

# The Rights of Landowners Under Wisconsin Eminent Domain Law



This pamphlet is published by the Wisconsin Department of Administration in cooperation with the Attorney General pursuant to Wis. Stat. § 32.26(6). It is not to be construed as legal advice. A displacing agency must make this pamphlet available to a displaced person before initiation of negotiations for acquisition of property for a public project.

## Procedures Under Wis. Stat. § 32.05: Highways, Streets, Storm & Sanitary Sewers, Watercourses, Alleys, Airports and Mass Transit

This brochure provides information on how the condemnation process works in Wisconsin, including the rights of property owners impacted by the process. More detailed information is available in Wis. Stat. Ch. 32.

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## INTRODUCTION

The Wisconsin Constitution, Article 1, section 13 establishes eminent domain authority, which is the power to take private property for a public purpose with payment of just compensation. The Eminent Domain Statute, Wis. Stat. Ch. 32, vests several public and private entities with eminent domain power. Condemnation is the legal process by which the acquiring authority exercises its eminent domain power.

The following are jurisdictional requirements that the acquiring authority must obey in order to condemn property. An acquiring authority must respect these stipulations regardless of whether it intends to exercise its eminent domain power to condemn property.

## RELOCATION ORDER

The Eminent Domain Statute requires specific entities to make a relocation order that provides for the laying out, relocation and improvement of a transportation-related facility prior to initiating negotiations. The order must include a map or plat showing the old and new facility locations, as well as the land and interests required for the project. Within 20 days of its issue, a copy of the order must be filed with the county clerk where the lands are located.

## APPRAISAL

The acquiring authority must obtain at least one appraisal for each property it will acquire prior to initiating negotiations. When obtaining and drafting the appraisal, the appraiser must consult with the property owner. Once completed, the appraiser must provide the property owner with a full narrative appraisal. Also, the acquiring authority must notify the property owner that he may obtain his own appraisal at the (reasonable) expense of the acquiring authority, which must be submitted to the acquiring authority within 60 days of obtaining the acquiring authority's appraisal.

## NEGOTIATIONS

The acquiring authority must negotiate with the property owner for the property purchase and must consider the full narrative appraisal to establish the property's fair market value during negotiations. It must provide a map showing all property the project impacts and the names of at least 10 neighbors who are receiving offers. If the project affects fewer than 10 owners, the acquiring authority must give the names of all offerees. Property owners may inspect and make copies of any maps the acquiring authority holds. The acquiring authority may consider relocation benefits during negotiations.

In partial acquisitions, fair market value is the greater of either the fair market value of the part acquired or the difference between the entire property value before acquisition and its value after. If only part of the property is acquired and an uneconomic remnant remains, the acquiring authority must also offer to acquire the uneconomic remnant. An uneconomic remnant is the property remaining after a partial taking, if the property remaining is of such size, shape or condition to be of little value or of substantially impaired economic viability.

Compensation for an easement is either the difference between the property value immediately before and immediately after the date of evaluation. The date of evaluation is the date the conveyance is recorded in the register of deeds in the county holding the property.

If the property owner agrees to a negotiated sale, the acquiring authority must record the conveyance with the county register of deeds. After recording, the acquiring authority must provide notice of the conveyance to all owners of record, by certified mail or personal service, as well as of their right to appeal the compensation award within 6 months of the recording date.

**JURISDICTIONAL OFFER**

If negotiations fail, the acquiring authority must provide the property owner with a jurisdictional offer. The offer must be delivered either by certified mail or personal service and include: (1) a description of the nature of the project; (2) a description of the property to be acquired; (3) the proposed date of occupancy; (4) the compensation offer; (5) notice that any additional items payable may be claimed for relocation assistance; (6) a statement that the appraisal on which the offer is based is available for viewing; and (6) notice that the owner has 2 years from the date the acquiring authority takes the property by award to appeal for greater compensation, even if the owner has already accepted and used the award.

*A lis pendens* gives notice to interested parties that the property may be acquired for public use. One must be filed with the register of deeds for the county in which the property is located within 14 days of when the offer is personally served or mailed. An owner must accept or reject the offer within 20 days of the offer's service or mailing date. If accepted, title transfers to the acquiring authority and the owner must be paid within 60 days. If rejected in writing by all owners of record, the acquiring authority may make an award of compensation.

