

Texas Landowner's Bill Of Rights-Annotated

Beginning February 1, 2008, condemning authorities are required to deliver a landowner's bill of rights statement prepared by the Attorney General's office before negotiating with a property owner to acquire real property. As authored by the Attorney General, the first ten sections summarize the basic rights of landowners. The remainder provides a step by step description of the condemnation process. In this paper, the left column is the text of the document as prepared by the Attorney General; the right column includes comments, case law, and statutory authority concerning the statement. This paper is not legal advice and is not a substitute for legal counsel.

Text	Comments and citations
<p>This Bill of Rights applies to any attempt by the government or a private entity to take your property. The contents of this Bill of Rights are prescribed by the Texas Legislature in Texas Government Code Sec. 402.031 and Chapter 21 of the Texas Property Code.</p>	<p>(a) The attorney general shall prepare a written statement that includes a bill of rights for a property owner whose real property may be acquired by a governmental or private entity through the use of the entity's eminent domain authority.</p> <p>(b) The landowner's bill of rights must notify each property owner that the property owner has the right to:</p> <ul style="list-style-type: none">(1) notice of the proposed acquisition of the owner's property;(2) a bona fide good faith effort to negotiate by the entity proposing to acquire the property;(3) an assessment of damages to the owner that will result from the taking of the property;(4) a hearing under Chapter 21, Property Code, including a hearing on the assessment of damages; and(5) an appeal of a judgment in a condemnation proceeding, including an appeal of an assessment of damages. <p>(c) The statement must include:</p> <ul style="list-style-type: none">(1) the title, "Landowner's Bill of Rights"; and(2) a description of:<ul style="list-style-type: none">(A) the condemnation procedure provided by Chapter 21, Property Code;(B) the condemning entity's obligations to the property owner; and(C) the property owner's options during a condemnation, including the property owner's right to object to and appeal an amount of damages awarded. <p>(d) The office of the attorney general shall:</p> <ul style="list-style-type: none">(1) write the statement in plain language designed to be easily understood by the average property owner; and(2) make the statement available on the attorney general's Internet website.

Tex. Gov't Code Ann. § 402.031 (Vernon 2007).

Text	Comments and citations
1. You are entitled to receive adequate compensation if your property is taken for a public use.	No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State. TEX. CONST. art. I, § 17.
2. Your property can only be taken for a public use.	<p>While a legislative declaration as to private or public purpose will be given great weight by the courts, the ultimate question of whether a particular use is a public use is a judicial question to be decided by the courts. <i>Maher v. Lasater</i>, 354 S.W.2d 923, 924 (Tex. 1962).</p> <p>Determining a public purpose is primarily a function of the legislature, whose decision should not be reversed, unless manifestly arbitrary and incorrect. <i>City of Arlington, Tex. v. Golddust Twins Realty Corp.</i>, 41 F.3d 960 (5th Cir.1994).</p>
3. Your property can only be taken by a governmental entity or private entity authorized by law to do so.	<p>The exercise of the power of eminent domain must be pursuant to specific legislative authority. It is not an implied power of local government. 35 David B. Brooks, <i>Texas Practice: County and Special District Law</i> §9.30 (2d ed. 2002).</p> <p>A county may exercise the right of eminent domain to condemn and acquire land, an easement in land, or a right-of-way if the acquisition is necessary for the construction of a jail, courthouse, hospital, or library, or for another public purpose authorized by law. Tex. Loc. Gov't Code Ann. §261.001 (Vernon 1999).</p>
4. The entity that wants to take your property must notify you about its interest in taking your property.	If an entity with eminent domain authority wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the condemning entity may begin a condemnation proceeding. Tex. Prop. Code Ann. § 21.012. (Vernon 2004).
5. The entity proposing to take your property must provide you with an assessment of the adequate compensation for your property.	A governmental entity with eminent domain authority that wants to acquire real property for a public use shall disclose to the property owner at the time an offer to purchase is made any and all existing appraisal reports produced or acquired by the governmental entity relating specifically to the owner's property and used in determining the final valuation offer. Tex. Prop. Code Ann. § 21.0111 (Vernon 2004).

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6. The entity proposing to take your property must make a good faith offer to buy the property before it files a lawsuit to condemn the property.

