



EMINENT DOMAIN

Definition of Eminent Domain

Eminent domain is the power of government or someone acting under the power of the government to take private property and convert it to public use. Article V of the US Constitution says that government may only exercise this power if it provides just compensation to the property owner. Condemnation describes the act to transfer the property from a private owner to the government.

Under Texas law:

- The actor must be the state or a private entity authorized to condemn. This authorization is granted by the Texas Legislature.
- The property must be taken for public use, which is defined as “the ownership, use and enjoyment of the property by the state, a political subdivision of the state, or the public at large, or an entity granted the power of eminent domain under law, or the elimination of urban blight.”
- The landowner must receive adequate compensation that is based upon the market value of the property.

Who Has Eminent Domain Authority and How Do They Use It?

Entity Type	Count of Entities	% of Total
City/County	3,152	19.93%
Community College District	90	0.57%
Economic Development Corporation	623	3.94%
Independent School District	2,434	15.40%
Municipal Utility or Water District	4,557	28.82%
Other Governmental Entity	929	5.88%
Other Special Purpose District (Hospital, Emergency Services, Road)	304	1.92%
Other Non-Governmental Entity	2,149	13.59%
Pipelines and Related Facilities	1,301	8.23%
Railroad Company	107	0.68%
Telephone or Other Communications Company	164	1.04%
Total	15,810	100.00%

The 84th Texas Legislature mandated that the Texas Comptroller maintain an online database of public and private entities that have eminent domain authority. That database is continually updated and is available at <https://data.texas.gov/Government-and-Taxes/Eminent-Domain-Data/cvjb-eurw>. The wide variety of government and non-government entities is listed below. 586 entities have reported filing a condemnation petition, and 297 or 51% of those are cities and pipelines who use condemnation to acquire easements and rights-of-way for pipelines or infrastructure.

Source: Texas Comptroller

Legal Protections for Landowners

Legal protections for landowners are found in the State of Texas Landowners Bill of Rights. This document gives a step-by-step procedure of what landowners can expect in the condemnation process:

- After the appraisal and a bona fide offer are given to the landowner, the landowner can accept or reject the offer. If the offer is rejected, the condemning entity files suit in court in the county in which the property is located. A judge appoints three local landowners to serve as special commissioners. The commission only assesses whether the compensation offered is adequate.
- If the commission determines a higher amount than the condemning entity offered, the condemning entity is responsible for the costs associated with the proceedings. If the commission determines an amount less than or equal to the original offer, the landowner may be responsible for the costs.
- Once the award is made, the condemner may take possession, even if either party appeals the decision. The landowner may appeal and request a trial.

The real weakness in the Texas process is the expense incurred by the landowner when fighting condemnation by entities with a lot of resources. The costs they face if they appeal a bona fide offer or an award from the special commission can discourage them from pursuing a fair offer.

Impacts on the Environment

Current eminent domain law in Texas allows condemnation of property without regard for impacts on the environment. For example, special districts such as Municipal Utility Districts can take adjacent land to discharge sewage effluent. Pipelines can be run through a sensitive habitat or watershed. There are no exemptions from eminent domain for property that is under a conservation easement, a property containing a natural spring, or property in use as grassland. Neither the environmental benefits of current land use, nor the potential negative environmental impacts of the proposed land use are considered. Without a requirement to consider environmental impact, these changing land uses are leading to land fragmentation and diminishing water and air quality.

Recent Legislative Activity

In the 85th Texas Legislature at least twelve bills were introduced dealing with eminent domain. The majority of them addressed property owner rights, such as adding the cost of damages to an appraisal, providing more transparency to property owners, and providing stricter penalties for entities with eminent domain powers for non-compliance with reporting requirements. The only bill that moved forward was SB 740, which would have strengthened the Landowner Bill of Rights, but after passing the Senate, it died in the House of Representatives.

What Changes to Eminent Domain Policy Could Be Considered?

- Qualifications for entities that can exercise the power of eminent domain could be reformed and could require elected officials as decision-makers, not private entities.
- Definitions like “public use” and “public purpose” could be tightened to mean government owned and operated property, rather than property that is used to generate income.
- Consideration of environmental impacts could be required in eminent domain proceedings.
- Property under a conservation easement could be exempted from condemnation.
- Landowner rights could be strengthened by:
 - o Holding condemning entities accountable for making initial fair value offers or requiring the condemning entity to pay all of a landowner’s expenses.
 - o Giving land owners an option to receive periodic rent payments from revenue-generating projects like utilities, economic development projects and pipelines.
 - o Giving landowners the option to reclaim their property if it is not used for its intended purpose within a set period of time for the price that was paid to them.
 - o Requiring condemning entities to be more transparent with project disclosures and provide more information to landowners than the Landowner Bill of Rights.
 - o Increasing accountability for private condemning regarding their exercise of eminent domain authority and the projects that follow.

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