



The Rights of Landowners Under Wisconsin Eminent Domain Law

Procedures Under sec. 32.06 Wisconsin Statutes

FOREWORD

This pamphlet is published by the Wisconsin Department of Commerce in cooperation with the Attorney General, pursuant to sec. 32.26 (6), of Wisconsin statutes. The pamphlet is to be given to property owners or their representatives by the acquiring authority prior to initiation of negotiations for property being acquired for a public project.

The material in this pamphlet provides information on how the condemnation process works in Wisconsin. It should serve as a reference for you, but it is not intended to cover every possible eventuality or every right you may have in individual cases. A further source of information is Chapter 32 of the Wisconsin statutes which contains the law that is summarized in this pamphlet.

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INTRODUCTION

In recent times there has been an increasing demand placed upon government for services in transportation, education, utilities, housing and other areas of public concern. At the same time, the available supply of land for these projects has been shrinking dramatically. Consequently, government has had to resort to its right to acquire private land for public uses even without the consent of private owners -- the eminent domain power.

This power derives from the Wisconsin Constitution, Art. IX, sec. 3. The Legislature has

FEDERAL LAW

When a project is receiving federal financial assistance, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) may provide additional or different protections than those outlined in this pamphlet. You should receive supplemental information from the acquiring authority if federal law applies.

delegated this power by statute to numerous authorities and has specified the purposes for which such power can be used. Generally, departments, municipalities, boards, commissions, public officers, and various public and quasi-public corporations are delegated this power. Some of the purposes for which the Legislature has specified that condemnation can be used are highway construction or improvement, reservoirs, dams, public utility sites, waste treatment facilities, city redevelopment and energy lines.

Wisconsin has long had statutes regulating the exercise of eminent domain power. This pamphlet is intended to give citizens information about Wisconsin's eminent domain procedure, the workings of the condemnation process, and the rights of property owners in this process. It is, by necessity, of a general nature and is not a substitute for legal advice in individual cases, since many

aspects of Wisconsin law cannot be covered in general terms. Another source of information for citizens is the particular authority which is acquiring the property.

The goal is to achieve equality of information for both parties during the negotiation process and to reach satisfactory settlements, equitable to both the property owner and the public, through the statutory process.

THE LANGUAGE OF EMINENT DOMAIN

(This glossary defines terms used in the pamphlet)

Acquiring Authority

A public or quasi-public entity vested with the constitutional or statutory power to acquire private property for a public use.

Additional Items Payable

Persons displaced by the public project are to be fairly compensated by the payment of relocation assistance and assistance in the acquisition of replacement housing.

Appraisal

A written report, by a professional and disinterested person skilled in valuation, describing the property that is to be acquired and reaching a documented conclusion as to the fair market value of such property.

Certificate of Compensation

A document recorded with the register of deeds when a sale is negotiated between the owner and the acquiring authority. It contains the names of persons with a record interest in the property, a legal description, the type of interest acquired, and the amount of compensation. All persons named should be sent a copy and a notice of the right to appeal the amount of compensation.

Condemnation Commission

A group of local residents, appointed by the circuit court of a county for fixed terms, who have the authority to determine just compensation for the property being acquired.

Date of Acquisition

The day the award of the condemnation commission is paid to the property owner or to the circuit court for the benefit of the property owner.

Date of Evaluation

The day on which the lis pendens is recorded in the office of the register of deeds in the county where the land is located. The fair market value of the property on this day is just compensation to the property owner for the acquisition. For negotiated sales, the date of acquisition and the date of evaluation is the date the conveyance is recorded with the register of deeds.

Determination of Necessity

A finding, made by the acquiring authority or the court, that the authority has the right to acquire private land for a specific public use.

Easement

An interest in real property which gives the acquiring authority the legal right to use the property for a specific purpose or to restrict the property owner's use of the land. Ownership and title to the property remain with the property owner.

Eminent Domain

The power of the state to acquire private property for a public use.

