

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. § 32.06: Anything Other than Transportation Matters

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. Stats. 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.

NECESSITY OF TAKING

The Eminent Domain Statute requires specific entities to provide a determination of the necessity of taking of property prior to the initiation of negotiations.

APPRAISAL

The acquiring authority must obtain at least one appraisal for each property it intends to acquire prior to the initiation of negotiations. When obtaining and drafting the appraisal, the appraiser must consult with the property owner regarding the property. Once the appraisal is completed, the appraiser must provide the property owner with a full narrative of the appraisal. Additionally, the acquiring authority must notify the property owner that he may obtain his own appraisal at the (reasonable) expense of the acquiring authority. The property owner must submit a full narrative of the appraisal he obtains to the acquiring authority within 60 days after the owner receives the acquiring authority's appraisal. This appraisal may be used in a subsequent appeal should the owner decide not to accept a negotiated offer or the jurisdictional offer.

NEGOTIATION/AGREED PRICE

The acquiring authority must negotiate with the property owner for purchase of the property 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.

Fair market value (FMV) means the price that a willing buyer would pay to a willing seller in the market. In partial acquisitions, FMV is the greater of either the FMV of the part acquired or the difference between the entire property FMV before acquisition and its FMV after. If part of the property is acquired and an uneconomic remnant remains, the acquiring authority must offer to acquire the uneconomic remnant. An uneconomic remnant is the property remaining after a partial taking, if it is of such size, shape or condition to be of little value.

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 the right to appeal the compensation amount 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 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 to see; and (6) notice that the owner has 2 years from the date the property is taken by award to appeal for greater compensation, even if the owner has already accepted and used the award. If the jurisdictional offer is accepted, title transfers to the acquiring authority and payment must be made within 60 days of acceptance.

CONTESTING THE RIGHT OF CONDEMNATION

Within 40 days from the date of service or certified mailing of the jurisdictional offer, an owner who wants to contest the right of condemnation for any reason other than the inadequacy of the compensation amount, must begin an action in the circuit court of the county holding the property, naming the acquiring authority as the defendant. If the owner has already accepted and retained any of the compensation, he may not file such an appeal.

COMMISSION HEARING

If the jurisdictional offer is not accepted or is rejected in writing by all owners of record within 20 days, the acquiring authority may petition the court for a hearing before the condemnation commission. The judge having jurisdiction of the petition will assign the matter to the condemnation commission chair who, within 7 days, shall select 3 commissioners to determine the compensation amount.

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ABANDONMENT OF PROCEEDING

At the hearing the commissioners shall first view the property to be condemned and then hear all evidence. A majority of commissioners present may determine all matters. The condemnee will present his testimony first and will also have the right to close. The commission must admit all testimony having reasonable probative value, but must exclude immaterial, irrelevant and repetitious testimony. The prior jurisdictional offer or award amount may not be disclosed to the commission. If either party would like the proceedings transcribed, the commission may order this and the applicant pays the cost. Within 10 days of the hearing conclusion, the commission shall make a written award specifying the compensation and file it with the clerk of the circuit court for the county holding the property.

At the same time as the petition for condemnation commission proceedings is filed, a *lis pendens* shall also be filed with the register of deeds for the county in which the property is located. A *lis pendens* gives notice to interested parties that the property may be acquired for public use. The day the *lis pendens* is filed is the "date of evaluation" of the property for the purpose of fixing just compensation.

ABANDONMENT OF PROCEEDING

An acquiring authority may abandon the proceedings to acquire property within 30 days of filing the commission's award by petitioning the circuit court for the county holding the property for leave to abandon the petition upon taking. The court shall grant the petition upon terms it deems just and make a formal order halting the proceeding. The order must be recorded in the judgment record after the record of the commission's award. The order divests the acquiring authority's title to the lands involved and discharges the *lis pendens*.

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PAYMENT OF AWARD

If the acquiring authority does not abandon the proceeding to take the property, it must pay the award to the owner within 70 days after the date of filing of the commission's award. The acquiring authority shall then take and file the owner's receipt of the award with the clerk of the circuit court or, at the option of the acquiring authority, pay the award into the office of the clerk of the court for the benefit of the parties having an interest in the property taken on the date of the evaluation. The property title vests in the acquiring authority upon the filing of the receipt or making of the payment of the award.

APPEAL TO CIRCUIT COURT

Within 60 days after the date of filing of the commission's award either party may appeal the giving notice to the opposite party of the appeal, as well as to the clerk of the circuit court holding the property. The only issues to be tried during this appeal shall be questions of title, if any, and the amount of just compensation the acquiring authority must pay to the property owner. The appeal shall have precedence over all other actions not then on trial and shall be tried by jury unless the jury is waived by both parties. The commission's award shall not be disclosed during such an appeal. If the jury verdict exceeds the jurisdictional offer, the acquiring authority may petition the court for leave to abandon the proceeding within 40 days of the filing of the verdict.

Whichever party the court awards in favor of shall be paid within 60 days after entry of the judgment unless the decision is appealed or the acquiring authority has petitioned for, and been granted, an order abandoning the condemnation commission proceeding.

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OCCUPANCY/WRIT OF ASSISTANCE

The acquiring authority must provide at least 90 days written notice to a person occupying real property before he can be required to move from a dwelling, business or farm. The occupant shall have rent-free tenancy for a period of 30 days commencing with the 1st or 15th day of the month after title vests in the acquiring authority, whichever is sooner.

The acquiring authority has the right to possession when the persons who occupied the acquired property leave, or stay past the vacation date given by the acquiring authority, whichever is sooner. If the acquiring authority is denied possession of the property, it may, upon 48 hours of notice, apply to the circuit court for a writ of assistance to be put in possession. The court shall grant the writ if all jurisdictional requirements have been complied with, the award has been paid and the acquiring authority has made a comparable replacement property available.

LITIGATION EXPENSES/COSTS

"Litigation expenses" is defined as "the sum of the costs, disbursements and expenses, including 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; etc. For a complete listing, please review Wis. Stat. § 32.28(3)(a)-(i).

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