Office of the Property Rights Ombudsman

State of Utah
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Salt Lake City, UT 84111

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Email: **propertyrights@utah.gov**
Website: **http://propertyrights.utah.gov**

March 2016

Your Guide to Just Compensation

What to do when the government wants to acquire your land

State of Utah
Office of the Property Rights Ombudsman

Notes:

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Statutory Requirements:

By delivering a complete printed copy of this document to property owners as early as practical in the negotiation process, a condemning authority will comply with the express duty to provide property owners with materials referred to in UTAH CODE § 78B-6-505(1)(b)(i) and UTAH CODE § 78B-6-505(3)(b)(i).

Sources of Law Referred to in This Booklet

The following statutes and laws are available online at both the Utah Legislature's website as well as the website for the Office of the Property Rights Ombudsman.

Utah State Legislature:
http://le.utah.gov

Office of the Property Rights Ombudsman:
http://propertyrights.utah.gov

Utah Constitution:
Eminent domain powers: Article I, Section 22.

Utah Code:

Eminent Domain:
Sections 78B-6-501 thru 522.

Relocation Assistance:
Sections 57-12-1 thru 14.

Property Acquisition Procedures:
Section 78B-6-505.
Section 57-12-13.

Dispute Resolution:
Section 78B-6-522.
Section 57-12-14.

Property Rights Ombudsman:
Sections 13-43-101 thru 206.

How to Contact the Office of the Property Rights Ombudsman

In Person: Office of the Property Rights Ombudsman
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By Mail: Office of the Property Rights Ombudsman
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Your Rights

As a Property Owner Facing Eminent Domain

Both the U.S. and the Utah Constitutions allow the taking of private property for public use, but only for a "public purpose" and the government must pay you "just compensation."

The following is a summary of your rights with respect to the acquisition of your property through eminent domain in Utah. A more detailed discussion follows.

- **You have the right** to ask questions about eminent domain in order to understand how it will affect you.
- **You have the right** to consult with and seek the assistance of the Office of the Property Rights Ombudsman *at any time* during the eminent domain process and *without cost or penalty* from the acquiring agency.
- **You have the right** to engage the services of a private attorney to represent you and to protect your interests.
- **You have the right** to know the public purpose for which your property is being acquired, and to challenge the necessity of the acquisition.
- **You have the right** to examine and copy public documents involving your project, and to be shown precisely what is being acquired from you.
- **You have the right** to receive *just compensation* when an agency acquires your property for public use.
- **You have the right** to know how the acquiring agency calculated the compensation for your property, and to request a copy of the appraisal report they obtained.

Glossary

***Appraisal*:** The process of estimating fair market value in a property or property interest. A qualified state-certified appraiser does this valuation.

***Condemnation*:** The acquisition of private property for a public use, for just compensation. Condemnation is used when attempts to reach an agreement have failed. Condemnation actions are brought under the power of eminent domain.

***Eminent Domain*:** The legal process by which a government or private entity acquires property by condemnation for a public use and pays the owner just compensation.

***Fair Market Value*:** The sale price that a willing and informed seller and buyer would agree upon within a reasonable time. The price is usually arrived at by an analysis of values of comparable properties in the area.

***Just Compensation*:** The price a condemning agency must pay for property as a result of the eminent domain process. Just compensation is the established fair market value as of the date that is fixed by law that the acquisition became sure. Unless otherwise negotiated, this is the date that a summons was served on those holding an interest in the property.

***Ombudsman*:** An independent public official appointed to investigate and address complaints by individuals against public bodies.

***Property Owner*:** The person or entity that owns or leases land subject to eminent domain proceedings.

***Right of Occupancy Agreement*:** An agreement entered into by the owner with the condemning agency giving the agency the right to occupy the property prior to finalizing an agreement over the amount of just compensation.

***Severance Damages*:** An amount owed to a property owner if only part of the property is acquired for a project, and the remainder suffers a net loss of value because of the project.

