

## Bond Requirement

Condemning entities have refused to purchase a bond to ensure payment to a property owner pending the appeal of a jury verdict. They have done this by claiming bankruptcy or insolvency to avoid payment of just compensation to the property owners. Private for-profit condemners use the threat of lengthy and expensive collection efforts to discourage landowners from exercising their constitution right to just compensation and to secure low settlements.

The *Peregrine Pipeline Co, L.P. v. Eagle Ford Partners* case in 2007 provides a classic example of the problem. The Peregrine Pipeline Co. condemned a pipeline easement on land owned by Eagle Ford Land Partners and since then has operated and gained profit from the pipeline on the property. Eagle Ford Land Partners contested the compensation offered by Peregrine Pipeline and was awarded \$1,633,000 by a jury district court. Peregrine Pipeline appealed the award and refused to pay the judgment or to provide a bond for the condemnation award in this case.

To address this issue the Texas Property Code Section 21.063 must be modified to include the following:

As a condition of appealing a final judgment, a nongovernmental entity must:

- pay the property owner the amount of just compensation awarded by the trial court;
- Deposit that same amount with the court subject to the order of the property owner;
- Or, post a surety bond in the same amount issued by a surety company qualified to do business, conditioned to secure the payment of the trial court's award of just compensation.

If the property owner moves to enforce these protocols and the nongovernmental condemner fails to comply within 30 days of the property owner's motion, then:

- The court of appeals shall dismiss the appeal with prejudice and order enforcement of the final judgment;
- the nongovernmental condemner and its assigns shall lose its right to remain on the property owner's property, and any rights that the nongovernmental condemner or its assigns has in the property shall revert to the property owner;
- and, the property owner shall be entitled to any damages attributable to the nongovernmental condemner's occupation of the property, all reasonable expenses incurred to remediate the property, and all reasonable and necessary fees for attorneys, appraisers, photographers, and other experts hired in relation to the taking.