
Can I Stop The Government From Taking My Property?

BLOG | MARCH 23, 2021

You have received notice that the government or some other condemning authority intends to take your property for an upcoming project. Most landowner's initial reaction is to look for a way to stop the condemnation from happening. While it is possible to stop the condemnation, most of the time an attempt to challenge eminent domain authority is unsuccessful. As a result, the primary fight with the condemning authority will focus on how much you will be paid for the property that will be taken.

Under What Circumstances Can I Stop the Condemnation?

There are two limitations on the power to take property through the exercise of eminent domain:

The taking must be for a public use or purpose, AND

They must pay you just compensation.

Public purpose is very broadly defined by our courts to encompass almost any project that has a public benefit, even if it is not specifically for public use. A public road or sewer line will clearly meet the requirement. However, even something such as a pipeline for a private company will generally be found to have a public purpose, unless there is a transparent showing that the condemnation is only for the benefit of an individual or small group, rather than the government or public at large. As a result, it is very rare for a condemnation to be stopped based on a failure to show a public purpose.

An additional issue to consider is whether the condemning authority is only taking what they need to in order to accomplish their public purpose. If more land or property interests are being taken than what is necessary, the additional takings should not be found to be for a public purpose. Once again, however, Courts give great deference to the condemning authority to determine what land and interests they need and will often defer to the condemning authority to determine what will be taken.

In limited scenarios, condemnors may be convinced to shift their plans and/or alter their taking to better fit the needs and desires of a property owner. However, this is almost always the result of the condemnor being convinced that it will pay less in just compensation if the plan is altered to reduce the impact on the property.

The just compensation requirement, for purposes of whether the condemnation action can go forward, will be met when the condemning authority deposits with the Court what they say your property is worth. If the condemnor is not

able to reach an informal agreement to pay you for your property, they will make this deposit when they file a lawsuit to take your property. As a result, this will almost never serve as a roadblock to condemning your land. That does not mean, however, that this is the full amount the landowner is actually entitled to recover. A knowledgeable eminent domain attorney can help you respond to the condemnation lawsuit and continue the fight to force them to pay you a fair price for your land.

For more information on this topic, please contact Brandon Weaver at (919) 861-5112 or Brando.Weaver@youngmoorelaw.com.

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