

# The Rights of Landowners Under Wisconsin Eminent Domain Law



## Procedures Under Wis. Stat. § 32.05: Highways, Streets, Storm & Sanitary Sewers, Watercourses, Alleys, Airports and Mass Transit Facilities

This brochure provides information on the condemnation process in Wisconsin, including the rights of impacted property owners. More detailed information is available in Wis. Stat. Ch. 32.

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## INTRODUCTION

The Wisconsin Constitution, Article 1, section 13, establishes eminent domain authority, which is the power to take private property for a public purpose with payment of just compensation. The Eminent Domain Law, Wis. Stat. Ch. 32, vests several public and private entities with eminent domain power. Condemnation is the legal process by which the acquiring agency exercises its eminent domain power.

The following are jurisdictional requirements the acquiring agency must obey in order to condemn property. Even if an acquiring agency does not intend to obtain property via condemnation, it must comply with the requirements of Chapter 32 when proceeding with an activity that may involve displacement of persons, business concerns, or farm operations.

## RELOCATION ORDER

Specific entities are required to make a relocation order that provides for the laying out, relocation and improvement of a transportation-related facility prior to initiating negotiations. The order must include a map or plat showing the old and new facility locations, as well as the land and interests required for the project. Within 20 days of issue, a copy of the order must be filed with the county clerk where the lands are located.

## APPRAISAL

The acquiring agency must obtain at least one appraisal for each property it will acquire prior to initiating negotiations. When obtaining and drafting the appraisal, the appraiser must consult with the property owner. Once completed, the appraiser must provide the owner with a full narrative appraisal. Also, the acquiring agency must notify the owner that he/she may obtain his/her own appraisal at the (reasonable) expense of the acquiring agency. The owner's appraisal must be submitted to the acquiring agency within 60 days of receiving the agency's appraisal.

## NEGOTIATIONS

The acquiring agency must negotiate with the property owner for purchase of the property and must consider the full narrative appraisal to establish the property's fair market value. It must provide a map showing all property the project impacts and the names of at least 10 neighbors who are receiving offers. If the project affects fewer than 10 owners, the acquiring agency must give the names of all offerees. Property owners may inspect and make copies of any maps the acquiring agency holds. The acquiring agency may present relocation benefits during negotiations, if relocation of displaced persons is required.

In partial acquisitions, fair market value is the greater of (1) the fair market value of the part acquired, or (2) the difference between the entire property value before and after acquisition. If only part of the property is acquired and an uneconomic remnant remains, the acquiring agency must offer to acquire the uneconomic remnant. An uneconomic remnant is the property remaining after a partial taking, if it is of such size, shape or condition to be of little value or of substantially impaired economic viability.

Compensation for an easement is the difference between the property value immediately before and immediately after the date of evaluation. The date of evaluation is the date the conveyance is recorded by the county register of deeds.

If the property owner agrees to a negotiated sale, the acquiring agency must record the conveyance with the county register of deeds. After recording, the acquiring agency must provide notice of the conveyance to all owners of record, by certified mail or personal service, as well as of their right to appeal the compensation award within 6 months of the recording date.

This pamphlet is published by the Wisconsin Department of Administration in cooperation with the Attorney General pursuant to Wis. Stat. § 32.26(6). It is not to be construed as legal advice. A displacing agency must make this pamphlet available to a displaced person before initiation of negotiations for acquisition of property for a public project.

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### **JURISDICTIONAL OFFER**

If negotiations fail, the acquiring agency must provide the property owner with a jurisdictional offer. The offer must be delivered by certified mail or personal service and include (1) a description of the nature of the project; (2) a description of the property to be acquired; (3) the proposed date of occupancy; (4) the compensation offer; (5) notice that any additional items payable may be claimed for relocation assistance; (6) a statement that the appraisal on which the offer is based is available for viewing; and (7) notice that the owner has 2 years from the date the acquiring agency takes the property by award to appeal for greater compensation, even if the owner has already accepted and used the award.

