

1-1-2012

Eminent Domain and Condemnation

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Recommended Citation

Wade, Alvin, "Eminent Domain and Condemnation" (2012). *Cooperative Extension Faculty Research*. Paper 24.
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Eminent Domain and Condemnation

Alvin Wade, Associate Professor

Under the power of eminent domain, a government can acquire property for a public use, even if the owner doesn't want to sell, when it pays just compensation—that is, the property's market value.

In an eminent domain proceeding, also known as a condemnation proceeding, the government must establish that the land is needed for a public use or benefit and that the amount of money offered to the landowner is the reasonable value of the land being taken.

The concept of public use is quite broad. It has been extended to include the condemnation of private land for resale to other private individuals or firms for urban renewal. The concept also has been broadened to include quasi-public organizations, such as utility companies, railroads and pipelines.

Whether the taking is for a public use is generally not the major issue, however. Of utmost concern, rather, is the question of adequate compensation. If the condemning authority and the owner fail to agree on the property's value, the owner can request a jury trial to determine the amount of just compensation. If the property is condemned for a highway, a school, a utility plant or another similar public purpose, the government will, of course take complete fee simple absolute title to the land.

Certain situations, however, require that only an easement be acquired. For example, consider VORTAC stations, which transmit radio signals that airplanes use to track their positions.

Although such a station physically takes up only a portion of an acre, the area around the station must not contain any object more than six feet high for a radius of approximately one-half mile.

In other words, the government has no need for the actual land surrounding VORTAC stations; it needs only the assurance that no physical obstructions will be constructed. In this situation, the government would condemn both the title to a station's physical location and an easement surrounding the building. The landowner could continue to use the land for farming purposes right up to the VORTAC building. Of course, the owner is entitled to just compensation for both the easement restriction and the land that is taken completely.



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TSU-05-0023(A)-7E-533224

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The Agriculture Extension Service and the U.S. Department of Agriculture cooperating

Printed by:

DocuTech Printing Service
Tennessee State University
Cooperative Extension Program
3500 John A. Merritt Blvd., Box 9635
Nashville, TN 37209-1561
615-963-5533

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