Fair Market Value

The amount for which property could be sold in the open market between a willing buyer and a willing seller.

Full Narrative Appraisal

A detailed and comprehensive description of the process an appraiser uses in regard to a certain property to reach an opinion of its fair market value. The opinion must contain the appraiser's rationale for determining value and be documented by market data which supports the appraiser's rationale.

Incidental Expenses

Reasonable and necessary amounts, defined by statute, payable to the owner of real property acquired for a public use. Generally, incidental expenses compensate for expenses you may incur in transfer of your property to the acquiring authority. They include recording fees, mortgage prepayment penalties and other items.

Jurisdictional Offer

A written notice given by the acquiring authority to the owner of property and any mortgagee of record which informs the recipients of the proposed public use, what property is being acquired, and the amount of compensation to be paid.

Lis Pendens

A notice filed with the register of deeds when the acquiring authority files a petition with the court seeking a hearing before the condemnation commission. It notifies all interested parties that the property described is in the process of being acquired for a public use. The day the lis pendens is filed is the "date of evaluation," except in the case of an acquisition by a public utility, or a negotiated sale.

Litigation Expenses

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 proceedings before a condemnation commission or any court.

Severance Damages

Damages which may result when only part of a person's property is condemned. Generally, these items of damage compensate for any loss in value of the remaining property due to the acquisition.

Uneconomic Remnant

Any portion of the property remaining after a partial acquisition which is of little value or substantially impaired economic viability due to its size, shape or condition.

PART ONE BEFORE NEGOTIATIONS TO ACQUIRE PROPERTY BEGINS

After you have been contacted by the acquiring authority, you have the right to a **full narrative appraisal** of the property sought to be acquired. This appraisal is done by an appraiser hired or employed by the agency, and the law requires the appraiser to confer with the owner or the owner's representative, if reasonably possible, when making the appraisal. Any and all appraisals made by the acquiring authority must be provided to you.

You have the right to have your own full narrative appraisal of the property made by a qualified appraiser. The reasonable cost of this appraisal may be submitted to the acquiring authority for payment, if the appraisal meets the standards set forth in sec. 32.09 of Wisconsin statutes, but, if you have such an appraisal made and wish to be paid for its cost, it must be submitted to the authority within 60 days after you receive the authority's full narrative appraisal. Your appraisal will be considered during negotiations.

The acquiring authority is required to make a determination of its need for the property. The way this **determination of necessity** is made varies depending on what type of agency is acquiring the property and the purpose for which it is being acquired.

If a public utility seeks your property for an electric generating plant or high-voltage transmission line, it applies to the Public Service Commission for a **certificate of public convenience and necessity**. This application must be filed by the Public Service Commission with the city or town clerk in the area where the facility is located, as well as the main public library in the county. The issuance of the certificate of public convenience and necessity provides the determination of necessity for the acquisition of the needed property.

Most other authorities seeking land for proposed projects make their own determinations of necessity. The statute lists the authorities who have the power to make their own determinations. In all other cases, the circuit court, upon a petition by the acquiring authority, makes the determination. These records are available for public inspection.

If a public project, other than a town highway, involves the acquisition of any interest in any farm operation of more than five acres, the Department of Agriculture, Trade and Consumer Protection (DATCP) may be required to prepare an **agricultural impact statement** prior to the acquisition of any land. Even if the acquisition is less than five acres, DATCP may prepare a statement if the acquisition will have a significant effect on the farm operation.

If an environmental impact statement is required by another statute, the requirements of the agricultural impact statement may be met by the environmental impact statement. Also, if an easement for an electric transmission line, excluding a high voltage line, is being acquired over a farm operation, an agricultural impact statement is not required.

A "farm operation" is defined by law as an activity conducted primarily for the production of commodities for sale or home use in such quantity that the commodities contribute materially to the support of the farm operator.

