

## NEVADA EMINENT DOMAIN LAW AND PROCEDURES

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### Negotiation/Precondemnation Process:

#### **Negotiation Requirements**

Not specifically under Nevada state eminent domain law in NRS chapter 37. However, Nevada has adopted the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* (42 U.S.C. sections 4601-4655) in NRS 342.105. Therefore, any requirements in the Relocation Act which require a condemnor to negotiate prior to filing an eminent domain action in court would be applicable in Nevada. *See* 49 C.F.R. Part 24.102.

#### **Acquisition by Agreement**

A landowner in Nevada can voluntarily agree to an acquisition by a condemnor and accept the offer made. NRS 37.010(e).

### Condemnation proceedings

Direct Condemnation proceedings in Nevada are initiated by the condemnor filing a verified complaint in the district court in the county in which the property is situated. NRS 37.060. Once the complaint is filed and served and the answer is filed, then discovery can be conducted pursuant to Nevada Rules of Civil Procedure. Under NRS 37.055 "Eminent domain proceedings take precedence over certain other proceedings and must be quickly heard and determined," allowing for eminent domain proceedings to receive a preferential trial setting in Nevada.

### How compensation cases are resolved (by judge, jury commissioners, etc.)

The District Court, judge or jury. NRS 37.110

### Reimbursable Expenses:

In Nevada, “just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.” Nev. Const. art. I, sec. 22(4). The Nevada constitution also provides that “A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.” Nev. Const. art. I, sec. 22(7).

NRS 37.185 provides: “Except as otherwise provided in this section, in all actions in eminent domain, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This section does not apply in an inverse condemnation action if the owner of the property that is the subject of the action makes a request for attorney's fees from the other party to the action.”

NRS 37.185 may be in conflict with Nevada Constitution art. I, sec. 22(4) which provides that “just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.”

NRCP 54(d)(2)(B) provides that for an award of attorney’s fees, a “fair estimate” of the amount sought “supported by counsel’s affidavit swearing that the fees were actually and necessarily incurred and were reasonable” is acceptable.

Costs must be reasonable and actually incurred and are recoverable by the landowner in either a direct or inverse condemnation action. Nev. Const. art. I, sec. 22(4).

**Limitations on types of compensation:**

NRS 37.110 provides for the ascertainment and assessment of damages as follows:

“The court, jury, commissioners or master must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and of each estate or interest therein shall be separately assessed.
2. If the property sought to be condemned constitutes only a part of a large parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff.

3. If the property, though no part thereof is taken, will be damaged by the construction of the proposed improvement, the amount of such damages.

4. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed, under subsection 2 of this section, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value of the portion taken.

5. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad between such railroad and other adjoining lands of the defendant; and the costs of cattle guards where fences may cross the line of such railroads.

As far as practicable, compensation must be assessed for each source of damages separately.”

In an eminent domain action in Nevada, an owner recovers, under NRS 37.110, not only the value of land taken, but also the amount by which the remaining parcel is diminished in value by virtue of the severance. Severance damages will not be awarded for injury to separate and independent parcels owned by the condemnee, but parcels damaged need not be physically contiguous to those taken so long as evidence discloses an actual and existing unity of use and purpose and existing, lawful and utilized access between the parcels. M&R Investments Co. v. State, 103 Nev. 445, 744 P.2d 531 (1987).

“If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. Nev. Const. art. 1, sec. 22(3). In Nevada, “a Landowner is entitled to compensation for the highest and best use to which his property may be put, and is not limited by the use actually made of it.” Andrews v. Kingsbury, 84 Nev. 88, 90, 436 P.2d 813, 814 (1968).

The Nevada Supreme Court in County of Clark v. Alper, 100 Nev. 382, 685 P.2d 943 (1984) has recognized that “every factor which affects the value of the property and which would influence a prudent purchaser should be considered. As a restriction on land use, an existing zoning ordinance is generally regarded as a proper matter for the jury’s consideration.” Id. At 386. (*Internal citations omitted*).

NRS 37.112 provides for the valuation of property subject to condemnation as result of public work or project as follows:

“1. Except as otherwise provided in subsection 2, if the property is subject to condemnation as a result of a public work or public improvement, any decrease or increase in the fair market value of the property before the date of valuation which is caused by:

(a) The public work or public improvement for which the property is acquired;  
or

(b) The likelihood that the property would be acquired for such a purpose, must be disregarded when assessing the value of the property pursuant to [NRS 37.110](#).

2. Any decrease or increase in the fair market value of the property before the date of valuation resulting from physical deterioration within the reasonable control of the owner is not required to be disregarded pursuant to subsection 1.”

