

## Law You Can Use: Consumer Information Column

### Eminent Domain: What a Property Owner Should Know

When the government needs private real estate to complete a public project, a governmental entity (such as the Ohio Department of Transportation or a city) can acquire title to the property by exercising the power of eminent domain. This extraordinary right must balance private and public interests—the concept of “every man’s home is his castle” versus the concept of “the king can do no wrong.”

**Q.:** *What is eminent domain?*

**A.:** Eminent domain (sometimes called “condemnation” or a “taking”) is the power of the government (which includes governmental agencies, cities and other local governmental entities) to acquire private real property from an unwilling owner. In Ohio, the government’s right to exercise eminent domain is based in the state’s constitution: “Private property shall ever be held inviolate, but subservient to the public welfare.”

**Q.:** *Can the government take property at will?*

**A.:** No. Two limitations on the power of eminent domain have always existed: (1) the taking must be necessary for a public purpose and (2) the government must pay “just compensation” for the property.

**Q.:** *If eminent domain can only be used for a “public purpose,” how can a city take private property and then sell it to a private developer?*

**A.:** The definition of “public purpose” extends beyond activities such as building roads or parks and also includes “economic development” (increasing the tax base and creating jobs). For the past fifty years or so, economic development alone was considered a “public purpose,” but Ohio law recently changed. Now, economic development by itself is not enough to justify the taking of private property.

Economic development may be viewed as a public purpose only if the property is deemed “blighted” according to Ohio law. The law’s definition of “blight” is long and complicated, but in general, a property is considered to be “blighted” if it is unsafe for human habitation or use, poses a direct threat to public health or safety, or has unpaid taxes or assessments that exceed the fair value of the land.

**Q.:** *How does eminent domain work?*

**A.:** First, the governmental entity decides to undertake a public project. The project may be the widening of a road or constructing public housing, for example. At least 30 days prior to filing an

eminent domain action, the entity must give notice to an owner of its intent to acquire the property and must make a “good faith offer” to purchase the property based on a recently-acquired appraisal. If the parties cannot agree on a price, the entity may turn to the courts to take the property needed for the project.

**Q.:** *What compensation would I be entitled to receive if the private property I own is taken by eminent domain?*

**A.:** You may be compensated for: (1) the fair market value of the property taken, (2) the damage to the “residue” in a partial taking, and (3) certain costs associated with the taking.

You are entitled to receive “fair market value” for the property actually taken. Fair market value is the price that would be agreed upon at a voluntary sale in the open market by an owner willing (but not obligated) to sell to a purchaser willing (but under no duty) to buy. In a taking situation, you are not entitled to a “bonus” price because of the forced nature of the transaction, and, likewise, you are not required to give a “bargain” price because the government needs the property.

If only a part of your property is taken (for example, if the government needs a strip of your land nearest the street to accommodate a road widening), it is referred to as a “partial taking” and the remaining property is referred to as the “residue.” When a partial taking occurs, access to the property may be affected or parking spaces may be lost. In such instances, in addition to compensation for the property actually taken, you can also receive compensation for the reduced value of the residue. Such damages are calculated as the difference between the fair market value of the entire property immediately before the taking and the fair market value of the residue after the taking, less the fair market value of the property taken.

Finally, the recent changes to Ohio law permit you, in certain circumstances, to receive additional compensation for losses related to the taking, such as goodwill payments, relocation expenses, and/or economic damages, if your property is a business that must relocate. In limited circumstances, you can also receive attorney’s fees.

**Q.:** *How is the amount of just compensation established if I cannot come to terms with the public entity that wants my property?*

**A.:** The amount can be resolved by the parties at mediation, but the matter is frequently submitted to a jury at trial. Both sides may present expert witnesses who give opinions about fair market value of the property and you also may testify as to value. The jury views the property and considers all evidence and determines what compensation you are owed.

*Law You Can Use is a weekly consumer legal information column provided by the Ohio State Bar Association. This article was prepared by attorney Barbara A. Sanchez of the Akron office of Vorys, Sater, Seymour and Pease LLP. Articles appearing in this column are intended to provide broad, general information about the law. Before applying this information to a specific legal problem, readers are urged to seek advice from an attorney.*