

Florida Eminent Domain in a Nutshell

In Florida, the condemning authority must first make the owner a written offer of compensation for the property before it can take title to the property. If the property owner and the condemning authority cannot agree on the compensation due the owner, the authority must then file a legal action to acquire title (or “take”) the property. This action is called an eminent domain action and the procedures are set forth in Chapters 73 and 74 of the Florida Statutes.

Once a lawsuit is prepared, a hearing date is scheduled in the circuit court. All persons having an interest in the real property are called defendants and are served with notice of this hearing date, along with a copy of the lawsuit. At this hearing, the condemning authority must present evidence that the property described in the lawsuit is being acquired for a public purpose and that the property is in fact necessary for that purpose. The condemnor then presents evidence as to an estimate of the amount of compensation due the property owner. And it must be prepared to deposit this good faith estimate of value if the court finds that it is exercising its power lawfully.

If the court finds that the government is acting in good faith and exercising this awesome power properly, it will issue an order called an Order of Taking. Although each defendant property owner will have an opportunity to defend against the entry of an Order of Taking, there are few grounds upon which a government’s exercise of this power can be defeated. Consequently most of the battle is fought over the amount of compensation. The Order of Taking provides for the transfer of title and possession to the condemnor when the condemnor deposits its good faith estimate of value in the court registry. The law permits these funds, once deposited, to be withdrawn by the property owner upon request. Absent another person having an interest in the property and seeking the release of the funds, the owner’s request will be granted. At this point, the action remains pending until a trial is set. Both State and Federal Constitutions provide the owner with the right to have a jury establish the amount of compensation the owner is due. Interestingly, an eminent domain action is one of only a very few actions where a defendant is entitled to a jury of twelve persons.

The Florida Constitution provides that the owner is entitled to “full compensation” for his/her property. In most instance that means the fair market value of the property taken. If the condemning authority only acquires a portion of your property, such as a right-of-way strip, which is called “a partial take,” you are entitled to the value of the property taken plus any loss in value suffered by the rest of your property. This diminution in value in the remaining property is called “severance damages.” If the property is commercial, the owner is also entitled to business damages caused by the loss of the property taken.

In addition, Florida law requires the government to pay attorney’s fees, expert fees and other costs of defense, and, in some instances, relocation expenses to the owner. Section 73.091 and 73.092 of the Florida Statutes, dictate when the government must pay attorney’s fees and costs. These statutes must be provided to the owner with the condemnor’s written offer to acquire the property. It’s important to read these carefully, as the issue of attorney’s fees is often misunderstood. It is a widely held belief that the government must pay all attorney’s fees, or attorney’s fees under any circumstance, but this is not true. In almost all cases, the attorney’s fees are limited to a percentage of what the owner obtains above the initial written offer made for the property. This overage is called the benefit. That means that the owner must negotiate a settlement above the government’s offer in order to recover attorney’s fees. While this may seem like a given (another belief that is widely held), in today’s declining real estate market, it is very possible that the government’s initial offer will be well above the property’s value when the property is taken. Consequently, it may be difficult to obtain a settlement or jury verdict above that offer amount, and therefore attorney’s fees.