***Taking*:** A legal term used to describe the agency's acquisition of property through the power of eminent domain, for a public use, and requiring just compensation.

***Uneconomic Remnant*:** The portion of a property owner's property that remains after a taking which is determined to be of little value or utility.

Further Questions

The following are additional common questions not addressed in this material. You may contact the Office of the Property Rights Ombudsman concerning these or any other questions you may have about the condemnation process.

What Is Happening?
What about crops or income from the property?
Do they owe me for property shown on my deed that is under an existing road?
Who will pay transaction costs?
What if the project adds value to my land?
What is the highest and best use of my property?

What Is the Process?
Can I change their form documents?
Do I have to let the surveyor on my land?
Do I have to let the appraiser on my land?
Can I see other appraisals in the project?
Can I get access to the project records?
Can I deal with a different agent?
How much will court cost?
Can this go to a jury?

How Will This Affect Me and My Land?
What if I have a tenant on this property?
What about greenbelts?
What about property taxes?
What happens with nonconforming lots and uses afterwards?
What if they build or trespass outside of their easement?
What if they want to take more land than they need?
What if the remainder of the property is useless now?
Will this affect my mortgage?
What if the project will affect my view?
Can they take my water rights?

- **You have the right** to the opportunity to accompany the appraiser hired by the agency during his or her inspection of your property, and to talk to the appraiser before a value is reached.
- **You have the right** to negotiate with the acquiring agency over the amount of compensation you receive, and to provide evidence to the acquiring agency in support of your just compensation claims.
- **You have the right** to attempt to resolve eminent domain disputes out of court, through free mediation or arbitration with the Office of the Property Rights Ombudsman. You have the right to require mediation and arbitration even if the acquiring agency objects.
- **You have the right** to request, as part of mediation through the Office of the Property Rights Ombudsman, an additional appraisal of your property at the agency's expense.
- **You have the right** to demand that any oral representations or promises by the acquiring agency be made in writing and signed by someone with authority to do so.
- **You have the right** to receive due process. If the acquiring agency takes you to court to condemn your property, you have a right to notice, to request trial by jury, to present evidence and to examine witnesses. You also retain the right to negotiate with the condemning agency over just compensation after litigation begins.

For more details concerning these rights, or if you have questions, please contact the Office of the Property Rights Ombudsman.

What Is Happening?

What is eminent domain?

Eminent domain is the government's power to acquire private property for a public use or purpose. This is called a "taking" or "condemnation." Both the Utah and U.S. Constitutions require a condemning authority to pay property owners "just compensation" for land taken.

What is a public purpose?

Eminent domain is available only where the property is needed for a "public purpose." Governments provide many public services that require property and facilities, such as police departments, fire stations, schools, roads, and utilities. Utah statutes specify the public purposes for which eminent domain may be used to acquire property.

Who can take my property?

Although eminent domain is a government power, private non-governmental entities such as public utilities, mining companies, or railroads can also use the power of eminent domain to acquire private property because the services they provide will be for a "public purpose."

Can I stop (or change) the project?

Eminent domain power is inherent in government, and is important to accomplish various public services. As long as the condemnation process complies with statutory requirements, it is unlikely you can stop or alter the project. However, you do have the right to obtain an additional appraisal and resolve the issues of just compensation outside of court. If you cannot come to an agreement, the *agency will use legal proceedings in court to condemn the property, where a judge or jury will determine your just compensation.

**From here on, the condemning authority – whether public or private – will be referred to as "agency."*

What are mediation and arbitration?

Mediation is a face-to-face meeting between the parties, led by a neutral third party. An Ombudsman, acting as the mediator, will assist all parties to evaluate facts and issues to reach a resolution. Mediation is voluntary; there is no obligation to settle, and you can walk away at any time.

Arbitration is more formal than mediation. Parties can present evidence and the arbitrator, like a judge, will issue a decision to resolve the dispute. The arbitration process is much faster and less formal than a court proceeding. The decision of the arbitrator is non-binding, but may become binding if neither party makes a timely appeal to a court.