Generally, in determining what constitutes just compensation for the taking for public use of private property, every factor which affects the value of the property and which would influence a prudent purchaser should be considered, including an existing zoning ordinance. County of Clark v. Alper, 100 Nev. 382, 685 P.2d 943 (1984). In Nevada, “Just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken.” Nev. Const. art. 1, sec. 22(4). Nevada has adopted the standard that “the word ‘just’ is used to intensify the meaning of the word ‘compensation’ and conveys the idea that the equivalent to be rendered for the property taken shall be real, substantial, full and ample.” Tacchino v. State, 89 Nev. 150, 152, 508 P.2d 1212, 1213 (1973).

Specific Elements of loss considered:

1. Goodwill. NRS 37.111 and State v. Cowan, 103 P.3d 1 (2004).
2. Option rights. State, Dept. of Transp. v. Las Vegas Bldg. Materials, Inc., 104 Nev. 479, 761 P.2d 843 (1988).
3. Substantial impairment of access. State ex rel. Dept. of Highways v. Linnecke, 86 Nev. 257, 468 P.2d 8 (1970) and Schwartz v. State ex rel. Dep’t of Transp., 111 Nev. 998, 900 P.2d 939 (1995).
4. Air Rights, where public is authorized by local ordinance to use private airspace up to 500 feet. McCarran International Airport v. Sisolak, 137 P.3d 1110 (2006) and Hsu v. County of Clark, 173 P.3d 724 (2007).
5. The potential income to be derived from sale of subdivided lots, discounted to show present value. Tacchino v. State, 89 Nev. 150, 508 P.2d 1212, (1973).
6. Lost Profits: County of Clark v. Sun State Properties, Ltd., 119 Nev. 329, 72 P.3d 954 (2003) (the condemnee may recover damages for lost profits when the condemnee has demonstrated that the condemnor caused unreasonable delay in bringing the action to trial).

The Nevada Constitution also allows that, “if private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.” Nev. Const. art. 1, sec. 22(3). The definition of “value” as provided in NRS 37.009 quoted above is similar to this constitutional provision.

Specific Elements of loss not considered:

1. Implied negative easement of light, air, and view, where no property was taken for the public improvement. Probasco v. City of Reno, 85 Nev. 563, 459 P.2d 772 (1969).
2. Mere circuitous route.
3. Temporary loss of access if no finding that impairment of access not substantial.
4. Access right where prescriptive easement not established and no property physically taken. Sloat v. Turner, 93 Nev. 263, 563 P.2d 86 (1977).

### **Power to condemn**

The right to condemn in Nevada is governed by NRS 37.0095. In NRS 37.0095 the takings power is granted to a “public agency” which is defined as “an agency or political subdivision of this State or the United States”. NRS 37.0095(3). NRS 37.0095 also provides that “the power of eminent domain may be exercised by a person who is not a public agency pursuant to” specific sections of NRS 37.010. NRS 37.010 grants the power of eminent domain to various public utilities and for specific uses. NRS 37.250 grants the power of eminent domain to nonresident corporations pursuant to specific licensing conditions. However, it must be noted that NRS 37.010(2) and the Nevada Constitution, art. I, § 22(1) provide that: “public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party.” NRS 37.010(3) and Nev. Const. art. I, § 22(1) also provide that “the entity that is taking property by the exercise of eminent domain has the burden of proving that the taking is for a public use.”

NRS 37.010 provides the “Public Uses for which eminent domain may be exercised” as follows:

“1. Subject to the provisions of this chapter and the limitations in subsections 2 and 3, the right of eminent domain may be exercised in behalf of the following public uses:

- (m) Pipelines for petroleum products, natural gas. Pipelines for the transportation of crude petroleum, petroleum products or natural gas, whether interstate or intrastate.

2. Notwithstanding any other provision of law and except as otherwise provided in this subsection, the public uses for which private property may be taken by the exercise of eminent domain do not include the direct or indirect transfer of any interest in the property to another private person or entity. Property taken by the exercise of eminent domain may be transferred to another private person or entity in the following circumstances:

(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility, railroad, public transportation project, pipeline, road, bridge, airport or facility that is owned by a governmental entity.

(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part of an airport or a facility that is owned by a governmental entity and, before leasing the property:

(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of an airport or facility that is owned by a governmental entity; and

(2) Provides the person from whom the property was taken with an opportunity to bid or propose on any such lease.

(c) The entity that took the property:

(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and

(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.

(d) The entity that took the property exchanges it for other property acquired or being acquired by eminent domain or under the threat of eminent domain for roadway or highway purposes, to relocate public or private structures or to avoid payment of excessive compensation or damages.

(e) The person from whom the property is taken consents to the taking.

3. The entity that is taking property by the exercise of eminent domain has the burden of proving that the taking is for a public use.

4. For the purposes of this section, an airport authority or any public airport is not a private person or entity.”