

THE STAGES¹ OF MARYLAND EMINENT DOMAIN CASES

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The laws governing eminent domain, and the condemnation process, are complicated and can be confusing. The eminent domain attorneys at Miller, Miller & Canby have prepared a brief article outlining the general steps that a property owner can expect in an eminent domain case. These steps can vary depending on the nature of the condemnation process and the powers granted to the condemning authority. Any property owner notified of a potential taking of their property should consult with a skilled and experienced eminent domain attorney to assist them in protecting their rights.

(1) Identification of public need and property to be acquired. The process of condemnation begins with the identification of a public need, and the determination by the applicable governmental body that it is necessary to acquire private property to fulfill that public need. This often involves public hearings where the issues are debated. A property owner may or may not be given individual notice of these hearings so should try to stay apprised of various projects within the community through reading local news and checking project website updates. The property to be acquired is identified in this process and authority to move forward with the acquisition is granted.

(2) Notice, Offer to Purchase, and Negotiations. Once the decision to acquire has been made, the condemning authority (also “condemnor”) generally gives the property owner written notice that it intends to acquire that person’s property. In most cases, the condemnor will make an initial offer of the amount it has determined to be just compensation for the property being taken and, if applicable, any damages to the property remaining after the acquisition. Likewise, in most instances, the condemnor is required by statute to engage in good faith attempts to acquire the property through negotiations with the property owner.

(3) Filing a Lawsuit. If negotiations for the acquisition of the property are unsuccessful, the condemning authority may file a complaint in the circuit court of the county in which the property to be acquired is located. In some localities, this first requires a taking resolution of the local government to allow a condemnation petition to be filed in court.

(4) Deposit of Estimate of Just Compensation into the Court Registry in Quick-Take Cases.

¹ Maryland has several State and local statutes that govern the authority and procedures for eminent domain cases in a variety of contexts. This summary is meant to give a summary of the most common components of any eminent domain case but legal counsel should be sought to address the specific details of any given case.

Certain State agencies (such as the State Roads Commission and the Washington Suburban Sanitary Commission in Prince Georges County) and certain jurisdictions (such as Baltimore City, and Baltimore, Cecil and Montgomery Counties) have “quick-take” authority, but the owner still has the right to a full trial to determine the amount of compensation paid after the property is taken. In order to quickly take possession of the property in this fashion, the condemning authority must pay into the court’s registry the amount of compensation it believes the owner is entitled to receive (this will usually be based upon an appraisal the owner has received in the earlier negotiations stage). The date that the funds are deposited into the court becomes the “date of valuation” of the property. Once those funds are deposited into the court, the condemning authority has the right to enter upon the property and begin the necessary construction, and the property owner is entitled to withdraw these funds.

This step is not applicable in traditional condemnation cases, as the condemning authority does not take possession, or pay any money, until after a judgment is entered. The date of value is the date of trial, in traditional condemnation cases.

(5) Withdrawing Money from the Court. Also in quick-take cases, the property owner is entitled to withdraw the funds deposited into the court. This requires a motion be filed with the court requesting that the funds be disbursed to the property owner. There may be several parties with an interest in the funds on deposit; frequently, this includes the property owner and any mortgagee holding a lien against the property at issue. A hearing may be scheduled for the court to hear argument on the motion, but frequently such motions are consented to by all parties interested and no hearing is necessary. Withdrawal of funds paid into court does not prejudice a property owner’s claim—he or she can still seek a higher judgment at trial. Alternatively, a lower judgment could also be entered at trial, meaning that a property owner would have to pay some of the money back.

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(6) Board of Property Review Hearing. In cases in which the State Roads Commission is pursuing the condemnation of property through its quick-take authority, the matter may proceed to a Board of Property Review after negotiations fail. These are 3-member boards in each county, which will hear the case and render an award. Any dissatisfied party may appeal to the circuit court and have the case heard “*de novo*”, or anew. These boards are generally meant to provide an inexpensive procedure for resolving small cases and are not likely appropriate for large contested cases. The Commission can—and often does—bypass a Board of Property Review hearing and file a formal condemnation petition with the circuit court from the outset.