Both mediation and arbitration are voluntary and property owners are not required to participate even if the agency requests it. If you, however, want to mediate or arbitrate and the Ombudsman's office determines it to be appropriate, the agency involved must participate.

How much does it cost?

The mediation and arbitration services provided by the Office of the Property Rights Ombudsman are free.

What Does the Ombudsman's Office Do?

What service can you provide?

The Office of the Property Rights Ombudsman can advise you about your rights in the condemnation process. The Ombudsman's office can also help facilitate negotiations between you and the agency, order an additional appraisal of your property at the agency's expense, or conduct formal mediation or arbitration to resolve a dispute outside of court.

Are you my lawyer?

No. The Office of the Property Rights Ombudsman is a neutral, non-partisan state agency, and does not represent individuals. The attorneys that staff the Ombudsman's office can assist you through advising, educating, and facilitating your negotiation with the condemning agency through mediation or arbitration. However, we cannot represent you or act as your attorney. If you retain your own attorney to represent you in your property matter, you may still utilize the services of the Ombudsman's office.

Will you help me negotiate?

The Office of the Property Rights Ombudsman can be a liaison between you and the agency to discuss a matter or potential dispute. The Ombudsman's office will attempt to help everyone understand the perspective of the others involved, and try to find an acceptable resolution.

Can they take immediate possession of my property?

The acquiring agency must give you opportunity to negotiate before taking legal action. You have the right to know about and examine any evidence used to establish the amount of just compensation before any formal mediation, arbitration, or trial. When a local government—such as a city or school district—wishes to take your land, a public meeting is required. The agency's need to condemn your property will be discussed. You must be notified of that meeting before the agency starts any legal action. If the agency determines that good faith negotiations have reached an impasse, they may *then* attempt to take possession of your property through court action. If you are required to move, you also have the right to receive 90 days written notice before moving, unless an emergency exists.

Can I believe what the agency tells me?

It is a good idea to obtain verification in writing of any promises made by the agency. Only written promises, signed by someone with authority, can bind the agency. You have the right to consult *at any time* with the Office of the Property Rights Ombudsman about your rights in eminent domain proceedings. The attorneys at the Office of the Property Rights Ombudsman can help verify the information the agency tells you.

What Is Just Compensation?

How is just compensation determined?

Just compensation is the fair market value of the property acquired. The value may be determined through an appraisal, which analyzes the property's value and the effect of the taking.

What is fair market value?

The fair market value of property and improvements is determined by calculating what a reasonable and well-informed buyer would pay to purchase property from a reasonable and well-informed seller. This is usually estimated by looking for recent sales of similar property, although other methods may be used.

What are severance damages?

When only a portion of a property is taken, the remainder may be damaged because the portion has been separated, or "severed" from the rest of the property. Severance damages are awarded when the value of the remaining portion is reduced because of the taking's effects. Severance damages may be reduced by the value of any benefits to the property from the public project.

The construction will impact my business. Can I get compensated for that?

Typically the agency does not need to compensate you for any business losses in addition to what it must pay as just compensation. Please contact the Office of the Property Rights Ombudsman regarding your specific circumstance.

If I need to move, am I entitled to relocation expenses?

You may be eligible to receive relocation expenses if the agency requires you to move your home, farm, or small business. Federal and state laws and regulations determine relocation amounts, and you must comply with the conditions imposed by those laws to be eligible. Contact the Office of the Property Rights Ombudsman for more information.

What is a temporary construction easement?

Not all takings are permanent. It is often necessary for the agency to temporarily use or access your property for a construction project. For example, a small portion of your property may be needed temporarily to work on a sidewalk, even though your property will not be used for the sidewalk itself. A temporary construction easement gives the agency the right to come onto your property to do their work. You are still entitled to compensation for that temporary use of your property, as well as any damage done to your property as a result.

How Will This Affect Me and My Land?

