



The Law Offices of Steven C. Vondran, P.C.

Arizona / California

(877) 276-5084

The Eminent Domain Process in Arizona

The following is general legal information only and not intended to be legal advice or a substitute for legal advice. For specific advice about your property please contact an eminent domain attorney.

General Overview of Arizona Eminent Domain

1. The eminent domain process in Arizona is normally kicked off by the City, Town, County or its subdivisions, (“the government”) sending the landowner an appraisal and offer to purchase the Subject Property (This is required by A.R.S. 12-1111). Remember, eminent domain law states that *private property may be taken for public use as long as “just compensation” is paid to the property owner.*
2. If the landowner accepts the offer then there is no legal action required. More often than not, however, the government will be looking to get a sweet deal and the offer will not likely represent the true “*highest and best use*” of the property and will often result in being an offer below market value. You should have a phoenix eminent domain lawyer review the appraisal for relationship to true market value.
3. Assuming the landowner wants to challenge the value, an appraisal should be undertaken by the property owner to establish the true value of the property. Negotiations with the government can then ensue. Your eminent domain lawyer should make a compelling case for value, in writing, to the government and follow up in an attempt to negotiate a better deal.
4. If negotiation on the eminent domain case breaks down, the government will eventually file a “**Complaint in Eminent Domain.**” This is an official lawsuit wherein the government will be named as the Plaintiff and the landowner assumes the role of defendant.
5. In the lawsuit filing, the government will also file an **order seeking immediate possession** of the property (called “OIP”). Basically, this means they want the Court to order the defendant-landowner to grant immediate possession to the subject property to the Government. If allowed, the government will be asked to post a “probable damages” bond (which should cover the likely amount of the “just compensation” that is likely to be awarded the property owner.

6. The defendant can either stipulate to the immediate possession, or they can challenge it. If challenged, a “*possession hearing*” can be scheduled. Issues that can be raised as the OIP hearing include, but are not limited to the following:
 - a. Whether the taking is “**necessary** to a public use” (typical challenges under the “*necessity prong*” include challenging the taking as being arbitrary, irrational, or challenging the location of the taking – Under A.R.S 12-1115, the government can only take property if it results in the *greatest public good and least private injury*. This point can be challenged).
 - b. Whether the taking is for a valid **public purpose** (the government may only take private property for a legitimate public use. If property is being “taken” to benefit a private developer or other private use, this can be challenged).
 - c. What the “**probable damages**” will likely be, (as discussed above, the issue of value and probable damages can be raised and bond reflecting the likely damages must be posted by the government).
 - d. There may also be **Constitutional Arguments** such as the taking violating the Equal Protection Clause, or Substantive Due Process Clause (a 42 U.S.C. 1983 Civil Rights Claim may be possible).

Note: If the Defendant contests the taking of possession, the *possession hearing* can be set out allowing sufficient time to engage in reasonable discovery in order to prepare to attack the above referenced issues.

These issues will be decided as judicial questions for the Judge (*Art. 2 Sec 17 of the Arizona Constitution*). If the Court determines the eminent domain is necessary for a proper public use and a probable damages bond is fair and just then the Court will sign the Order authorizing the government to take immediate possession of the property intended to be condemned.

Note: If the taking is deemed not “necessary” (i.e. it is based upon an arbitrary, irrational, or bad faith decision), or if the use is not deemed a valid “public use” (ex. taking is for private developers or some other unauthorized use), then the Court can set-aside the Complaint in eminent domain and force the government to dismiss its complaint, possibly with an award of attorney fees to the property owner.

7. If possession is granted, the only remaining issue is what “**just compensation**” for the taking is. The landowner is entitled to just compensation for the taking and also any “severance” damages (damages caused to the remainder of the property not being taken by the government). The government will likely undervalue or ignore the damage to the remaining parcel but these are legally recognizable damages that may be proven in a Court of law.

8. The fight over *just compensation* normally involves a “*battle of the appraisers*” arguing what the **highest and best use** of the property is” (just compensation and severance damages are jury questions). In making this determination, however, the Judge will decide the issue of what the highest and best use of the property is and whether there is a reasonable probability of rezoning (which could significantly affect the amount of damages awarded by the jury).
9. At the conclusion of the evidence and a jury verdict, the just compensation **award is entered** into the record and title to the subject property is officially transferred to the government.
10. **Appeal** is possible on limited grounds

What is “just compensation” in an Arizona Eminent Domain Case?

The Courts in Arizona have held that “Just compensation” is the amount of money necessary to put the property owner in as good a financial position as if the property had not been taken. “Market value,” is what a willing buyer would pay, and what a willing seller would accept. A willing buyer would consider all reasonably probable uses of the property (including probable rezoning densities that were set forth in a general plan). See *City of Phoenix v. Wilson*, 200 Ariz. 2, 21 P.3d 388, Ariz., (2001).

If you are a landowner in Phoenix, Scottsdale, Tempe, Mesa, Buckeye, Goodyear, Chandler, Flagstaff, Surprise, Glendale, Peoria, Casa Grande, Eloy, Florence, Maricopa, Fountain Hills, Anthem, Avondale, or any other city in the Greater Phoenix area, and your property is the subject of an eminent domain or condemnation action in Arizona, contact our office for a confidential initial consultation.

The Law Offices of Steven C. Vondran, P.C.
2415 E. Camelback Road, Suite 700
Phoenix, Arizona, 85016
Phone: (877) 276-5084
Email: Steve@VondranLaw.com

Attorney Steve Vondran is licensed to Practice Law in California and Arizona and holds Real Estate Broker Licenses in Both States.

Copyright 2009 – Law Offices of Steven C. Vondran, P.C. - All Rights Reserved.

This is an advertisement and communication pursuant to State Bar Rules.