

# The Rights of Landowners Under Wisconsin Eminent Domain Law



## Procedures Under Wis. Stat. § 32.06: Anything Other than Transportation Matters

This brochure provides information on the condemnation process in Wisconsin, including the rights of impacted property owners. 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 Law, Wis. Stat. Ch. 32, vests several public and private entities with eminent domain power. Condemnation is the legal process by which the acquiring agency exercises its eminent domain power.

The following are jurisdictional requirements the acquiring agency must obey in order to condemn property. Even if an acquiring agency does not intend to obtain property via condemnation, it must comply with the requirements of Chapter 32 when proceeding with an activity that may involve displacement of persons, business concerns, or farm operations.

### NECESSITY OF TAKING

Specific entities are required to provide a determination of the necessity of taking of property prior to the initiation of negotiations. (See Wis. Stat. § 32.07 for more information.)

### APPRAISAL

The acquiring agency 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 of the appraisal. Also, the acquiring agency must notify the property owner that he/she may obtain his/her own appraisal at the (reasonable) expense of the acquiring agency. The owner's appraisal must be submitted to the acquiring agency within 60 days of receiving the agency's appraisal.

### NEGOTIATION/AGREED PRICE

The acquiring agency 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. 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 agency must give the names of all offerees. Property owners may inspect and make copies of any maps the acquiring agency holds. The acquiring agency may present relocation benefits during negotiations, if relocation of displaced persons is required.

In partial acquisitions, fair market value is the greater of (1) the fair market value of the part acquired, or (2) the difference between the entire property value before and after acquisition. If only part of the property is acquired and an uneconomic remnant remains, the acquiring agency 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 or of substantially impaired economic viability.

Compensation for an easement is 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 by the county register of deeds.

If the property owner agrees to a negotiated sale, the acquiring agency must record the conveyance with the county register of deeds. After recording, the acquiring agency 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.

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.

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**JURISDICTIONAL OFFER**

If negotiations fail, the acquiring agency 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 appraisal on which the offer is based is available for viewing; and (7) 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 agency and payment must be made within 60 days.

**CONTESTING THE RIGHT OF CONDEMNATION**

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

**COMMISSION HEARING**

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

At the hearing, the commissioners shall view the property to be condemned and hear all evidence presented. A majority of commissioners present may determine all matters. The prior jurisdictional offer or award amount may not be disclosed to the commission. Within 10 days of the hearing conclusion, the commission shall issue a written award specifying the amount of compensation and file it with the clerk of circuit court.

At the same time the petition for condemnation shall also be filed with the county register of deeds. 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 agency may abandon proceedings to acquire property within 30 days of filing of the commission's award by petitioning the circuit court for leave to abandon the petition for taking trial and shall be tried by jury unless the jury is waived by both parties. The amount of the jurisdictional offer or the commission's award shall not be disclosed during such an appeal. If the jury verdict exceeds the jurisdictional offer, the acquiring agency may petition the court for leave to abandon the proceeding within 40 days and discharges the *lis pendens*.

**PAYMENT OF AWARD**

If the acquiring agency does not abandon the proceeding to take the property, it must pay the award to the owner within 70 days after the commission's award is filed. The acquiring agency shall then file the owner's receipt of the award with the clerk of circuit court or, at the option of the agency, pay the award into the office of the clerk of circuit court for the benefit of the parties having an interest of record on the date of the evaluation (and provide notice to such parties by certified mail). Title to the property vests in the acquiring agency upon filing of the receipt or the making of such payment.

**APPEAL TO CIRCUIT COURT**

Within 60 days after the date of filing of the commission's award, either party may appeal the commission's award to the circuit court. The only issues to be tried during this appeal shall be questions of title, if any, and the amount of just compensation the acquiring agency 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 amount of the jurisdictional offer or the commission's award shall not be disclosed during such an appeal. If the jury verdict exceeds the jurisdictional offer, the acquiring agency may petition the court for leave to abandon the proceeding within 40 days of filing of the verdict.

All judgments required to be paid shall be paid within 60 days after entry of judgment, unless the matter is appealed to the court of appeals or the acquiring agency has filed a petition for leave to abandon the proceeding.

**OCCUPANCY/WRIT OF ASSISTANCE**

No person occupying real property may be required by the acquiring agency to move from a home or business without at least a 90-day written notice. If title vests with the acquiring agency before the 90-day period ends, the occupant may remain 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 agency. If the occupant denies the agency the right of possession at the end of the 90-day period, the agency may apply to the circuit court 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 met, the award has been paid and a comparable property has been made 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 acquiring agency 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).