The condemning authority must make a bona fide offer which "must be based on a reasonably thorough investigation and honest assessment of the amount of just compensation due to the landowner as a result of the taking." *State v. Hipp and Dowd*, 832 S.W. 2d 71, 78 (Tex.App.-Austin 1992, writ denied as to *Hipp*) reversed as to *Dowd* only, *State v. Dowd*, 867 S.W.2d 781 (Tex. 1993).

7. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.

An expert witness may testify regarding "scientific, technical, or other specialized" matters if the expert is qualified and if the expert's opinion is relevant and based on a reliable foundation. In considering whether expert testimony is reliable, a court should examine the principles, research, and methodology underlying an expert's conclusions. When testimony involves technical or other specialized knowledge, there must be some basis for the opinion to show its reliability. An expert's bare opinion will not suffice and there cannot be 'too great an analytical gap between the data and the opinion proffered. *State v. Bristol Hotel Asset Co.*, Not Reported in S.W.3d, 2007 WL 2042793 (Tex.App.-San Antonio), July 18, 2007.

A landowner who gives evidence that he is acquainted with the market value is prima facie qualified to testify concerning value as an expert. His testimony is admissible as such, and it then becomes a question of the weight that may be given it by the jury. *Gulf States Utilities Co. v. Austin*, 439 S.W.2d 411 (Tex Civ App- Houston [14 Dist.]), writ refused n.r.e.

8. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.

Attorney's fees are recoverable in a condemnation proceeding only if the condemnation proceeding is dismissed. See Tex. Prop. Code§ 21.019 (Vernon 2004).

A condemning authority may reduce the amount of property being acquired during the course of a condemnation proceeding, but if the size reduction is too great the courts may consider the reduction to be a functional dismissal of the original condemnation proceeding and assess certain attorneys fees and costs against the condemnor. *FKM Partnership, Ltd., v. Board of Regents of the University of Houston System*, --- S.W.3d ----, 2008 WL 2316296, Tex., 2008.

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9. Before your property is condemned, you are entitled to a hearing before a court-appointed panel that includes three special commissioners. This specialized hearing panel must determine the amount of compensation the condemning entity owes for the taking of your property. The commissioners must also determine what compensation, if any, you are entitled to receive for any reduction in value of your remaining property.

The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall appoint three disinterested freeholders who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. The judge appointing the special commissioners, shall give preference to persons agreed on by the parties. If a person fails to serve as a commissioner, the judge may appoint a replacement.

The special commissioners shall swear to assess damages fairly, impartially, and according to the law.

Special commissioners may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt in the same manner as a county judge. Tex. Prop. Code§ 21.014 (Vernon 2004).

10. If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the taking of your property was proper, you have the right to a trial by a judge or jury. If you are dissatisfied with the trial court's judgment, you may appeal that decision.

A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court. Tex. Prop. Code§ 21.018 (Vernon 2004).

CONDEMNATION PROCEDURE

Eminent Domain is the ability of certain entities to take private property for a public use.

Eminent Domain is the sovereign power vested in the state to take private property for the public use. *City of Austin v. Nalle*, 120 S.W. 996 (Tex. 1909). Condemnation is the procedure by which the government exercises that power. *A. C. Aukerman Co. v State*, 902 S.W.2d 576, (Tex. App. Houston [1st Dist.] 1995, writ denied).

Private property can include land and certain improvements that are on that property.

In general, all property located within the state may be taken under the power of eminent domain, both real and personal. *City of Galveston v. Brown*, 28 Tex. Civ. App. 274, 67 S.W. 156 (1902). Property interests that may be taken include leases, liens, and maintenance assessments. See *City of Dallas v. VSC, LLC*, 242 S.W.3d 584, (Tex.App.-Dallas 2008); *Texas Southern University v. Cape Conroe Property Owners Ass'n, Inc.*, --- S.W.3d ---, 2007 WL 4762910 (Tex. App.-Beaumont 2008); *Canal Ins. Co. v. Hopkins*, 238 S.W.3d 549, (Tex.App.-Tyler 2007).

Property interests are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law. *Byers v. Patterson*, 219 S.W.3d 514 (Tex.App.-Tyler, 2007).

