



TEXAS A&M UNIVERSITY
SCHOOL OF LAW

LAW AND POLICY RESOURCE GUIDE

A SURVEY OF EMINENT DOMAIN
LAW IN TEXAS AND THE NATION

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TEXAS A&M UNIVERSITY SCHOOL OF LAW

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EXECUTIVE SUMMARY

Eminent Domain is the power of the government or quasi-government entities to take private or public property interests through condemnation. Eminent Domain has been a significant issue since 1879 when, in the case of *Boom Company v. Patterson*, the Supreme Court first acknowledged that the power of eminent domain may be delegated by state legislatures to agencies and non-governmental entities.¹ Thus, the era of legal takings began.

Though an important legal dispute then, more recently eminent domain has blossomed into an enduring contentious social and political problem throughout the United States. The Fifth Amendment to the United States Constitution states, “nor shall private property be taken for public use, without just compensation.” Thus, in the wake of the now infamous decision in *Kelo v. City of New London*, where the Court upheld the taking of private property for purely economic benefit as a “public use,” the requirement of “just compensation” stands as the primary defender of constitutionally protected liberty under the federal constitution. In response to *Kelo*, many state legislatures passed a variety of eminent domain reforms specifically tailoring what qualifies as a public use and how just compensation should be calculated.³

Texas landowners recognize that the state’s population is growing at a rapid pace. There is an increasing need for more land and resources such as energy and transportation. But, private property rights are equally important, especially in Texas, and must be protected as well. Eminent domain and the condemnation process is not a willing buyer and willing seller transition; it is a legally forced sale. Therefore, it is necessary to consider further improvements to the laws that govern the use of eminent domain so Texas landowners can have more assurance that this process is fair and respectful of their private property rights when they are forced to relinquish their land.

This report compiles statutes and information from the other forty-nine states to illustrate how they address key eminent domain issues. Further, this report endeavors to provide a neutral third voice in Texas to strike a more appropriate balance between individual’s property rights and the need for increased economic development. This report breaks down eminent domain into seven major topics that, in addition to Texas, seemed to be similar in many of the other states. These categories are: (1) Awarding of Attorneys’ Fee; (2) Compensation and Valuation; (3) Procedure Prior to Suit; (4) Condemnation Procedure; (5) What Cannot be Condemned; (6) Public Use & Authority to Condemn; and (7) Abandonment. In analyzing these seven categories, this report does not seek to advance a particular interest but only to provide information on how Texas law differs from other states. This report lays out trends seen across other states that are either similar or dissimilar to Texas, and additionally, discusses interesting and unique laws employed by other states that may be of interest to Texas policy makers. Our research found three dominant categories which tend to be major issues across the country: (1) the awarding of attorneys’ fees; (2) the valuation and measurement of just compensation; and (3) procedure prior to suit.

ATTORNEYS' FEES

Texas currently only allows attorneys' fees to be paid if the condemnor does not follow the proper procedure in making a bona fide offer to the property owner. This is one of the stricter approaches taken, as forty other States award attorneys' fees on a variety of additional bases. From the outset, landowners are in a precarious position when a taking is initiated. The law entitles a landowner to the taken property's "market price," but who pays for the appraisal? Who pays for an attorney to review the paperwork? Under current law, that is left entirely to the landowner. Landowners who challenge just compensation are often never made whole when their property is taken for public use because any amount they receive will be reduced by the fees needed to win the suit.

COMPENSATION AND VALUATION

There are two dominant approaches adopted by states regarding valuation of land to be condemned. Texas, along with twenty-eight other states, uses a Broad Instruction Approach. This approach provides minimal guidance on what just compensation should be based on. The appointed Special Commissioners have considerable discretion in determining the land valuation without any specific factors that they must follow. The other dominant approach, taken by seventeen states, is a Factor Based Approach. This approach specifically lays out what considerations should be followed by the court in determining the fair market value of the land. By specifically laying out the factors to be followed, this approach ensures that relevant information is considered in every condemnation case.

PROCEDURE PRIOR TO SUIT

A variety of different nuances exist amongst the states in the procedure prior to suit. Most, including Texas, adhere to a general pattern of negotiation between the landowner and condemnor followed by a determination of value using an appraiser. While current law requires a bona fide offer, it may be of interest to the legislature to better specify, in statute, what "bona fide" really means. Several states allow recovery of costs and fees if the condemnor does not follow the appropriate procedure. This could be beneficial as it would help offset costs for a landowner who wishes to continue with litigation. A few states even go as far as to allow the proceedings to be dismissed if the condemnor does not follow the appropriate statutory pre-suit requirements.

Each section will provide a greater understanding of the variances between Texas Eminent Domain Law and the individual states. With this information, policy makers should be able to appropriately determine national trends that could provide opportunities for Texas to refine existing eminent domain law. All policy conclusions contained in this report were derived from explicit state statutes, regulations, and constitutions. Specific case law or judicial interpretation of these statutes is beyond the scope of this report.

INTRODUCTION

FINDING A SPACE FOR COMPETING INTERESTS

Although the American economy has struggled at times in recent years, the Texas economy has generally continued to grow at a rapid pace and diversified as it has grown. And while the state has historically been known as an oil and gas haven, the Bureau of Economic Analysis has noted that the largest industry segment in Texas is finance, insurance, real estate, rental and leasing.⁴ Even though this segment contributed the most to the state's gross domestic product (GDP)⁵, the industry segment accounted for only 13.7% of the Texas' total GDP. The Texas economy is no longer dependent on one particular market or industry.

This success in economic diversity has brought challenges. The Texas population grew by almost half a million residents between July 2014 and July 2015,⁶ and economic growth has created an influx of residents to urban areas. During the same period, Houston, San Antonio, Fort Worth, Dallas, and Austin were among the ten cities with the largest increase in residents for a combined total of approximately 128,000 individuals, excluding surrounding suburban areas.⁷ The state population is expected to continue the trend upward. New residents create a demand for new roads, power resources, and water resources. In addition to these infrastructure needs, two new shale fields, known as the Alpine High and Wolfcamp, have recently been found to hold a wealth of reservoirs.⁸ So, Texas infrastructure must meet the demand of a growing population and growth in the oil and gas industry.

These infrastructure demands shine a spotlight on eminent domain law because more people and more oil and gas activity require more roads, more pipelines, and more power lines. However, these roads, pipelines, and power lines often cross miles and miles of open Texas countryside—the vast majority of which is owned by private Texas citizens. The state must strike a balance between the rights of the private landowner and the general public good. While residents of Dallas may benefit immensely from infrastructure features like a high-speed rail to Houston, there are families with heritage farms who may not wish to let the high-speed train run through their land. As the Legislature stands poised to consider eminent domain law again in 2017, this report seeks to provide helpful information on the current state of eminent domain law in Texas and across the United States. This report does not seek to advance a particular interest, but endeavors to provide an objective resource to the 85th Texas Legislature and policymakers to aid in the review of current laws pertaining to eminent domain. The students of Texas A&M University School of Law ("TAMU Law") have conducted nationwide research to benchmark Texas law and determine national trends, allowing the Legislature to consider opportunities to modify Texas law.

The policy features and conclusions contained in this report are based solely upon the language of respective state statutes, regulations, and constitutions. Court decisions of particular jurisdictions interpreting statutory language are beyond the scope of this report.

This whitepaper examines each of several overarching topics relevant to eminent domain law across the country. For each topic, this paper will briefly discuss current Texas law, and then will discuss the state of eminent domain law in the other forty-nine states, highlighting significant similarities and differences. Finally, this white paper will briefly discuss a sampling of unique or interesting laws that highlight the fact that each state often faces its own distinct challenges with respect to eminent domain law, and crafts a solution that works best for that state.

THE CONDEMNATION PROCESS IN TEXAS

The Texas Constitution declares that “No person’s property shall be taken...for a public use without adequate compensation . . . and only if the taking is for the State . . . or the public at large; or an entity granted the power of eminent domain under law.”⁹

Property can only be taken for a “public use” defined by the Texas Constitution as the “ownership, use, and enjoyment of the property,” by the government or another entity granted eminent domain power. Texas, like most states, does not specifically codify in one location entities with eminent domain power. The Texas Comptroller’s office does, however, maintain an updated list of the entities who have applied for, and currently have, eminent domain authority.¹⁰ The definition of “public use” encompasses condemnation of the property to eliminate urban blight, but transferring property to a private party for economic development or enhancement of tax revenue is not “public use” in Texas.¹¹

Once a piece of property is deemed necessary for a public use, Texas condemnation procedure is represented by three phases: (1) negotiation between the condemnor and the property owner; (2) the special commissioners’ hearing and award of damages; and if either party is dissatisfied with the commissioners’ award; (3) an appeal through a civil condemnation suit. Texas law strongly favors negotiation between the eminent domain entity and the landowner. To this end, the law requires an eminent domain entity to make a “bona fide” offer to the property owner. To fulfill this requirement, the condemnor must make an initial offer in writing to the landowner and obtain the property value via a written appraisal from a certified appraiser. Then, the condemnor must wait at least thirty days from the initial offer to provide the landowner with a final written offer equal to or greater than the appraisal. The final offer must also include a copy of the written appraisal, a copy of the deed or easement sought to be acquired, and the Landowner’s Bill of Rights.¹² If the condemnor and the landowner cannot agree on the property value, the condemnor may file a condemnation petition in the county where the property is located.¹³

Once the petition is filed, the court appoints three special commissioners, who are disinterested landowners residing in the county, to assess the property value and any property damages. Then, the commissioners schedule a hearing and notify all interested parties. At the hearing, the commissioners determine the property value and damages to be paid in light of testimony and evidence presented. If either party disagrees with the commissioners’ findings, they can file an objection with the court, which initiates a civil condemnation suit.¹⁴

In order to proceed to the condemnation suit, the objecting party must file a written statement on or before the first Monday following the twentieth day after the commissioners filed their findings with the court. Once this objection is timely filed, the court will try the case like any other civil mat-

ter. The judge decides whether the condemnor has the power to condemn and the jury determines damages, if a jury trial is requested; otherwise, the judge determines damages. The condemnation suit is a fresh slate, meaning no evidence of the prior special commissioners' hearing, including the final award, is admissible in the condemnation suit.¹⁵

The special commissioners, and perhaps later a jury, assess the landowner's just compensation based on the evidence presented. If an entire tract or parcel of real property is condemned, the damage to the landowner is defined as the "local market value of the property at the time of the special commissioners' hearing."¹⁶ If only a portion of the tract or parcel is condemned, the landowner's compensation is the market value of the portion condemned plus damages to the remaining property. To determine damages, the commissioners consider both the particular injuries and benefits to the property owner, but not injuries or benefits in common with the local community (e.g., a change in property values because of the condemnation).¹⁷



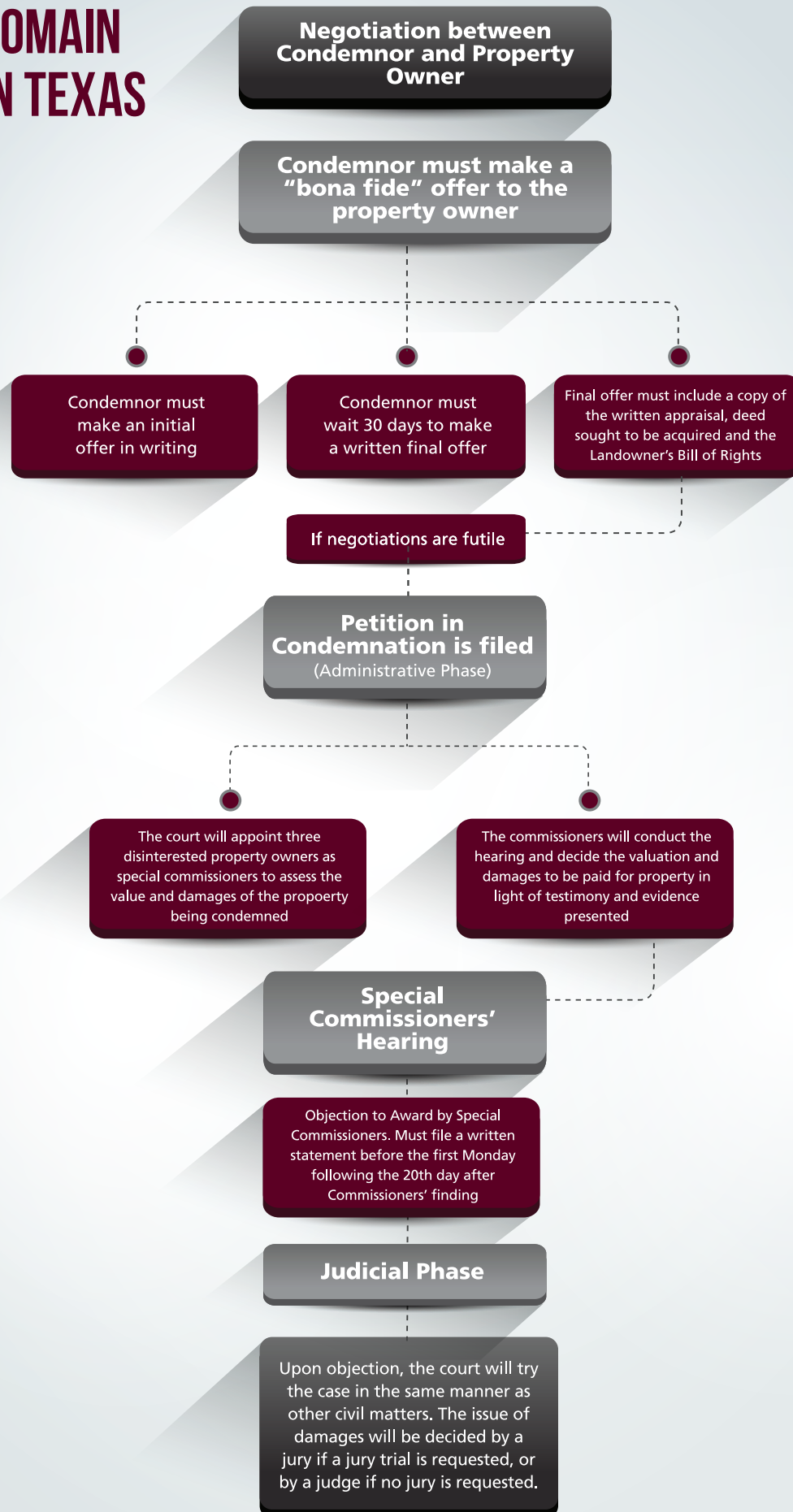
Photo credit: Tave Doty

Each party in the civil condemnation suit is responsible for their own attorneys' fees¹⁸, except for particular circumstances laid out in the property code. A landowner may collect attorneys' fees and other litigation expenses if the condemnor: (1) does not follow proper procedure in making the "bona fide offer," as described in the Tex. Prop. Code § 21.0113; (2) moves to dismiss the condemnation proceedings; lacks authority to condemn the property, resulting in dismissal of proceeding; or (3) dismisses the proceeding and subsequently

attempts to condemn essentially the same property a second time. Upon a second attempt, the condemnor must pay the original commissioners' award plus triple the landowner's original expenses.¹⁹ A figure explaining the eminent domain process in Texas is given on the following page.

