



Washington Eminent Domain Law Overview.

By Christopher M. Small

Many people don't even know what eminent domain is until the full force and weight of it is upon them. You may have heard about it on the news in passing - some big Supreme Court ruling or someone protesting a city taking property for what many perceive to be a private purpose. But most of the time eminent domain operates under the radar, a sort of underbelly to the traditional operation of the federal, state, and local governments and all utilities. Many times the threat of eminent domain swoops in and is gone before anyone really knows what has happened. But that doesn't make it any less scary. So I've put together this overview of eminent domain law, particularly in the State of Washington and the area surrounding Seattle so some of your questions and concerns can be answered.

This material is broken up into several short segments:

- What is Eminent Domain?
- Overview of the Eminent Domain Process
- Overview of the Property Valuation Process
- What Every Landowner Facing Eminent Domain Should Do

Please remember when reading this information that it is **not intended to be relied upon alone as legal advice**. If you find yourself facing a DUI charge, **contact a Seattle DUI attorney or Bellevue DUI attorney before making any decisions**.

WHAT IS EMINENT DOMAIN?

Eminent domain is the process of the government taking private property for public purposes. It is often associated with roads, public buildings (courthouses, schools, utility buildings, etc.), and utilities (cable, sewer lines, electrical lines, etc.). The power of eminent domain is actually derived from the Fifth Amendment to the United States Constitution, which states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

It is not the first part of the Fifth Amendment that creates the power of eminent domain, but the second. The ability to be free from deprivation of your property without just compensation was a cornerstone of the Constitution and one of the primary motivations behind the Revolutionary War.

It is undeniable that there are times when property is needed for public or government purposes, and must be seized by the government if it cannot be purchased outright. Without this power, there would be no straight streets, sewage, water, and electrical service as we know it would not exist, and there would be no such thing as public infrastructure (imagine trying to get a block of

landowners to sell their land for a street, much less a mile's worth). Under English rule, the government did not pay for land, and they did not ask for it – they simply took it. The founders of the United States realized the need for public infrastructure but wanted to be certain that landowners were compensated for their loss. The Fifth Amendment and eminent domain law arose out of the need to meet these two competing goals.

OVERVIEW OF EMINENT DOMAIN PROCESS

The eminent domain process usually starts with a governmental entity recognizing the need for a public project. An example will make this much easier to discuss, so I'll use the City of Seattle recognizing the need to widen 1st Avenue from four lanes to six lanes. After recognizing this need, some preliminary engineering work will begin, and usually the city will begin to hold public meetings, with the affected landowners invited to attend, to discuss the impacts and benefits of the projects, and receive feedback on how the project should be designed. In many ways these meetings are designed to help affected landowners become accustomed to the idea that their property is going to be affected by a road project.

The next step involves acquiring the property from the landowners. As preliminary engineering designs progress, a right of way line, or parameters for the property needed for the project, becomes clear and is finalized. Once the right of way lines are finalized, Seattle would hire a title company to figure out who the owners of the affected properties (also called parcels) were. At this time it is also common for Seattle workers to outline the new right of way lines, often by spray painting what is needed on the sidewalk (and if grass is involved, by staking out the new right of way line).

After the parcels have been staked and the property owners identified, the next step is often a letter to those property owners informing them of the road project, informing them that their land is needed for the project, and informing them that every effort will be made to reach an agreed to price for the settlement, but if an agreement cannot be reached, the city's power of eminent domain will be exercised. This letter also lets the property owner know that an appraiser will be out to value the property, and asks for the landowner's cooperation.

Some time later, an appraiser will come to the landowner's property, take some measurements, take some notes, ask you some questions, and put together an appraisal of the portion of the property to be taken. At this point, even if you are against the project, it is a good idea to speak with the appraiser. The more information you give them, the better the appraisal will be. And it is important for you to talk to them, because no one knows your property better than you.

Once the appraisal is complete an offer of just compensation will be put together. Just compensation includes the value of the property taken, any damage the taking causes to any remaining property, and any items that need to be replaced on the remaining property (often referred to as "cost to cure" items). This offer is usually delivered personally by an acquisition agent, though some of the less caring government's will just send a letter.

Once you receive your offer of just compensation, the real process begins. This is because, like the sale of your house to a regular buyer, their offer is not a take it or leave it proposition. The

sale of your property to Seattle, even though you are under the threat of eminent domain, is a negotiation in the truest sense of the word. At this point it is often most beneficial to hire a [Washington eminent domain lawyer](#), or in this example, a [Seattle eminent domain lawyer](#). They have the expertise and experience to get you the most money possible for your property. And though they do cost money (often a percentage of what they get you over your initial offer), without them you stand to leave thousands of dollars on the table.