Generally a cemetery may not be taken through condemnation. *Sacred Gardens of Memory, Inc. v. State*, 334 S.W.2d 220, 222 (Tex.Civ.App.-San Antonio 1960) writ ref'd n.r.e.

Private property may only be taken by a governmental entity or private entity authorized by law to do so.

In Texas about 100 different types of entities have the power to take private property for a public purpose. These entities include: pipeline companies, telegraph companies, water and wastewater corporations, power companies, private road and bridge companies, cemetery associations, and various utility cooperatives. See *Texas Statutes Granting, Prohibiting, or Restricting the Power of Eminent Domain* prepared by Amy M. Young for State Representative William A. "Bill" Callegari, Published by the, Texas Legislative Council. March 2006.

Among the governmental entities granted eminent domain power are cities, counties, the state, hospital districts and authorities, transit authorities, civic center authorities, rural rail transportation districts, housing authorities, and the various general law water districts as authorized under the Water Code. 35 David B. Brooks, *Texas Practice: County and Special District Law* §9.30 (2d ed. 2002).

Your property may be taken only for a public use. Eminent domain cannot be used to take your property for economic development purposes, except for limited exceptions provided by law.

An entity may not take private property through the use of eminent domain if the taking:

- (1) confers a private benefit on a particular private party through the use of the property;
- (2) is for a public use that is merely a pretext to confer a private benefit on a particular private party; or
- (3) is for economic development purposes, unless the economic development is a secondary purpose ...

[Exceptions include:]

- (1) transportation projects,
- (2) ...:
 - (A) port authorities;
 - (B) navigation districts; and
- (3) water supply, wastewater, flood control, and drainage projects;
- (4) public buildings, hospitals, and parks;
- (5) the provision of utility services;
- (6) a sports and community venue project approved ... before December 1, 2005, ...;
- (7) the operations of:
 - (A) a common carrier ... or
 - (B) an energy transporter, ...;

...

- (9) underground storage operations subject to Chapter 91, Natural Resources Code;
- (10) a waste disposal project; or
- (11) a library, museum, or related facility and any infrastructure related to the facility. Tex. Gov't Code Ann § 2206.001

Your property cannot be taken without adequate compensation. Adequate compensation includes the market value of the property being taken. It may also include certain damages, if any, to your remaining property caused by the acquisition itself or by the way the condemning entity will use the property.

Adequate compensation means just compensation, and implies fair market value of the property. *City of Houston v. Religious of the Sacred Heart*, 811 S.W.2d 734, 736 (Tex.App.--Houston [1st Dist.] 1991), aff'd, 836 S.W.2d 606 (Tex.1992).

Market Value is the price which the property will bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonable adaptable and for which it either is or in all reasonable probability will become available within the reasonable future. *City of Austin v. Cannizzo*, 267 S.W.2d 808 (Tex. 1964).

The value of the land condemned is not to be estimated with reference to any use to which it is reasonably adapted. The best or most valuable use to which the property, which is taken for the public use, is adapted should be considered. *City of Tyler v. Ginn*, 225 S.W.2d 997 (Tex.Civ.App.-Texarkana 1949 err. disp.).

How the Taking Process Begins
The taking of private property by eminent domain must follow certain procedures.

A condemning entity may begin a condemnation proceeding if it is "unable to agree with the owner of the property on the amount of damages. *Hubenak v. San Jacinto Gas Transmission Co.*, 141 S.W.3d 172, 183-84 (Tex.2004).

First, the entity that wants to condemn your property must notify you about its interest in acquiring your property.

Second, before a condemning entity begins negotiating with you to acquire your property, it must send this Landowner's Bill of Rights statement to the last known address of the person in whose name the property is listed on the most recent tax roll.

Before a governmental or private entity with eminent domain authority begins negotiating with a property owner to acquire real property, the entity must send by first-class mail or otherwise provide a landowner's bill of rights statement provided by Section 402.031, Government Code, to the last known address of the person in whose name the property is listed on the most recent tax roll of any appropriate taxing unit authorized by law to levy property taxes against the property. Tex. Prop. Code § 21.0112(a).

Third, the condemning entity must make a good faith offer to purchase the property. The condemning entity's offer must be based on an investigation and an assessment of adequate compensation for the property.

