MISSOURI OFFICE OF THE
PUBLIC COUNSEL

Missouri Condemnation Overview

The following is a summary of the general condemnation process in Missouri and a discussion of some of the important topics related to condemnation. This summary is not legal advice. Additional information is available in Chapter 523 of the Missouri statutes[1] and the Missouri Rule of Civil Procedure 86,[2] which applies in Missouri's courts.

The Missouri Ombudsman for Property Rights cannot give legal advice, but the Ombudsman can help answer questions about the condemnation process and point you to helpful resources. If you have any questions, please reach out to the Ombudsman.

What is Condemnation?

Condemnation occurs when entities who have the power of eminent domain take private property for certain public purposes. Entities with the power of eminent domain can take private property from individual landowners, even if the landowner does not wish to sell the property or an interest in the property. The entity taking the property must provide the landowner with "just compensation" for the property or property interests taken.

Some common reasons for exercising eminent domain are for the construction of roads, railways, sidewalks, pipes or pipelines, dams and canals, and electric transmission lines.[3]

Condemnation can be temporary (i.e. property taken to allow for use during the project's construction, then returned to the landowner), or permanent. It can also be partial (i.e. taking only one acre of a landowner's 5-acre property or taking only an easement on the property) or full (i.e. taking all a landowner's property).

Condemnation Process Overview:

The summary below refers to the entity seeking to take property, the condemning authority, generally as the "Condemnor."

The condemnation process in Missouri includes both pre-filing requirements and a two-part court process. The Condemnor must satisfy the pre-filing requirements for the court process to proceed. The court process seeks to answer: (1) whether the condemning authority may lawfully exercise eminent domain authority, and (2) what is the appropriate amount of "just compensation" owed to the landowner.

If a landowner agrees to sell his or her property or an interest in his or her property (including an easement) prior to the filing of a condemnation petition and the transaction is completed, the Condemnor will not file a condemnation petition. If the Condemnor does not file a condemnation petition, the court process will not occur. Further, if the landowner accepts an offer from the

[1] The Revised Statutes of Missouri are available at https://revisor.mo.gov/main/Home.aspx.

[2] The Missouri Rules of Civil Procedure are available at https://www.courts.mo.gov/page.jsp?id=46.

[3] This is not a comprehensive list of all the reasons an entity may seek to exercise eminent domain.

Condemnor after it has filed a condemnation petition, the court process against that landowner will end.

Phase 1: Pre-Filing Requirements:

60-DAY NOTICE: At least 60 days before filing the condemnation petition, the Condemnor must provide the landowner with written notice of the intended acquisition by certified or registered mail. The notice must identify the interest in real property sought to be acquired, and include a statement of the legal description or commonly known location of the property, the purpose of the condemnation, and an explanation of the landowner's rights to:

1. Seek legal counsel at the landowner's expense;
2. Make a counteroffer and engage in negotiations;
3. Obtain his or her own appraisal of just compensation;
4. Have just compensation determined initially by court-appointed condemnation commissioners and, if those values are opposed, final determination can be made by a jury;
5. Seek assistance from the office of the ombudsman for property rights;
6. Contest the right to condemn in the circuit court condemnation proceeding; and
7. Exercise the rights to request vacation of an easement under the procedures and circumstances provided for in Section 527.188 of the Revised Statutes of Missouri.

(See § 523.250 RSMo.).

> **IMPORTANT NOTE:** The landowner has the right to make a counteroffer and negotiate during this pre-filing phase. Nothing requires the landowner to accept the Condemnor's offer to purchase the property.

ALTERNATIVE LOCATION PROPOSAL (PARTIAL TAKING ONLY): If the Condemnor does not intend to take the entire property, a landowner may propose an alternative location in writing within 30 days of receiving the 60-day written notice described above. The alternative location must be on the same parcel of the landowner's property as the property the Condemnor seeks to condemn. The Condemnor is required to consider the alternative location requested. It can provide a written statement explaining its acceptance or rejection of the alternative location. (§ 523.265 RSMo.).