And, contrary to how you may feel or how Seattle may make you feel, you are not wrong for questioning the government's valuation of your property. Often the government appraisers are overworked and undereducated, which results in the miscalculation of the value of your property. And although this often results in a miscalculation of your just compensation, it makes it the perfect opportunity to negotiate a higher price. Also, it is the primary reason why I counsel my clients not to get their own appraisal until it is really necessary – there is much more money to be made by poking holes in the government's appraisal than by getting your own. It doesn't cost you any money, and there is no information coming from your side for the government to critique. In my experience, the best results occur when the landowner doesn't get their own appraisal.

If negotiations do not result in an agreed to price for your property, Seattle will file an eminent domain action in King County Superior Court. At that point the case progresses much like a normal civil case, with discovery, depositions, expert witness designations, and, if mediation doesn't work, a jury trial. In most instances the case doesn't get to trial, mostly because it is always risky to have a jury decide the case – it is impossible to know what facts will be given the most weight. When an agreement is reached or the jury returns a verdict, the moment the government pays the money owed into court they own your property.

OVERVIEW OF THE PROPERTY VALUATION PROCESS

The appraisers the City of Seattle hire will use one of three traditional appraisal methods, following a standard appraisal formula, to value your property. If the entire property is taken, they simply determine the value of your property, after determining the highest and best use of the property. If only a portion of the property is taken, they determine what your entire property was worth before the taking, what your remaining property is worth after the taking (including any loss in value), and the difference between the two is your just compensation.

The property valuation process begins by determining the highest and best use of the property. This refers, as the name suggests to the most valuable use the property could be put to. Often this isn't what the property is being used for at the time of the taking. For example, if you own property that has a rental home on it, but it is zoned for commercial use, it is probable that the highest and best use is as a commercial development, which brings a much higher price per square foot than a residential property would. And you don't even have to have plans to use the property in that manner. The property is examined from your perspective as a seller, meaning what you would sell it for if you were selling it willingly, and from a buyer's perspective, meaning what they would pay. If the property were zoned commercial, you would not sell it for residential prices, and a buyer would likely pay some level of commercial value for it.

After highest and best use is determined, one of three (or a combination of the three) appraisal methods is used: (1) comparable sales; (2) income capitalization; and (3) replacement cost. The comparable sales method is the one most common to other sales – look at what similar properties are selling for and that is a good indicator of what your property would likely sell for. The income capitalization approach looks at what the land could generate from an income perspective. For example, if you could show that someone would lease the property for \$3.00 per square foot, that figure can be used to determine a value for the property. And finally, the replacement cost method examines at what it would cost to replicate the property and then reduces the value for depreciation. This is often used when buildings or houses are being acquired.

It is important to know, however, that some things cannot go into the calculation of just compensation for your property. Sentimental value is not compensable. Speculative, conjectural or remote uses cannot be used. Illegal uses cannot be used. And the fact that the government is taking your property against your will cannot be used. These are often hard to get by, but the goal (from the Constitution’s perspective) is to pay the owner what they would have gotten for the property if they were a willing seller and they sold to a willing buyer – what is often referred to as an arm’s length transaction.

This is just the tip of the iceberg for the appraisal process of property acquired by eminent domain. And, as you can see, it gets pretty complicated pretty fast. Get the most for your property by hiring a Washington eminent domain attorney or Seattle eminent domain attorney early in the process. It will reap huge dividends.

WHAT EVERY LANDOWNER FACING EMINENT DOMAIN SHOULD DO

Here is a short list of some things you can do to help your situation if you ever find your Washington or Seattle area property taken by eminent domain:

- Hire an experienced eminent domain lawyer early in the process.
- Do not hire an appraiser to value your property. Without the proper instructions they will not do the job correctly, potentially costing you thousands and thousands of dollars.
- Be on the lookout for the sale of properties similar to yours (or with your similar highest and best use).
- Make a list of the unique, quantifiable properties your land has. Think about what would make a buyer want to pay more for your property over the average property (zoning, uses, water, oil, other mineral, access to highways, etc.).
- Don’t be afraid to negotiate with the government. They know their appraisals often miss the mark and will pay you for their mistakes (I know, I used to be the eminent domain attorney for a state department of transportation).

If your land is being taken in Washington State or the Seattle area, call CMS Law Firm LLC today.