EMINENT DOMAIN PROCESS IN TEXAS

Figure 1

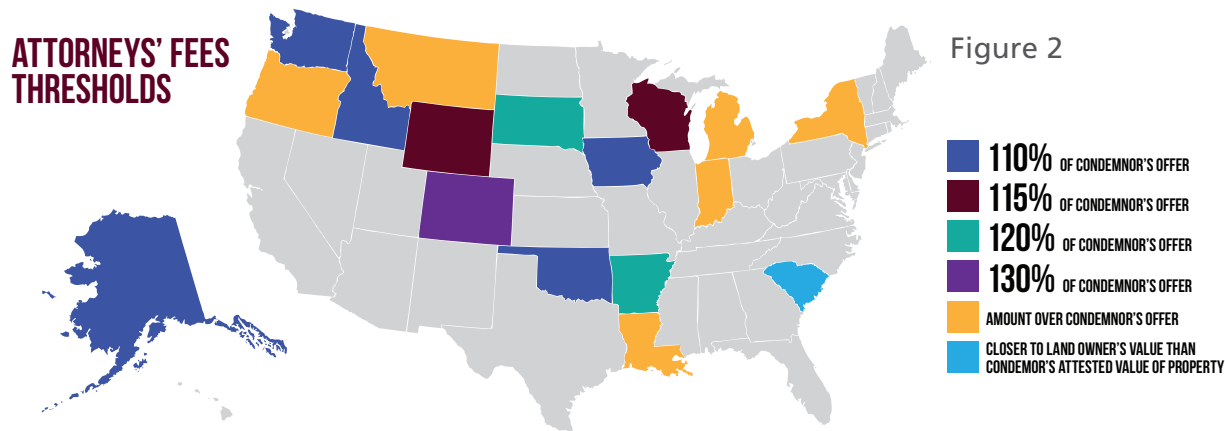


STATE LAW COMPARISONS

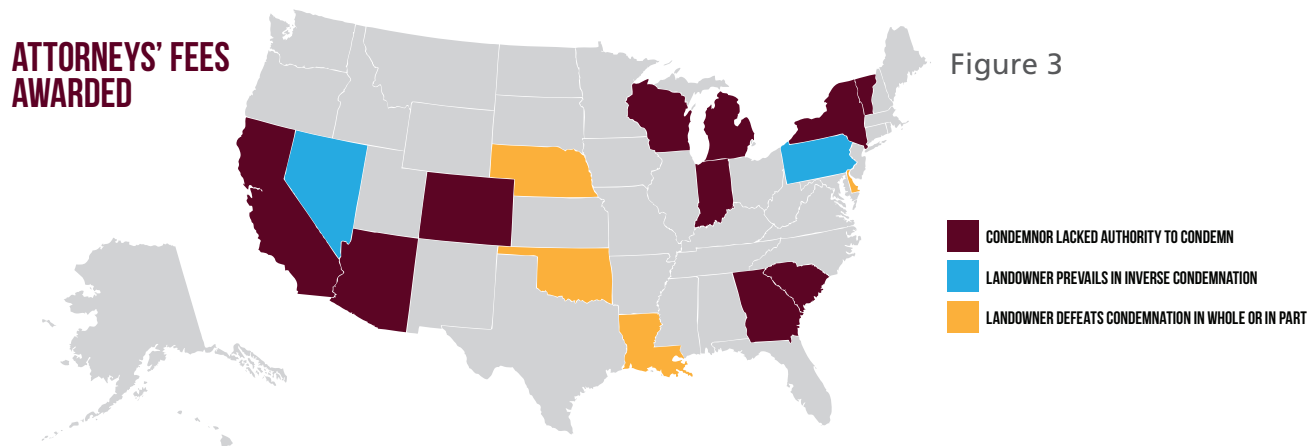
LANDOWNER’S ATTORNEYS’ FEES

States that award attorneys’ fees when the landowner recovers more than the condemnor originally offered encourage eminent domain entities in those states to make a fair offer to the landowner at the outset. Further, such a provision ensures that landowners are made whole throughout the entire condemnation process. Texas allows attorneys’ fees in limited circumstances to enforce compliance with proper condemnation procedure. Texas does not, however, award attorneys’ fees when the landowner recovers more than the condemnor originally offered.

Many states allow landowners to recover attorneys’ fees in a condemnation action if the amount awarded by a court or jury exceeds a threshold value. For example, Alaska’s statute allows recovery of costs and attorneys’ fees if a jury awards at least 10% more than the amount awarded at the “Master’s Hearing” (a process similar to Texas’ commissioners’ hearing).²⁰ The following chart summarizes the attorneys’ fee thresholds in various states.



A number of other states also use attorneys’ fees as an incentive for condemnors to use their eminent domain power judiciously. Some states award attorneys’ fees when a landowner prevails over a condemnor for any reason.³⁸ Other states award attorneys’ fees when the condemnor lacks the authority to condemn the property at issue,³⁹ or when all or part of the property at issue cannot be acquired through a condemnation proceeding.⁴⁰ Finally, as in Texas, a number of states award attorneys’ fees to the landowner if the condemnation proceeding is abandoned or dismissed.⁴¹



Many states have procedural hurdles that a condemnor must clear before taking possession of the property at issue. In some states, attorneys' fees are awarded to a landowner if the court finds that a condemnor improperly took possession of the property at issue.⁴² These statutes indirectly protect landowners by ensuring that condemnors follow proper procedure to take property, tend to make the condemnor more cautious about using eminent domain, and encourage negotiation over litigation.

A handful of states award attorneys' fees based on a much more fact-intensive inquiry than comparing a condemnor's offer to a jury's final award. For instance, a few states—Wyoming, Oregon, and Missouri⁴³—attempt to enforce good-faith negotiation by awarding attorneys' fees if the court finds a lack of good faith during negotiations. Similarly, California courts may award attorneys' fees if they find that a condemnor's offer was unreasonable while the landowner's was reasonable, in light of the amount of the final judgment.⁴⁴

Alternatively, some states award attorneys' fees as a matter of course, or at the discretion of the presiding judge. Florida awards based on benefits achieved for the landowner;⁴⁵ Illinois awards at the judge's discretion to reimburse the property owner;⁴⁶ New Hampshire awards are currently awarded to the prevailing party, but see proposed legislation that would award to the property owner if the jury award for just compensation is 120% of the final offer made by the condemning entity;⁴⁷ North Dakota awards according to the judge's discretion an amount sufficient to reimburse the property owner;⁴⁸ Ohio awards attorneys' fees any time a state agency initiates a condemnation proceeding;⁴⁹ Pennsylvania awards up to \$4,000 if a property is condemned in fee simple, and up to \$1,000 if the property is condemned as an easement for water or sewage lines.⁵⁰ Several states have unique qualifications for awarding attorney fees, for example:

- *In Arizona, courts award attorneys' fees if property is taken for a non-public use, or when a jury awards more than a municipality's final offer in an urban blight condemnation case.*⁵¹
- *In Delaware, if two-thirds of the property owners in a project area along a private beach have allowed the Department of Natural Resources to initiate a project, the Secretary can initiate condemnation proceedings against the remainder of the project area, and the Secretary may include an award of attorneys' fees when determining the total project costs of obtaining an interest in the properties to be acquired.*⁵²
- *In Mississippi, courts award attorneys' fees when a condemnor fails to pay the landowner's damages within ninety days of a final judgment, so long as the condemning entity did not appeal the final judgment.*⁵³
- *In South Carolina, courts award attorneys' fees to the condemnor if the court determines that the landowner disputed the right to take in bad faith.*⁵⁴
- *In West Virginia, attorneys' fees are only recoverable if federal funds are used to finance the project for which the property is condemned.*⁵⁵

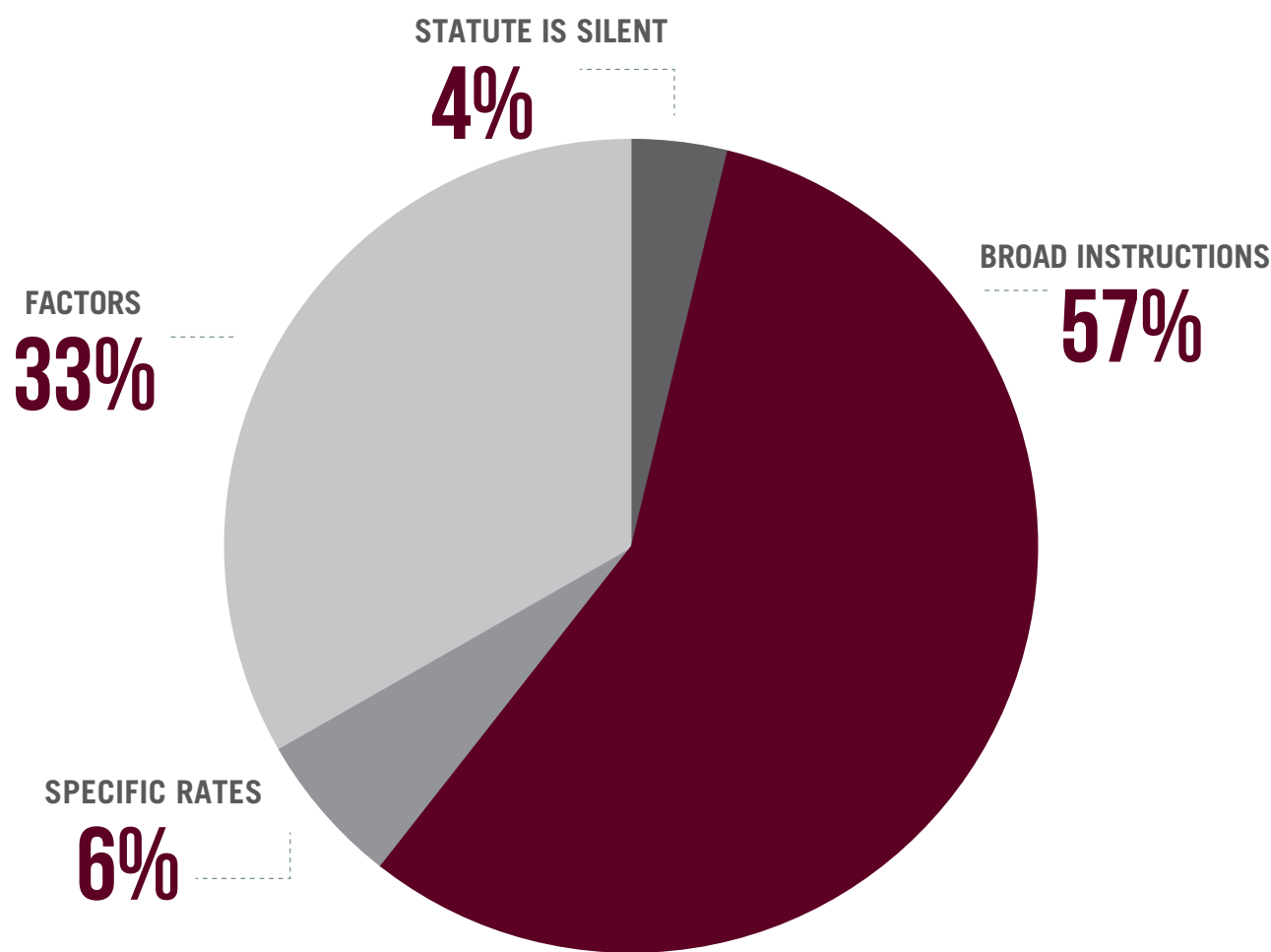
A few states do not have legislation regarding an award of attorneys' fees.⁵⁶ For example, Connecticut is like Texas in that each party pays its own attorneys' fees.⁵⁷ Moreover, a substantial number of states across the country use attorneys' fees to encourage the judicious use of eminent domain power and to favor negotiation over litigation. As Texas law currently stands, attorneys' fees are primarily used to enforce procedural compliance in condemnation proceedings, but are not available to a landowner that prevails.

COMPENSATION AND VALUATION

A state’s method of determining the value of property is of paramount concern to property owners, because land takings through eminent domain are not negotiated between a willing buyer and a willing seller. The baseline for determining “just compensation” in an eminent domain case is the fair market value of the property. However, the way statutes approach this baseline falls into one of three categories: a “Broad Approach,” a “Specific Rates Approach,” and a “Factor-Based Approach.” Only two states, Delaware and Georgia, do not address land valuation in their statutes.⁵⁸ These approaches reflect the diversity of ideology across various state legislatures.

HOW STATES APPROACH VALUATION

Figure 4



BROAD INSTRUCTION APPROACH TO VALUATION

Twenty-nine of the fifty U.S. states fall under the Broad Instruction Approach, giving little guidance on adequate compensation for condemned land, outside of some version of “fair market value.” Specifically, Texas law refers to “local market value” at the time of the taking as the value of just compensation for the subject property.⁵⁹ The term “local market value” is not specifically defined, but it does include any injuries or benefits from the condemnation and its effects on the use or enjoyment of the parcel.⁶⁰ The definition of “fair market value,” or as it is known in some states, “just compensation” or “highest and best use,” varies among states, but is generally described as the price that would be established between a willing buyer and a willing seller. These are loosely defined, general classifications whose meanings are typically interpreted and resolved by courts.

SPECIFIC RATES APPROACH TO VALUATION

Only a few states use a Specific Rates Approach, and it only applies to certain types of property. These statutes reflect a state’s interest in properly valuing certain types of land takings, including heritage, homestead, and agricultural land values.

In Missouri, if the property being condemned has been owned by the same family for more than fifty years, and the property’s current use would not be feasible after the proposed condemnation, then the property has “heritage value.”⁶¹ Compensation for a property with heritage value in Missouri is 150% of the fair market value.⁶² Additionally, small businesses with less than 100 employees can also invoke heritage value.⁶³

A homestead taking occurs when a landowner’s home is being condemned. Missouri further defines a homestead taking to apply when parcels within 300 feet of the landowner’s residence are condemned and the condemnation prevents the residence from being used. Missouri compensates 125% of the fair market value of the property for this type of taking. Similarly, in Indiana, the taking of a landowner’s residence requires compensation equal to 150% of the fair market value.⁶⁴

Agriculture is another area that receives special attention in some states. Indiana requires condemners to pay 125% of fair market value for agricultural land, or they may “trade” an ownership interest in equal acreage, with the consent of the landowner.⁶⁵

Although these rates are tied to “fair market value” it is clear that some states place a premium on particular types of land. These statutes are rare among the states. A more common method for valuation is a Factor Based Approach for valuation, which provides guidance for the court determining just compensation, but does not set specific rates.

FACTOR-BASED APPROACH TO VALUATION

A Factor-Based Approach, used by seventeen of the fifty states, strikes a balance between a Broad Instruction and a Specific Rates Approach and consists of statutes that provide express considerations in determining compensation. It provides some guidance, but still leaves the courts flexibility to determine just compensation. States typically address two general topics using this approach: (1) how to value land when the entire parcel is not condemned, and (2) characteristics of property that affect value.