This step is not applicable in traditional condemnation cases; it applies only to State Roads Commission quick-take cases.

(7) Scheduling Order. When the formal condemnation petition is filed with the court, the court will issue a scheduling order that will govern the significant deadlines in the eminent domain case. It is very important that the deadlines be noted and complied with, as failure to comply with a deadline can result in prejudice to a property-owner’s case.

(8) Retention Expert Witnesses. In most condemnation cases, the only issue for the fact-finder to determine is the amount of money owed to the property owner for the property taken, and this depends on the value of the property taken and the damages to any remaining property. The condemning authority and the property owner will hire an appraiser to value the property and opine as to the amount the property owner should be paid. In some more complicated cases, additional experts, such as land planners, engineers, or even traffic experts will be necessary to provide the appraiser with the foundational information needed to accurately value the property taken and damages caused to any of the remaining property. It is important that these experts be consulted with and retained early, for the proper framing of an eminent domain case.

(9) Discovery. The condemning authority and the property owner each have the right to ask the other for information and documents relating to their case, including the names and contact information for witnesses, the documents supporting their claims, and also carry out depositions of witnesses to get more information. This process is referred to as “discovery.” In many cases, most of the discovery will relate to the appraisals, opinions, and testimony of the expert witnesses.

(10) Continued Settlement Negotiations and Mediation. The parties may continue informal settlement negotiations up to the date of trial. Additionally, the parties will have the opportunity to participate in a mediation or settlement conference, depending on the jurisdiction. Although voluntary, most courts strongly encourage these as opportunity to make another effort at settlement before trial. Often they are more successful than informal settlement negotiations because a judge or very experienced attorney participates and aids the parties at achieving a resolution.

(11) Pre-trial hearings. Several hearings may occur prior to trial to resolve a variety of issues. Hearings may be scheduled to resolve motions, such as those dealing with discovery disputes or addressing legal or evidentiary issues in the case. Administrative hearings may also occur to address administrative issues such as scheduling a trial date. Most hearings can be carried out by the attorney and do not require the attendance of the property owner.

(12) Trial. Maryland provides a right to a jury trial on the issue of just compensation in State condemnation proceedings. The parties may, nonetheless, elect to waive a jury trial, in which case the judge will be responsible for making the determination of the appropriate amount of damages. In Maryland, the property owner also has the right to a jury view, where the jury is transported to the property so that it can view the property first-hand. The parties have the opportunity to present evidence and testimony in support of their claim as to the correct amount of compensation.

(13) Verdict. Once the jury has been presented with all of the testimony and evidence, it will enter a verdict for the amount of compensation to which it believes the property owner is entitled. In “quick-take” cases, if the award is higher than the initial amount paid into court (see number 5, above), the property owner is entitled to be paid the difference, plus interest. If the award is less, the property owner will have to reimburse the over-payment. In traditional

condemnation cases, once the jury enters the verdict, the condemning authority can pay the amount of the jury's award and obtain possession of the property. Or, it can elect to abandon the condemnation (if, for example, the jury award is too costly), in which case it will be required to pay the property owner reasonable costs and attorney's fees.

(14) Post-Trial and Appeal. After judgment is entered either party has the right to appeal the judgment if they believe there was an error in the trial. Appeals can take several years to reach resolution. If the judgment is not appealed, it is final.

(15) Relocation Benefits. In some instances, the property owner is entitled to additional compensation for having to relocate a residence or business. Relocation benefits may reimburse a portion of moving expenses, utility reconnection expenses, business advertising expenses, or a variety of other related expenses.

For more information on the stages of eminent domain and the rights of property owners contact one of Miller, Miller & Canby's eminent domain attorneys: James Thompson, Joe Suntum or Amy Grasso at 301.762.5212.