

TEXANS PROPERTY RIGHTS

Improvements have been made in past years to Texas' eminent domain laws to better protect private property rights.

The voter-approved amendment to the Texas Constitution in 2009 prohibited the taking of private property for economic development, and Senate Bill 18 in 2011 made changes to the condemnation process, but eminent domain remains at the forefront of concerns for Texas landowners.

Unfortunately, **Texas landowners continue to struggle with an unbalanced set of laws** that are at odds with a state known as a champion for private property rights. Despite past efforts, condemning entities continue to hold an unfair advantage over landowners who are forced to sell their property without truly being made whole when their property is taken. In Texas, where about 95 percent of the land is privately owned, our legal system should better protect landowners.

Texas landowners recognize that the state's population is growing at a rapid pace. There is an increasing need for more land for public resources such as energy and transportation. But landowners also recognize that their property rights must be better protected, not only for themselves, but also for future generations.

Texans take great pride in their land, and they don't want to see their private property rights taken advantage of. The condemnation process is **not a willing buyer and willing seller transaction**. It's a legally forced sale. Therefore, **it's necessary to make further improvements to the laws that govern the use of eminent domain** so Texas landowners can have more assurance that this process is fair and respectful of their private property rights when they are forced to sell their land.

Such improvements should include... 

TEXANS FOR PROPERTY RIGHTS COALITION

Texas Farm Bureau
Texas & Southwestern Cattle Raisers Association
Texas Wildlife Association
South Texas' Property Rights Association
Texas Forestry Association
Texas Association of REALTORS
Texas Sheep & Goat Raisers Association
Texas Poultry Federation
Independent Cattlemen's Association of Texas
Texas Grain Sorghum Association
Plains Cotton Growers, Inc.
Texas Land & Mineral Owners Association
Texas Association of Dairymen
Texas Cattle Feeders Association
Corn Producers Association of Texas
Riverside & Landowners Protection Coalition
Texas Grain & Feed Association
Texas Citrus Mutual
Texas Hill Country Heritage Association
Texas Coalition for Conservation
Texas Wheat Producers Association
Texas Agricultural Land Trust
Ranchers & Landowners Association of Texas
Texas Nursery & Landscape Association

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TexansforPropertyRights.com

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REIMBURSEMENT OF LANDOWNER COSTS AND EXPENSES

- Due to litigation costs and other legal expenses, landowners who challenge in courts for just compensation are often never made whole when their property is taken.
- Condemnors should be required to pay the costs and fees incurred by property owners in eminent domain proceedings if final damages awarded are greater than 125 percent of the entity's offer.

BOND REQUIREMENT

- Some condemnors have refused to purchase a bond and then claimed bankruptcy or insolvency to avoid payment to the landowner for just compensation.
- As a condition of appealing a judgement, a condemning entity should be required to either pay the award or secure a bond in the amount of the award in order to guarantee payment to a prevailing landowner at the conclusion of the legal proceedings.

ROYALTY PAYMENTS

- Often landowners are not aware that they have the ability to request royalty payments as an option in negotiating payment.
- Statute should state condemning entities and landowners can agree to royalty payments. This option should be permissive but noticeably available to landowners.

PROPERTY RIGHTS PROTECTION IN BONA FIDE OFFER

- While state law grants the power of eminent domain to public and private entities there is hardly any oversight or protections to keep the entities who exercise this authority acting in good faith. It is left up to landowners to protect themselves against lowball offers and bad actors. This is difficult to do when they are provided little transparency as to the nature of the project for which their land is condemned for public use.
- As a requirement of a true bona fide offer a condemning entity should disclose certain information about the project and provide a minimum amount of property right protections in order to be allowed to condemn.

DISCLOSURE OF APPRAISALS

- Some condemning entities are taking advantage of a loophole in the law regarding appraisals. Although entities will make an appraisal available at the time of initial and final offer, they are being allowed to present a new or updated appraisal immediately before a commissioners court hearing. Meanwhile, landowners are required to provide appraisals no later than three business days prior to a hearing.
- Appraisals or opinions of property value, and damages caused by the condemnation, should be made available to the landowner at the time of the initial and final offer, no less than three business days prior to the special commissioners court hearing.

VALUATION OF EASEMENTS

- As the basis for assessing damages to a landowner from a condemnation, evidence of sales of freely negotiated comparable easements are usually not admissible in condemnation proceedings.
- The court should admit evidence on the price paid for pipeline or powerline rights-of-way in privately negotiated transactions made in the absence of condemnation authority.

ENFORCEABILITY OF POSSESSION AND USE AGREEMENTS

- There are instances where landowners give possession of their property to a condemning entity through possession and use agreements. Any written agreement made between the condemning authority and the property owner during a condemnation case should be enforceable.

PROPERTY TAXES

- When landowners transfer possession of property to condemning entities under possession and use agreements, they still have to pay taxes on that property. Dispossessed property owners should not have to pay taxes on land once exclusive possession is granted to an entity with eminent domain authority.