



Compensation and Value Explainer

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WHAT IS THIS STEP IN THE EMINENT DOMAIN PROCESS?

Value estimation appears early in the eminent domain process, because landowners are typically formally offered an amount for the parcel in question prior to condemnation proceedings. Often, a condemning entity will approach the landowner with an offer to purchase the land voluntarily at this stage (in order to avoid said proceedings). The parties then commence a period of open negotiations. Formal determination of compensation occurs much later in this process, as the condemnation proceedings must first occur, and a judgment be given in favor of condemnation. Once the judgment in favor of condemnation is given, just compensation is paid out by the condemning authority. Compensation typically includes payment for the fair market value of the property taken and any damages to the remainder tract as determined by the condemning authority earlier in the process.

WHY IS IT IMPORTANT?

Compensation is extremely important in eminent domain proceedings because the seller is not a willing seller, and thus, compensation must be fair and just. This is outlined in the Takings Clause of the United States Constitution, and every state constitution has the same language.

DIFFERENCE BETWEEN STATES

That being said, how “fair” and “just” are measured varies from state to state, but three categories exist. The first category is the most common, the broad instruction approach, and is used by 29 states. The premise is what would be “fair market value.” Texas refers to “local market value,” although this is not directly defined. Further, “fair market value” can be regarded as a price that would be agreed upon by a willing buyer and a willing seller.

The “specific rates approach” and the “factor-based approach” are used by the remaining states, aside from Delaware and Georgia. The latter two remain silent regarding land valuation. The specific rates approach pertains only to certain types of land takings, including heritage, homestead, and agricultural land values. It also puts real percentages in play, a rarity amongst much legislation. Missouri and Indiana provide useful examples. Missouri’s legislation creates “heritage value,” which requires compensation of 150% of the fair market value. The heritage value kicks into effect when the property has been owned by the same family for 50 or more years, and the current use of the property would no longer be practical after the condemnation. The heritage value is also applied to land owned by small businesses (100 or less employees). Missouri does not stop here. Missouri defines a taking of a homestead to be when land parcels within 300 feet of the homestead are condemned, and the residence can no longer be used. In this instance, the original owner is due 125% of the fair market value. In Indiana, taking a landowners residence must be met with compensation equal to 150% of the fair market value. Indiana also requires compensation of 125% of the fair market value for agricultural land that has been condemned.

The factor-based approach is a mix between the prior two, and used by 17 states. This approach gives courts a great deal of flexibility, but does provide guardrails: (1) how to value land when the entire parcel is not condemned, and (2) characteristics of property that affect value. With this approach, factors matter. How is the remaining, non-condemned land impacted? Or, what is the remaining value of the parcel of land minus the land being condemned? These are difficult questions, and states vary on approach. For example, Michigan requires just compensation for an entire parcel of land if a partial taking would destroy the practical value of the non-condemned land.