When a condemning authority fails to make a good faith offer, the trial court should not dismiss the case but should instead abate the proceedings and provide a reasonable period of time for the authority to make a bona fide offer. *Hubenak v. San Jacinto Gas Transmission Co.*, 141 S.W.3d 172 at 184 (Tex. 2004).

At the time the offer is made, the governmental condemning entity must disclose any appraisal reports it used to determine the value of its offer to acquire the property. You have the right to either accept or reject the offer made by the condemning entity.

A governmental entity with eminent domain authority that wants to acquire real property for a public use shall disclose to the property owner, at the time an offer to purchase is made, any and all existing appraisal reports produced or acquired by the governmental entity relating specifically to the owner's property and used in determining the final valuation offer. Tex. Prop. Code § 21.0111 (Vernon 2004).

Condemnation Proceedings

If you and the condemning entity do not agree on the value of the property being taken, the entity may begin condemnation proceedings. Condemnation is the legal process for the taking of private property. It begins with a condemning entity filing a claim for your property in court. If you live in a county where part of the property being condemned is located, the claim must be filed in that county. Otherwise, the claim can be filed in any county where at least part of the property being condemned is located.

The venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located. Tex. Prop. Code§ 21.013 (a) (Vernon 2004).

The claim must describe the property being condemned, the intended public use, the name of the landowner, a statement that the landowner and the condemning entity were unable to agree on the value of the property, and that the condemning entity provided the landowner with the Landowner's Bill of Rights statement.

The petition must:

- (1) describe the property to be condemned;
- (2) state the purpose for which the entity intends to use the property;
- (3) state the name of the owner of the property if the owner is known;
- (4) state that the entity and the property owner are unable to agree on the damages; and
- (5) if applicable, state that the entity provided the property owner with the landowner's bill of rights statement ...

Prop. Code§ 21.012.

The government does not have to describe in its petition the specifics of the project it intends to construct nor is the government prohibited from changing design specifications after the special commissioners' hearing. *PR Investments and Specialty Retailers, Inc. v. State*, --- S.W.3d ----, 2008 WL 400396, Tex., 2008.

Special Commissioners' Hearing

After the condemning entity files a claim in court, the judge will appoint three landowners to serve as special commissioners. These special commissioners must live in the county where the condemnation proceeding is filed, and they must take an oath to assess the amount of adequate compensation fairly, impartially, and according to the law.

The administrative step affords the parties an opportunity to present their case in a relatively streamlined fashion and to resolve their differences short of a full-blown court trial, thus sparing the parties and the courts the burdens of a trial. Such pretrial settlements should be encouraged. *PR Investments and Specialty Retailers, Inc. v. State*, --- S.W.3d ----, 2008 WL 400396, Tex., 2008.

The special commissioners are not authorized to decide whether the condemnation is necessary or if the public use is proper. After being appointed, the special commissioners must schedule a hearing at the earliest practical time and place and provide you written notice of that hearing.

The special commissioners in an eminent domain proceeding shall promptly schedule a hearing for the parties at the earliest practical time and at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held. Tex. Prop. Code § 21.016 (Vernon 2004).

The sole authority given to the commissioners by the statute is to hear the evidence, assess the amount of damages due the owner and file their decision with the county judge. They are not a court. They cannot pass upon a plea in abatement or upon a motion to dismiss and they have no authority to require the condemnor to amend his petition. *Brazos R. Conservation & Reclamation Dist. v. Allen*, 171 S.W.2d 847 (Tex. 1943).

The special commissioners in condemnation proceedings are not qualified or authorized to pass on questions of law, and their hearings are not required to be held in strict conformity with the laws of evidence and other procedure observed in a formal trial. *Dueitt v. Harris County*, 249 S.W.2d 636 (Tex.Civ.App.- Galveston 1952, err. ref.).

You are required to disclose to the governmental condemning entity, at least ten days before the special commissioners' hearing, any appraisal reports used to determine your opinion about adequate compensation for the property. You may hire an appraiser or real estate professional to help you determine the value of your private property. You may also hire an attorney regarding these proceedings.