WRITTEN OFFER: At least 30 days before filing a condemnation petition, the Condemnor is required to present a written offer to the landowner. This offer must be held open for 30 days, unless the landowner reaches an agreement with the Condemnor sooner. At the time it provides the written offer, the Condemnor must also provide the landowner with either an appraisal made by a state-licensed or state-certified appraiser using generally accepted appraisal practices or an explanation with supporting financial data for its determination of the property valuation. (§ 523.253 RSMo.).

GOOD FAITH NEGOTIATIONS: The Condemnor must engage in good faith negotiations prior to filing a condemnation petition in circuit court. (§ 523.256 RSMo.). Section 523.256 explains the circumstances under which a Condemnor will be considered to have engaged in good faith negotiations.

POTENTIAL AGREEMENT: If a landowner agrees to sell his or her property or an interest in his or her property (including an easement) during Phase 1, and the transaction is completed, the Condemnor will not file a condemnation petition. If the Condemnor does not file a condemnation petition, the court process explained below will not occur.

Phase 2: Court Process:

If the landowner is unable to reach an agreement with the Condemnor, the Condemnor may file a condemnation petition in the circuit court of the Missouri county where the property is located. (§ 523.010.1 RSMo.; Rule 86.02). The court will then issue a summons giving the landowner at least 10 days' notice of the time when the court will hold a hearing on the petition. (§ 523.030 RSMo.).

This begins the two-step court process, which will determine if the condemning authority may legally exercise eminent domain authority, and if so, what the appropriate amount of just compensation is for the landowner.

Step 1: Condemnation Hearing: Determining the Condemnor's Authority to Condemn:

The first step of the court process is the condemnation hearing. The assigned circuit court judge will determine whether the Condemnor may lawfully condemn the landowner's property. This determination will likely include an inquiry into the Condemnor's authority to condemn the landowner's property and a determination as to whether the Condemnor has complied with the necessary pre-filing requirements.

CONTESTING THE NECESSITY OF THE TAKING: If a landowner would like to contest the necessity of the proposed taking, Missouri case law requires him or her to allege and prove "fraud, bad faith, or an arbitrary or unwarranted abuse of discretion of the condemnor in its claim of 'necessity'...."[4] *Missouri Pub. Serv. Comm'n v. H & W Inv. Co.*, 602 S.W.2d 41, 43 (Mo. Ct. App. 1980); *see Mapco, Inc. v. Williams*, 581 S.W.2d 402, 405 (Mo. Ct. App. 1979).

The landowner may make these allegations in either a motion to dismiss or an answer asserting affirmative defenses in the circuit court. Either of these filings should be filed within thirty days of receiving service of the condemnation petition. (*See* Mo. R. Civ. P. 55.27, 55.25.) Either of these filings must "contain a short and plain statement of the facts showing that the pleader is entitled to the defense or avoidance."[5] (Mo. R. Civ. P. 55.08).

> **NOTE:** It is important that the landowner files any responsive pleading prior to the Court issuing the order following the condemnation hearing. It is possible to request additional time to file either an answer or motion to dismiss. (Mo. R. Civ. P. 44.01(b)).

Step 2: Determination of Just Compensation:

If the court determines that the Condemnor may lawfully condemn the landowner's property, the second part of the court process begins. In this part, the court determines the appropriate amount

---

[4] Importantly, courts have held that the "question of whether the taking of any given private property is 'necessary' and the extent and exact location of the property to be taken are matters of political or legislative determination which have been delegated to the condemning authority by virtue of the statute granting the right of eminent domain." *Missouri Pub. Serv. Comm'n v. H & W Inv. Co.*, 602 S.W.2d 41, 43 (Mo. Ct. App. 1980) (citing § 523.010 RSMo.). Courts "may inquire into those questions relating to 'necessity' **only if** the protesting landowner alleges and proves that the condemnor's claim of necessity constitutes fraud, bad faith or an arbitrary and unwarranted abuse of discretion." *Mapco, Inc.*, 581 S.W.2d at 405 (citations omitted).

[5] The Missouri Court of Appeals, Western District defined affirmative defense as "a defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's . . . claim, even if all the allegations in the complaint are true. An avoidance is an affirmative defense to an affirmative defense. An avoidance, like an affirmative defense, is to be pled in response to a preceding pleading." *Rosales v. Benjamin Equestrian Ctr., LLC*, 597 S.W.3d 669, 683 (Mo. Ct. App. 2019) (internal quotation marks and citations omitted).

of just compensation due to the landowner for the taking of his or her property. This portion of the court process may be further broken down into 2 sub-steps.

