



Eminent Domain - Part 2 of 4

Step-By-Step Guide to the Condemnation Process in Oklahoma

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Initial Proceedings

The Oklahoma Legislature has enacted public policy guidelines that must be followed by any "person, acquiring agency or other entity acquiring real property for any public project or program." The condemning authority must first make a resolution declaring that the acquisition of the property is necessary for a public use or public purpose. However, taking the property does not have to be absolutely necessary, it only must be reasonably necessary to accomplish the stated public purpose or use. The resolution also creates a rebuttable presumption of public purpose, which shifts the burden of proof in a condemnation proceeding to the landowner to show an absence of public purpose. The policy then requires that the condemning agency to fairly evaluate the value of the property (which typically requires an appraisal). However, a condemnor's failure to obtain an appraisal or allow the landowner to consult the appraiser will not create any "rights or liabilities" that affect the validity of a property acquired through condemnation proceedings.

Good-Faith Offer (and potential negotiations)

Condemnation statutes also require a condemnor to make a good-faith offer to a landowner before instituting condemnation proceedings. However, this first offer is usually based on economic, not legal, considerations. An outright rejection of the condemnor's offer or a landowner's counter-offer (which can be considered a rejection) gives the condemnor the authority to commence a lawsuit to condemn the affected land. While it appears that landowner does not have much bargaining power at this point in the proceedings, it is important to remember that condemning authorities understand that it is ultimately cheaper for them to negotiate at this stage than to go through the full judicial condemnation process. Depending on the circumstances, a landowner may actually have considerable leverage to reach a fair resolution with the condemning authority.

It is very important at this stage for the landowner to be proactive and gather the relevant information regarding the true value of the property to be taken and the effect, if any, the taking will have on the remaining part of the landowner's property. This typically requires the landowner to find out as much information as possible about the project by: talking to others in the path of the taking, obtaining project drawings from the condemnor, talking to engineers on the project, and generally asking questions and gathering information from every available source. At this stage, the landowner should be consulting a lawyer with experience in condemnation matters, retaining experts to evaluate the value of the property and any damages caused by the taking. The better armed the landowner is with information, the better chance for early resolution at a fair price.

Petition

In order to initiate a condemnation proceeding, the condemning agency will determine the names and addresses of any individuals who may own any interest in the property to be acquired. Once the condemnor has this information, it will initiate a civil lawsuit in the county court where the property is located. In its petition, the condemning authority must include the following:

- (1) A recitation of the condemning authority's power of eminent domain;
- (2) The resolution of necessity, including the condemnor's authority to commence condemnation proceedings;
- (3) The legal description of the property to be condemned;
- (4) The identity of any individuals or entities who currently possess any interest in the identified property; and
- (5) A request for the appointment of commissioners.

In the petition, the condemnor will also request a hearing to appoint the commissioners. The soonest the hearing can take place is ten days after notice of the suit and hearing is served on the affected landowners.

Hearing to Appoint Commissioners

Unlike the majority of petitions filed in court, a landowner does not have to answer a condemnation petition. In fact, the Oklahoma Supreme Court has noted that they “do not approve of [filing answers in condemnation actions]. An answer filed in a condemnation suit will not, in and of itself, raise any issue that can be determined in the proceeding.” See *Board of County Commissioners of Creek County v. Casteel*, 522 P.2d 608, 610 (Okla. 1974). When a condemnation petition is filed, the Court must then choose three (3) freeholders who reside in the county where the affected land is located, and who do not have any personal interest in other recent or currently-pending condemnation proceedings. Each court has its own procedures for selecting commissioners, ranging from the court having total control over the selection process to the landowner and condemnor being allowed to participate in the selection. Although many courts require that the commissioner be a member of the real-estate profession or at least have extensive background in that area, other courts only require that the commissioner be a landowner in the county. A landowner cannot object to the proposed condemnation until after the commissioners have submitted their valuation of the affected land to the court.

Commissioners' Report

After the appointed commissioners have taken their oaths to uphold their duties, they must: (1) inspect the affected property, (2) evaluate the damages the landowner will suffer if the proposed condemnation is approved, and (3) determine the just compensation to the landowner for the property taken. The landowner is allowed to accompany the commissioners during their evaluation of the property. The landowner and condemnor are both required to provide information to the commissioners regarding their position on value and damages. The Oklahoma Constitution defines “just compensation” as “the value of the property taken, and in addition, any injury to any part of the property not taken. Any special and direct benefits to the part of the property not taken may be offset only against any injury to the property not taken.” Okla. Const. art II, § 24. After their evaluation, the commissioners will file a written report setting their opinion on the “just compensation” for the proposed condemnation.

Landowner Objections and Demand for Jury Trial

Once the court receives the commissioners' report, the court clerk will then mail the report and a notice to all affected landowners. If the landowner disagrees with the condemnor's right to take the property, he must file an exception (objection) to the report within thirty days. If the landowner disagrees with the commissioner's opinion on “just compensation,” he must file a demand for jury trial within sixty days. If either of these deadlines is missed, the

landowner waives any right to object to the right to take and the amount of just compensation.

Condemnor's Payment and Possession of Affected Land

Whether or not the landowner chooses to file an exception to the commissioners' report, the condemnor will usually pay the "commissioners' award" into court. The Oklahoma Constitution states that "[u]ntil the compensation shall be paid to the owner, or into the court for the owner, the property shall not be disturbed, or the proprietary rights of the owner divested." By paying the award into the court, the condemnor is legally allowed to take possession of the affected property. If it is later determined that the condemnor did not have the right to take the property, the condemnor will be liable for any damages caused by its occupation of the premises during the proceedings. Although the condemnor is not required to do so by law, most condemning authorities will give the affected landowner a reasonable period of time to leave the property. As soon as the money is paid into the court, the landowner has a right to withdraw the money without prejudice to his right to seek a jury trial on the just compensation for the taking, meaning the landowner can take the money and still pursue recovery of just compensation in the court.

Next Step: Settlement or Jury Trial

[The next article](#) in this series will focus on preparing for and successfully navigating this judicial process to ensure that a landowner truly receives just compensation for the taking of his land.

Links

[Eminent Domain - Part 1 of 4: Limits on the Power of Eminent Domain](#)

[Eminent Domain - Part 3 of 4: Practical Strategies a Landowner Should Follow to Maximize Compensation](#)

[Eminent Domain - Part 4 of 4: Settlement or Trial?](#)

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