A landowner who gives evidence that he is acquainted with the market value is prima facie qualified to testify concerning value as an expert. His testimony is admissible as such, and it then becomes a question of the weight that may be given it by the jury. *Gulf States Utilities Co. v. Austin*, 439 S.W.2d 411 (Tex. Civ. App.-Houston [14 Dist.]), writ refused n.r.e.

At the hearing, the special commissioners will consider evidence on the value of the property, the damages to remaining property, any value added to the remaining property as a result of the project, and the uses to be made of the property being taken.

If the property owner makes an appearance before the Special Commissioners on the date and at the time of the Special Commissioners' hearing, any defects in the statutory prerequisites are waived. *Austin Home Center Assoc. v. State*, 794 S.W.2d 593, 595 (Tex. App.—Austin 1990, no writ); *Phillips Pipeline Co. v. Woods*, 610 S.W. 2d 204, 207 (Tex.App.—Houston [14th Dist.] 1980, writ ref'd n.r.e.); *Dyer v. State* 388 S.W. 2d 226, 230 Tex.App.—El Paso 1965, no writ).

Special Commissioners' Award
After hearing evidence from all interested parties, the special commissioners will determine the amount of money to be awarded as adequate compensation. You may be responsible for the costs if the Award is less than or equal to the amount the condemning entity offered before the condemnation proceeding began. Otherwise, the condemning entity will be responsible for the costs.

(a) The special commissioners shall assess damages in a condemnation proceeding according to the evidence presented at the hearing. – Tex. Prop. Code§ 21.042 (Vernon 2000).

As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on:

- (1) the value of the property being condemned;
- (2) the injury to the property owner;
- (3) the benefit to the property owner's remaining property; and
- (4) the use of the property for the purpose of the condemnation. Texas Prop. Code 21.041 (Vernon 2000).

The special commissioners will give a written decision to the court that appointed them. That decision is called the "Award." The Award must be filed with the court and the court must send written notice of the Award to all parties.

After the special commissioners in an eminent domain proceeding have assessed the damages, they shall:

- (1) make a written statement of their decision stating the damages, date it, sign it, and file it and all other papers connected with the proceeding with the court on the day the decision is made or on the next working day after the day the decision is made; and
- (2) make and sign a written statement of the accrued costs of the proceeding, naming the party against whom the costs are adjudged, and file the statement with the court. Texas Prop. Code§ 21.048 (Vernon 2000).

After the Award is filed, the condemning entity may take possession of the property being condemned, even if either party appeals the Award of the special commissioners. To take possession of the property, the condemning entity must either pay you the amount of the Award or deposit the amount of the Award into the registry of the court. You have the right to withdraw the deposited funds from the registry of the court.

After the special commissioners have made an award in a condemnation proceeding, except as provided by Subsection (c) of this section, the condemnor may take possession of the condemned property pending the results of further litigation if the condemnor:

- (1) pays to the property owner the amount of damages and costs awarded by the special commissioners or deposits that amount of money with the court subject to the order of the property owner. Tex. Prop. Code§ 21.021 (Vernon 2004).

The condemnor has the right to retain possession of the property through the appellate process. See *Houston B. & T. Ry. Co. v. Hornberger*, 141 S.W. 311 (Tex.Civ.App.-Galveston 1911), approved 106 Tex. 104, 157 S.W. 744 (1913).

When a landowner withdraws the award money from the Registry of the Court, the landowner is precluded from contesting the right to take the property. *State v. Jackson*, 388 S.W. 2d 924, 925 (Tex.1965).

Objection to the Special Commissioners' Award

If either you or the condemning entity is dissatisfied with the amount of the Award, either party can object to the Award by filing a written statement of objection with the court.

A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court. Tex. Prop. Code§ 21.018 (Vernon 2004).

If neither party timely objects to the Award, the court will adopt the Award as the final judgment of the court. If a party timely objects to the special commissioners' Award, the court will hear the case in the same manner as other civil cases.

The trial court is not authorized to change the award of the Special Commissioners or the conditions of the condemnation unless a party has filed objections to the award. *In re Energy Transfer Fuel, LP*, --- S.W.3d ----, 2008 WL 726338, Tex.App.-Tyler, 2008.

If you object to the Award and ask the court to hear the matter, you have the right to a trial by judge or jury. The allocation of costs is handled in the same manner as with the special commissioners' Award. After that trial, either party may appeal any judgment entered by the court.

