

Practical Suggestions to Protect Your Rights in Eminent Domain

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In order to provide the infrastructure needed to accommodate Florida's explosive population growth, public authorities throughout the state are constructing and expanding public projects every day. Whether these projects are roads, airports, schools, or parks, more often than not, they require the acquisition of private property. Thus, every day, property owners and business operators face the prospect that their properties and businesses will be taken and affected by compulsory condemnation.



Once property owners and business tenants are notified of a condemnation, they often ask whether there is anything they can do to avoid condemnation or what steps they can take to assure that they will receive full compensation for the taking of their property. Here are four recommendations:

1. **Consult with an attorney as early as possible.** An attorney experienced in representing owners in condemnation cases will be able to advise the owner or tenant of his or her rights. There is no reason why an affected owner should not seek legal advice as soon as possible. In Florida state court condemnations, the reasonable attorney's fees and costs of owners and tenants are generally paid for by the condemning authority, and the sooner the owner meets with his or her attorney, the quicker they can begin preparing for the proposed condemnation. Proper precondemnation planning can have dramatic and positive impacts on the results of the case.
2. **Be cautious about what you say about your property or its value.** Your statements may be used against you. Positions taken by the owner regarding the value of his property before it is condemned — such as listing the property for sale or appealing a real estate tax assessment — may be used against him in the condemnation trial. If these

positions show a lower value than the value the owner asserts in court, the condemning authority may introduce these positions in evidence.

3. **Consider the possibility of condemnation in drafting leases.** The terms of an existing lease may have a profound effect on the amount of compensation an owner is able to recover in a condemnation case. In addition, the terms of such a lease may affect the rights and obligations of the landlord and tenant on issues caused by a partial taking. The property is often considered by the condemnation jury to be more valuable if it is generating higher rent at less expense to the owner. The terms of the lease are also important in determining whether the landlord and tenant share the condemnation award and, if so, the portion of the award each party receives.
4. **Maintain your property in good repair.** The condition of the property affects its value. A well-maintained property will also help create a positive impression on the appraisers and the jury. The owner should be careful to avoid environmental contamination. Code violations should be avoided, and, if citations are issued, should be promptly corrected.

By following these four simple suggestions, property owners can place themselves in the best possible position if their property is condemned.