A *lis pendens* gives notice to interested parties that the property may be acquired for public use. One must be filed with the county register of deeds within 14 days of personal service or mailing of the jurisdictional offer. An owner must accept or reject the jurisdictional offer within 20 days of personal service or mailing. If accepted, title transfers to the acquiring agency and the owner must be paid within 60 days. If rejected in writing by all owners of record, the acquiring agency may make an award of compensation.

### **CONTESTING THE RIGHT OF CONDEMNATION**

Within 40 days from the date of service or mailing of the jurisdictional offer, an owner who wants to contest the right of condemnation for any reason other than inadequacy of the amount of compensation, may commence an action in the circuit court of the county where the property is located, naming the acquiring agency as the defendant. However, if the owner has already accepted and retained any of the compensation, such an action may not be filed.

### **AWARD OF COMPENSATION**

If the owner fails to accept the jurisdictional offer within 20 days of personal service or mailing, or if all owners of record reject the offer in writing, the acquiring agency may deliver a written award of damages by certified mail or personal service. This is called the award of compensation and must include (1) a property description; (2) a description of the interest to be acquired; (3) the date of occupancy; (4) the amount of compensation (at least equal to the jurisdictional offer); and (5) a statement that the acquiring agency has complied with all jurisdictional requirements.

After the acquiring agency has served the award and provided payment, it shall record the award with the county register of deeds. At the time of recording, title vests in the acquiring agency. This date is called the date of evaluation.

### **OCCUPANCY & WRIT OF ASSISTANCE**

No person occupying real property may be required by the acquiring agency to move from a home or business without at least a 90-day written notice. If title vests with the acquiring agency before the 90-day period ends, the occupant may remain in the property rent-free for the first 30 days, beginning on the 1<sup>st</sup> or 15<sup>th</sup> day of the month after title vests with the acquiring agency. If the occupant denies the agency the right of possession at the end of the 90-day period, the agency may apply to the circuit court for a writ of assistance to be put in possession of the property upon 48-hour notice to the occupant. The court shall grant the writ of assistance if all jurisdictional requirements to condemn have been met, the award has been paid and a comparable property has been made available.

### **CONTESTING THE COMPENSATION AWARD**

Any party having ownership interest in the acquired property has 2 years from the date of evaluation to challenge the compensation award. To challenge the award, any party of interest may apply to the judge for the circuit court where the property is located for assignment to the condemnation commission. When one party of interest appeals the award, no other party may file a separate appeal, but instead may join the existing appeal by serving notice on the condemnation commission and appellant within 10 days of receiving notice of the appeal. The jurisdictional offer or basic award may not be disclosed to the condemnation commission. Whether the commission decides that the fair market value is greater or less than the compensation award, payments should be made within 70 days after the date of filing of the award unless it is appealed to the circuit court.

Any party to the condemnation commission proceeding may appeal the award to the circuit court. The sole issues to be tried are questions of title, if any, and the amount of just compensation the acquiring agency must pay. A jury must try this appeal unless waived by both parties. The jurisdictional offer, basic award, or condemnation commission's award may not be disclosed during trial. Awarded money must be paid within 60 days of entry of judgment.

Parties with ownership interest in the acquired property may waive the appeal to the condemnation commission and appeal directly to the circuit court within 2 years of the evaluation date. This appeal takes priority over all other actions not then on trial. No other party of interest can file a separate appeal, but may join the existing appeal by providing notice to all parties by certified mail or personal service within 10 days of receipt of notice of the appeal.

### **LITIGATION EXPENSES/COSTS**

“Litigation expenses” is defined as “the sum of the costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees necessary to prepare for or participate in actual or anticipated proceeds before the condemnation commissioners, board of assessment or any court under [Chapter 32].” Wis. Stat. § 32.28(1)(b). There are several conditions under which litigation expenses may be awarded to a complainant in a just compensation matter. These conditions include but are not limited to: (1) the acquiring authority abandons the proceeding; (2) the court determines the acquiring agency does not have the right to condemn the property or there is no necessity for its taking; (3) the judgment is for the plaintiff in an action under Wis. Stat. § 32.10; etc. For a complete listing, please review Wis. Stat. § 32.28(3)(a)-(i).