The acquiring authority may gather the necessary information for the impact statement. DATCP must prepare the statement within 60 days after receiving the information from the acquiring authority. After preparation, the statement must be published by DATCP. For a 30 day period after publication, the acquiring authority is precluded from negotiating with the property owner or making a jurisdictional offer.

The law also requires that the agricultural impact statement be distributed by DATCP to various offices and individuals. You can obtain a copy from your local library or from any local unit of government in the area affected. You may also request a copy directly from DATCP.

PART TWO THE NEGOTIATION PERIOD

After appraisals are completed, the acquiring authority must attempt to negotiate with the owner or the owner's representative for purchase of the needed property. The statutes require that you be provided an informational pamphlet on eminent domain procedure **before** negotiation begins. If you are also displaced as a result of the acquisition, the law requires that you receive a pamphlet on **relocation benefits**. The owner's full narrative appraisal must be considered as a part of the negotiation. Also, any rights you may have for additional items payable (relocation benefits) can be included in the negotiations.

During negotiations, the acquiring authority must provide a map showing all property affected by the proposed project. Along with this map you must be given the names of at least 10 neighboring landowners to whom offers are being made. The names of all offerees if less than 10 owners are affected must be given. Any maps in the possession of the authority showing the property affected can be inspected, and copies will be made available at reasonable cost. At this point, condemnation is not involved, only negotiations for purchase.

If you agree to a negotiated purchase, the acquiring authority must record the conveyance and a **certificate of compensation** with the register of deeds in the county where the land is located. Also, all owners of record should receive by certified mail the certificate of compensation and a notice of their right to appeal within **six months** after the date of the recording of the certificate. Such an appeal would challenge the amount of compensation received by the property owner. The appeal would be initiated by filing a petition with the circuit court. The judge then assigns the appeal to the chairperson of the county condemnation commission. All persons with a record interest in the property will be notified of the appeal.

The date the conveyance is recorded is the date of acquisition and the date of evaluation.

PART THREE PARTIAL ACQUISITIONS AND EASEMENTS

If only a part of your property is acquired, other than for an easement, two different calculations may be made to determine the fair market value of the part acquired. In such partial acquisitions, fair market value is the greater amount of either the fair market value of the part acquired or the difference between the value of your property **before** the acquisition and its value after, giving effect to severance damages set forth in sec. 32.09 of Wisconsin Statutes.

If only part of your property is acquired and you are left with an **uneconomic remnant**, the acquiring authority must also offer to acquire the uneconomic remnant. You must consent to the acquisition in order for the remnant to be acquired.

When an easement over your property is acquired, the compensation required is the difference between the value of your property immediately **before** the date of evaluation and its value immediately **after** the date of evaluation. Severance damages may also be paid where such damages exist and are allowed by statute.

If your land is zoned or used for agricultural purposes and an easement is acquired for a high voltage transmission line or a fuel pipeline, you will be entitled to choose between a lump sum

payment for the easement or an annual payment representing just compensation for the acquiring of the easement for one year. The acquiring authority should be able to answer any questions on your eligibility for this choice and the terms of each alternative. Sec. 32.09 (6r) (a), (b), and (c) of Wisconsin statutes details the law on lump sum versus annual payments.

PART FOUR THE JURISDICTIONAL OFFER TO PURCHASE

If negotiations do not lead to a purchase of the needed interest by the acquiring authority, a **jurisdictional offer** must be given to the owner and to any mortgagee of record. You will receive the notice by personal service or by certified mail.

This very important document will provide you with vital information on the acquisition of your property. Items that must be included are a statement of the nature of the project, a description of the property to be acquired, and a statement of the proposed date the acquiring authority will occupy the property. Included in the document is the amount of compensation to be paid for your property, including a statement that any additional items payable may be claimed for relocation assistance. An owner has **20 days** from the receipt of this offer to accept or reject it. If you accept the jurisdictional offer, title will be transferred and you will be paid the amount specified in the offer within 60 days. This 60 day period can be extended by mutual written consent of the property owner and the acquiring authority. **Incidental expenses** for which you may be eligible under sec. 31.195 of the statutes relating to transfer of your property to the acquiring authority will also be paid.

If the property owners of record reject the jurisdictional offer in writing, or do not act upon it within the 20 day period, the acquiring authority may petition the court to have the county condemnation commission make a determination of just compensation for the property.

PART FIVE HEARING BEFORE THE COUNTY CONDEMNATION COMMISSION

The acquiring authority, after a jurisdictional offer is **not accepted**, may petition the circuit court to initiate a hearing before the condemnation commission. If a determination of necessity has not been made by the agency, the petition may ask the court to make the determination of necessity at this time. You will receive notice of the acquiring authority's petition.

An important event which coincides with the filing of this petition is the filing of a **lis pendens**. The lis pendens is filed with the register of deeds in the county where the property is located. It provides notice to any interested party of the possibility that your property may be acquired for a public use.

The day this lis pendens is filed is the "date of evaluation." The value of your property on this day is just compensation to you for its loss under the law. A different "date of evaluation" may apply when your property is acquired by a public utility. The date depends on when the certificate of public convenience and necessity and the advance plans were filed. For negotiated sales the date of evaluation is the day the conveyance is recorded with the register of deeds.

A hearing on the petition the acquiring authority has filed with the court must be held at **least 20 days** after the date the petition was filed. If the court finds that the authority has a right to

condemn your property, the court will assign the matter to the condemnation commissioners for a hearing.

A county will have six to 12 commissioners, depending on the county population. They are local individuals, residents of the county or adjoining county, and are appointed by the circuit court. They serve staggered three year terms and generally sit in groups of three.

Within seven days after the chairperson of the commission is notified of the petition by the judge, three of the commissioners are selected to hear the case. The hearing date, time and place are fixed by the chairperson, and will not be less than 20 days nor more than 30 days from the day the court assigned the petition to the chairperson. At least 10 days prior notice will be given to all parties. The commission proceedings are more informal than court proceedings, and are governed by statute. The amount of the jurisdictional offer or award of compensation cannot, by law, be disclosed to the commission. You have a right to appear and to present evidence. A majority of the members have the power to make all decisions. **Within 10 days** after the end of the hearing, a **written award** is made and filed with the clerk of circuit court. The clerk will notify the parties of the award.

An acquiring authority may elect to abandon proceedings to acquire your property within 30 days after the filing of the condemnation commission's award by petitioning the circuit court where the property is located. You will receive five days notice by certified mail of this petition. The court will set the terms by which the abandonment can take place. If the judge formally discontinues condemnation by making an order, the order removes any title in the acquiring authority and automatically discharges the lis pendens.

Should the commission's award exceed the amount paid by the acquiring authority, and if neither party appeals from the award of the commission to the circuit court, interest is paid on the amount of the increase for the period from the date of acquisition until the date of the commission award, if the amount of the increase is paid within 14 days of the commission award. This payment passes title of the property to the acquiring authority.

If you or the acquiring authority are dissatisfied with the award of the condemnation commission, either can appeal to the circuit court of the county where the property is located. This must be done within **60 days** of the filing of the condemnation commission's award. If an appeal is made to the circuit court by either party, the owner will not be entitled to receive the amount of compensation paid to the circuit court unless the owner posts a bond equal to one-half of the award. This bond protects the acquiring authority in case the judgment of the court on appeal is less than the award of the condemnation commission.

PART SIX APPEAL OF JUST COMPENSATION TO CIRCUIT COURT

The statutes require certain notices and papers to be filed to accomplish an appeal. It would be advisable to secure legal counsel to aid you in your appeal to the circuit court. The procedure may be found in sec. 32.06 (10) of Wisconsin statutes. You have a right to a jury trial on the issue of **just compensation**.

The measure of just compensation is the fair market value of the property acquired from you as of the date of acquisition, as calculated under sec. 32.09, stats. Should a court or jury determine that the amount you were paid for your property exceeded its fair market value as of the date of

acquisition, you will be required to repay to the acquiring authority the amount of the difference. On the other hand, if the jury verdict is greater than the award of the commission, you are entitled to receive legal interest on the excess from the date title vests in the acquiring authority.

If the jury verdict or judgment of the court **exceeds** the amount of the commission's award, the acquiring authority has 40 days after the filing of the judgment to petition for abandonment of the condemnation. (The procedure followed is the same as the procedure for abandonment after the award of the condemnation commission is filed.)

If no appeal is taken to the Wisconsin court of appeals, and no petition for abandonment is filed by the acquiring authority, the judgment must be paid **within 60 days** after it is entered. If the judgment is not paid within 60 days, it will bear interest from the date of entry of the judgment until the date of payment at 10% a year.

PART SEVEN ACTION TO CONTEST THE RIGHT OF CONDEMNATION

Such an action challenges the right of the authority to condemn the property described in the jurisdictional offer. This action must be commenced in circuit court **within 40 days** from the postmark of the certified letter containing notice of the jurisdictional offer.

If you do not challenge the acquiring authority's right to acquire your property within this 40 day period, you will lose your right to do so.

In addition, if you accept and retain any money awarded for your property, you may not challenge the acquiring authority's right to acquire.

In this proceeding, you may challenge any defects in the procedure the authority has used and the "public" nature and necessity of the proposed use.

PART EIGHT LITIGATION EXPENSES AND COSTS

The law provides for the payment of litigation expenses by the acquiring authority under **any one** of the following circumstances:

- if the proceeding is abandoned by the acquiring authority;
- if it is determined by a court that the acquiring authority does not have the right to condemn;
- if the award of the condemnation commission is **greater** than the jurisdictional offer, or the highest written offer prior to the jurisdictional offer, by at least \$700 and 15%, **and** the award is not appealed;
- if the property owner appeals an award of the condemnation commission which exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer, by at least \$700 **and** 15%, and the court approved jury verdict **exceeds** the award of the condemnation commission by at least \$700 **and** 15%;
- if the acquiring authority appeals an award of the condemnation commission, and the court-approved jury verdict is \$700 **and** 15% greater than the jurisdictional offer or the highest written offer prior to the jurisdictional offer;

- if the property owner appeals an award of the condemnation commission which **is not** 15% greater than the jurisdictional offer or the highest written offer prior to the jurisdictional offer, and court-approved jury verdict is at least \$700 **and** 15% higher than the jurisdictional offer or highest written offer prior to the jurisdictional offer.

Unless you come under one of these specific categories, you will not be able to recover litigation expenses from the acquiring authority.

The Legislature has provided "costs" (statutorily determined payments to successful parties in proceedings challenging just compensation) to litigants who are successful but who do not fit into any of the categories mentioned above. If the just compensation awarded by the court or condemnation commission exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer, the property owner will be deemed the "successful" party. You may be required to pay "costs" to the acquiring authority if you are unsuccessful in challenging the compensation you have received or the acquiring authority's right to acquire the property. "Costs" are defined in Ch. 814 of Wisconsin statutes.

PART NINE OCCUPANCY

No occupant may be required to move from a dwelling or move a business or farm without at least 90 days' written notice from the acquiring authority. An occupant shall have rent free use of the property for 30 days beginning with the 1st or 15th day of the month after title vests in an agency, whichever is sooner. Rent charged for use of a property between the date of acquisition and the date of displacement may not exceed the economic rent, the rent paid by a tenant to the former owner or the occupant's financial means if a dwelling, whichever is less.

The acquiring authority may not require the persons who occupied the premises on the date title vested in the acquiring authority to vacate until a comparable replacement property is made available. (You may have a different right of occupancy if the property is acquired by a public utility.)

If you damage or destroy any acquired property after the date that title vest in the acquiring authority, you may be liable for the damage.

