

Landowners Notice of Rights

Condemnation by a Non-Governmental Entity Proceedings Before Assessors

As indicated in the attached notice, a public utility¹ is attempting to acquire property rights from you for public use. Before a public utility can exercise the power of eminent domain and condemn your property, Georgia law requires that the utility make a reasonable effort to negotiate the purchase of your property. However, if an agreement cannot be reached through good-faith negotiations, the public utility has the power to condemn your property.

In accordance with state law, this Landowners Notice of Rights was promulgated by the Georgia Department of Community Affairs to provide you with a general understanding of your rights during the negotiation process and possible condemnation proceedings to acquire your property. The information contained herein is generally applicable. However, in some instances slight variances in the procedural requirements, such as methods of serving notice, for condemnations authorized under chapter 3 of Title 22, could apply. **Please note however that this document is not authoritative, it is for general information purposes, and should not be relied upon as a substitute for competent legal counsel.**

Prior to Initiating Condemnation Proceedings

Prior to making an official decision to condemn your property, the governing body or chief executive officer of the public utility (hereinafter referred to as condemnor) must have authorized an individual or group of individuals to approve this condemnation on behalf of the public utility. Then, unless waived by you in writing, the condemnor must carry out the pre-condemnation procedures listed below.

- Personally serve you with the enclosed notice of the proposed condemnation at least 15 days before the condemnor makes a decision to exercise its power of eminent domain concerning your property. If the condemnor's attempt to personally serve you fails, the condemnor may notify you by mail.
- If possible, post a sign on a right of way adjacent to your property with the following information: (a) notice that your property is subject to a proposed condemnation and that the condemnation may be initiated after 15 days from the date of the sign's posting; (b) the date of the sign's posting; and (c) the name, business address, and telephone number of the condemnor.
- Offer you an **opportunity to meet** with the individual(s), or a representative of that individual(s), who has the authority to decide whether or not to exercise the power of eminent domain to acquire property rights from you.

Condemnation Proceedings

The condemnor must document by appropriate method the time of the final approval of the decision to exercise its power of eminent domain to acquire property rights from you. If the decision to condemn your property is approved, the condemnor must wait at least 30 days from the time of this approval before filing a petition of condemnation in the superior court of the county in which your property is located.

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Unless acknowledged or waived by you, the county sheriff will, if possible, serve you with a copy of the notice of condemnation at least 15 days before the meeting to assess the fair market value of your property being condemned (and other compensation issues if applicable). Also, the sheriff will arrange for the publication of a notice in the official organ of the county one week before the date of this meeting. The notice of condemnation will:

- Describe the property or franchise and the amount of interest therein sought to be condemned;
- Fix the time when the hearing will be had on the premises;
- Give the name of the assessor selected by the condemnor; and
- Request that you and any other owners, trustees, or their representatives, as the case may be, to select an assessor (see more on this below). If the owner is unknown, the notice will be directed to "all persons having any interest in the property" (with a description of the property).

Note that at any point before title to property rights in your property vests in the condemnor you may file a **motion** with the superior court asking the court to determine whether the planned use of your property is for a public use² and/or whether the condemnor has the legal authority to exercise the power of eminent domain. **A sample of this kind of motion is attached to this Statement of Rights.** These questions will not be considered unless you file a motion requesting the court to review them.

In such proceedings before the court, the condemnor has the burden of proving that the proposed property will be for a public use and that the condemnor has the legal authority to condemn your property.

Compensation

The Georgia Constitution requires that you be appropriately compensated if your property is condemned. Private property may not be taken from you without just and adequate compensation being paid to you first. This means that you are entitled to receive the fair market value of your property if it is condemned. Additionally, if you are displaced from your property, you may be entitled to relocation costs, and/or to actual direct losses as a result of moving a business or a farm operation currently on your property.

If only part of your land is condemned, you may also be entitled to recover for any reduction in the market value of the remaining property if the condemnation causes the value to go down. These are called consequential damages.

