



## Understanding Kentucky's Law on Eminent Domain

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Private property is a fundamental component of America's economic system. Interest in property allows a landowner to use that property in a variety of ways the landowner values. Since land is generally locally owned and managed, it makes sense that the landowner understands and appreciates how other people use and enjoy their land.

### WHAT IS EMINENT DOMAIN?

Eminent domain, as defined by the Kentucky Eminent Domain Act of 1976, means the right of the Commonwealth to take land for a public purpose, and shall include the right of private persons, corporations, or business entities, to do so under authority of law. In essence, eminent domain allows for a government entity to take private property for the public good, as long as just compensation is provided to the landowner.

Often, we hear the term "condemn" or "condemnation". This is simply a process to take private property for a public purpose under the right of eminent domain. A reason why a local government entity may choose to take land under eminent domain might be to build a road. A government takes the land to build a road, since the activity advances a public purpose. If the state tried to buy the land in the market place the price can radically increase and delay the road project. Eminent domain, subject to citizen and property safeguards, provides for land acquisition to advance a state public purpose.

Citizens want safeguards of eminent domain proceedings so they are not denied their property rights. Through procedural and substantive due process, citizens' rights are protected under the law. Procedural due process allows anyone wronged by a governmental action to challenge that government for a constitutional or legal redress of grievances. In general, procedural due process constitutes certain steps the government must follow to ensure that citizens' due process rights are being followed. For example, in the event of an eminent domain proceeding, the government should give notice and public hearing for their decision. Notice may include a newspaper advertisement in the legal section of the local paper. This notice serves to inform citizens and residents that an eminent domain proceeding may be occurring and would give certain specific land use characteristics. A hearing does just exactly as the word indicates. It would grant a hearing to landowners facing an eminent domain proceeding. A hearing affords citizens the opportunity to challenge the government's actions.

To ensure that a procedural due process challenge meets all tests of local government actions, it is important to explain the concept of substantive due process. Basically, substantive due process, as the name implies, ensures that any action that challenges a government decision or action not only is legally possible but also falls under the guidelines of whether a cause of action could occur.

## WHAT IS THE PROCEDURE OF EMINENT DOMAIN IN KENTUCKY?

Kentucky created the Eminent Domain Act of 1976 to define and establish procedures for eminent domain situations across the state (KRS 416.540 to 416.670). For purposes of the act KRS 416.540 (1) defines condemn as, “[a] means to take private property for a public purpose under the right of eminent domain.” Eminent Domain itself is defined under KRS 416.540(6) “means the right of the Commonwealth to take for public purpose and shall include the right of private persons, corporations or business entities to do so under authority of law.” The Commonwealth’s Eminent Domain Act also sets out clear procedures to begin eminent domain proceedings, rights of landowner to challenge proceedings and remedies to compensate landowners for taking land through eminent domain.

KRS 416.560 establishes procedures for eminent domain. Under KRS 416.540 (1) municipalities or counties, with the exception of certain waterworks corporations, are provided the opportunity to set their own eminent domain actions with full costs borne by the county, municipality or its departments. For state cabinet agencies, except for the Transportation cabinet, KRS 416.560 (3) begins eminent domain by request of state agency through the Finance and Administration Cabinet. Sometimes to begin an eminent domain effort the condemnor, the one exercising the right of eminent domain, “must enter the property to make studies, surveys, tests, sounding and appraisals, provided that the landowner has been notified ten (10) days prior to entry on the property,” KRS 416.540 (4). If property is damaged by condemnor in the performance of their duties, then the landowner is compensated.

Probably the most important question a landowner asks is how property is assessed for compensation. Again the Eminent Domain Act spells out the obligations of the condemnor to determine compensation.

### **KRS 416.660(1) Standards for Determining compensation – Changes in value – Taking Date.**

- (1) In all actions for the condemnation of lands under the provisions of KRS 416.550 to 416.670, except for temporary easements, there shall be awarded to the landowners as compensation such a sum as will fairly represent the difference between the fair market value of the entire tract, all or a portion of which is sought to be condemned, immediately before the taking and the fair market value of the remainder thereof immediately after the taking, including in the remainder all rights which the landowner may retain in the lands sought to be condemned where less than the fee simple interest therein is taken, together with the fair rental value of any temporary easements sought to be condemned.
- (2) Any change in the fair market value prior to the date of condemnation which the condemnor or condemnee establishes was substantially due to the general knowledge of the imminence of condemnation or the construction of the project shall be disregarded in determining fair market value. The taking date for valuation purposes shall be either the date the condemnor takes the land, or the date of the trial of the issue of just compensation, whichever occurs first.

Eminent Domain is an important tool for state and local governments to advance the public interest. But, as laid out in the Eminent Domain Act, there are specific steps the governmental or business entity must take to protect the citizens property rights under the law.

## CONCLUSION

Private property rights not only are protected under the United States and Kentucky Constitutions, but the process of eminent domain is outlined within the Eminent Domain Act of 1976. The act sets

forward certain steps to take and ensures the property owner access to government and remedies for any wrongs that may be committed. Through the process of procedural and substantive due process, landowners and others can challenge local government decisions not only for eminent domain, but for other government decisions.

## ADDITIONAL RESOURCES

Edgens, Jeff. Department of Forestry, University of Kentucky Cooperative Extension Service. What Are Property Rights FORFS 99-3

Edgens, J., Department of Forestry, University of Kentucky Cooperative Extension Service. Forest Landowner Rights and Responsibilities FORFS 99-4

Edgens, J., Department of Forestry, University of Kentucky Cooperative Extension Service. Understanding Property Rights and Takings FORFS 99-5

Kentucky Eminent Domain Act of 1976, (KRS 416.540 to 416.670)

United States Constitution especially the Fifth and Fourteenth amendments.

(J. Edgens 10/99)

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