



UNDERSTANDING EMINENT DOMAIN: TEXAS LANDOWNER'S BILL OF RIGHTS

by Texas Attorney General Greg Abbott

SINCE STEPHEN F. AUSTIN FIRST HELPED settlers establish new roots west of the Sabine River, Texas has always been a place that respects private property rights. With three times more privately owned land than any other state, Texas leads the nation in private property ownership. From the Panhandle to the Piney Woods, Texas is a place where citizens – not the government – own the land.

The distinction matters because private landownership lies at the heart of our democratic, free-market system. Recognizing this important principle, President William Howard Taft once observed, “Next to the right of liberty, the right of property is the most important individual right guaranteed by the Constitution.”

To ensure that Texas landowners are informed about their rights as private property owners, the state Legislature asked my office to draft a Texas Landowner’s Bill of Rights. As Attorney General, I can neither make new laws nor change existing law; the Texas Legislature has that exclusive authority. The ultimate goal of the Texas Landowner’s Bill of Rights is to make existing laws accessible by explaining complicated legal concepts in a manner that can be easily understood.

The central focus of the Texas Landowner’s Bill of Rights is eminent domain. Although both the U.S. and Texas Constitutions both contain protections for property owners, some

governmental and private entities have the ability to take private property for public use under certain circumstances.

For example, when a local power company needs to build a new power line, it can acquire private land to house infrastructure that serves the public interest. But when even the most narrow sliver of land is taken for a public purpose, the landowner must be adequately compensated for their property.

Under Texas law, eminent domain is the legal authority to take private property for public use. The takings process itself is called condemnation. Effective February 1, 2008, Texas property cannot be taken unless the condemning authority first provides the Landowner’s Bill of Rights to the affected property’s owners. All rights outlined in this document apply every time any entity uses eminent domain to take a Texas landowner’s private property.

The Texas Landowner’s Bill of Rights consists of 10 basic principles:

1. You are entitled to receive adequate compensation if your property is taken for a public use.
2. Your property can only be taken for a public use.
3. Your property can only be taken by a governmental entity or private entity authorized by law to do so.
4. The entity that wants to take your property must notify you about its interest in taking your property.
5. The entity proposing to take your property must provide you with an

assessment of the adequate compensation for your property.

6. The entity proposing to take your property must make a good faith offer to buy the property before it files a lawsuit to condemn the property.

7. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.

8. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.

9. Before your property is condemned, you are entitled to a hearing before a court-appointed panel that includes three special commissioners.

10. If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the taking of your property was proper, you have the right to a trial by jury.

The Texas Landowner’s Bill of Rights, along with an explanation of the condemnation process, is available at www.texasattorneygeneral.gov.

Texans should always consult the Texas Landowner’s Bill of Rights when their property faces condemnation. In a state whose citizens have a storied relationship with the land, where 95% of the property is privately owned, it is critical that residents know and understand their legal rights as private property owners.

POINTS TO REMEMBER



TEXAS LANDOWNER'S BILL OF RIGHTS

“No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Fifth Amendment
of the U.S. Constitution

Eminent domain describes certain entities to legal authority take private property for a public use.

Under HB 1495, enacted by the 80th Texas Legislature, a condemning authority must provide property owners facing condemnation with a copy of the Texas Landowner’s Bill of Rights.

The Texas Landowner’s Bill of Rights is available on the Office of the Attorney General’s Web site at www.texasattorneygeneral.gov.

More information about the procedures, timelines and requirements outlined in the Landowner’s Bill of Rights can be found in Chapter 21 of the Texas Property Code.

Access Texas statutes online at www.capitol.state.tx.us.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT