

TEXANS PROPERTY RIGHTS

Improvements have been made in past years to Texas' eminent domain laws to better protect private property rights.

The voter-approved amendment to the Texas Constitution in 2009 prohibited the taking of private property for economic development, and Senate Bill 18 in 2011 made changes to the condemnation process, but eminent domain remains at the forefront of concerns for Texas landowners.

Unfortunately, **Texas landowners continue to struggle with an unbalanced set of laws** that are at odds with a state known as a champion for private property rights. Despite past efforts, condemning entities continue to hold an unfair advantage over landowners who are forced to sell their property without truly being made whole when their property is taken. In Texas, where about 95 percent of the land is privately owned, our legal system should better protect landowners.

Texas landowners recognize that the state's population is growing at a rapid pace. There is an increasing need for more land for public resources such as energy and transportation. But landowners also recognize that their property rights must be better protected, not only for themselves, but also for future generations.

Texans take great pride in their land, and they don't want to see their private property rights taken advantage of. The condemnation process is not a willing buyer and willing seller transaction. It's a legally forced sale. Therefore, **it's necessary to make further improvements to the laws that govern the use of eminent domain** so Texas landowners can have more assurance that this process is fair and respectful of their private property rights when they are forced to sell their land.

Such improvements should include... →

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REIMBURSEMENT OF LANDOWNER COSTS AND EXPENSES

- Due to litigation costs and other legal expenses, landowners who challenge in courts for just compensation are often never made whole when their property is taken.
- Condemnors should be required to pay the costs and fees incurred by property owners in eminent domain proceedings if final damages awarded are greater than 125 percent of the entity's offer.

BOND REQUIREMENT

- Some condemnors have refused to purchase a bond and then claimed bankruptcy or insolvency to avoid payment to the landowner for just compensation.
- A condemning entity should be required to either pay the jury award or secure a bond in the amount of the jury award in order to guarantee payment to a prevailing landowner at the conclusion of the legal proceedings.

APPRAISALS

- Some condemning entities are taking advantage of a loophole in the law regarding appraisals. Although entities will make an appraisal available at the time of initial and final offer, they are being allowed to present a new or updated appraisal immediately before a commissioners court hearing. Meanwhile, landowners are required to provide appraisals no later than three business days prior to a hearing.
- Appraisals or opinions of property value, and damages caused by the condemnation, should be made available to the landowner at the time of the initial and final offer, no less than three business days prior to the special commissioners court hearing.

PROPERTY RIGHTS PROTECTION IN BONA FIDE OFFER

- Although current law requires a bona fide offer, it is important to better specify in statute what exactly this should include.
- A true bona fide offer should require the condemning entity to provide minimum property rights protection and delineate all uses or restrictions for the condemned property. Terms to ensure the condemning entity will maintain the surface of the property throughout the life of the easement should also be required.

POSSESSION AND USE AGREEMENTS/PROPERTY TAXES

- There are instances where landowners give possession of their property to a condemning entity through possession and use agreements. Any written agreement made between the condemning authority and the property owner during a condemnation case should be enforceable.
- When landowners transfer possession of their property to condemning entities under possession and use agreements, they still have to pay taxes on the condemned property. Dispossessed property owners should not have to pay taxes on condemned land.

VALUATION OF EASEMENTS

- As the basis for assessing damages to a landowner from a condemnation, evidence of sales of freely negotiated comparable easements are usually not admissible in condemnation proceedings.
- The court should admit evidence on the price paid for pipeline or powerline rights-of-way in privately negotiated transactions made in the absence of condemnation authority.

ROYALTY PAYMENTS

- Often landowners are not aware that they have the ability to request royalty payments as an option in negotiating payment.
- Statute should state condemning entities and landowners can agree to royalty payments. This option should be permissive but noticeably available to landowners.