- **Sub-Step 1: Commissioners:** First, the court will appoint three "disinterested" commissioners[6] to assess the value of the condemnation and issue a report within 45-days of their appointment. (§ 523.040 RSMo.).
  - At least ten days before viewing the property, and before issuing their report, the commissioners must notify all parties named in the condemnation petition of the opportunity to present information to the commissioners, and to accompany the commissioners on their viewing of the property. (§ 523.040.2 RSMo.).
  - Prior to issuing their report, the commissioners must view the property, hear arguments, and review other relevant information that may be offered by the parties. (§ 523.040.3 RSMo.).
  - The court will notify the parties once the commissioners submit their report and give the parties 30-days to file a response (known as an "exception"). (§ 523.050 RSMo., Mo. R. Civ. P. 86.08).
    - A response must be written and filed within 30 days. The response may include a request for a jury trial on the issue of damages or a request for a new appraisal. Any party may file a response. (§ 523.050 RSMo., Mo. R. Civ. P. 86.08).

- **Payment:** The Condemnor may take possession of the property and begin to use it in the manner set out in the condemnation petition after it has paid the amount awarded by the commissioners to the clerk of the court. (§ 523.040 RSMo.; Mo. R. Civ. Proc. 86.06, 86.08).
  (1) The clerk will notify the landowner within five days of receiving the payment. (§ 523.055 RSMo.)
  (2) The landowner has 10 days after receiving this notification to either turn over possession of the condemned property or to make a motion for the court to grant the landowner an extension (90 days maximum). (§ 523.055 RSMo.)
    (a) If the taking results in a landowner becoming displaced from his or her principal place of residence, then he or she will have 100 days from the date of the award to deliver possession of the property. (§ 523.055 RSMo.)
  (3) If the landowner does not deliver possession within the time allowed, the Condemnor may make a motion for the court to issue a "writ of possession"

---

[6] Section 523.040.1 requires the commissioners to be

> residents of the county in which the real estate or a part thereof is situated, and in any city not within a county, any county with a charter form of government and with more than one million inhabitants, or any county with a charter form of government and with more than six hundred thousand but fewer than seven hundred thousand inhabitants at least one of the commissioners shall be either a licensed real estate broker or a state-licensed or state-certified real estate appraiser.

Section 523.040.4 also requires, in certain instances, that one of the commissioners be a "farmer who has been engaged in farming . . . for a minimum of ten years in the county were such property is situated." Specifically, that provision states, in full:

> In any eminent domain proceeding involving agricultural or horticultural property, for purposes of constructing an electric plant subject to a certificate of convenience and necessity under subsection 1 of section 393.170 at least one of the disinterested commissioners appointed by the court shall be a farmer who has been engaged in farming, as defined in section 350.010, for a minimum of ten years in the county where such property is situated. The provisions of this subsection shall not apply to applications filed pursuant to section 393.170 prior to August 28, 2022.

directing the sheriff to deliver possession of the property to the Condemnor. (§ 523.055 RSMo.).

- **Sub-Step 2: Jury:** If either party files a response (an exception), the damage determination will be submitted to a jury, or, if a jury is waived, to the court. (§ 523.050 RSMo.; Mo. R. Civ. Proc. 86.08).
  - A party's response or a request for a new appraisal will affect only the court's determination of the appropriate amount of just compensation that the landowner will receive. (§ 523.050 RSMo., Mo. R. Civ. P. 86.08).
  - Even if an exception is filed, the Condemnor may take possession of the property as described above. (§ 523.050 RSMo., Mo. R. Civ. Proc. 86.08)

Additional Condemnation Topics:

In addition to the condemnation process explained above, there are two important condemnation topics to be aware of.

Property Valuation Methodology:

Just compensation for condemned property is determined by the method below that provides the highest compensation to the landowner. (§§ 523.001, 523.039 RSMo.). After the commissioners or jury determine the appropriate amount of just compensation, the judge presiding over the condemnation proceeding decides if a homestead or heritage taking has occurred, and adjusts the compensation based on that decision.[7] (§ 523.061 RSMo.).