If a portion of a property is condemned, leaving a remainder of the property damaged by the action, many states account for the damage to the remaining land. In Texas, if only a portion of the tract or parcel is condemned, the special commissioners determine damage to both the portion of land that is condemned and to the remainder by valuing the entire parcel of land less the portion of land being taken. The effect of the taking on the remaining land is then added to the value of the damage to the condemned land to determine total damage.⁶⁶

Most states approach partial takings in a very similar manner. But what happens if condemnation of one portion of the land effectively ruins the practical value of the remainder? One state, Michigan, addresses this issue so that if a partial taking would destroy the practical value of the remainder, the condemning entity must pay just compensation for the whole parcel.⁶⁷

Many states have specifically listed factors that the determining body should consider that affect value, including: (1) improvements, (2) growing crops, and (3) goodwill of a business.⁶⁸ Eleven states

that mention “improvements” leave the statute very open and can include a variety of improvements located on the condemned property. Within this category, states are split as to whether the final award amount “must” or “may” include the value of improvements located on the property at the time of the initial condemnation action.



Photo credit: Tave Doty

California, Kansas, Nebraska, and Wyoming all specify that landowners should be compensated for growing crops that have not yet been harvested on the prop-

erty to be taken; however, this does not typically include crops that are planted after notice of the condemnation action. Additionally, some states account for goodwill of a business and its value to taken property. This goodwill is defined as the value of a business because of its location and reputation.

In addition to the general categories noted above, some state statutes include different or notable factors for courts to consider when valuing condemned property. For example, courts in Alaska and

Arizona include the cost to build fences and cattle guards if the condemned property is for a railroad. Kansas provides perhaps the most extensive list of factors of any state, including: access to the property, aesthetics, and use of the property. In Wyoming, a landlord and tenant of a leasehold can determine their respective rights and obligations through their lease, in the event of an eminent domain taking. Wyoming also requires a condemnor who acquires an easement on land to return the property and improvements, as closely as possible, to pre-condemnation condition.⁶⁹

Overall, Texas follows most states in determining land value using a Broad Instruction Approach. This approach gives a great degree of latitude to courts as they simply must determine the “fair market value” or “just compensation” for a parcel of land. However, this approach may lead to inconsistent valuations across the State because different Special Commissioners may use different criteria to determine the final value of the condemned property. A Factor Based or Specific Rates approach may be advantageous if Texas policy makers wish to ensure uniformity and protect certain property types across the state.

PRE-CONDEMNATION REQUIREMENTS

One simple fact shows the importance of robust pre-suit procedures: the overwhelming majority of properties acquired for public projects never involve a condemnation proceeding. In 2015, the U.S. Department of Transportation acquired 317 (25.4%) properties in Texas through condemnation suits out of a total 1,249 properties for highway projects. In 2010, the total was 1,263 with 239 (18.9%) taken via condemnation suits. In fact, one regional condemning authority reported that condemnation proceedings are used for less than 5% of the properties it acquires for public projects. It is clear that a majority of land taken for public use is acquired through pre-suit negotiation and settlement. Without comprehensive and legally enforceable pre-suit procedures, landowners are forced to operate without the protection of law.⁷⁰

This section will address the six predominant themes of state eminent domain law relating to pre-suit condemnation procedure: (1) laws that require the condemnor to contact or notify the landowner of the proceedings; (2) laws that require negotiation before a suit can be filed; (3) laws that require the disclosure of certain information between the parties; (4) laws that require the condemnor to notify landowners of their rights; (5) laws that require settlement offers; and (6) laws that enforce the foregoing provisions.

INITIAL CONTACT/NOTICE

Generally, states require some sort of notification to the landowner that his or her land is under threat of condemnation. Specific requirements vary across states, but most states require an earnest attempt to contact the landowner before filing suit. Twenty-nine states require the condemnor to reach out to the landowner before filing suit.

On the other hand, states that do not require contact with the landowner before the suit—like Washington—rely heavily on the court system during all aspects of the condemnation process.⁷¹ In some states, contact with the landowner is a prerequisite to filing suit.⁷² However, states differ greatly in how long prior to suit notice should be delivered to the landowner, ranging from as little as twenty days prior to suit⁷³ to as much as ninety days prior to suit.⁷⁴

These notice requirements protect the landowner by preventing unfair surprise and allow the landowner to marshal his or her defense. Of course, contact with the landowner is only the first step in the pre-suit procedure. A number of states require more than simply notifying the landowner of the pending acquisition of his land.

NEGOTIATION

Laws in several states require some form of negotiation between the condemnor and the landowner. Fourteen states require negotiations to occur with the landowner before the suit can be filed.⁷⁵

However, “negotiation” could technically consist of a single low-ball offer. As a result, many states have passed laws requiring good faith offers.⁷⁶ For example, Texas requires both an initial written offer and a final written offer at least thirty days later.⁷⁷

Condemnors have a financial interest in moving projects forward as quickly as possible. Laws that require a pause for negotiation encourage more reasonable offers, because they give the condemnor an incentive to settle with the landowner quickly in order to get on with the project.

DISCLOSURE OF INFORMATION

Negotiating on equal footing requires at least some disclosure of information. There are many variations on this theme. Therefore, several states require the condemnor to provide its appraisals to the landowner prior to the condemnation hearing.⁷⁸ For example, New Jersey requires that the parties exchange appraisals at least fifteen days before the condemnation hearing.⁷⁹ Alternatively, some states do not require this exchange of information until it is presented at the trial or hearing.⁸⁰

Written documentation is not the only way that information can be communicated between the parties. For instance, several states allow the landowner to accompany the condemnor’s appraiser as he or she appraises the property.⁸¹ While most states generally allow the landowner to provide his own appraiser,⁸² some states, such as New Mexico, require the parties to appoint a neutral appraiser if negotiations break down.⁸³

Knowing the basis for the condemnor’s valuation of the property ahead of time allows the landowner to adequately prepare his or her arguments for court.

NOTICE CONCERNING LANDOWNER’S RIGHTS

Even with a written offer and a copy of the condemnor’s appraisal in hand, an average landowner is still unlikely to understand the extent of his rights and options under eminent domain law. To this end, a number of states, including Texas, require that a condemnor provide some sort of written explanation of eminent domain and the landowner’s rights (in Texas, “The Landowner’s Bill of Rights”).⁸⁴ Montana, for example, provides perhaps the most extensive coverage, requiring the condemnor to attach a fifty-nine-page document, titled “Eminent Domain in Montana,” to the condemnation complaint, which explains eminent domain and landowner rights.⁸⁵

These requirements protect landowners in condemnation proceedings by explaining his or her rights and/or obligations, as well as those of the condemnor. This may prevent landowners from being disadvantaged by unfamiliarity with the governing laws and regulations.

OFFERS

Twenty-four states, including Texas, require that condemning authorities provide an offer to landowners prior to filing suit.⁸⁶ Thirteen of these states use the amount of this pre-suit offer as the benchmark to determine whether to award attorneys' fees to landowners.⁸⁷ Other states do not allow for recovery of attorneys' fees based on valuation. Oklahoma, for example, considers the difference between the condemnor's offer and the amount of the commissioners' award to determine if attorney's fees will be awarded.⁸⁸



Photo credit: Tave Doty

ENFORCEMENT

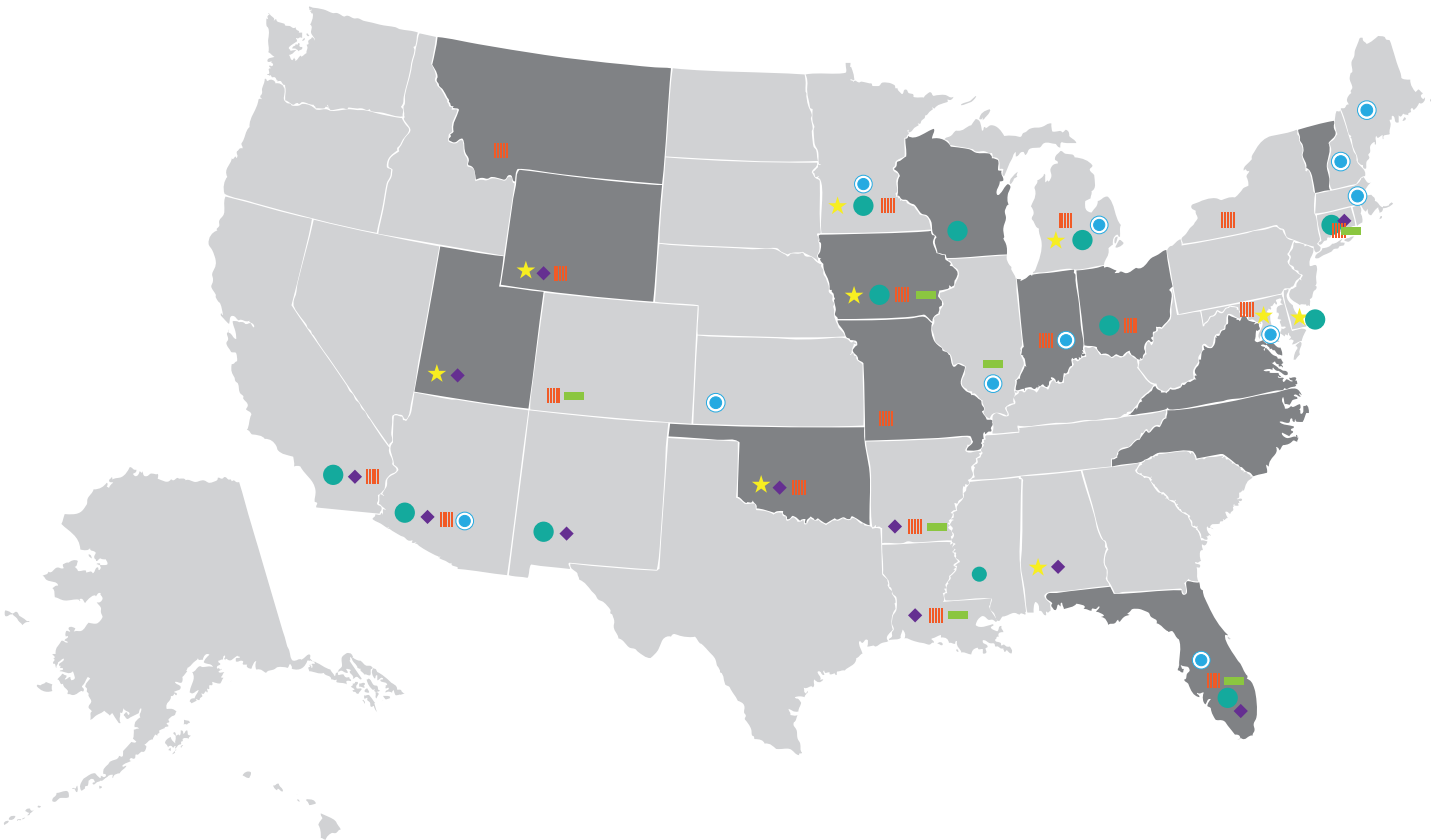
After a state establishes the statutory protections it deems necessary and proper, it must then establish an effective enforcement mechanism. The award of attorneys' fees is perhaps the most common method of enforcing the protections discussed in this section.

Notably, enforcement statutes may function so effectively that the enforcement provision is all that is required. For example, a handful of states do not require a pre-suit settlement offer by statute. However, because those states award attorneys' fees based on the difference between the final judgment and any pre-suit offer, condemnors have just as much incentive to make a pre-suit offer as condemnors in states that actually have such a requirement, where condemnors who fail to make pre-suit offers are responsible for all of the landowner's attorneys' fees, regardless of the ultimate award from the court.⁸⁹

On the following page are two charts that illustrate some of the required procedures in various states.

LANDOWNER PROTECTIONS

Figure 5



- NOTICE OF RIGHTS
- ACCOMPANY
- COPY OF APPRAISAL
- CALCULATIONS
- GOOD FAITH OFFER
- SPECIFIC PRIOR NOTICE
- FEES BASED ON PRE-SUIT OFFER

THE PROCEEDINGS

COMMISSIONERS, JURIES, AND COMPLAINT

In general, when a state entity with condemnation authority wishes to condemn a piece of property, the entity should negotiate with the landowner before considering condemnation. If the landowner refuses to sell the subject property, or the parties disagree as to compensation, the condemnor may begin condemnation proceedings. A court will then determine whether the condemnation is proper and the amount of compensation owed to the landowner. Condemnation authority and compensation may be determined in the same or separate phases of hearings, parties may be able to request a jury decision, and appellate review is available.

Condemnation proceedings are generally initiated by the condemnor filing a complaint with a specified court in the county where the property is located. Most states require the condemnor to file its complaint in the district or circuit court where the property is located. If the property is located in more than one county, states have adopted one or more of three general rules for determining the proper court in which the condemnor should file its complaint. When the landowner resides on the subject property and the property spans more than one county, Michigan follows the Texas approach, which requires the condemnor to file in the county where the landowner resides. If the landowner does not reside on the subject property, then many states require the condemnor to file in the county where the majority of the property is located. However, Michigan and Alabama allow the condemnor to file in any county where any of the property is located when the property spans two or more counties.⁹⁰

INITIATING CONDEMNATION PROCEEDINGS

The most common points of initiation are: (1) when the complaint is filed with the clerk of the court where the condemnation proceeding is to occur, and (2) when notice is given to landowners that their property is to be condemned. States vary as to the number of days required between serving the landowner with process and setting the condemnation hearing.

In most states, the complaint must identify the condemning parties, the owner(s) of the property to be condemned, a description of the property, and the purpose for condemning the property. Deviations from these required components occur most markedly in South Dakota and Montana. In South Dakota, the petitioner may file a declaration of taking any time before final judicial determination of the parties' rights when proceedings are against entities engaged in the operation of electric utilities, gas utilities, railroads, and coal transportation.

The complaint must include a declaration of taking, be signed by the petitioner, and declare the extent of the property interest to be taken. In these instances, the declaration must contain: (1) a statement of authority under which the property interest is taken; (2) a description of the property

interest; (3) a legal description of the land; (4) the names of all persons or entities claiming an interest in the lands and a description of the interest claimed by each; (5) a statement by the acquiring authority containing an estimate of just compensation for the property interest; and (6) a detailed appraisal upon which the amount of petitioner's deposit was based. When serving a complaint in Montana, the condemnor must attach the latest edition of "Eminent Domain in Montana," which is a fifty-nine-page summary of eminent domain law and history in Montana.⁹¹

States have various timelines for initiating eminent domain proceedings after landowners have been served with the complaint or notice of condemnation. For example, in Indiana, the condemnation action cannot proceed until ten days after the landowner(s) have been served with process, or, if the landowner(s) are unknown or nonresidents of the state, until five days after notice has been published for three successive weeks in an English-language newspaper in the county where the property sits. The clerk of the court will mail notice to nonresidents if their addresses can be obtained through the office of the county treasurer. Additionally, in Indiana, the condemnor must serve a written settlement on the landowner(s) not later than forty-five days prior to trial. This is similar to Texas's "final offer," but is counted from the trial date rather than the first offer date. This is the offer that will determine whether the landowner is awarded attorneys' fees after trial.⁹²



Photo credit: Tave Doty

Likely the longest allowable period between filing a complaint for condemnation and the first day of condemnation proceedings is in Montana, where the court has six months to begin condemnation proceedings once the complaint is filed in the district court.⁹³ However, a landowner in Wisconsin has twenty days from the date of service of a condemnor's jurisdictional offer before condemnation proceedings begin.⁹⁴

COMMISSIONERS COURT – TRADITIONAL CONDEMNATION PROCEDURE

In most states, as in Texas, once condemnation proceedings have been initiated, the commissioners' court typically hears the matter first. However, some states such as Alaska, Michigan, Illinois, Louisiana, New Hampshire, and Washington allow the parties to request a jury hearing, or as in Michigan, the court may appoint twelve jurors, rather than commissioners, at its discretion. A typical panel of commissioners is made up of three disinterested citizens. Some states require either the commissioners or jurors to view the property. For example, in Michigan the commissioners or jurors view the property and determine whether the taking is necessary and the amount of just compensation.⁹⁵

Some states allow the court to appoint the three commissioners, while others allow each party to select one commissioner and the third commissioner is selected by the two commissioners appointed by the parties.

The commissioners' court may be given other powers beyond determining necessity of taking and just compensation. For example, Maine allows the commissioners court to place terms and restrictions on the condemned property's use. Additionally, Georgia allows the commissioners court to subpoena witnesses and compel witnesses to appear at its hearings, as in the Superior Court. In Indiana, when multiple parcels in a county are to be taken for the same public use, the complaints may be heard together. The Indiana courts retain the authority to consolidate or separate the actions as they see fit for the convenience of the parties and the ends of justice.⁹⁶

The jury selection approach in Mississippi is different from most states. In Mississippi, the court clerk should deliver a copy of the court order fixing the time and place for the hearing to the sheriff and the official court reporter. Both the clerk and the sheriff should attend the condemnation hearing. The clerk should draw from the court jury box the names of twenty-four jurors. The sheriff should then summon the jurors to appear at the time and place designated in the court order.⁹⁷

When one of the parties is not satisfied with the results of the commissioners' hearing, that party may file to have the matter heard in trial. However, in New York, all condemnation proceedings are non-jury trials.⁹⁸

EXPEDITED CONDEMNATION PROCEEDINGS

In a limited number of instances, states have adopted procedures for entities to condemn land more quickly than usual. The entities allowed to initiate this type of proceeding are typically limited. New Mexico and California have the most user-friendly procedures for expedited condemnation proceedings.

New Mexico allows for a Special Alternative Condemnation Procedure that is generally only available to government entities. The procedure follows the general condemnation proceeding pattern, with shortened timelines. The condemnor may file a petition for condemnation in the district court where the property is located. The petition must include the condemnor's authority to condemn and the final amount offered to the landowner, and must generally describe the public purpose necessitating condemnation. The court then issues a "notice of condemnation" and a preliminary order of condemnation, which grants the condemnor the right to immediately possess the property after depositing the final compensation amount. The landowner has ten days to object to the order before it becomes permanent. If objections are timely filed, a trial will be held to determine whether the condemnation is necessary for the public purpose and to assess just compensation.⁹⁹

California refers to expedited condemnation proceedings as Urgent Need Condemnation. After filing the complaint for condemnation, but prior to an entry of judgment, the plaintiff may move the

court for an order for possession demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited a satisfactory amount into the court's register. The motion must include the following language and be served to the owner and occupants of the property: "You have the right to oppose this motion for an order of possession of your property. If you oppose this motion you must serve the plaintiff and file with the court a written opposition to the motion within 30 days from the date you were served with this motion." The court may issue an order of possession upon an ex parte application by a water, wastewater, gas, electric, or telephone utility, if the court finds an emergency exists and an emergency order of possession will not displace or unreasonably affect any person in actual and lawful possession.¹⁰⁰

Illinois also allows for quicktake condemnation. Here, condemning authorities with quick-take powers may file a complaint electing the quicktake procedure. The court then will fix a date no less than five days after the filing of the complaint. If the court finds that reasonable necessity exists, it will enter an order as to reasonable compensation, and the order is appealable by either party within thirty days of the order.¹⁰¹

APPRAISERS

Most states either do not possess specific requirements for appraisers or they follow the Texas approach. However, the requirements in Indiana and South Carolina are worth noting.

Like Texas, the court in Indiana appoints three commissioners to assess property value. Two of the appraisers must be certified appraisers, and the third appraiser must be a resident of the county in which the property interest is located. Unlike Texas, Indiana does not appear to require a commissioners' hearing—it simply states that the commissioners determine the value of the property and file their report. Once they determine fair market value, the appraisers file their report with the court, and the clerk sends written notice of the report to all known parties and their attorneys of record by certified mail. Any party may appeal the appraisers' valuation, but appeals are accepted no later than forty-five days after the report filing. As in Texas, if exceptions are filed, then the matter proceeds to trial as in any other civil action.¹⁰²

In South Carolina, if the condemnor elects to proceed by way of an appraisal panel, the condemnor shall bear the costs of the appraisal panel, which must be a fee of not more than \$100 for each member plus the actual expenses incurred by the panel. The appraisal panel consists of one member appointed by the condemnor, who may not be an employee or former employee of the condemnor; one member other than a condemnee in that action, appointed by the landowner; and one member who must, as a minimum qualification, possess a South Carolina real estate broker's license, appointed by the first two members. The third appointed member must be the chairman of the panel, is responsible for convening the panel and reporting its determination to the condemnor, and shall receive fifty dollars in additional compensation. Within twenty days of appointing the third member, the appraisal panel must conduct an informal proceeding and consider all relevant evidence and information to determine the amount of just compensation.¹⁰³

CHALLENGES AND APPEALS

Appeals and challenges to final decisions are allowed in many states. Some states allow these appeals to be based on the amount of damages awarded and/or the necessity of taking the land. Sometimes, the scope of review on appeal will be limited to certain subjects. The right to bring an appeal or challenge is usually barred after a certain number of days. Some states will not stop proceedings in the original action in the case of an appeal, thus allowing simultaneous proceedings to occur.

Typically, landowners are allowed thirty days to appeal compensation awards after a determination has been made. There are variations, as in Michigan, which allow the time for challenging to be specified in the complaint. Wisconsin gives the landowner six months to appeal a jurisdictional offer, even if the landowner has accepted the offer. Additionally, Wisconsin allows a party to appeal a commissioner's award sixty days from the day of its filing. Massachusetts has one of the lengthier time frames for challenging an offer; any party may file a complaint within three years after the taking has been recorded. Also, a landowner is not barred from appeal if he takes settlement funds.¹⁰⁴

States vary as to what can be reviewed on appeal. Some states, such as Louisiana, will only allow the judgment to be reviewed. New York limits the scope of the review to the constitutionality of the proceeding, the statutory or jurisdictional authority of the condemnor, adherence to the procedure set forth in the condemnation statute, and the validity of the proposed public use. Other states, such as California, allow the landowner to appeal on the grounds that the plaintiff is not authorized by statute to exercise the power of eminent domain for the purpose stated in the complaint. Additionally, the landowner can object that the stated purpose is not a public use, or that the property is not subject to acquisition by the power of eminent domain.¹⁰⁵

POSSESSION AND RIGHTS TO ENTER LAND

There is much variation among the states as to when a condemnor can take possession, and whether the landowner can do anything to delay possession. Many states allow for the condemnor to take possession after a compensation award regardless of whether the landowner will appeal the decision or not. Many of these states require only that the compensation be paid for the condemnor to take possession.

Some states allow issuance of a court order fixing the terms of possession. For example, Alaska allows the court to fix the time during which the parties can take possession and when the landowner is required to surrender possession. Hawaii allows the court to grant possession to the condemnor at any time after the summons is served. The order must be in the form of a motion stating the reasons why immediate occupation of the land is necessary, and the approximate value of compensation as estimated by the condemnor. The court must also issue an order to the landowner requiring them to respond or appear and show cause as to why the motion to grant possession should not be approved. Colorado only allows the condemnor to possess the property when the court issues an order and compensation has been paid to the landowner.¹⁰⁶

Alaska does not allow the condemnor to take possession until after the time for the landowner to file an objection has run. If the landowner does file an objection, then the condemnor cannot take possession until the hearing on the objection has taken place. Michigan allows for interim possession; meaning, if a reasonable need is shown, possession can be granted even if the final appeal has not been decided.¹⁰⁷ The State of New York, when acting as a condemnor, may take possession as soon as an appropriation map is filed with the County Clerk. There is no requirement that a hearing or any formal proceeding take place in order for title to vest.¹⁰⁸

WHO HAS AUTHORITY TO CONDEMN?

The power to take private property for public use is only available to entities upon which the state has properly conferred condemnation authority. Texas does not specifically address who has the authority to condemn within the Texas Property Code. However, the Texas Comptroller's Office keeps an updated list of entities' condemnation applications and registrations. Most states have general provisions addressing condemnation authority similar to Texas, but these provisions may be more narrow or broad.

NARROW AUTHORITY TO CONDEMN PROVISIONS

Montana's eminent domain provisions are much stricter than Texas's. There, a strong presumption exists against allowing condemnors to obtain unfettered title by purchasing land outright. The Montana Code presumes an easement is sufficient, unless the public use is for a highway or the condemning entity has a compelling reason requiring purchase of the entire property interest.

The Montana Constitution states that the possession and protection of property is an inalienable right. The Montana Supreme Court has interpreted this clause to mean that eminent domain infringes on the fundamental rights of landowners bestowed by the state's constitution. In furtherance of this protection, the authority to condemn requires express legislative approval, and such approval must conform to the strict guidelines of Montana's constitution.¹⁰⁹



Photo credit: Tave Doty

Many states, including Virginia, provide explicit restrictions confining authority to utility companies, common carriers, and railroad companies when those entities provide utility, common carrier, or railroad services, respectively. Typically, taking or damaging private property is not public use if the primary use is private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for eliminating a public nuisance existing on the property. There is no presumption of public use, and the condemnor bears the burden of proving public use.¹¹⁰

Other states, while not as strict as Montana, still provide restrictions. In Georgia, the Georgia Land Bank Authorities do not have condemnation authority, and soil and water conservation districts need 90% voluntary land acquisition for a small watershed project before condemning the remaining 10%.¹¹¹ States with narrow condemnation authority may restrict use of eminent domain by private companies and common carriers. In Kentucky, pipeline companies not regulated by Kentucky's Public Service Commission lack eminent domain authority.¹¹² South Carolina has taken a unique temporal approach to affording eminent domain authority to for-profit pipelines. For-profit oil pipelines, which include all publicly traded oil companies, do not have eminent domain authority

in the State.¹¹³ However, this provision is only applicable for three years and will be revisited by the South Carolina General Assembly in 2019.

States, including Texas, generally give “common carriers” the condemnation authority.¹¹⁴ In Texas, an entity merely checks a box on a form, but other states offer a more strict approach.¹¹⁵ For example, in Missouri, all motor carriers, contract carriers, and express companies are excluded from being considered common carriers for eminent domain purposes.¹¹⁶ States may limit the number of common carriers by creating a rigorous application process to become a common carrier.

BROAD AUTHORITY TO CONDEMN PROVISIONS

By contrast, some states enjoy seemingly greater eminent domain authority than Texas. For example, Maryland’s States Road Commission and the City of Baltimore may condemn without going through the full negotiation, appraisal, valuation, and hearing procedure required of most entities.¹¹⁷ Although the landowner may appeal the fair value, this provision gives great leeway to both the State’s Road Commission and the City of Baltimore to bypass many hurdles other entities encounter.

In addition, states such as New Mexico and Hawaii grant more broad eminent domain discretion than Texas. However, the New Mexico Cultural Properties Review Committee may condemn culturally or historically significant private land and buildings to be held in trust by the state. In addition, corporations in Hawaii involved in water irrigation may exercise eminent domain if the corporation has at least \$50,000 in cash or has tangible property with market value equal to the amount the corporation values the condemned property as an asset.¹¹⁸

Alabama provides a special provision granting condemnation authority specifically to the University of Alabama, Auburn University, and Montevallo University. Similarly, New Jersey provides an even broader provision stating that all State Colleges are specifically granted the right to condemn.¹¹⁹

AUTHORITY GRANTED BY SPECIAL REVIEW BOARDS

In Texas, the Public Utility Commission may confer eminent domain to utilities through a Certificate of Convenience and Necessity. Many states have similar review boards with broad discretion to confer an authority to condemn. For example, the Iowa Utilities Board can confer condemnation authority for electric power generating plants, electric transmission lines, intrastate natural gas pipelines, hazardous liquid pipelines, and telephone and telegraph companies by granting a Certificate of Public Convenience Use and Necessity, a permit, or a franchise.¹²⁰ Much like Texas, the Iowa Public Utility Commission has considerable discretion in deciding whether to confer eminent domain authority. If the condemning authority can show the use of the land is a reasonable and beneficial public use of the property, then the Commission may decide to grant authority. What is considered public use, and how states define it is discussed at length in a later section.

AUTHORITY GRANTED BY STATE GOVERNOR

A few states skirt creating a commission to oversee granting eminent domain authority, and afford the governor of the state that power. Alabama, South Dakota, and Massachusetts grant their Governor great discretion in deciding whether to grant eminent domain authority. In Alabama, if a corporation, person, or association seeks to obtain private property using eminent domain, but is afforded no lawful recourse for the taking, then a written direction by the Governor to the attorney of record is sufficient authority for bringing the suit. In South Dakota, a railroad company, while granted authority under statute, still must obtain permission from either the Governor or the commission board if the project is consistent with the state's public necessity requirement. Similarly, in Massachusetts, where there is no other provision by law, the Governor may institute a taking by or on behalf of the State so long as it meets the public necessity requirement.¹²¹

THE STANDARD OF PUBLIC USE

To determine the purposes of private property takings, many states rely on the term “public use.” In *Kelo v. City of New London*, the United States Supreme Court upheld tangential economic benefits as a public use under the Fifth Amendment. In this case, the City of New London approved a development plan that would generate hundreds of jobs and grow the city’s tax revenues. The city purchased land from owners willing to sell and intended to exercise eminent domain authority to take the rest. City residents of the condemned land—some of whom had lived there for almost 100 years—challenged the City’s authority.¹²²

Although the Supreme Court decided *Kelo*, this signaled only the beginning of an evolving set of tensions across the United States over defining “public use.” Following *Kelo*, many state legislatures either broadly outlawed eminent domain for economic development or enumerated specific authorized public uses.

Texas responded strongly to *Kelo* in 2005 by enacting §2206.001, which provides that no entity may take private land if the taking (1) confers a private benefit; (2) has a public use that is mere pretext; (3) is for the purpose of economic development, unless the economic development is a secondary benefit resulting from urban renewal; and (4) is not for public use.¹²³ Texas also defines public use in the state constitution and expressly excludes the transfer of private property to a private entity for the primary purpose of economic development or increasing tax base.¹²⁴

To more accurately define public use in the broader context of the United States, this section discusses how different states respond to (1) the challenge of private, for-profit entities seeking eminent domain authority and (2) issues of public use raised by pipeline companies.

“Economic development” provisions vary substantially by state. Some states, like Florida,¹²⁵ have all but banned transferring condemned property to private entities for economic development.¹²⁶ Others, such as Missouri and Vermont, prohibit the taking of land “primarily” or “solely” for economic development. Texas, like most other states, prohibits taking property for economic development. However, if this development is secondary to alleviating harm to society from blighted property, then economic development is permitted.¹²⁷

Several states restrict or prohibit transferring condemned property to another person or private entity. Delaware, for instance, requires proof of public use by clear and convincing evidence before allowing a property transfer to a private entity under eminent domain.¹²⁸ Additionally, Florida requires a three-fifths vote from both houses of the legislature before eminent domain can be exercised to benefit a private party.¹²⁹ These states generally favor the landowner and disfavor eminent domain benefiting a private party, even if the public might also benefit from the taking. Texas is one of these states.

The Texas Constitution specifically excludes from “public use” taking private property under eminent domain if the primary purpose is economic development or increasing tax revenue. Compared with some states, this prohibition is moderately restrictive. It leaves the door open for the eminent domain authority to articulate some other plausible “primary” purpose. In order to restrict this authority further, the Texas legislature now prohibits taking private property if it benefits a private party through the property’s use.¹³⁰

Despite these common protections, states must also note that private entities often use land for substantial public benefit. This balance is reflected in states that carve out statutory exceptions allowing some private entities to take land under eminent domain, or be given land by some other eminent domain authority. The three most common situations are utilities, oil and gas pipelines, and blight. Public utilities provide a valuable service to the public, but are often privately owned. Should private property be taken and given to these private entities to facilitate running power lines, water, or sewer? The overwhelming majority of states answer in the affirmative, allowing public utilities—even if privately owned—to benefit from an eminent domain taking. Thirty-nine state legislatures have expressly addressed utilities in their eminent domain statutes.

The exact provisions vary, but generally fall into two categories. Some legislatures have exempted utilities from the “economic development” restrictions on eminent domain use.¹³¹ Other states give certain utilities express eminent domain authority to take private property; this authorization trumps other restrictions on taking.¹³² States not expressly giving utilities power to take private property require the utility to obtain a certificate from the State public utility agency to condemn property.¹³³ So, even states that do not expressly endorse utilities as a “public use” allow utilities to take private property under some circumstances. Utilities and oil and gas can either be exempt from a prohibition on private takings or given blanket eminent domain authority. Some states either do not mention utilities, or require them to obtain permission from a court or administrative agency to use eminent domain; therefore, it is not a statutory exception.

Thirty-four states allow the government to condemn private property and then transfer it to a private entity or sell it to a developer for economic development. Most commonly, state statutes exempt blighted property from the “economic development” restrictions. However, the state may enact other conditions or restrictions on takings of blighted property for economic development.¹³⁴ A second method, used to narrow the taking of blighted property, requires a heightened burden of proof. Before taking blighted property, the developer or agency must show public use by clear and convincing evidence (a higher burden of proof than “preponderance of the evidence”).¹³⁵ Lastly, some legislatures require a specific health and safety threat before condemning blighted property for redevelopment.¹³⁶

Texas has exempted utilities and oil and gas pipelines from the State’s “economic development” and “transfer to a private party” restrictions, whose eminent domain authority are enumerated by other

statutes. Interestingly, Texas has a split blight exception. An eminent domain authority may take blighted property for economic development, but not necessarily for transfer to another private party.¹³⁷ Just how effective are the Texas statutory restrictions? That may remain an open question, as somewhere between 1,600¹³⁸ and 6,000¹³⁹ entities (including counties, school districts, etc.) possess or have claimed eminent domain authority in Texas.

Enshrined here is the understanding that absolute private ownership may conflict with—and sometimes be subordinate to—the public good.¹⁴⁰ Each state has its own ongoing struggle to find the right balance between these two interests because private ownership and public benefit are by no means the same thing.

ABANDONMENT

Across the nation, abandonment occurs in two general contexts with respect to eminent domain or condemnation proceedings. The condemnor abandons the project when it withdraws from the condemnation proceedings (“dismissal of proceedings”), and when it doesn’t use the land for the public use project for which it was taken (“abandonment of public purpose”). Many states have statutory provisions to discourage either type of abandonment, although the remedies for dismissal are generally more substantial than the remedies available for outright abandonment.

Some states provide remedies to landowners upon dismissal of the proceedings. These remedies include reimbursement to the landowner of reasonable attorney’s fees; reimbursement of appraisal fees and engineering fees actually incurred; a reverter of the land; or a combination of any of these remedies. Other states provide remedies or repurchase rights for land taken then later abandoned by the condemnor. These remedies vary depending on the state but tend to include either an original landowner’s right to repurchase, an automatic termination of easements, automatic re-vesting of title, or an option to purchase by other parties such as adjoining landowners, municipalities, or other parties interested in public use development.

This section expounds on the laws of the states regarding dismissal of proceedings and abandonment of public purpose. The analysis below also provides further insight into the similarities and differences between abandonment statutes in the fifty states as compared to Texas. It is important to note that eleven out of the fifty states do not have statutory provisions addressing abandonment in either context.¹⁴¹

DISMISSAL OF PROCEEDINGS

The condemnor may withdraw from condemnation proceedings in three ways: (1) the condemnor files a motion to dismiss the proceedings; (2) the final judgment states that petitioner cannot acquire the land by condemnation; or (3) the condemnor fails to pay the judgment within a certain period of time.

MOTION TO DISMISS

Many states, including Texas, hold a condemnor liable for some of all the landowner’s incurred expenses if the condemnor moves to dismiss the proceedings. In several states, the condemnor must reimburse the landowner for all reasonable attorney, appraisal, and engineering fees incurred following a voluntary dismissal of eminent domain proceedings.¹⁴² Not all states are this comprehensive, however. In Wisconsin, for instance, a condemnor who dismisses the proceedings is only responsible for attorneys’ fees.¹⁴³ Michigan has a similar law regarding reimbursement for reasonable expenses, but requires that the owners of the property reasonably relied on the condemning authority’s good faith written offer in incurring those expenses.¹⁴⁴

FAILURE TO COMPENSATE THE LANDOWNER

Other states allow the landowner to vacate the condemnation judgment if a condemnor fails to make full payment of the judgment within a certain period of time. On the other hand, in Florida, if the condemnor fails to make the payment within twenty days, the final judgment is null and void, unless the court finds good cause to grant the condemnor an extension of up to sixty days to pay the judgment. If the proceedings are dismissed following failure to make payment, the landowner can generally recover reasonable costs, including attorney's fees in some states.¹⁴⁵

Because the condemnation is a civil proceeding, most states allow a condemning authority to withdraw from condemnation proceedings at any point before a final judgment is rendered. Some states expressly prohibit withdrawal from an eminent domain proceeding once a final judgment has been reached. However, some states provide more leeway, giving a condemnor thirty days after the final judgment to withdraw from the proceedings. One of those states, California, limits the thirty-day allowance if the landowner has justifiably relied on the proceeding and therefore cannot be restored to substantially the same position. Furthermore, in the event of a dismissal in California, the landowner is entitled to any ad valorem taxes, penalties, and costs on the property for which he or she would be liable. In New Jersey, a condemnation proceeding can be abandoned at any time by agreement of the parties, but if the condemnor dismisses the suit within the thirty days after judgment is entered, the condemnor is liable for all the landowner's expenses.¹⁴⁶

A number of states, however, place stricter limits on condemnors. For instance, several states prohibit a condemnor from abandoning a condemnation proceeding once a declaration of taking was filed or after the plaintiff has taken possession (some, like South Carolina, prohibit withdrawal once the condemnor has taken possession and made material alterations to the property.)¹⁴⁷ While not prohibiting abandonment outright, Nevada awards damages to the landowner from the condemnor's occupancy if the condemnor occupies the property and then abandons the proceedings.¹⁴⁸ These statutes and the other prohibitions on abandonment of the proceedings serve to hold condemnors to the public purpose they claimed in exercising eminent domain over private property. Rhode Island also places limits on a condemnor's ability to abandon the proceedings. There, the condemnor may withdraw from the condemnation proceedings at any time before a final court determination is made regarding damages.¹⁴⁹ Not only will the condemnor owe all costs and expenses upon such withdrawal, but title to the property will automatically revert to the landowner.¹⁵⁰

Although many states have such statutory protections in place, some states do not hold condemnors liable for the landowner's expenses upon withdrawal from condemnation proceedings. For example, in Massachusetts, a city may abandon land with no additional recourse to the prior owner. In Arkansas, a levee or drainage district may refuse to pay the final judgment award, abandon the line, and relocate without being liable for any award or judgment rendered in any proceeding for the condemnation right-of-way, except as to those specific costs.

Overall, most states hold a condemnor who withdraws from a condemnation proceeding responsible to reimburse the landowner. Many states take the same approach as Texas, and require abandoning condemnors to pay landowners for incurred attorney, appraisal, and engineering fees. This seems to reflect a general desire to include a statutory remedy that protects landowners by holding condemnors to the public purpose they relied on in order to exercise the power of eminent domain.

ABANDONMENT OF PUBLIC PURPOSE

What if a condemnor goes through with the condemnation proceeding, but then fails to use the property for the alleged public use? Many states have statutory provisions that touch on the consequences resulting from a condemnor who abandons the purpose for which the land was acquired, including easements. Failure to use the land for the purpose in which it was acquired is not abandonment of the land per se because the condemnor still owns the property interest it condemned. A majority of states, however, consider this “abandonment” of the property and have enacted statutory provisions to address this situation.

Some states, including Texas, provide a set period of non-use after which the law considers the public use abandoned, while other states consider the public use abandoned whenever the land is no longer being used for the purpose in which it was acquired. In Texas, a person having real property interest in the land which was condemned has a right to repurchase the land ten years after the date of acquisition, if no progress has been made, if the project no longer needs the land, or if the project is cancelled. Some states have similar ten-year “waiting periods.”¹⁵¹ Other states have shorter periods, allowing landowners to repurchase land sooner than ten years if the condemnor abandons the public use, generally ranging from six to eight years.¹⁵²

After six to ten years, property values naturally change. Many states address the question of repurchase price by statute. Texas, for instance, allows the landowner to repurchase the land for the amount originally paid for it, while others set the repurchase price as the condemnation price plus a percent per annum.¹⁵³ Unlike Texas, there are states which provide remedies for non-use of land or easements but without a set period of time in which the non-use must occur. This means that abandonment may be found regardless of whether the non-use occurs several months or several years after the taking.

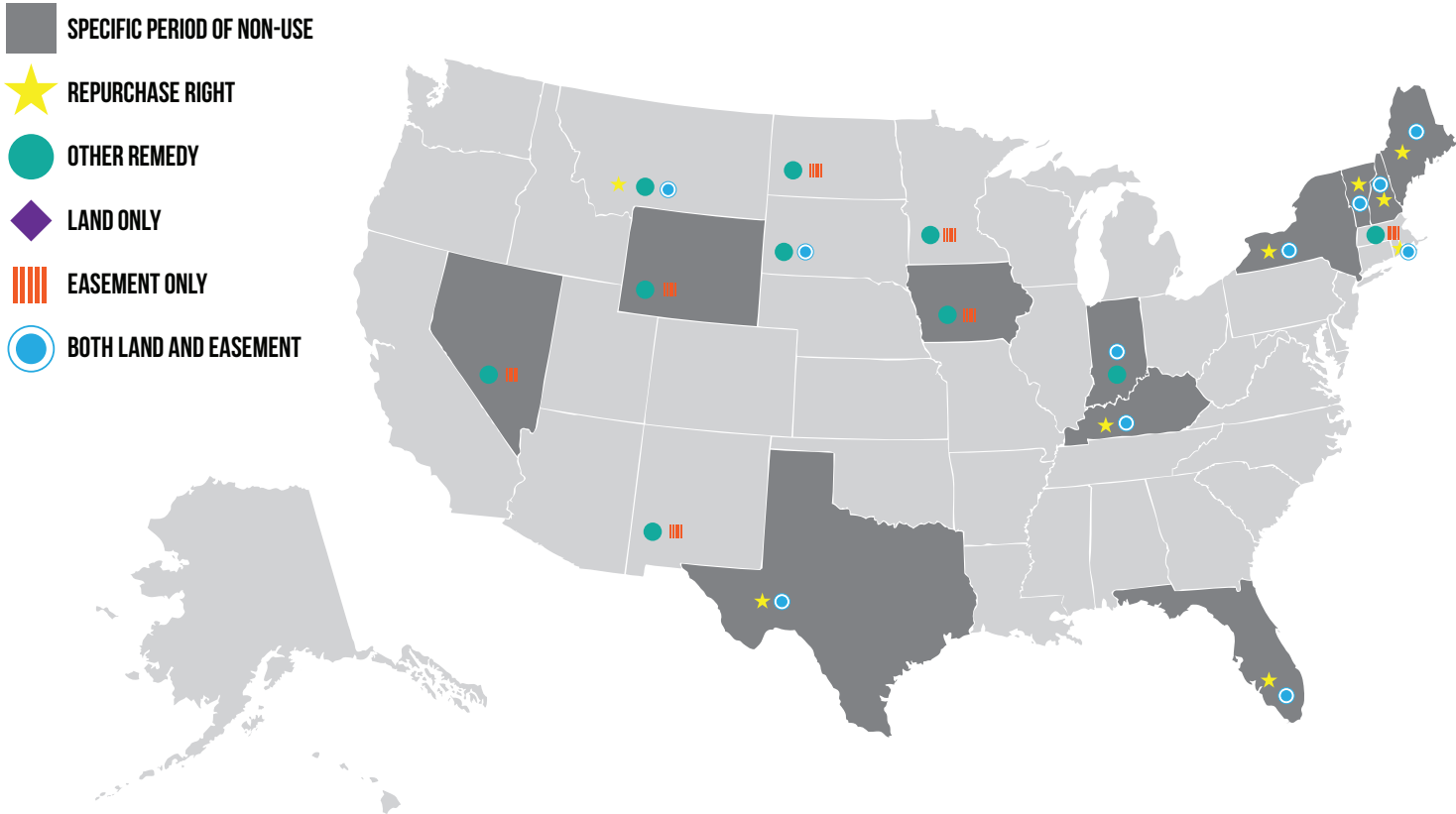
Repurchase by the landowner is the most common, but not the only, result of abandonment of the condemned property. For example, if property is abandoned after six years in Indiana, a forfeiture action may be brought either by a person with a legal interest in the property or some other party with a public use interest in the property (another potential condemnor, in other words).¹⁵⁴ Some states’ laws are stricter and automatically terminate the condemned easement or revert title to the original landowner.¹⁵⁵ On the other hand, the laws in some states are silent or ambiguous as to what happens if a condemnor abandons the public use of the property.¹⁵⁶

Other states stand alone in their approaches to abandonment. In Montana, for example, an abandoned easement automatically reverts to the original landowner, but if the condemnor took full title to the parcel of land and abandoned it, the landowner only receives the right to repurchase the land by matching the highest bid at auction. Alternatively, in Rhode Island a condemnor may, with the permission of the State properties committee, convey, sell, or lease property no longer needed for a public use. The landowner, however, retains a right of first refusal.¹⁵⁷ Finally, South Dakota’s abandonment statutes require a railroad that abandons a project to resolve title claims within one year, or title reverts back to the landowner or municipality.¹⁵⁸

In summary, the majority of states provide procedures and remedies available in the event of an abandonment of the public purpose for which land was acquired. While few states track Texas law exactly, many have only slight differences—mainly the period of time required for non-use to be deemed abandonment—and most allow some form of repurchase right to the landowner.

Figure 6

ABANDONMENT OF PUBLIC PURPOSE



UNIQUE FEATURES FROM AROUND THE UNITED STATES

There are some unique laws in individual states that, while not fitting into any of the trends discussed above, are worth taking into consideration.

BLANKET EASEMENTS

Missouri provides that blanket easements are void for public policy reasons. A blanket easement is an easement where the terms are not specific regarding the location of facilities on, over, under, or across the burdened property.¹⁶⁸

EXPANDED USE TRIGGERS NEW PROCEEDING

In Missouri, a new condemnation proceeding must take place if the condemnor uses the condemned property in a manner inconsistent with the easement or other instrument of conveyance. This is known as an “expanded use.” Expanded use occurs when the condemnor uses an area greater than what was described in the instrument, for a different use than described, or in a way that has an unreasonably burdensome impact on the property or landowner.¹⁶⁹

UNIQUE LANDOWNER RESOURCES

Missouri also allows the landowner, after receiving the initial offer, to submit an alternative location to be condemned which the condemnor must consider. If the condemnor decides against the landowner’s alternative location, the condemnor must provide the reasoning behind that decision.¹⁷⁰

Finally, the office of public counsel in Missouri must create an office of ombudsman for property rights by appointing a person to the position of ombudsman. The ombudsman assists citizens by providing non-legal guidance regarding the condemnation process and procedures. The ombudsman also documents the use of eminent domain within the state as well as any issues associated with its use and must submit a yearly report to the general assembly.¹⁷¹

ADDITIONAL DAMAGES FOR RELOCATION

In Pennsylvania, displaced homeowners are entitled to receive up to \$31,000 for costs associated with terminating an existing mortgage, purchasing an equivalent replacement home, and increased mortgage interest expenses. Additionally, renters are eligible to receive up to \$7,200 for increased rental expenses. Pennsylvanians who have been displaced following a condemnation proceeding are entitled to reimbursement for moving expenses.¹⁷²

SPECIAL CONDITIONS ON OIL AND GAS CONDEMNORS

In Maryland, if land is condemned for a gas pipeline, the pipeline must transmit gas to local consumers and offer to contract with those consumers. Further, if land is condemned for an oil pipeline, the pipeline’s condemnation authority is limited to select counties.¹⁷³

THE JURY CAN TAKE A LOOK

Alabama allows the court to take the jury to view the property that is sought to be taken. The parties can attend, but the judge is the only one allowed to make a statement to the jury, and the statement must be transcribed.¹⁷⁴

LANDOWNER INVOLVEMENT TO MITIGATE HARM

In Montana, there is a balancing test used to determine the best location for condemnation on a landowner's property. This process allows the landowner to be involved in the planning stages of the project, once condemnation has occurred, in an effort to mitigate the harm to his or her land.

CONDEMNATION FOR PRESERVATION

In New Mexico, the State may condemn private land or buildings that are "culturally or historically significant" as well as land near highways to "preserve scenic beauty."¹⁷⁵

RELIEF FROM PREPAYMENT PENALTIES OF MORTGAGES

In South Carolina, the government must pay or reimburse the landowner any prepayment penalties for mortgages that arise because of the taking in an eminent domain case. The government is given a credit against taxes due during the year in which it acquires the landowner's property, but the government also has the responsibility of paying taxes on the property for that year.¹⁷⁶

Similarly, in Oklahoma, property owners are eligible for reimbursement of prepayment penalties for any pre-existing recorded mortgage on the property taken.¹⁷⁷

INCREASED SCRUTINY FOR PIPELINES

In Vermont, the routing and construction of oil and gas pipelines is highly regulated at the state level. Technical and non-technical public hearings must be held and the Public Service Board must grant the certification of public good before construction can begin. The Board cannot grant the certification if it interferes with municipal plans or negatively affects aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, or the public health and safety.¹⁷⁸

The Board must also look at economic costs of the pipeline and determine whether there is a benefit to the State and its residents. After the certificate of public good is granted, the pipeline company can move on to the condemnation procedure if they were unable to negotiate a sale with the landowner.¹⁷⁹

DELAYED POSSESSION

In Wisconsin, if a utility applies to condemn land, and the utility is unlikely to commence the project within two years, the landowner retains possession of the land until the utility begins construction.¹⁸⁰



Photo credit: Tave Doty

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We are also immensely grateful to all our guest speakers, listed below, who traveled from all over the state to enlighten us with their unique knowledge in the field of Eminent Domain.

- Judge Joe Spurlock, Professor of Law, Texas A&M University School of Law, and Former Texas Legislator
- Dr. Roel Lopez, Director of the Texas A&M Institute of Renewable Natural Resources
- Lewis Isaacks, Gay, McCall, Issacks & Roberts
- John Johndroe, Cantey Hanger
- Jim Malewitz, The Texas Tribune
- Max Baker, Fort Worth Star-Telegram
- Travis Kelly and Joe Maley, Texas Central Partners
- Dan Gattis, Attorney, Former Legislator, and Director and Vice-Chair of the Property Rights and Tax Committee for the Texas and Southwestern Cattle Raisers Association
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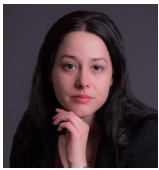
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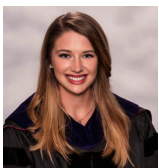
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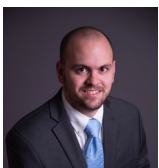
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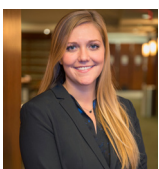
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APPENDIX A

EXAMPLE STATUTES

1. ABANDONMENT

"When an interest, other than a fee simple interest, in property that has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or when the purpose for which it was acquired is terminated, the property reverts to the original owner or the original owner's successor in interest."¹⁸¹

2. COMPENSATION

BROAD INSTRUCTION APPROACH

"The fair market value as used in this chapter shall be defined as the price the property would bring when offered for sale by a willing seller who is not forced to sell and which is sought by a willing buyer who is not required to buy, after due consideration of all the elements affecting value."¹⁸²

SPECIFIC RATES APPROACH

"...[A] condemnor that acquires a parcel of real property through the exercise of eminent domain under this chapter shall compensate the owner of the parcel as follows:

- (1) For agricultural land:
 - (A) either:
 - (i) payment to the owner equal to one hundred twenty-five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1; or
 - (ii) upon the request of the owner and if the owner and condemnor both agree, transfer to the owner of an ownership interest in agricultural land that is equal in acreage to the parcel acquired through the exercise of eminent domain;
 - (B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and
 - (C) payment of the owner's relocation costs, if any.
- (2) For a parcel of real property occupied by the owner as a residence:
 - (A) payment to the owner equal to one hundred fifty percent (150%) of the fair market value of the parcel as determined under IC 32-24-1;
 - (B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain; and
 - (C) payment of the owner's relocation costs, if any.
- (3) For a parcel of real property not described in subdivision (1) or (2):
 - (A) payment to the owner equal to one hundred percent (100%) of the fair market value of the parcel as determined under IC 32-24-1;
 - (B) payment of any other damages determined under IC 32-24-1 and any loss incurred in a

trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any."¹⁸³

FACTORS APPROACH

"(d) *Factors to be considered.* In ascertaining the amount of compensation and damages, the following nonexclusive list of factors shall be considered if such factors are shown to exist. Such factors are not to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage under the provisions of subsections (b) and (c) of this section. Such factors are:

- (1) The most advantageous use to which the property is reasonably adaptable.
- (2) Access to the property remaining.
- (3) Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.
- (4) Productivity, convenience, use to be made of the property taken, or use of the property remaining.
- (5) View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.
- (6) Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.
- (7) Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.
- (8) Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that such loss affects the value of the property remaining.
- (9) Destruction of a legal nonconforming use.
- (10) Damage to property abutting on a right-of-way due to change of grade where accompanied by a taking of land.
- (11) Proximity of new improvement to improvements remaining on condemnee's land.
- (12) Loss of or damage to growing crops.
- (13) That the property could be or had been adapted to a use which was profitably carried on.
- (14) Cost of new drains or loss of drains and the cost of replacing them with drains of like quality, to the extent that such loss affects the value of the property remaining.
- (15) Cost of new private roads or passageways or loss of private roads or passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that such loss affects the value of the property remaining."¹⁸⁴

PAYMENT TIMELINE

Example statute from Alabama:

“(a) If the plaintiff fails to make full payment of the judgment, or of the full amount awarded for any separate item or parcel of property described therein, within [90 days after the assessment thereof,] the defendant may treat the failure to make payment as an abandonment of the condemnation action with respect to the property for which payment has not been made, and may move to vacate the judgment and for a dismissal...”¹⁸⁵

OR stricter example statute from Florida:

“Within 20 days after the rendition of the judgment, the petitioner shall deposit the amount set forth therein into the registry of the court for the use of the defendants, or the proceeding shall be null and void, unless for good cause further time, not exceeding 60 days, is allowed by the court.”¹⁸⁶

3. PUBLIC USE

Texas falls in line with most of the country with respect to public use. The most relevant statute for Texas is Gov’t Code Ann. § 2206.001. “(b) A governmental or private entity may not take private property through the use of eminent domain if the taking: (1) confers a private benefit on a particular private party through the use of the property; (2) is for a public use that is merely a pretext to confer a private benefit on a particular private party; (3) is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas) and (This section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for: (1) transportation projects, including, but not limited to, railroads, airports, or public roads or highways; (2) entities authorized under Section 59, Article XVI, Texas Constitution, including: (A) port authorities; (B) navigation districts; and (C) any other conservation or reclamation districts that act as ports; (3) water supply, wastewater, flood control, and drainage projects; (4) public buildings, hospitals, and parks; (5) the provision of utility services; (6) a sports and community venue project approved by voters at an election held on or before December 1, 2005, under Chapter 334 or 335, Local Government Code; (7) the operations of: (A) a common carrier pipeline; or (B) an energy transporter, as that term is defined by Section 186.051, Utilities Code; (8) a purpose authorized by Chapter 181, Utilities Code; (9) underground storage operations subject to Chapter 91, Natural Resources Code; (10) a waste disposal project; or (11) a library, museum, or related facility and any infrastructure related to the facility.”¹⁸⁷

Deleware statute:

(a) The policy of the provisions of this chapter pertaining to eminent domain is to ensure that eminent domain is used for a limited, defined public use. Public use does not include the generation of public revenues, increase in tax base, tax revenues, employment or economic health, through private land owners or economic development.

(b) Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning agency, including an agency as defined in § 9501(b) of this

title, shall use eminent domain other than for a public use, as defined in subsection (c) of this section.

(c) The term “public use” shall only mean:

- (1) The possession, occupation, or utilization of land by the general public or by public agencies;
- (2) The use of land for the creation or functioning of public utilities, electric cooperatives, or common carriers, or
- (3) Where the exercise of eminent domain:
 - a.1. Removes a “blighted area” as defined at § 4501(3) of Title 31, or a “slum area”, as defined at § 4501(23) of Title 31;
 2. Removes a structure that is beyond repair or unfit for human habitation or use; or
 3. Is used to acquire abandoned real property; and
 - b. Eliminates a direct threat to public health and safety caused by or related to the real property in its current condition.

(d) Whenever real property is condemned and will be used, including owned, occupied or developed by a private party, the State or agency thereof or a political subdivision must establish by clear and convincing evidence that the use of eminent domain complies with the definition of “public use” in subsection (c) of this section.

(e) “No written notice or correspondence shall be sent to property owners from the State, an agency or a political subdivision communicating to the property owner that the real property is subject to eminent domain without the State, an agency, or a political subdivision first notifying the property owner in writing of the public use as defined in subsection (c) of this section and as required by § 9505(15) of this title.”¹⁸⁸

Public Use

“Notwithstanding any other provision of law, in any condemnation action, without the consent of the owner of the property, the burden of proof is on the condemning entity to demonstrate, by a preponderance of the evidence, that the taking of private property is for a public use, unless the condemnation action involves a taking for the eradication of blight, in which case the burden of proof is on the condemning entity to demonstrate, by clear and convincing evidence, that the taking of the property is necessary for the eradication of blight.”¹⁸⁹

4. WHAT CANNOT BE CONDEMNED

“(B.) The power of eminent domain shall not be used for the siting or building of wind turbines on private property.”¹⁹⁰

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ENDNOTES

¹ *Miss. & Rum River Boom Co. v. Patterson*, 98 U.S. 403 (1878).

² *Kelo v. City of New London, Conn.*, 545 U.S. 469 (2005).

³ *Id.*

⁴ Texas, BUREAU OF ECON. ANALYSIS, <http://www.bea.gov/regional/bearfacts/pdf.cfm?fips=48000&areatype=STATE&geotype=3> (last visited Nov. 19, 2016).

⁵ *Id.*

⁶ Four Texas Metro Areas Collectively Add More Than 400,000 People in the Last Year, Census Bureau Reports, U.S. CENSUS BUREAU (Mar. 24, 2016), <http://www.census.gov/newsroom/press-releases/2016/cb16-43.html>.

⁷ Five of the Nation's Eleven Fastest-Growing Cities are in Texas, Census Bureau Reports, U.S. CENSUS BUREAU (May 19, 2016), <http://www.census.gov/newsroom/press-releases/2016/cb16-81.html>.

⁸ Texas Population, 2020 (Projection), TEX. DEP'T OF STATE HEALTH SERVS., <https://www.dshs.texas.gov/chs/popdat/st2020.shtm> (last visited Jan. 18, 2017).

⁹ TEX. CONST. art. I, § 17.

¹⁰ Glen Hegar, Comptroller's Online Eminent Domain Database (COEDD), TEX. COMPTROLLER OF PUB. ACCTS., <http://coedd.cpa.texas.gov> (last visited Jan. 18, 2017).

¹¹ TEX. CONST. art. I, § 17(b) (West 2009).

¹² TEX. PROP. CODE § 21.0113 (LexisNexis, Lexis through the 2015 reg. sess., 84th Leg.).

¹³ TEX. PROP. CODE § 21.012 (LexisNexis, Lexis through the 2015 reg. sess., 84th Leg.).

¹⁴ TEX. PROP. CODE §§ 21.014-.015 (LexisNexis, Lexis through the 2015 reg. sess., 84th Leg.).

¹⁵ TEX. PROP. CODE § 21.018 (LexisNexis, Lexis through the 2015 reg. sess., 84th Leg.).

¹⁶ TEX. PROP. CODE § 21.042 (LexisNexis, Lexis through the 2015 reg. sess., 84th Leg.).

¹⁷ *Id.*

¹⁸ TEX. PROP. CODE § 21.047 (LexisNexis, Lexis through the 2015 reg. sess., 84th Leg.).

¹⁹ TEX. PROP. CODE §§ 21.019, .0195, .020 (LexisNexis, Lexis through the 2015 reg. sess., 84th Leg.).

²⁰ ALASKA R. CIV. PRO. 72(k)(3) (West, Westlaw through 2016).

²¹ ALASKA R. CIV. PRO. 72(k)(3) (West, Westlaw through 2016).

²² WYO. STAT. ANN. § 1-26-509(j) (West, Westlaw through 2016).

²³ In Arkansas, the threshold is 120% of condemnor's initial assessment, or 120% of sum deposited by a municipal or water corporation in immediate possession. ARK. CODE ANN. § 18-15-103(b)(11)(A) (West, Westlaw through 2016).

²⁴ Where the compensation set by the court exceeds \$10,000. COLO. REV. STAT. ANN. § 38-1-122(1) (West, Westlaw through 2016).

²⁵ Attorney fees may be awarded at an amount up to \$25,000 or the fair market value, whichever is less. IND. CODE ANN. §§ 32-24-1-14, -2-17, -3-4 (West, Westlaw through 2016).

²⁶ S.C. CODE ANN. § 28-2-510 (West, Westlaw through 2016).

²⁷ IOWA CODE ANN. § 6B.33 (West, Westlaw through 2016).

²⁸ WIS. STAT. ANN. § 32.28(3)(e) (West, Westlaw through 2016).

²⁹ S.D. CODIFIED LAWS § 21-35-23 (West, Westlaw through 2016).

³⁰ In Louisiana, the threshold is greater than the condemnor's highest offer or greater than the amount deposited in registry for the landowner, however, the attorney fees are limited to 25% of the difference between the award and the amount deposited. LA. REV. STAT. ANN. § 19:8 (West, Westlaw through 2016).

- ³¹ IDAHO CODE ANN. § 7-711A (West, Westlaw through 2016).
- ³² Where the award of damages exceeds \$25,000. MONT. CONST. art. II, § 29 (1972).
- ³³ OKLA. STAT. ANN. tit. 27, § 11 (West, Westlaw through 2016).
- ³⁴ N.Y. EM. DOM. PROC. LAW § 701 (West, Westlaw through 2016).
- ³⁵ WASH. REV. CODE ANN. § 8.25.070(1)(b) (West, Westlaw through 2016).
- ³⁶ OR. REV. STAT. ANN. § 35.346(7)(a) (West, Westlaw through 2016).
- ³⁷ MICH. COMP. LAWS ANN. § 213.66(3) (West, Westlaw through 2016).
- ³⁸ MONT. CODE ANN. § 70-30-305(2) (2013); 26 PA. CONS. STAT. §§ 306, 308, 709 (2006); NEB. REV. STAT. ANN. § 76-726 (West 1989); MISS. CODE ANN. § 11-27-37 (West 1991).
- ³⁹ MICH. COMP. LAWS ANN. § 213.66(2) (West 2006); N.Y. EM. DOM. PROC. LAW § 702(B) (McKinney 1987); S.C. CODE ANN. § 28-2-510(A) (1976); IND. CODE ANN. § 32-24-1-8; GA CODE ANN. § 22-1-12 (2006); WIS. STAT. ANN. § 32.28(3)(b) (West, Westlaw through 2016); CAL. CIV. PROC. CODE § 1268.610 (West, Westlaw through 2016); COLO. REV. STAT. ANN. § 38-1-122(1) (West 2016); ARIZ. REV. STAT. § 12-1129 (2005); VT. STAT. ANN. tit. 19, § 505(d)(1) (West 2015).
- ⁴⁰ OKLA. STAT. ANN. tit. 27, § 11 (West, Westlaw through 2016); If at least 50% of the property is not acquired. LA. REV. STAT. ANN. § 19:201 (West, Westlaw through 2016); DEL. CODE ANN. tit. 29 § 9503 (West, Westlaw through 2016); NEB. REV. STAT. ANN. § 76-726 (West, Westlaw through 2016).
- ⁴¹ Michigan; California; Pennsylvania; Minnesota; Mississippi; Illinois; New York; South Carolina; Alabama; Louisiana; Oklahoma; Hawaii; Ohio; Missouri; Indiana; Georgia; Wisconsin; Nebraska; North Dakota; North Carolina; South Dakota; Tennessee; New Jersey; Virginia; Maryland; Delaware; Connecticut; Alaska; Idaho; Maine; Nevada; Oregon; Utah; Wyoming; and Vermont.
- ⁴² If the condemnor took property after denying there was a taking and making no offer. N.Y. EM. DOM. PROC. LAW § 702(C) (McKinney 1987); if the taking was unconstitutional. TENN. CODE ANN. § 12-1-205 (West 1994); if landowner successfully challenges necessity or public use of condemnation. OHIO REV. CODE ANN. § 163.09(G) (West 2007); if condemnor exceeds bounds or use of property condemned. MO. ANN. STAT. § 523.283 (West 2006).
- ⁴³ OR. REV. STAT. § 35.346(7)(b) (West, Westlaw through 2016) (technically requires the initial offer to be in good faith); MO. REV. STAT. § 523.256 (West, Westlaw through 2016).
- ⁴⁴ CAL. CIV. PROC. CODE § 1250.410(b) (West, Westlaw through 2016).
- ⁴⁵ The term “benefits” means the difference, exclusive of interest and costs, between the final judgment and the last written offer. FLA. STAT. § 73.092(1)–(2) (West, Westlaw through 2016).
- ⁴⁶ 735 ILL. COMP. STAT. ANN. 30/10-5-65(A) (West, Westlaw through 2016).
- ⁴⁷ N.H. REV. STAT. ANN. § 498-A:26-b (West, Westlaw through 2016).
- ⁴⁸ N.D. CENT. CODE § 32-15-32 (West, Westlaw through 2016).
- ⁴⁹ OHIO REV. CODE ANN. §§ 163.62(A), 163.09(G), 163.21(A), (C) (West, Westlaw through 2016).
- ⁵⁰ 26 PA. CONS. STAT. ANN. § 710 (West, Westlaw through 2016).
- ⁵¹ ARIZ. REV. STAT. ANN. § 12-1135(B)–(C) (West, Westlaw through 2016).
- ⁵² DEL. CODE ANN. tit. 7, § 6810 (West, Westlaw through 2016).
- ⁵³ MISS. CODE ANN. § 11-27-37 (West, Westlaw through 2016).
- ⁵⁴ S.C. CODE ANN. § 28-2-510(A) (West, Westlaw through 2016).
- ⁵⁵ W. VA. CODE ANN. § 54-3 (West, Westlaw through 2016).
- ⁵⁶ Rhode Island and Kentucky.
- ⁵⁷ CONN. GEN. STAT. ANN. § 48-26 (West, Westlaw through 2016).
- ⁵⁸ GA CODE ANN. § 22 (West, Westlaw through 2016); DEL. CODE ANN. tit. 10 § 6102-15 (West, Westlaw through 2016).
- ⁵⁹ TEX. PROP. CODE § 21.042 (LexisNexis, Lexis through the 2015 reg. sess., 84th Leg.).
- ⁶⁰ Id.
- ⁶¹ MO. REV. STAT. §§ 523.001(2), .039(3) (West, Westlaw through 2016).
- ⁶² MO. ANN. STAT. §§ 523.001(2), .061, .039(3) (West, Westlaw through 2016).
- ⁶³ MO. ANN. STAT. § 523.001(2) (West, Westlaw through 2016).
- ⁶⁴ MO. ANN. STAT. §§ 523.061, .001(3), .039(2), .001(3) (West, Westlaw through 2016); IND. CODE ANN. § 32-24-4.5-8(2)(A) (West, Westlaw through 2016).
- ⁶⁵ IND. CODE ANN. § 32-24-4.5-8(1)(A) (West, Westlaw through 2016).
- ⁶⁶ TEX. PROP. CODE § 21.042 (LexisNexis, Lexis through the 2015 reg. sess., 84th Leg.).
- ⁶⁷ MICH. COMP. LAWS ANN. § 213.54(1) (West 1996).
- ⁶⁸ This chart is supported by the following: ALASKA STAT. ANN. § 09.55.310 (West 1968); IND. CODE ANN. § 32-24-1-9(c), (f) (West 2013); S.C. CODE ANN. § 28-2-340 (1987); IOWA CODE ANN. § 6B.45; Iowa Civil Jury Instructions 2500.6; UTAH CODE ANN. § 78B-6-511 (West, Westlaw through 2016); CAL. CIV. PROC. CODE §§ 1263.320.26, .510, .250 (West, Westlaw through 2016); PA. STAT. ANN. § 1105(2)(iv) (West, Westlaw through 2016); WYO. STAT. ANN. § 1-26-709(d) (West, Westlaw through 2016); MONT. CODE ANN. § 70-30-313 (1983); OHIO REV. CODE ANN. § 163.60(B) (West, Westlaw through 2016); NEB. REV. STAT. ANN. § 76-710 (West, Westlaw through 2016); TENN. CODE ANN. § 29-17-1004 (West, Westlaw through 2016).
- ⁶⁹ ALASKA STAT. ANN. § 09.55.310 (West 1968); ARIZ. REV. STAT. § 12-1122 (2002); KAN. STAT. ANN. § 26-513(b) (West 1999); WYO. STAT. ANN. §§ 1-26-711(a), -714 (West 2007).
- ⁷⁰ Annual Right-of-Way Statistics, U.S. DEP’T OF TRANSP., http://www.fhwa.dot.gov/real_estate/uniform_act/stats/ (last visited Jan. 18, 2017); Lewis L. Isaacks, Partner, Gay, McCall, Isaacks & Roberts, P.C., Address at Texas A&M School of Law (Oct. 4, 2016).

⁷¹ WASH. REV. CODE ANN. § 8.12.050 (West, Westlaw through 2016).

⁷² ARIZ. REV. STAT. § 12-1116 (West, Westlaw through 2016) (“... at least twenty days before filing an action for condemnation of property or any interest in property, the plaintiff shall deliver to the property owner of record and as a courtesy to the sole lessee of record, if applicable, according to the records of the county recorder in the county in which the property is located: 1. A written offer to purchase the property . . . 2. One or more appraisals that support the amount of the proposed compensation.”).

⁷³ *Id.*

⁷⁴ MD. CODE ANN., REAL PROP. § 12-207 (West, Westlaw through 2016) (“without at least 90 days’ written notice from the displacing agency concerned.”).

⁷⁵ COLO. REV. STAT. § 38-1-121 (West, Westlaw through 2016); CONN. GEN. STAT. § 48-12 (West, Westlaw through 2016); DEL. CODE ANN. tit. 29, § 9505 (West, Westlaw through 2016); 735 ILL. COMP. STAT. ANN. 30/10-5-15 (West, Westlaw through 2016); KY. REV. STAT. § 416.550 (West, Westlaw through 2016); MD. CODE ANN., REAL PROP. § 12-207 (West, Westlaw through 2016); MONT. CODE ANN. § 70-30-111 (West 2013); NEB. REV. STAT. ANN. § 76-702 (West, Westlaw through 2016); N.H. REV. STAT. ANN. § 498-A:4 (West, Westlaw through 2016); N.M. STAT. ANN. § 42A-1-4 (West, Westlaw through 2016); N.D. CENT. CODE § 32-15-06.1 (West, Westlaw through 2016); OR. REV. STAT. ANN. § 35.235 (West, Westlaw through 2016); S.C. CODE ANN. § 28-2-70 (West, Westlaw through 2016); UTAH CODE ANN. § 78B-6-505 (West, Westlaw through 2016).

⁷⁶ ARK. CODE ANN. § 18-15-103(b)(6) (West, Westlaw through 2016); FLA. STAT. ANN. § 73.015 (West, Westlaw through 2016); IDAHO CODE § 7-707(7) (West, Westlaw through 2016); IOWA CODE § 6B.2B (West, Westlaw through 2016); LA. REV. STAT. ANN. § 19:2 (West, Westlaw through 2016); MICH. COMP. LAWS SERV. § 213.55 (West, Westlaw through 2016); MINN. STAT. ANN. § 117.036 (West, Westlaw through 2016); MO. REV. STAT. § 523.256 (West, Westlaw through 2016); OKLA. STAT. tit. 27, § 18 (West, Westlaw through 2016); WYO. STAT. ANN. § 1-26-509(a) (West, Westlaw through 2016).

⁷⁷ TEX. PROP. CODE § 21.0113 (West, Westlaw through 2016).

⁷⁸ ALA. CODE § 18-1A-21 (West, Westlaw through 2016); DEL. CODE ANN. tit. 29, § 9505(2) (West 2009); IOWA CODE § 6B.54(2) (West 2008); MD. CODE ANN., REAL PROP. § 12-207(c)(1) (West, Westlaw through 2016); MICH. COMP. LAWS ANN. § 213.54(3) (West, Westlaw through 2016); MINN. STAT. ANN. § 117.036 (West 2015); OKLA. STAT. tit. 27, § 13(2) (West, Westlaw through 2016); UTAH CODE ANN. § 78B-6-505(1)(b)(ii)(2)(b) (West 2014).

⁷⁹ See, e.g., WIS. STAT. ANN. §§ 32.05(2)(b) (2015).

⁸⁰ N.M. STAT. ANN. § 42A-1-5(A)(3) (1980).

⁸¹ ARIZ. REV. STAT. § 12-1116(A)(2) (West, Westlaw through 2016); CAL. GOV’T CODE § 7267.2(b) (West 2009); CONN. GEN. STAT. § 8-129(a)(2) (West 2012); DEL. CODE ANN. tit. 29, § 9505(2) (West 2009); FLA. STAT. ANN. § 73.015(1) (West, Westlaw through 2016); MICH. COMP. LAWS SERV. § 213.55(1) (West 2006); MINN. STAT. ANN. § 117.036 (West 2015); N.M. STAT. ANN. § 42A-1-4(B) (1980); OHIO REV. CODE ANN. § 163.04(C) (West 2007).

⁸² See MISS. CODE ANN. § 11-27-7 (West 1991).

⁸³ N.J. STAT. § 20:3-12(d) (West 1971).

⁸⁴ TEX. PROP. CODE ANN. § 21.0112 (West 2011) (“Not later than the seventh day before the date a governmental or private entity with eminent domain authority makes a final offer to a property owner to acquire real property, the entity must send by first-class mail or otherwise provide a landowner’s bill of rights statement.”); FLA. STAT. ANN. § 73.015(4) (West, Westlaw through 2016); IOWA ADMIN. CODE R. 61-34.1(78GA,HF476) (1999); MO. ANN. STAT. § 523.250 (West 2006); MONT. CODE ANN. § 70-30-203(2) (West 2013); N.C. GEN. STAT. ANN. § 40A-40 (West 1999); OHIO REV. CODE ANN. § 163.041 (West 2007); OKLA. STAT. ANN. tit. 27, § 18 (West 2012); UTAH CODE ANN. § 78B-6-505(3)(b)(i) (West 2014); VT. STAT. ANN. tit. 19, §§ 502, 502(d) (West 2012); WIS. STAT. ANN. § 32.26 (West 2011); WYO. STAT. ANN. § 1-26-509 (West 2013).

⁸⁵ MONT. CODE ANN. § 70-30-203(2) (West 2013).

⁸⁶ TEX. PROP. CODE § 21.0113 (West 2011); ARIZ. REV. STAT. § 12-1116(A) (2004); ARK. CODE ANN. § 18-15-103(b)(6) (West 2015).

⁸⁷ ARK. CODE ANN. § 18-15-103(b)(11) (West 2015) (“a property owner shall be entitled to an award of the property owner’s costs, expenses, and reasonable attorney’s fees incurred in preparing and conducting the final hearing and adjudication, including without limitation the cost of appraisals and fees for experts if the compensation ultimately awarded exceeds the condemning entity’s initial assessment of the just compensation owed by twenty percent (20%) or more.”).

⁸⁸ OKLA. STAT. tit. 27, § 11 (West 1975) (“If the award of the jury exceeds the award of the court appointed commissioners by at least ten percent (10%), the owner . . . may be paid such sum as in the opinion of the court will reimburse such owner for his reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings.”).

⁸⁹ CAL. CIV. PROC. CODE § 1268.610 (West 2001) (“the court shall award the defendant his or her litigation expenses whenever: The proceeding is wholly or partly dismissed for any reason.”).

⁹⁰ LA REV. STAT. ANN. § 19:2 (West 2012); ALA. CODE § 18-1A-71 (West, Westlaw through 2016); MICH. COMP. LAWS SERV. § 213.55(1) (West, Westlaw through 2016).

⁹¹ S.D. CODIFIED LAWS § 21-35-24; MONT. CODE ANN. § 70-30-203 (West 2013).

⁹² IND. CODE ANN. §§ 32-24-1-7(a), -7(b), -12, -14(b) (West 2006).

⁹³ MONT. CODE ANN. § 70-30-202 (West 2013).

⁹⁴ WIS. STAT. ANN. § 32.05(3) (West, Westlaw through 2016).

⁹⁵ MICH. COMP. LAWS ANN. § 213.3 (West, Westlaw through 2016).

⁹⁶ ME. REV. STAT. tit. 35-A, § 6505(1) (West, Westlaw through 2016); GA CODE ANN. § 22-2-61(a) (West, Westlaw through 2016); IND. CODE ANN. §§ 32-24-1-4(b)–(c) (West 2013).

- ⁹⁷ MISS. CODE ANN. § 11-27-11 (West, Westlaw through 2016).
- ⁹⁸ N.Y. EM. DOM. PROC. LAW § 512(b) (McKinney).
- ⁹⁹ N.M. STAT. ANN. §§ 42-1-4, -5(A), -2-6(A), -2-12 (West, Westlaw through 2016).
- ¹⁰⁰ CAL. CIV. PROC. CODE § 1255.410(a), (d)(2)(C), (e)(1)(A)–(B) (West, Westlaw through 2016).
- ¹⁰¹ See 735 ILL. COMP. STAT. ANN. 30/20-5-5(b), -5-10(a), (c) (West, Westlaw through 2016).
- ¹⁰² IND. CODE ANN. §§ 32-24-1-7(c), -9, -11(a)–(c) (West 2006).
- ¹⁰³ S.C. CODE ANN. §§ 28-2-250(A)–(C), -260(A) (1976).
- ¹⁰⁴ MICH. COMP. LAWS § 213.55(4) (West, Westlaw through 2016); WIS. STAT. ANN. § 32.06(7) (West, Westlaw through 2016); MASS. GEN. LAWS ANN. ch. 79, § 8A (West, Westlaw through 2016).
- ¹⁰⁵ LA. REV. STAT. ANN. § 19:3 (West, Westlaw through 2016); N.Y. EM. DOM. PROC. LAW § 207(C) (West, Westlaw through 2016); CAL. CIV. PROC. CODE § 1250.360 (West, Westlaw through 2016).
- ¹⁰⁶ ALASKA STAT. ANN. § 09.55.450 (West, Westlaw through 2016); HAW. REV. STAT. ANN. § 101-28 (West, Westlaw through 2016).
- ¹⁰⁷ ALASKA STAT. ANN. § 09.55.450 (West, Westlaw through 2016); MICH. COMP. LAWS § 213.59(1) (West, Westlaw through 2016).
- ¹⁰⁸ N.Y. EM. DOM. PROC. LAW § 402(A) (West, Westlaw through 2016).
- ¹⁰⁹ MONT. CODE ANN. §§ 70-30-104(2), -102 (2009); MONT. CONST. art. II, §§ 3, 29; *City of Bozeman v. Vaniman*, 869 P.2d 790, 792 (1994).
- ¹¹⁰ VA. CONST. art. I, § 11 (2013).
- ¹¹¹ GA. CODE ANN. § 2-6-41 (West 1960).
- ¹¹² KY. REV. STAT. ANN. § 278.020 (West 2016).
- ¹¹³ S.C. CODE ANN. § 28-30-20 (West, Westlaw through 2016).
- ¹¹⁴ TEX. NAT. RES. CODE ANN. § 111.019 (West 1993).
- ¹¹⁵ Application for Permit to Operate A Pipeline in Texas, PIPELINE SAFETY DIV., PERMITS SEC., R.R. COMM’N OF TEX., <http://www.rrc.state.tx.us/media/8016/t-4.pdf> (last visited Jan. 18, 2017); Tiffany Dowell, *Eminent Domain in Texas (Part 3)—Oil and Gas Pipelines*, TEX. AGRIC. L. BLOG (Mar. 31, 2014), <http://agrilife.org/texasaglaw/2014/03/31/eminant-domain-in-texas-part-3-oil-and-gas-pipelines>.
- ¹¹⁶ MO. ANN. STAT. § 523.262 (West, Westlaw through 2016).
- ¹¹⁷ MD. CONST. art. III, §§ 40A, 40B (West, Westlaw through 2016).
- ¹¹⁸ N.M. STAT. ANN. § 18-6-10 (1969); HAW. REV. STAT. ANN. § 101-4, 41 (West, Westlaw through 2016).
- ¹¹⁹ ALA. CODE § 18-1A-270 (West, Westlaw through 2016); N.J. STAT. ANN. § 20:1-3.11 (West 1970).
- ¹²⁰ IOWA CODE ANN. §§ 476A.2, 478.2, 479B.4, 479.5 (West 2001).
- ¹²¹ ALA. CODE § 18-1A-270 (West, Westlaw through 2016); S.D. CODIFIED LAWS § 49-16A-75 (West, Westlaw through 2016); MASS. GEN. LAWS ANN. ch. 79, § 2 (West, Westlaw through 2016).
- ¹²² *Kelo v. City of New London*, 545 U.S. 469, 472, 74–77 (2005).
- ¹²³ TEX. GOV’T CODE ANN. § 2206.001 (West 2011).
- ¹²⁴ TEX. CONST. art. I, § 17(b).
- ¹²⁵ FLA. CONST. art. X, § 6(c) (allowing “economic development” taking only with approval of three-fifths of each house of the legislature).
- ¹²⁶ MO. REV. STAT. § 523.271 (2006); VT. STAT. ANN. tit. 12, § 1040 (2005).
- ¹²⁷ TEX. GOV’T CODE ANN. § 2206.001(b)(3) (West 2011).
- ¹²⁸ DEL. CODE ANN. tit. 29, § 9501A(d) (2009).
- ¹²⁹ FLA. CONST. art. X, § 6(c) (2006).
- ¹³⁰ TEX. CONST. art. I, § 17(b) (2009); TEX. GOV’T CODE ANN. § 2206.001(b)(1) (West 2011).
- ¹³¹ See, e.g., NEV. REV. STAT. § 37.010(2)(a) (2013).
- ¹³² See, e.g., MISS. CODE ANN. § 11-27-41 (1972).
- ¹³³ See, e.g., R.I. GEN. LAWS § 39-1-31 (1956).
- ¹³⁴ See IND. CODE § 32-24-4.5-7 (2006).
- ¹³⁵ See, e.g., COLO. REV. STAT. § 38-1-101(2)(b) (2006).
- ¹³⁶ See, e.g., ARIZ. REV. STAT. ANN. § 12-1132(B) (2006).
- ¹³⁷ See TEX. GOV’T CODE ANN. §§ 2206.001(b), (c) (West 2011).
- ¹³⁸ Glen Hegar, *Comptroller’s Online Eminent Domain Database (COEDD)*, TEX. COMPTROLLER OF PUB. ACCTS., <http://coedd.cpa.texas.gov> (last visited Jan. 18, 2017).
- ¹³⁹ See Senate Bill 18 Lookup Tool, TrackingTX.org, <http://www.trackingtx.org/index.php/sb18report/search> (last visited Nov. 16, 2016).
- ¹⁴⁰ “[N]or shall private property be taken for public use, without just compensation” U.S. CONST. amend. V (emphasis added)—the Founders created a mechanism by which the government could take private property, implying that in some circumstances, the public good trumps the private right.
- ¹⁴¹ Alaska, Colorado, Delaware, Georgia, Louisiana, Maryland, Mississippi, Nebraska, North Carolina, Tennessee, and Washington.
- ¹⁴² ME. REV. STAT. tit. 23, § 153(4) (West, Westlaw through 2016); CONN. GEN. STAT. ANN. § 48-17a (West 2016); HAW. REV. STAT. ANN. § 101-27 (West 1984); NEV. REV. STAT. ANN. § 37.180(1) (West 2015); MO. ANN. STAT. § 523.259 (West 2006). ARIZ. REV. STAT. § 12-1129 (West 2005).
- ¹⁴³ WIS. STAT. ANN. § 32.28(3) (West, Westlaw through 2016).

- ¹⁴⁴ MICH. COMP. LAWS ANN. § 213.68(1) (West 1996).
- ¹⁴⁵ ALA. CODE §§ 18-1A.215, .231–.232 (West, Westlaw through 2016); KAN. STAT. ANN. § 26-507(b) (West, Westlaw through 2016) (payment required within 30 days); FLA. STAT. ANN. § 73.111 (West, Westlaw through 2016).
- ¹⁴⁶ N.J. STAT. ANN. § 20:3-35 (West, Westlaw through 2016); CAL. CIV. PROC. CODE §§ 1268.510(a), .420 (West 2001).
- ¹⁴⁷ S.D. CODIFIED LAWS § 31-19-35 (West, Westlaw through 2016); 735 ILL. COMP. STAT. ANN. 30/20-5-40 (West, Westlaw through 2016); S.C. CODE ANN. § 28-2-230(B) (West, Westlaw through 2016).
- ¹⁴⁸ NEV. REV. STAT. ANN. § 37.180(2) (West 2015).
- ¹⁴⁹ R.I. GEN. LAWS ANN. §§ 38-6-8, 39-6-8 (West, Westlaw through 2016).
- ¹⁵⁰ ARK. CODE ANN. § 18-15-1007 (West 1945).
- ¹⁵¹ N.Y. EM. DOM. PROC. LAW. § 406 (West, Westlaw through 2016); FLA. STAT. ANN. § 73.013(1)(f) (West, Westlaw through 2016); N.H. REV. STAT. ANN. § 498-A:12 (West, Westlaw through 2016).
- ¹⁵² ME. REV. STAT. ANN. tit. 1, § 815 (West, Westlaw through 2016); KY. REV. STAT. ANN. § 416.670(1) (West, Westlaw through 2016); VT. STAT. ANN. tit. 19, § 31 (West, Westlaw through 2016); 45 R.I. GEN. LAWS ANN. § 45-50-13(3) (West, Westlaw through 2016).
- ¹⁵³ N.Y. EM. DOM. PROC. LAW. § 406 (West, Westlaw through 2016); N.H. REV. STAT. ANN. § 498-A:12 (West, Westlaw through 2016).
- ¹⁵⁴ IND. CODE ANN. § 32-24-1-15 (West, Westlaw through 2016).
- ¹⁵⁵ IOWA CODE ANN. § 478.15 (West, Westlaw through 2016); NEV. REV. STAT. ANN. § 37.180 (West, Westlaw through 2016); WYO. STAT. ANN. § 1-26-515 (West, Westlaw through 2016).
- ¹⁵⁶ MASS. GEN. LAW. ANN. 79, § 43 (West, Westlaw through 2016); N.M. STAT. ANN. §§ 42A-3-1, 42A-1-33 (West 1997); MINN. STAT. ANN. § 117.225 (West, Westlaw through 2016).
- ¹⁵⁷ MONT. CODE ANN. §§ 70-30-321, -322 (West 2013); R.I. GEN. LAWS ANN. § 37-7-3 (West, Westlaw through 2016).
- ¹⁵⁸ S.D. CODIFIED LAWS §§ 49-16A-115, 5-2-11.1 (West, Westlaw through 2016); N.D. CENT. CODE ANN. § 49-09-04.2 (West, Westlaw through 2016).
- ¹⁵⁹ Fair Market Value or price paid by condemnor. FLA. STAT. ANN. § 73.013(1)(f) (West, Westlaw through 2016).
- ¹⁶⁰ Interest reverts back to landowner.
- ¹⁶¹ Landowner may bring a forfeiture action.
- ¹⁶² Price equivalent to highest bid at auction.
- ¹⁶³ Price paid by condemnor.
- ¹⁶⁴ Price paid by condemnor plus 6% interest per annum.
- ¹⁶⁵ Title automatically reverts back to landowner.
- ¹⁶⁶ Price paid by condemnor plus 6% interest per annum.
- ¹⁶⁷ Property vests to municipality.
- ¹⁶⁸ MO. ANN. STAT. § 523.282(1) (West, Westlaw through 2016).
- ¹⁶⁹ MO. ANN. STAT. § 523.283 (West, Westlaw through 2016).
- ¹⁷⁰ MO. ANN. STAT. § 523.265 (West, Westlaw through 2016).
- ¹⁷¹ MO. ANN. STAT. § 523.277 (West, Westlaw through 2016).
- ¹⁷² 26 PA. STAT. & CONS. STAT. ANN. §§ 711, 902–04 (West, Westlaw through 2016).
- ¹⁷³ MD. CODE ANN., PUB. UTIL. §§ 5-403, -404 (West, Westlaw through 2016).
- ¹⁷⁴ ALA. CODE § 18-1A-191 (West, Westlaw through 2016).
- ¹⁷⁵ N.M. STAT. ANN. §§ 8-6-6, 67-12-14 (West, Westlaw through 2016).
- ¹⁷⁶ S.C. CODE ANN. § 28-2-110 (West, Westlaw through 2016).
- ¹⁷⁷ OKLA. STAT. ANN. tit. 27, § 10 (West, Westlaw through 2016).
- ¹⁷⁸ VT. STAT. ANN. tit. 30, §§ 248(a)–(b) (West, Westlaw through 2016).
- ¹⁷⁹ VT. STAT. ANN. tit. 30, §§ 248(b), 111 (West, Westlaw through 2016).
- ¹⁸⁰ WIS. STAT. ANN. § 32.075 (West, Westlaw through 2016).
- ¹⁸¹ MONT. CODE ANN. § 70-30-321(3) (West 1981).
- ¹⁸² ALA. CODE § 18-1A-172 (West, Westlaw through 2016).
- ¹⁸³ IND. CODE ANN. § 32-24-4.5-8 (West, Westlaw through 2016).
- ¹⁸⁴ KAN. STAT. ANN. § 26-513(d) (West, Westlaw through 2016).
- ¹⁸⁵ ALA. CODE § 18-1a-215 (1985).
- ¹⁸⁶ FLA. STAT. ANN. § 73.111 (1978).
- ¹⁸⁷ TEX. GOV'T CODE ANN. § 2206.001 (West, Westlaw through 2016).
- ¹⁸⁸ DEL. CODE ANN. tit. 29, § 9501A (West, Westlaw through 2016).
- ¹⁸⁹ COLO. REV. STAT. ANN. § 38-1-101(2)(b) (West, Westlaw through 2016).
- ¹⁹⁰ OKLA. STAT. ANN. tit. 27, § 7(B) (West 2011).