Selection of Assessors

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You and the condemnor will each select an assessor, and the two assessors so selected will select a third assessor. These assessors must be real estate appraisers who have an appraiser classification of certified general appraiser granted under Chapter 39A of Title 43, the "Real Estate Appraiser and Classification Act." You will be liable for the costs of the assessor you select, the condemnor will be responsible for the costs of the assessor it selects, and the costs of the assessor selected by the other assessors will be split equally between the you and the condemnor. The combined total cost of all three assessors is limited to no more than \$500 per day.

You and any other persons having any interest in the property will have equal rights in the selection of an assessor. If you and the other parties (if any) fail to select an assessor the judge of the probate court will select an assessor unless the judge of the probate court is disqualified. In such case, the clerk of the superior court will make the selection for you.

If the two assessors selected by, or on your behalf, and the condemnor do not agree on a third assessor within five days after the selection of the second assessor, the judge of the superior court, upon application of either party, of which the other shall have notice, will make the selection.

Assessors Duties

If by reason of delay in appointing assessors or other cause, the hearing cannot be conducted at the time fixed in the original notice, the assessors will fix the time for the hearing and will notify the parties in writing of the time and place of the hearing.

The assessors' role is to establish the fair market value and address other compensation issues discussed above. The assessors will have the same power to issue subpoenas and compel the attendance of witnesses as is vested in the superior court. At the hearing the assessors will hear all evidence offered by either party regarding the value of the property or interest, and other matters material to your respective rights.

You have the right to appear in person and to be represented by an attorney before the assessors. However, the assessors will have no authority to decide questions of law. Their responsibility will be limited to issues of compensation for your property rights. They will refer questions of law to the superior court prior to entering an award. You and the condemnor will have the right to appeal questions of law to the superior court after the entry of the assessors' award.

Entry of Findings by Assessors

After hearing the evidence, the assessors will enter their findings and award you an amount for the value or interest in your property being condemned, and net consequential damages resulting from the condemnation, if any. The condemnor is required to pay the amount of the award within ten days after it is entered by the assessors.

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Rights to Appeal

If you are not satisfied with the amount of the award for your property, you may file an appeal asking the court for a jury trial. You are entitled to a jury trial only for issues related to the amount of compensation awarded by the assessors, with the same right to move for a new trial and file an appeal as in other cases at law. Note however, that entering of an appeal will not hinder or delay in any way the condemnor's right to use the condemned property or interest, provided that the condemnor pays or tenders to the owner the amount of the award and, in case of the refusal of the owner to accept the award, deposits the amount awarded with the clerk of the superior court for the benefit of the owner.

If the amount awarded by the special assessors is less than that found by the verdict of the jury, the condemnor will be bound to pay the additional amount in order to retain the property. **However, if the jury's verdict is that the amount of the special assessors' award was too high, then the award would be reduced accordingly, which means that if you have already accepted the award, the condemnor would be entitled to a judgment against you for the difference.**

Reimbursement of Your Expenses if Condemnation Denied or Abandoned

If the final judgment of the superior court is that the condemning authority cannot acquire your property by condemnation, or if the condemnor abandons the condemnation proceedings, you are entitled to a reimbursement of reasonable costs that you incur for attorney, appraisal, and engineering fees because of these condemnation proceedings. The actual amount of your reimbursement award would be determined by the court.

Relevant Code sections

The Code sections described herein are in Title 22 of the Official Code of Georgia Annotated, which can be accessed online at: <http://www.legis.ga.gov/legis/GaCode> .

¹ **Generally speaking "public utilities" include publicly, privately, or cooperatively owned entities that provide telephone communications, electricity, light, heat, gas, oil products, water, steam, clay, waste management, storm water management not connected with highway drainage, common carriers, railroads, and other similar services.**

² **Public benefits derived from economic development do not fall within the legal definition of "public use." However, the condemnation of land for the creation or functioning of public utilities, the opening of roads, and the providing of channels of trade or travel are specifically included within this definition. O.C.G.A. 22-1-1(9)**