

### Background

“The process of acquiring private property for public use is called eminent domain or condemnation. When property is taken, the owner has a constitutional right to receive fair compensation.”<sup>1</sup>

Utah statutes allow “most governmental agencies and some private parties like utility companies and railroads” to exercise eminent domain.<sup>2</sup> If the property owner contests the condemnation or does not accept the offered price, the condemning agency “may file an action with a court, seeking an order forcing the property owner to transfer ownership.”<sup>3</sup>

A condemning party must follow statutory requirements.<sup>4</sup> The two most important requirements that are required by the U.S. and Utah Constitutions are that 1) the property must be for a public use and 2) the condemning party must pay just compensation.<sup>5</sup> Public use generally means the property will be used for a public purpose. Utah Code lists acceptable public uses including roads, buildings, schools, and parks.<sup>6</sup> Just compensation has been defined by the U.S. Supreme Court as the “market value of the property at the time of the taking”<sup>7</sup> unless “market value [is] too difficult to find, or when its application would result in manifest injustice to owner or public.”<sup>8</sup>

Utah has provided property owners additional safeguards. A summary of the process a condemning party must go through to exercise eminent domain is as follows:

1. Provide property owner (fee simple owner) and each record interest holder notice of intent to exercise eminent domain with property rights ombudsman materials and notice of negotiation and appraisal rights.<sup>9</sup>
2. After 30 days from time of notice, begin legal action to acquire property.<sup>10</sup>
  - a. Appraisal required / property owner may accompany appraiser.<sup>11</sup>
  - b. Negotiation required.<sup>12</sup>
3. Property owner has right to speak at initial hearing.<sup>13</sup>
  - a. Condemning party can make a settlement offer at any time.<sup>14</sup>
  - b. Condemning party can file for immediate occupancy to do work on the premises.<sup>15</sup>

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<sup>1</sup> Office of the Property Rights Ombudsman, Takings and Eminent Domain, <https://propertyrights.utah.gov/takings-and-eminent-domain/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; U.S. Const. amend V; Utah Constitution, Article I § 22.

<sup>6</sup> Utah Code Ann. § 78B-6-501.

<sup>7</sup> *Olson v. U.S.*, 54 S.Ct. 704, 709 (1934).

<sup>8</sup> *United States v. Commodities Trading*, 70 S.Ct. 547, 549 (1950).

<sup>9</sup> Utah Code Ann. § 78B-6-505.

<sup>10</sup> Utah Code Ann. § 78B-6-504(2).

<sup>11</sup> Utah Code Ann. § 57-12-13(2)(b).

<sup>12</sup> *Id.*

<sup>13</sup> Utah Code Ann. § 78B-6-509.

<sup>14</sup> *Id.*

<sup>15</sup> Utah Code Ann. § 78B-6-510.

4. Court determines market value of entire parcel or the partial parcel using what a willing buyer and willing seller would consider in determining market value of property as of the date of the summons.<sup>16</sup>
5. Condemning party must pay compensation within 30 days of final judgement.<sup>17</sup>

If the condemning party is a political subdivision, the political subdivision must, in addition to the requirements above:

- Approve an ordinance with guidelines related to eminent domain.<sup>18</sup>
- Approve the condemnation action at a meeting of the governing body.
  - Provide written notice to property owner of the meeting and an opportunity to be heard.<sup>19</sup>
  - Make reasonable effort to negotiate before final approval.<sup>20</sup>

## Eminent Domain Appeals Process

The decision of the district court in an eminent domain decision can be appealed to a court of appeals. The decision of a political subdivision can also be appealed to the legislative body or the body designated to hear appeals within 30 days of the subdivision's final decision.<sup>21</sup>

Before a final court decision, Utah Code provides property owners several options for disputing an eminent domain action. A property owner can request a no-cost mediation or arbitration from the Office of the Property Rights Ombudsman.<sup>22</sup> Either party can request an arbiter outside the property ombudsman's office if the party is willing to pay for the outside arbiter.<sup>23</sup> As part of mediation, the property owner can request an appraisal from an independent appraiser.<sup>24</sup> The condemner must pay the cost of one additional appraisal.<sup>25</sup> The mediator can file a motion for the eminent domain proceedings to be stayed until the mediation takes place.<sup>26</sup>

Property owners can also request an advisory opinion from the Property Rights Ombudsman. The advisory opinion fee is \$150. Both parties must share the cost equally, and the property owner can request a fee waiver if there is a financial hardship.<sup>27</sup>

## Just Compensation for Property Owners

Utah code requires the condemning party to offer the property owner (fee simple owner) an amount that is "reasonably believed to be just compensation."<sup>28</sup> The amount must be measured by an undivided interest in the property and cannot be less than the lowest approved appraisal of fair market value.<sup>29</sup> Any increase or decrease in the value of the property as a result of the eminent domain action cannot factor into fair market value analysis.<sup>30</sup>

<sup>16</sup> Utah Code Ann. §§ 78B-6-511-512.

<sup>17</sup> Utah Code Ann. § 78B-6-514.

<sup>18</sup> Utah Code Ann. § § 63L-4-201.

<sup>19</sup> Utah Code Ann. S 78B-6-504(c)

<sup>20</sup> Utah Code Ann. § 78B-6-505(2)(a).

