

# Precondemnation Planning: 8 Tips to Protect Your Rights

When a government or private entity seeks to take possession of private property for public use, it can do so through a legal process known as eminent domain. As a result, landowners whose properties are targeted for condemnation face a complex and challenging situation. The process can be lengthy and emotionally draining, as property owners are faced with the prospect of losing their homes, businesses, or land. To prepare for condemnation, landowners need to be aware of their rights, understand the legal process, and engage in strategic planning to protect their interests. In this context, it is crucial to have access to expert legal advice and guidance to ensure that the landowner's rights are protected throughout the process.

If you know a condemnation may be coming, and you have not engaged an attorney, there are a number of things you can do to protect yourself:

## **1** Maintain the Property in Good Condition

Maintain the property in good condition as if you were preparing to sell it. The valuation process in a condemnation is designed to simulate a fair market sale. Neglect or damage to the property can reduce its value and potentially decrease the compensation received. Therefore, the landowner should make sure to keep the property in good condition, making any necessary repairs, keeping the landscaping well-maintained, and ensuring that the property is clean and free from any hazards.

## **2** Save All Documents Regarding the Condemnation

Save all documents regarding the condemnation, including public notices, letters, e-mails, and other communications. These documents may be important evidence in the case and can help the landowner understand their rights and obligations throughout the condemnation process.

By keeping accurate records of all communications and documents related to the condemnation case, the landowner can build a comprehensive record of the case that can help them prepare for negotiations, mediation, or trial.

## **3** Take Pictures of the Property Before the Condemnation

Pictures and videos may become very important evidence about the value of your property at trial. Condemnation juries travel to your property and view the property taken during the trial, but the project may have already been built and your home or business destroyed prior to trial. Therefore, it is crucial to document the property's condition before the taking occurs and throughout the process, as pictures and videos may be the only way to demonstrate the property's value and condition prior to the condemnation.

**4****Timber and Landscaping Value**

If a landowner has timber or landscaping on their property that will be destroyed as a result of a condemnation, it is crucial to have it valued before it is destroyed. Timber or landscaping can be a valuable asset, and its destruction can result in a significant loss of income for the landowner. Therefore, having the timber valued can ensure that the landowner receives fair compensation for this loss.

Valuing timber can be a complex process that involves assessing the quantity, quality, and market value of the trees. It may be necessary to hire a professional forester or appraiser to conduct a timber valuation. This expert can assess the age and species of the trees, estimate the volume of timber, and determine the current market value of the timber. Similarly, landscaping may need to be valued by a licensed arborist. This evidence can help the landowner receive fair compensation for this loss and ensure that their rights are protected throughout the process.

**5****Do Not File Any Real Estate Tax Appeals**

When preparing for a condemnation case, it is generally recommended that the landowner refrain from filing any real estate tax appeals that could result in a lower valuation of the property. If any low value is put forth in such an appeal, the condemning authority may use this lower value as evidence that the property is worth less than the value claimed in the condemnation case against the landowner during a condemnation trial.

Also, be careful if you place a value on the property in any other document like a financial statement.

**6****Maintain All Government Approvals Regarding the Use of Your Property**

Maintain all government approvals regarding the use of your property. Even if you know property is heading toward condemnation, do not let any legal nonconforming uses lapse. Not maintaining these government approvals could result in a lower compensation award. If you were otherwise intending to pursue government approvals to enhance the use of your property, continue to do so in the normal course in consultation with your condemnation team.

**7****Do Not Sign Anything Presented by a Condemnor**

Do not sign anything presented by a condemnor, especially a right of early entry or an option agreement. These documents may give the government the right to enter onto your property without immediately paying just compensation as required by law.

An early entry agreement allows the government to access the property and begin work on the project before paying the landowner just compensation for the taking of their property. In addition, the agreement may contain provisions that waive the landowner's rights to challenge the validity of the taking or the amount of compensation.

Similarly, an option agreement gives the government the right to purchase the property at a later date, but without providing immediate compensation to the landowner. These agreements may also contain terms that limit the landowner's ability to challenge the validity of the taking or the amount of compensation.

**8****Consult an Experienced Eminent Domain Attorney**

Condemnation law is complex. There are many pitfalls for the unwary landowner or lawyer.

Precondemnation planning can be a crucial step for a landowner facing the potential taking of their property through eminent domain. By following these eight tips, a landowner can take proactive steps to protect their rights and interests during the condemnation process. With the right planning and guidance, a landowner can achieve a fair and just compensation for the taking of their property and move forward with their lives.