- **FAIR MARKET VALUE:** An amount equal to the fair market value of the property. This value considers comparable sales in the area, capitalization of income, and replacement cost less depreciation. It also considers the value of the property based on its highest and best use, using generally accepted appraisal practices.
  - If only part of the property is taken, the fair market value will be calculated as the difference between the property's fair market value immediately before the taking and the fair market value of the remaining or burdened property immediately after the taking. Both the direct damages from the condemnation and consequential damages should be considered.[8]
- **HOMESTEAD VALUE:** The fair market value of the property multiplied by 125%. Homestead property is a dwelling being taken that is owned by the landowner and used as the landowner's primary residence, or any of the landowner's property within 300 feet of the

[7] When a landowner requests heritage value in a condemnation action, prior to the assigned circuit court judge determining whether it is payable, the disinterested commissioners and/or the jury, after instruction from the circuit court judge, must first determine whether the property has been owned by the same family for 50 or more years. *See* § 523.039.1(3) RSMo.; *State ex rel. C.F. White Fam. P'ship v. Roldan*, 271 S.W.3d 569, 574-75 (Mo. banc. 2008). After the commissioners and/or the jury make this determination, the assigned circuit court judge will determine whether heritage value is payable. § 523.061 RSMo.

After the Supreme Court's decision in the *Roldan* case, the law on which the *Roldan* court relied changed to specify that the property owner has the burden of proving to the commissioners *or the court*, "that the property has been owned within the same family for fifty or more years." *Compare* § 523.039.1(3) (2021)*, with* § 523.039.1(3) (2022). The Ombudsman is not aware of any court opinion addressing this change and modifying the requirement as expressed in *Roldan*.

[8] The Supreme Court of the State of Missouri has explained that "damages for the value of the land taken" are direct damages. *State ex rel. Mo. Highway & Transp. Comm'n v. Horine*, 776 S.W.2d 6, 10 n.1 (Mo. banc 1989). Consequential damages are "any other damages that flow to the landowner as a consequence of the taking." *Id.*

landowner's primary residence which substantially prevents the landowner from using the property as its current use.

- **HERITAGE VALUE:** Where the taking prevents the landowner from using the property in substantially the same manner as its current use, and the property was in the landowner's family for 50 or more years, an amount equal to the sum of the fair market value and heritage value (50% of fair market value).
- **AGRICULTURAL OR HORTICULTURAL PROPERTY TAKEN FOR CONSTRUCTION OF CERTAIN ELECTRICAL PLANT:** In limited circumstances, a fourth option exists. Where "an electrical corporation as defined in section 386.020, except for an electrical corporation operating under a cooperative business plan as described in section 393.110" seeks to take "any agricultural or horticultural property… for the purposes of constructing an electric plant subject to a certificate of convenience and necessity under subsection 1 of section 393.170," then "just compensation shall be an amount equivalent to fair market value multiplied by one hundred fifty percent, as determined by the court." (§ 523.039.2 RSMo.). This option exists only if the electrical corporation filed the application for its electrical plant with the Missouri Public Service Commission after August 28, 2022. (Id.).

Relocation Expenses:

In certain specific circumstances, the Condemnor must provide relocation assistance. Two statutory schemes govern when the Condemnor must provide relocation assistance: (1) federal statutes located at 42 USC § 4601 to 42 USC § 4655[9] and federal rules located at 49 CFR part 24 (including subparts);[10] and (2) Missouri statutes located at § 523.200 to §523.215 of the Revised Statutes of Missouri. Whether a landowner is displaced and entitled to relocation expenses is a fact-intensive inquiry.

LEGAL DISCLAIMER: *The Missouri Ombudsman for Property Rights' purpose is to provide guidance to Missouri landowners on the condemnation process and procedures. (RSMo. § 523.277). This guidance is not legal advice, and you would need to consult an attorney for legal advice regarding your rights and the merits of any challenges you may wish to make.*

[9] These statutes exist at https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter61&edition=prelim.

[10] The Code of Federal Regulations can be found at https://www.ecfr.gov/current/title-49/subtitle-A/part-24?toc=1.