



# Awarding of Attorneys' Fee Explainer



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## WHAT IS THIS STEP IN THE EMINENT DOMAIN PROCESS?

Eminent Domain proceedings, including trials can be lengthy, confusing, and, more than anything, costly. This can be a deterrent to many landowners who believe their land is not being valued or condemned properly by a condemning authority. Also, a landowner may never truly receive the “fair value” of their land after they are saddled with attorney fees. Because of this, many states award attorneys’ fees in varying degrees, in order to ensure the landowner is fairly compensated for their time and effort in eminent domain proceedings. But many states do not have any mechanism for fee recovery resulting in a net loss to the landowners.

## WHY IS IT IMPORTANT?

Attorneys’ fees will always be a contentious issue—in eminent domain proceedings, they are of paramount importance. The importance stems from staggered incentives, codified in many states’ legislation. Some states may leverage awarding attorneys’ fees to keep the condemning party just and fair, or, to be imposed when a landowner is able to obtain an award higher than the condemnor’s offer. These practices are paramount to promoting fairness in condemnation proceedings, because it forces the condemning entities to fight fair.

## DIFFERENCE BETWEEN STATES

These fee awards vary dramatically from state to state—in fact, it is one of the biggest areas of variance and discourse across the country. As stated previously, some states award attorneys’ fees when the landowner receives more compensation than the condemner originally offered for the condemned property—the extraction of how much more compensation also varies. Additionally, some states allow landowners to recover attorneys’ fees if the amount awarded by a court in the condemnation process exceeds a certain value—this threshold at which these fees can be paid out, again, varies.

Some states will award attorneys’ fees when a landowner prevails over the condemning authority in any way, meaning that the trial was ruled in favor of the landowner—some have stipulations to award fees when the condemning authority lacks oversight, responsibility, or authority in different ways throughout the process that leave the condemning authority unable to condemn the property properly, or it is abandoned or dismissed. Further, states like Connecticut and Texas have no legislation regarding attorney fees, and landowners must pay their own bill. There are many more nuances in these laws, and nearly no two states are the same in how, when, or why they award attorneys’ fees. A few of the statutory triggers are listed below: