

## CONDEMNATION OF LAND FOR PUBLIC USE

"Eminent Domain" is one of the "rights" a sovereign government has - to take private property for public use. The Alabama Constitution [1901 Ala. Const. Art. 1, §23] provides that just compensation must be paid to the landowner. The Alabama Constitution also provides for the exercise of eminent domain by cities, counties and other corporations and individuals vested with the right to take property for public use. [1901 Ala. Const. Art. XII, ' 235]. Jurisdiction to condemn privately owned land rests in the Probate Court. The Judge of Probate receives petitions for condemnation, conducts the necessary proceedings and issues the final condemnation order. In addition to condemnation for public uses, this jurisdiction extends to the erection of dams for mills, gins or factories, and to rights-of-way for private owners.

### I PROCEDURE PRIOR TO COMMENCEMENT OF CONDEMNATION ACTION

#### A. Appraisal

Before beginning a condemnation action, a condemnor must have the property appraised to determine the amount that would constitute just compensation for the taking. The owner or the owner's representative must be given a reasonable opportunity to accompany the appraiser during the inspection of the property.

#### B. Offer

Before beginning a condemnation action, a condemnor must offer the owner an amount believed to be just compensation. The condemnor shall provide the owner with a written statement and a written summary showing the basis for the amount determined to be just compensation.

#### C. Payment Or Deposit Before Surrender Of Property

An owner is not required to surrender possession of the property before the condemnor either pays the agreed purchase price or deposits the amount awarded.

#### D. Notice

Except in an emergency, a condemnor may not require an occupant of the condemned property to move prior to a 90 day notice of the move.

#### E. Uneconomic Remnant

If the acquisition of part of the property would leave the owner with an uneconomic remnant, the condemnor must offer to buy the remnant.

#### F. Entry

A condemnor and its agents may enter the property for a reasonable time to make suitability studies unless good cause to the contrary is shown.

#### G. Offer As Prerequisite

The condemnor must offer to acquire the property at its approved offer before commencing the condemnation action.

## II COMMENCEMENT OF CONDEMNATION ACTION

### A. Filing Complaint

A condemnation action is begun by filing a complaint in the Probate Court in the county in which the property is located.

### B. Service of Process

When the complaint has been filed, the Probate Court must set a date for the hearing and issue notice to the owner unless notice has been waived.

### C. Owner's Response

The owner may respond to the complaint, but is not required to do so unless he challenges the right to condemn, disputes the area to be acquired or remain, or wishes to raise preliminary objections to the condemnor's procedure.

## III DETERMINATION OF VALUE OF PROPERTY/DAMAGES SUSTAINED BY OWNER - PROCEDURE RELATING TO PAYMENT - APPEAL OF DECISION

### A. Appointment of Commissioners

Within 10 days after granting the complaint, the Judge of Probate must appoint 3 citizens to serve as commissioners. Commissioners must be eligible to serve as jurors in Clarke County and must be disinterested in the case. In other words, the commissioners can not have a relationship with the condemnor or the owners.

### B. Commissioners' Hearing And Assessment Of Damages

The commissioners must hold a hearing to receive evidence relating to compensation. Notice of the hearing must be given to the parties. Once a date is set, the chairman should contact the attorney of record for the condemnor, so that said attorney can send notice of the hearing to all other interested parties.

### C. Commissioners' Report

Within 20 days from their appointment, the commissioners must make a written report to the Probate Court stating the amount of damages and compensation ascertained. Within 7 days of receipt of the commissioners' report, the Probate Court must issue an order recording the report and condemning the property upon payment or deposit into Probate Court the damages and compensation assessed.

### D. Payment of Damages and Compensation

The condemnor may pay the damages and compensation assessed at any time within 90 days after the assessment thereof, or, in case an appeal is taken, within 60 days after the appeal is determined. If the condemnor fails to pay on a timely basis, such assessment shall cease to be binding on the owner of the lands or other interested parties and the complaint shall be dismissed, with the condemnor being liable to the owner of the lands for all damages the latter may have sustained by the institution of the proceedings, including a reasonable attorney's fee for defending the same.

#### E. Appeal To Circuit Court

Within 30 days of the order of condemnation, any party may appeal the order to the Circuit Court for a new trial.

#### F. Amount of Damages

##### 1. "Fair Market Value"

The term "fair market value" has been 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."

##### 2. Before And After Value

In a partial taking, the owner is entitled to the difference between the fair market value of the entire property before the taking and the fair market value of the remainder after the taking.

##### 3. Incidental Benefits

The amount of compensation a landowner may be entitled to receive may not be reduced because of any incidental benefits which may accrue to the remaining land. However, in condemnation of lands for rights-of-way for public highways, water or sewer lines, the value of the enhancement to the remaining lands of the landowner may be considered in fixing the amount of compensation to be awarded the owner.

##### 4. Highest And Best Use

The owner is entitled to consideration for condemnation on the basis of the highest and best use to which the property could be put, even though not presently being so used.

##### 5. Taking

An owner is not required to surrender possession of property before the condemnor: (a) pays the agreed purchase price; or (b) pays or deposits the amount awarded by the condemnation order together with interest thereon as prescribed in the order.

#### IV PROCEDURE UTILIZED BY COMMISSIONERS IN DISCHARGE OF THEIR DUTIES

##### A. Appointment

The Probate Court appoints the commissioners. The appointment is made on a rotational basis from a list prepared by the Judge of Probate.

##### B. Chairman of Commission

The Probate Court will appoint one of the commissioners to serve as chairman of the commission. The Chairman is responsible for making the arrangements with the other commissioners and advising the condemnor (or its attorney of record), concerning the date, time and location for the viewing of the property and the time and date of the commissioners'

hearing.

C. Viewing Of Property

The commissioners will physically go to the property in question and view it prior to their hearing.

D. Commissioners' Hearing

The commissioners will conduct an informal hearing in a conference room at the Probate Court. All interested parties should be afforded an opportunity to make their presentation to the commissioners in the presence of the other interested parties.

E. Format Of Commissioners' Meeting

1. Chairman of Commission calls the meeting to order and introduces the other commissioners to all interested parties.
2. The lawyer for the condemnor presents expert testimony as to the property to be taken, the estimated value of the property and whether any uneconomic remnant exists. At this time the condemnor's damage award offer is disclosed. The commissioners and the interested parties may ask questions of the testifying witnesses.
3. The owner or the lawyer of the owner presents testimony as to the property to be taken, the estimated value of the property and whether an uneconomic remnant exists. The owner or his lawyer can comment about the condemnor's damage award offer.
4. After all evidence and testimony is obtained, all parties exit and the commissioners meet in private to determine the award to be given to the owner.
5. The condemnor (or its attorney of record) prepares and furnishes a written report for the commissioners to use in reporting to the Probate Court their findings and decision as to the award.
6. The commissioners present their report to either the Judge of Probate or the Chief Clerk and are "sworn out." The oath utilized is: "In the matter of [style of case], each of you have been previously sworn as commissioners; you now render unto the Court your report of money damages due to the defendants (or parties) which is based upon the evidence and testimony presented to you; that such damages are (state each parcel or tract by name or number and the amount entered in the report); so say each of you? (each commissioner should respond affirmatively)."
7. At the time the report is submitted to the Judge of Probate or Chief Clerk, the commissioners will advise as to how much time they have expended with regard to that particular matter. The current rate utilized is \$80.00 per hour with a \$200.00 minimum fee. If the commissioners have any extraordinary expenses (such as attorney's fees), they should present written documentation to support the same to the Judge of Probate or Chief Clerk. The commissioners' fee is paid by the condemnor as a part of court costs.

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