<sup>21</sup> Utah Code Ann. §§ 10-9a-801; 63L-4-301.

<sup>22</sup> 7 Utah Code Ann. § 8B-6-522.

<sup>23</sup> Utah Code Ann. § 13-43-204.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Utah Code Ann. §§ 13-43-205-206.

<sup>28</sup> Utah Code Ann. § 57-12-13(2)(c).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

The code also requires that, “if the acquisition of only part of the property would leave the fee simple owner with an uneconomic remnant, an offer to acquire the entire property shall be made.”<sup>31</sup> If a “condemning party acquires [an] entire property, just compensation means the fair market value of the property. For a partial acquisition of [the] property, just compensation means the fair market value of any property and improvements actually taken by the condemning party, severance damages, project damages, and compensation for any temporary occupation of the property related to the project.”<sup>32</sup>

The Department of Transportation has passed an administrative rule with factors to consider when purchasing property including title insurance commitment, environmental assessment, engineering assessment, regulatory codes, an appraisal, an analysis of past maintenance and operational expenses, zoning and planning information, and a land survey.<sup>33</sup>

“Once a condemning party gives [the property owner] an appraisal and an offer to purchase [the] property, the burden of proof shifts to [the property owner] to prove that the value of [the] property is different than the amount offered by the condemning party. Often, this proof comes through an appraisal.”<sup>34</sup>

If negotiation fails, a court determines the market value of the taken parcel using what a willing buyer and willing seller would consider in determining market value of property at the date of the summons.<sup>35</sup>

## Property Valuation Appeal

The property owner can request no-cost mediation and one independent, no-cost appraisal from the Property Rights Ombudsman if the owner does not agree with a condemning agency’s offer.<sup>36</sup> Property owners also have “the right to receive a copy of the appraisal obtained by the condemning party as part of the condemnation process.”<sup>37</sup>

Once a court has determined fair market value, the court system is the only avenue for appeal.

## Relocation Assistance

There are state and federal funds available for relocation assistance. State code states that “[n]o person shall be required to move or be relocated from land used for his residence and acquired under any of the condemnation or eminent domain laws of this state until he has been offered a comparable replacement dwelling, including the curtilage, which is a decent, safe, clean, and sanitary dwelling, including the curtilage, adequate to accommodate the occupants, available on the private market, and reasonably accessible to public services and places of employment. If a program or project cannot proceed to actual construction because comparable sale or rental housing is not available and cannot otherwise be made available, such action shall be taken as is

<sup>31</sup> Utah Code Ann. § 57-12-13(2)(i).

<sup>32</sup> Office of the Property Rights Ombudsman, Takings and Eminent Domain, <https://propertyrights.utah.gov/takings-and-eminent-domain/>.

<sup>33</sup> Utah Admin. Code R933-1-4.

<sup>34</sup> Office of the Property Rights Ombudsman, Takings and Eminent Domain, <https://propertyrights.utah.gov/takings-and-eminent-domain/>.

<sup>35</sup> Utah Code Ann. § 78B-6-511-512.

<sup>36</sup> Utah Code Ann. § 57-12-14.

<sup>37</sup> Office of the Property Rights Ombudsman, Takings and Eminent Domain, <https://propertyrights.utah.gov/takings-and-eminent-domain/>.

necessary or appropriate to provide this housing by use of funds authorized for the project.”<sup>38</sup> The agency<sup>39</sup> acquiring the property must reimburse relocation costs.<sup>40</sup>

Farms, nonprofit organizations, and businesses can also be given up to \$50,000 for “reasonable expenses” necessary to relocate.<sup>41</sup>

## Continued Use of Condemned Property

Utah state code states, “[t]he construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least 90 days' written notice from the date by which such move is required.”<sup>42</sup>

If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.”<sup>43</sup>

## Eminent Domain Reversal

If the condemning party does not use the condemned property within the time specified by the court, the property owner may file an action in court to “set aside the condemnation.”<sup>44</sup> If the court finds that the condemning party has not used the property as proposed without a “reasonable justification,” it can reverse the eminent domain. The property owner will be required to return what was compensated minus damages and attorney fees.<sup>45</sup> If damages and attorney fees exceed the compensation given, the court can order the condemning party to pay the difference.<sup>46</sup>

Further, if the condemning party wants to use the property for a use that is different from the public use used to condemn the property, the condemning party is required to offer to sell the property to the property owner for the amount the agency paid the owner.<sup>47</sup> The property owner has 90 days to accept the offer.<sup>48</sup> If a condemning party declares the condemned property surplus, the property owner must be given the first right of refusal to purchase the property.<sup>49</sup>

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<sup>38</sup> Utah Code Ann. § 57-12-7.

<sup>39</sup> Utah Code Ann. § 57-12-3 (includes political subdivision).

<sup>40</sup> Utah Code Ann. § 57-12-5(4).

<sup>41</sup> Utah Code Ann. § 57-12-4.

<sup>42</sup> Utah Code Ann. § 57-12-13(2)(e).

<sup>43</sup> *Id.* § (6).

<sup>44</sup> Utah Code Ann. § 78B-6-520.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Utah Code Ann. § 8B-6-520.3.

<sup>48</sup> *Id.*

<sup>49</sup> Utah Code Ann. § 78B-6-521.

