



A C H I E V E   A N Y T H I N G

EMINENT DOMAIN

§ 73.015, Fla. Stat. (2017).



The power of the government to take private property and convert it into public use. The Fifth Amendment provides that the government may only exercise this power if they provide just compensation to the property owners.



# EMINENT DOMAIN

(Sometimes referred to as condemnation)



This power is limited by the federal constitution and state constitutions - the government must fairly compensate the owner when it takes private property.



This power is limited by constitutional provisions that no person may be deprived of property without due process of law.



The power of eminent domain can be exercised either directly or indirectly. A direct exercise requires the condemning entity to file a lawsuit, also known as an eminent domain action.

An indirect exercise of eminent domain occurs when the government takes possession of a property through physical use, without first filing a lawsuit.

In Florida, the power of eminent domain is most often exercised via an eminent domain action. In bringing the action, the government must file one of two types of lawsuits: a quick-take action or a slow-take action.



# Eminent Domain Process



# Overview of Process



The property is necessary meaning the taking is justified for furthering a proposed public use and is limited to what is reasonably required to serve the public.



# City Resolution

§ 166.401(3), Fla. Stat. (2017).



The City may not exercise its power of eminent domain unless the Commission adopts a resolution authorizing the acquisition of a property by eminent domain for any municipal use or purpose designated in such resolution.



# Before filing an eminent domain action, the City must:



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→ Attempt to negotiate in good faith with the property owner;

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→ Provide the property owner with a written offer and, if requested, a copy of the appraisal upon which the offer is based; **and**

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→ Attempt to reach an agreement regarding the amount of compensation to be paid for the property.





# Eminent Domain Action



# Necessity and Public Use

§ 166.411, Fla. Stat. (2017); *Lakeland v. Bunch*, 293 So. 2d 66 (Fla. 1974).



The property is necessary meaning the taking is justified for furthering a proposed public use and is limited to what is reasonably required to serve the public.

Public  
improvement to  
preserve health or  
welfare

Streets, highways,  
bridges

Parks, waterworks,  
ponds

Drainage

Reclaiming/filling  
wetlands

Use of  
water/sewer pipes

Underground  
wires & conduits

City buildings

Other municipal  
purposes

# Limitations and Burden of Proof

§73.014, Fla. Stat. (2017).



The condemning authority may not exercise eminent domain for the purpose of:

- Abating or eliminating a public nuisance
- Preventing or eliminating slum or blight conditions

The condemning authority bears the burden of proving the necessity and public purpose



# What is Fair Market Value?





Fair market  
value is a selling  
price for an item  
to which a buyer  
and seller can  
agree.



# Appraisals

- An expert estimate of the value of something
- Appraisers always consider a property's "highest and best use" when formulating an opinion of value.

# Approach to Appraisal Value



Comparable sales approach is based on recent sales of property similar to the property being appraised. This method works well for residential properties and is always used for vacant land. The appraiser will analyze the sales by making a grid to show the expert's adjustments for location, size, time, zoning, marketing factors, view and other factors that a buyer would consider, all with the idea that the comparable sales, as adjusted, will indicate a value of the subject.

Income approach is based on capitalization of the income that the property is capable of producing through its highest and best use. Simply put, this approach finds the present value of real property based on its future income. In condemnation, the property is valued as if it is free and clear of all liens, encumbrances and leases.

Cost approach requires the appraiser to find a value of the land and then add the estimated value of the improvements. The value of the improvements is found by finding the current cost of constructing a reproduction of the valuation subject and then subtracting depreciation. All incremental costs are also considered and added to value. Cost approach is rarely used in a condemnation real property case.



# Appraisal Life



## Validity

Under most loan guidelines, appraisals do not have a set expiration period. However, because lenders want comps that are no more than six months past, an appraisal should be no more than six months old. Most appraisers and lenders agree six months is the maximum amount of time that an appraisal holds a valid value, referred to as the “term of validity.”

## Exception

In markets that are rapidly increasing or decreasing, loan underwriters may require appraisals that are more recent than six months. This is especially true in a declining market. In this kind of market, lenders may want an appraisal to be no more than 90 to 120 days old.

# Attorney's Fees & Cost

§73.092, Florida Statutes (2017)

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## Reasonable Costs

- Attorney's fees in Florida are part of full compensation to be paid by the condemning authority.
- Reasonable costs include but are not limited to appraisal fees and accountants fees (if business damages are applicable).