What if access to my land becomes more difficult?

If a project on part of your property interferes with direct access to the remainder of your property, you may be entitled to severance damages. Severance damages are only awarded when the remaining portion of your property's value has been reduced because of the taking's effects. For specific questions regarding damages for loss of access, view, visibility, or traffic flow, please contact the Office of the Property Rights Ombudsman.

Can I require the agency to buy the whole property instead of a portion?

Although an agency may not be required to purchase all of your property, you can always request that they do so. In any event, an agency must compensate you for the full loss of value to any of your remaining property by reason of its severance from the property acquired by the agency. Please contact the Office of the Property Rights Ombudsman to discuss your particular situation.

What is the agency's obligation for improvements that they remove or damage?

Improvements on property such as buildings, landscaping, fences, etc. generally contribute value to the property, although not always. Improvements are not separately assessed but are usually calculated into the fair market value of the property based on what they contribute to the overall value. Where only part of a property is taken, the agency has a legal obligation to replace, repair, or pay for any damage done to the property or improvements. In cases of temporary construction easements, any damage to improvements or fixtures are assessed and compensated.

What is not considered just compensation?

Just compensation does not include sentimental value, historical interest, long-time ownership, unique need or use, or emotional trauma for having to sell. Other unavoidable aspects or inconveniences of construction that affect all properties, such as noise and dust, are also not considered.

May I dispute the compensation amount?

Condemning agencies must attempt to negotiate the purchase of your property before filing an eminent domain action. They may establish the price through their negotiation with you. You have the right to reject any offer for any reason, or to request more information if unable to decide due to insufficient facts. The agency has the right to use the court for resolution if good faith negotiations reach an impasse.

Can I get attorneys' fees?

Legal fees of a landowner incurred by going to court over a condemnation are not recoverable in Utah, except in certain very limited circumstances. You may contact the Office of the Property Rights Ombudsman for more specific details related to your particular situation.

What Is the Process?

What will happen if we cannot agree on compensation?

If you and the agency are unable to reach an agreement on the amount of just compensation, the agency will likely use its eminent domain power by filing a condemnation action in court. Even if this happens, you still retain the right to continue negotiations and use the services of our office. The Office of the Property Rights Ombudsman may assist by mediating settlement discussions, or by deciding the value in arbitration.

What is a right of occupancy agreement?

A right of occupancy agreement may be negotiated between you and the agency as an alternative to legal action. This usually gives you more time to reach a resolution before the agency files a condemnation action. The agency will agree to pay their estimate of just compensation—usually into escrow—in exchange for you permitting the agency to occupy your property and begin the project. The agreement usually includes a waiver of your right to challenge any aspect of the condemnation in court, except for issues of additional just compensation.

Can I get another appraisal?

You may be eligible to receive an additional appraisal at the agency's expense if requested through the Office of the Property Rights Ombudsman, and if the additional appraisal is reasonably necessary to resolve a dispute over just compensation. You may also obtain additional appraisals at your own cost to use in negotiation, arbitration, or trial.

Is the appraiser required to contact me?

Yes. You have the right to be informed of the agency's designated appraiser's inspection of your property, and to obtain information about the appraisers, such as names and addresses. The appraiser must give you the opportunity to accompany the appraiser during the property inspection and to talk to him or her before a value is reached. Homeowners are entitled to a copy of the appraisal on request. Business and farm owners are entitled to know what appraisals exist and why they are not allowed to see them during negotiations. You will be entitled to see the appraisal before a formal mediation, arbitration, or trial.

Can I negotiate directly with the agency?

Yes. You always have the ability to negotiate directly with the agency during any step of the process, whether or not our office is involved, or even if the case is already in court. During negotiations, be aware that while agency representatives will try to answer questions and explain the project, *they may not have the power to promise you anything that binds the agency.* In making any decision based on something you have been told, **be sure to (1) get those promises or representations in writing, and (2) get them signed by someone having authority to bind the agency acquiring your land.**