the true value of your property. This is where the experience and ability of veteran eminent domain law professionals is most important. In our pursuit of full compensation, we work with a group of tried and true eminent domain law experts who have been to trial and dealt with many aspects of eminent domain valuation and law.

What if the condemning authority's offer is close to what I feel my property is worth?

Most landowners have a good feeling for what they believe their property is worth. However, it is very important to engage practitioners who focus on eminent domain matters (lawyers, appraisers and planners, among others) to examine your property. Often, minor issues or issues which the owner overlooked cause the property to be valued well above what the owner thought it was worth. Remember, as this is your only chance to receive compensation for the taking of your property, it is very important to take every opportunity to ensure you receive the maximum value for your property.

How do I know if the condemning authority's offer is too low? Aren't they required to treat me fairly and pay fair market value?

Just as you wouldn't sell a piece of property to a buyer if a buyer were allowed to set the price himself, accepting the condemning authority's first offer could be selling yourself short. Fair market value can vary wildly depending on what the appraiser views as the highest and best use of the property and what other properties the appraiser feels are comparable. Because of this, to avoid being taken advantage of, it is vital to retain experienced counsel who can tell you what they would testify to before a jury and also give insight into what type of award a jury would likely make. Other issues often emerge in eminent domain cases which are easily overlooked, both by property owners and attorneys not familiar with eminent domain cases. These include:

- Compensation issues relating to business damages
- Compensation issues relating to fixtures and improvements
- Severance damages and damages to remaining property
- Possible entitlement to relocation benefits
- Unforeseen or unrealized highest and best uses of the property (e.g. it may be valued much higher if an expert believes it is reasonably probable the property could be used for commercial use instead of the current residential use)
- Is the cure proposed by the government actually going to work? Can it be permitted? Is a different cure necessary?
- Did the condemning authority's experts miss hidden issues of access, drainage, use, engineering, etc. which impact value?

Only experienced eminent domain practitioners have the insight to identify, value and present these damages to the condemning authority in the manner most likely to yield maximum compensation.

Why should I have GrayRobinson represent my rights in an eminent domain lawsuit?

The difficulty with eminent domain law matters is that the property owner starts every case at a huge disadvantage. In order to provide you with an offer, the condemning authority has already had a combination of lawyers, right-of-way agents, appraisers and experts scrutinize your property and the taking and formed opinions regarding the value and potential uses of your property. Fortunately Florida, unlike most other states, has given the property owner the opportunity to make the fight fair by mandating that the condemning authority must pay all of the property owner's reasonable expert costs and attorneys' fees. What this means is, in nearly all contexts where your property is taken and you hire GrayRobinson to represent your eminent domain case you pay no out of pocket fees.

A friend recently hired an attorney for a car accident and the attorney kept 30% of the award. If I hire GrayRobinson, will a portion of my compensation go towards the fee?

No. While we have heard of other eminent domain law groups keeping a portion of the compensation you receive for your property; this is not something we do. Thus we do not keep any amount you are awarded (or settle for) for your property.

I cannot afford/I do not want to pay an attorney to defend my property rights. Does that mean I should accept the condemning authority's offer?

Absolutely not. In Florida, the condemning authority is required to pay your reasonable expert costs and attorneys' fees. What this means is that, in the vast majority of cases, the property owner pays no fees or costs.

The government is only taking part of my land. How is this valued?

This is known as a "partial taking." Here, the appraiser must focus on two things: first, what is the value of the property taken; and second, what is the loss in value to the remaining property as a result of the taking and project. For example, a piece of property being impacted by a new expressway would be entitled to the value of the acres taken to build the expressway and the damages caused to the rest of the property as a result of being smaller in total size, being next to an expressway, and having more difficult access.

I have a mortgage on my property. How does that change a condemnation?

Most mortgages have provisions dealing with the possibility of eminent domain and it will depend on the terms in that mortgage. However, as part of negotiations and case preparation, GrayRobinson attorneys frequently negotiate agreements between the mortgage company and the property owner on behalf of our clients.

Aren't all appraisals the same? Can't I just use the appraisal done for my mortgage to show the value of my property?

No, all appraisals are not the same! This is one of the most common mistakes we see property owners make on their own accord. A mortgage company appraisal is a completely different animal than an eminent domain appraisal. Most mortgage appraisals are performed quickly and focus on the potential downside to the bank. Eminent domain appraisals have a specific legal interest they seek to value: namely the fair market value as influenced by the guidance provided by Florida 's eminent domain law.

An eminent domain appraiser needs to meet the following criteria: (1) experience and a thorough understanding of eminent domain valuation rules and laws; (2) experience appraising the type of property in question; (3) experience testifying before a jury; and (4) ability to write a comprehensive report explaining the findings.

What are the penalties for refusing to take the condemning authority's offer?

By forcing the condemning authority to exercise its power of eminent domain, an owner is simply exercising his/her constitutional rights. Courts generally recognize this fact as well. However, it is possible for the government to withdraw the first offer which can create very difficult circumstances for an owner attempting to represent him or herself.

What if the taking causes my property to become nonconforming with zoning, setbacks and the like?

This is a specific type of damage that, unfortunately, occurs all too often. When it comes to takings and zoning, different governmental units are pursuing their unique interests which can cause unforeseen and sometimes catastrophic consequences. For example, certain cities will not waive their requirements for building setbacks, even where the property has been impacted

by a department of transportation road project. The result is that a formerly buildable lot could become nonconforming, unbuildable and have only nominal value.

When these issues arise, GrayRobinson's team of outside professionals work closely with the municipality's planning and zoning departments so the property that remains after the taking is useful. When necessary, these professionals will also work through final approval with the city to permit the anticipated cure.

I am/there is a tenant at the property. Does this matter?

Tenants are often overlooked in eminent domain law actions. However, the Florida courts have repeatedly held that a tenant is entitled to compensation from an eminent domain action. Many leases address how compensation in an eminent domain law case should be apportioned between a landlord and a tenant. Additionally, leaseholders who meet certain statutory criteria may be entitled to business damages even where they will continue to operate after the taking. We have worked with landlords and tenants in a variety of contexts regarding eminent domain law matters and would be happy to discuss the particulars of your lease and business.

The condemning authority is only taking a few parking spaces from the front of my business. What's the big deal?

Parking spaces are frequently impacted in eminent domain matters and, unfortunately, the actual impact of loss of parking is often overlooked. We have seen cases where the loss of just a few spaces led to the ultimate shut down of a business. Remember: if fewer customers, clients and staff are able park at your business there is a good chance your business may not operate as efficiently and profitably as before the taking.

Also, in Florida if your business has been in existence at that location for more than five years you may be entitled to business damages for this type of taking. To fully analyze a claim for business damages, GrayRobinson works closely with an experienced team of forensic accountants who can examine and testify regarding the anticipated damages caused by the changes.