**CONTESTING THE RIGHT OF CONDEMNATION**

Within 40 days from the date of service or the mailing date of the jurisdictional offer, an owner who wants to contest the right of condemnation for any reason other than the inadequacy of the amount of compensation, must commence an action in the circuit court of the county where the property is located, naming the condemnor as the defendant. However, if the owner has already accepted and retained any of the compensation, such an appeal may not be filed.

**AWARD OF COMPENSATION**

If the owner fails to accept the jurisdictional offer within 20 days of personal service or the mailing date, or if all owners of record reject the offer in writing, the acquiring authority may deliver a written award of damages by certified mail or personal service. This is called the award of compensation and must include: (1) a property description; (2) a description of the interest to be acquired; (3) the date of occupancy; (4) the amount of compensation (at least equal to the jurisdictional offer); and (5) a statement that the acquiring authority has complied with all jurisdictional requirements.

After the acquiring authority has served the award and provided payment, it shall record the award with the register of deeds for the county in which the property is located. At the time of recording, title vests in the acquiring authority. This date is called the date of evaluation.

**OCCUPANCY & WRIT OF ASSISTANCE**

The acquiring authority must provide at least 90 days written notice to the property owner of the required move date. If title vests with the acquiring authority before that 90-day period ends, the occupant will be able to live in the property rent-free for the first 30 days, beginning on the 1<sup>st</sup> or 15<sup>th</sup> day of the month after title vests with the acquiring authority. If the occupant denies the condemnor the right of possession of the property at the end of the 90-day period, the acquiring authority may apply to the court for the county in which the property is located for a writ of assistance to be put in possession of the property upon 48-hour notice to the occupant. The court shall grant the writ of assistance if all jurisdictional requirements to condemn have been complied with, the award has been paid and comparable property has been made available.

**CONTESTING THE COMPENSATION AWARD**

Any party having ownership interest in the acquired property has 2 years from the date of evaluation to challenge the compensation award. To challenge the award, any party of interest must appeal to the judge for the circuit court holding the property for assignment to the condemnation commission. When one party of interest appeals the award, no other party may file a separate appeal, but instead must join the existing appeal by serving notice on the condemnation commission and appellant within 10 days of receiving notice of the appeal. The jurisdictional offer or basic award may not be disclosed to the condemnation commission. Whether the commission decides that the fair market value is greater or less than the compensation award, payments should be made within 70 days after the date of the filing of the award unless it is appealed to the circuit court.

Any party to the condemnation commission proceeding may appeal the award to the circuit court of the county holding the property. The sole issues to be tried are the question of title, if any, and the amount of just compensation the condemnor must pay. A jury must try this appeal unless waived by both parties. The jurisdictional offer, the basic award, or the condemnations commission's award may not be disclosed during the trial. Awarded money must be paid within 60 days of the judgement entry.

Parties with ownership interest in the acquired property may waive the appeal to the condemnation commission, appealing directly to the circuit court of the county holding the property within 2 years of the evaluation date. This appeal takes priority over all other actions not then on trial. The sole issues to be examined are the question of title, if any, and the compensation amount the condemnor must pay.

The appeal must be tried by a jury unless waived by both parties. The jurisdictional offer or basic award amounts may not be disclosed during trial. No other party of interest can file a separate appeal, but may join the existing appeal by providing notice to the condemnor and the appellant by certified mail or personal service within 10 days of receipt of notice of the appeal.

**LITIGATION EXPENSES/COSTS**

"Litigation expenses" is defined as "the sum of reasonable attorney, appraisal and engineering fees necessary to prepare for or participate in actual or anticipated proceeds before the condemnation commissioners, board of assessment or any court under [Chapter 32]." Wis. Stat. § 32.28(1)(b). There are several conditions under which litigation expenses may be awarded to a complainant in a just compensation matter. These conditions include but are not limited to: (1) the acquiring authority abandons the proceeding; (2) the court determines the condemnor does not have the right to condemn the property or there is no necessity for its taking; (3) the judgment is for the plaintiff in an action under Wis. Stat. § 32.10; etc. For a complete listing, please review Wis. Stat. § 32.28(3)(a)-(i).