The trial before the court is a trial de novo, conducted in the same manner as other civil causes. It is not confined to the same evidence that was presented at the administrative phase. *PR Investments and Specialty Retailers, Inc. v. State*, --- S.W.3d ----, 2008 WL 400396, Tex., 2008.

Dismissal of the Condemnation Action

A condemning entity may file a motion to dismiss the condemnation proceeding if it decides it no longer needs your property. If the court grants the motion to dismiss, the case is over and you are entitled to recover reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses incurred to the date of the hearing on the motion to dismiss.

A court that hears and grants a motion to dismiss a condemnation proceeding made by a condemnor ... (a) shall make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing.

A court that hears and grants a motion to dismiss a condemnation proceeding made by a property owner seeking a judicial denial of the right to condemn or that otherwise renders a judgment denying the right to condemn may make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing or judgment. Tex. Prop. Code§ 21.019 (Vernon 2004).

See *Brazos Elec. Power Co-op., Inc. v. Weber*, 238 S.W.3d 582, (Tex.App.-Dallas, 2007), for a discussion on how attorneys fees may be calculated.

You may also file a motion to dismiss the condemnation proceeding on the ground that the condemning entity did not have the right to condemn the property, including a challenge as to whether the property is being taken for a public use. If the court grants your motion, the court may award you reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses incurred to the date of the hearing or judgment.

Whether a condemning authority has the right to take property and whether the court has jurisdiction are matters of law that the court decides. It is the condemning authority's burden to prove it has met the requirements and has the right to acquire the property through eminent domain. *Amason v. Natural Gas Pipeline Co.*, 682 S.W. 2d 240 (Tex. 1984).

Relocation Costs

If you are displaced from a residence or place of business, you may be entitled to reimbursement for reasonable expenses incurred while moving personal property from the residence or relocating the business to a new site. You are not entitled to these relocation costs if they are recoverable under another law. If you are entitled to these costs, they cannot exceed the market value of the property being moved and can only be reimbursed for moving distances within 50 miles.

A property owner who is permanently displaced from the property owner's dwelling or place of business may recover, in addition to the property owner's other damages, the reasonable expenses of moving the property owner's personal property from the dwelling or place of business. Tex. Prop. Code § 21.043 (Vernon 2000).

If federal funds are involved then the person who is being displaced may be entitled housing supplements and other assistance to owners under the Federal Uniform Relocation Assistance Advisory Program, 23 U.S.C.A. 501, et seq.

Reclamation Options

If private property was condemned by a governmental entity, and the purpose for which the property was acquired is canceled before the 10th anniversary of the date of the acquisition, you may have the right to seek to repurchase the property for the fair market value of the property at the time the public use was canceled. This provision does not apply to property acquired by a county, a municipality, or the Texas Department of Transportation.

Not later than the 180th day after the date of the cancellation of the public use for which real property was acquired through eminent domain from a property owner ..., the governmental entity shall send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice containing:

- (1) an identification, which is not required to be a legal description, of the property that was acquired;
- (2) an identification of the public use for which the property had been acquired and a statement that the public use has been canceled; and
- (3) a description of the person's right under this subchapter to repurchase the property.
 - (a) Not later than the 180th day after the date of the postmark on the notice ...the property owner or the owner's heirs, successors, or assigns must notify the governmental entity of the person's intent to repurchase the property interest under this subchapter.
 - (b) As soon as practicable after receipt of the notification under Subsection (a), the governmental entity shall offer to sell the property interest to the person for the fair market value of the property at the time the public use was canceled. The person's right to repurchase the property expires on the 90th day after the date on which the governmental entity makes the offer. Tex. Prop. Code§ 21.102 (Vernon Supp. 2005).

The information in this statement is intended to be a summary of the applicable portions of Texas state law as required by HB 1495, enacted by the 80th Texas Legislature, Regular Session.

This statement is not legal advice and is not a substitute for legal counsel.

Additional Resources

Further information regarding the procedures, timelines and requirements outlined in this document can be found in Chapter 21 of the Texas Property Code.

Chapter 21 of the Texas Property Code sets forth the standard procedures for the exercise of the power of eminent domain.