

EMINENT DOMAIN PROCEDURE

Nebraska

Prepared By:
William G. Blake, Attorney at Law
BAYLOR EVNEN Law Firm
1248 "O" Street, Suite 600
Lincoln, NE 68508
(402) 475-1075
Wblake@baylorevnen.com

The purpose of this statement is to generally outline for the property owner (condemnee) the steps that are taken to acquire property by eminent domain, which is also known as condemnation. This statement should not be considered as a complete statement of all the laws and procedures governing eminent domain, and it should not be used as a substitute for specific legal advice based upon the facts of the situation.

Governmental entities, public utilities, and some vital service private entities such as railroads and pipeline companies, (condemners) are authorized to acquire property by agreement to fulfill their legal purposes, or by eminent domain if agreement cannot be reached. The property must be needed for a public purpose, and it must be a present need. The amount must be reasonable to meet the present need.

Prior to 2011, Pipeline companies were given broad brush authorization to acquire right of way in Nebraska. "Any person...company...or association...created for the purpose of transporting...crude oil, petroleum, gasses, or other products thereof in interstate commerce through, or across the State of Nebraska, or intrastate within the State of Nebraska, and desiring or requiring a right-of-way or other interest in real estate, and being unable to agree with the owner or lessee of any land...for the amount of compensation,...shall have the right to...exercise the power of eminent domain." Neb. Rev. Stat. Sec. 57-1101.

Beginning in 2011, Nebraska adopted several regulatory acts regarding siting of major pipelines, requiring state approval of a pipeline's route prior to condemning any right of way.

The condemnation procedure is in the manner set forth for all other condemning authorities, as discussed herein. In most cases, the condemner must hold a hearing to explain the project, the reasons for selecting the property and the amount of property, and to hear the comments of the landowners.

If the proposed acquisition does not change, the next step is to have the property appraised by a licensed appraiser and to negotiate in good faith with the landowner to acquire the property by agreement.

When agreement with the landowner cannot be reached, appropriate documents instituting eminent domain proceedings are filed by the condemner with the County Judge in the county where the property is located. The County Judge then appoints three (3) local property owners as appraisers who are familiar with local real property values. The appraisers generally include an attorney, a licensed appraiser, and another person selected by the County Judge. They must be landowners who reside in the County. After proper notification to the landowner of the time and place of hearing, the Board of Appraisers view the property and listen to statements of the condemner and landowners or their representatives as to their opinion of land value and damages to the remaining property. The Board of Appraisers then files a formal report of their findings of value with the County Judge. The amount reported by the Board is the total amount of compensation received (unless the landowner or tenant is entitled to relocation assistance, which is a separate proceeding). The condemner must deposit the amount awarded by the Board of Appraisers with the County Court within 60 days.

While the landowner is not required to attend the hearing, it is to his interest to do so. The landowner may elect to present his own statement to the Board of Appraisers or may wish to retain an attorney to represent him. Unless the landowner elects to retain an attorney, the above-described hearing is conducted at no expense to the landowner. An appraiser may also be retained by the landowner to offer an opinion of value to the Board of Appraisers, and other experts or persons familiar with property values may be used as well.

If either the landowner or the condemner is not satisfied with the report of the Appraisers appointed by the County Judge either may appeal to the District Court of the county in which the property is located for a determination of value by a jury of 12 citizens residing in the county. It is strongly recommended that a landowner not

attempt to file or prosecute an appeal without the assistance of an attorney. The appeal must be filed within 30 days of the report by the County Court Board of Appraisers. All rules of court will apply to the jury trial.

If neither party appeals to the District Court, the amount awarded by the Board of Appraisers is available to the landowner after thirty (30) days from the filing of the award by the Appraisers. The landowner should make inquiry of the County Judge as to when the award was filed.

The condemner may not require the landowner to surrender possession until a) the amount of the award entered by the Appraisers is deposited with the County Court, and b) the property is actually needed for the public project.

If either party appeals from the award of Appraisers, the landowner and the condemner may stipulate to withdrawal by the landowner of all or a portion of the amount awarded to the landowner by the Board of Appraisers, without affecting the landowner's rights in the appeal. The amount awarded by the Board draws interest for the benefit of the landowner until paid to the landowner, except for any amount the condemner offers to allow to be withdrawn.

The amount awarded on appeal by the jury is final, subject to appeal to the Nebraska Court of Appeals and/or Nebraska Supreme court for errors of law or evidence in the jury trial.