

Overview of Eminent Domain in Utah

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General Eminent Domain Principles

"Eminent domain," in its simplest terms, is the inherent power of a governmental entity to take privately owned property and convert it to public use. More specifically, "eminent domain" is the power of a governmental entity to take private property for a public use without the owner's consent, conditioned upon the payment of just compensation.

Although just compensation is determined by attempting to approximate the voluntary marketplace, the essence of condemnation is its involuntary, compulsory nature.



American Jurisprudence 2d on Eminent Domain

Constitutional Foundations

From the US Constitution:

“...nor shall private property be taken for public use, without just compensation.”

From the Utah Constitution:

“Private property shall not be taken or damaged for public use without just compensation.”

“No person shall be deprived of life, liberty or property, without due process of law.”



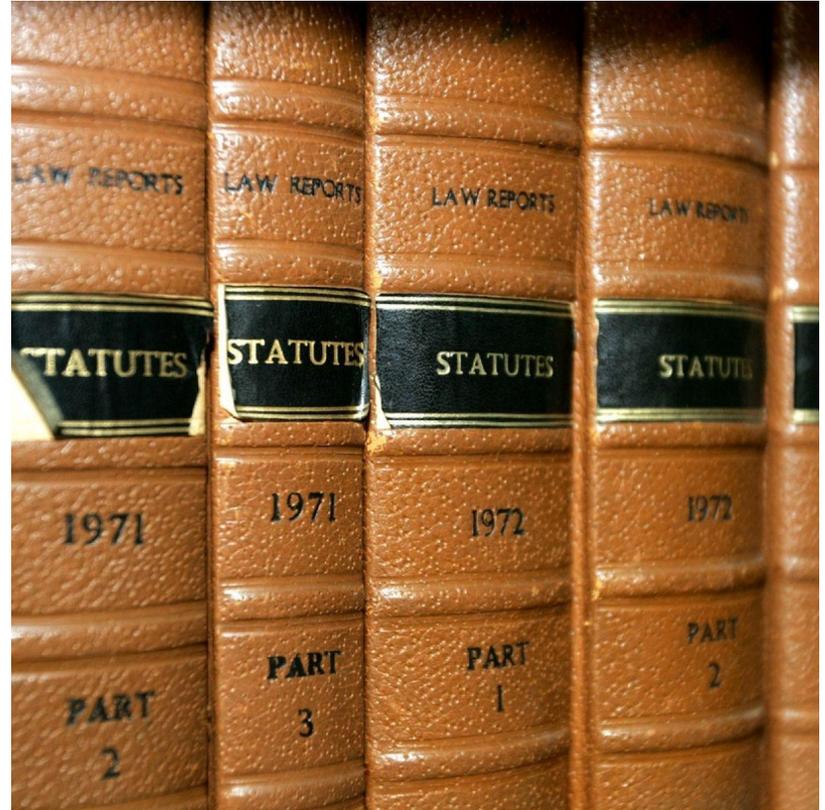
Two Primary Constitutional Limitations on the Exercise of Eminent Domain

1. Eminent domain may only be exercised for a public use
2. When eminent domain is exercised, just compensation must be given for the property taken

Additional Statutory Limitations

Before property can be taken it must appear that:

- The use is a public use authorized by law
- The taking is necessary for that use
- Construction and use of the needed property with commence within a reasonable time



Who Can Use Eminent Domain? For What Purpose?

The power of eminent domain is inherent in the state, but it may only be exercised by government and private entities *by specific grant of authority*.

Historically, the power of eminent domain has been granted by describing the appropriate *uses* of eminent domain.

More recently, statutes have been enacted that specifically focus on the entity that may condemn land for its public purposes.

Either type of delegation works.



Public Uses

Eminent Domain may be exercised on behalf of the following public uses:

- Public uses authorized by the federal government
- Public buildings and grounds for state or local governments
- Water and sewer infrastructure
- Roads and streets, including adjacent sidewalks and bike paths
- Telecommunication systems, electrical lines and infrastructure
- Cemeteries & public parks



More Public Uses

- Uses which will “promote the public interest and tend to develop the resources of the state,” including uses related to:
 - Stream widening and maintenance
 - Railroads
 - Mining infrastructure
 - Milling infrastructure
 - Logging infrastructure
 - Mineral and other types of resource extraction



More Public Uses

“[A]ll other public uses for the benefit of any county, city, or town, or its inhabitants”

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“Eminent domain?! What happened to huffing and puffing?”

Notable Prohibitions on the Use of Eminent Domain

Recent legislation reiterated that eminent domain may not be exercised for “trails, paths or other ways for walking, hiking, bicycling, equestrian use, or other recreational uses, or whose primary purpose is as a foot path, equestrian trail, bicycle path, or walkway.”



Notable Prohibitions on the Use of Eminent Domain

Recent legislation also prohibited the use of eminent domain to condemn “century farms” in counties of the first class (Salt Lake County) for public park uses.

- A century farm is essentially a farm that has been designated as greenbelt and has been “owned or held by the same family for a continuous period of 100 years or more.”



Who Can Use Eminent Domain?

Notable Entities with Specific Grants of Authority

- Department of Transportation (transportation purposes)
- Municipalities (to further their purposes)
- Counties (flood control, streets, other purposes)
- Local districts (for their purposes)
 - Exception: Public Transit Districts



Just Compensation

Fair Market Value

"[C]onsideration must be given to all factors bearing upon such value that a prudent and willing buyer and seller, with knowledge of the facts, would take into account..." *State by Road Comm'n v. Wood*, 452 P.2d 872 (Utah 1969)

Relocation Assistance



Just Compensation

If the taking is a “partial taking,” just compensation includes severance damages (Before & After Test)

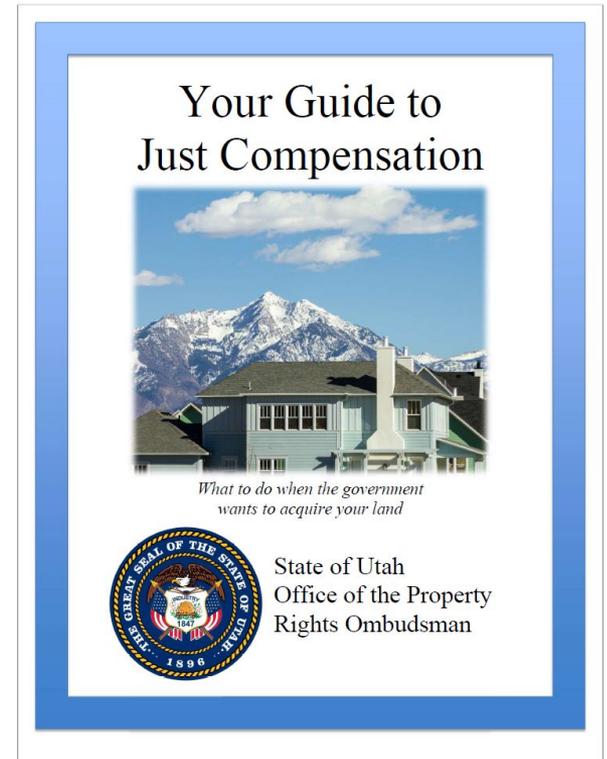


“Cost-to-cure” items

Determining Just Compensation

Under the statute governing the exercise of eminent domain, a condemning entity must provide certain disclosures to a property owner that effectively lay out a potential framework for determining just compensation and reaching resolution in a given case. The condemning entity must disclose, among other things, the following:

- The property owner is entitled to negotiate with the entity over the amount of just compensation before any legal action may be filed
- The property owner is entitled to an explanation of how the compensation offered to them was calculated
- If an appraiser is asked to value the property, the property owner is entitled to accompany the appraiser during the inspection of the property
- The property owner is entitled to discuss their case with the attorneys in the Office of the Property Rights Ombudsman and ask questions about their legal options
- The property owner may request free mediation or arbitration of their dispute with the condemning entity. As part of this process, the property owner may request a free independent valuation of the property



The Role of the Office of the Property Rights Ombudsman

- Advise property owners regarding their rights and options in an Eminent Domain matter
- Advise condemning entities regarding their rights, duties, and responsibilities
- Provide mediation or arbitration services, as requested by the property owner
- Obtain an additional opinion of value, in the form of an additional appraisal, at the condemning entity's cost.



Litigation

- Once the duty to negotiate, mediate, and/or arbitrate has been exhausted, or proves to be insufficient for resolving a dispute over just compensation, the condemning entity may proceed to file a condemnation lawsuit to determine just compensation and transfer the property to the entity pursuing the public use
- The filing of a lawsuit may also be necessary to obtain occupancy of the property to ensure the use may be carried out within necessary timeframes

