

# If eminent domain comes knocking: Some answers to frequently asked questions

Thanks to efforts by Virginia Farm Bureau Federation and other groups, Virginia voters in 2012 overwhelmingly approved an amendment to the state constitution to permanently protect private property rights. Since the 3-to-1 passage of that amendment, Virginians' private property now can be taken for a legitimate public use only, and citizens must receive just compensation in any situation where eminent domain is used.

In cases in which land is threatened to be condemned using eminent domain, it is important for landowners to know their rights. If you are a landowner in that situation, the following answers to frequently asked questions might be helpful.

## Why can the government take my property?

Eminent domain is the government's ability to take private property for public use and stems from the 5th amendment to the U.S. Constitution, usually referred to as the "takings clause." It states that private property shall not be taken for public use without just compensation to the landowner. Virginia's constitution and state code set parameters for takings by the state and local government.

## Who can take my property?

Federal, state and local governments have the power of eminent domain. Those government bodies have further delegated the power to other entities such as the Virginia Department of Transportation and public utility companies.

## How is a legitimate public use decided?

Only a judge can decide that. Even if the condemner believes it is for a public use, the courts may rule otherwise. Common public uses include acquiring new land for



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road construction (new roadways, expansion, roundabouts), utility projects (power lines, sewers) or public buildings such as schools and airports. Virginia's 2012 constitutional amendment ensures that land cannot be condemned for private gain, private benefit or private enterprise, or for increasing jobs, tax revenue or economic development.

## How will I know if my property is about to be taken?

Hopefully, you will be notified far in advance by the condemner. Sometimes, though, you may find out about it online or in a newspaper. Often, a public agency will have a public hearing to discuss the scope

of a project and identify what land will be affected. A landowner should receive a written notice that his or her property (or part of it) is needed for a public project, and the agency will make an offer to buy the property before it files condemnation papers. If the landowner doesn't agree to the offer, the agency must prove to a court that the property is "reasonably necessary" for the proposed taking.

## When will the eminent domain taking occur?

It depends on the project, but the property cannot be taken until the condemner makes an offer for the property

and the landowner has accepted it. If the property taken is worth \$10,000 or more, the condemning authority has to provide a copy of the appraisal.

### If I say no to the offer, who decides how much money I get?

The initial offer from the public entity was based on an appraisal provided by an appraiser of their choosing. For obvious reasons, it could be biased. In Virginia, you are allowed to choose a randomly selected jury (comprised of landowners) or a panel of appointed commissioners who can determine the total amount of compensation you are owed. Remember: You are entitled to damage claims even if they take only part of your property. You will need a separate appraisal from a licensed appraiser to prove the damages, and an attorney to represent you in court. The key is to make sure you are getting the most amount of money for the fair market value of your land, even if the whole parcel was not taken.

### Do I have to pay taxes on my compensation?

You have a period of time to reinvest your award sum and defer your tax obligation. If part of the award is for damages to property you still own, you can potentially defer the payment of taxes on that portion of the award until you sell the property.

### Let's suppose that the government has decided to take my property for a legitimate public use. What should I do before the condemnation has begun?

- Keep all records of conversations with the condemner in one place. Note the agency representative's name, the date and time of the conversation, and what was said. Save any correspondence or documents.
- Keep the property in tip-top shape, as if you were about to sell it. This will help you receive the highest fair-market value.
- Take photographs of the property on a clear day.
- Consult an attorney regarding the filing of subdivision plans, the title to the property or any land leases that may be on the property.
- *Never sign anything* before consulting with an attorney of your choice.

Virginia Farm Bureau does not offer legal representation or appraisal services; however, the organization is available to serve as a landowner resource. If your property is threatened by eminent domain, feel free to contact Trey Davis in the VFBB Governmental Relations Department, at [trey.davis@vafb.com](mailto:trey.davis@vafb.com).



The power of eminent domain often is delegated by government to other entities such as public utility companies.

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