

Landowners Notice of Rights

Condemnation by a Non-Governmental Entity Proceedings Before a Special Master

As indicated in the attached notice, a public utility¹ is attempting to acquire property rights from you for public use. Before a public utility can exercise the power of eminent domain and condemn your property, Georgia law requires that the utility make a reasonable effort to negotiate the purchase of your property. However, if an agreement cannot be reached through good-faith negotiations, the public utility may file a condemnation petition against your property.

In accordance with state law, this Landowners Notice of Rights was promulgated by the Georgia Department of Community Affairs to provide you with a general understanding of your rights during the negotiation process and possible condemnation proceedings to acquire your property. The information contained herein is generally applicable. However, in some instances slight variances in the procedural requirements, such as methods of serving notice, for condemnations authorized under chapter 3 of Title 22, could apply. **Please note however that this document is not authoritative, it is for general information purposes, and should not be relied upon as a substitute for competent legal counsel.**

Prior to Initiating Condemnation Proceedings

Prior to making an official decision to condemn your property, the governing body or chief executive officer of the public utility (hereinafter referred to as condemnor) must have authorized an individual or group of individuals to approve this condemnation on behalf of the public utility. Then, unless waived by you in writing, the condemnor must carry out the pre-condemnation procedures listed below.

- Personally serve you with the enclosed notice of the proposed condemnation at least 15 days before the condemnor makes a decision to exercise its power of eminent domain concerning your property. If the condemnor's attempt to personally serve you fails, the condemnor may notify you by mail.
- If possible, post a sign on a right of way adjacent to your property with the following information: (a) notice that your property is subject to a proposed condemnation and that the condemnation may be initiated after 15 days from the date of the sign's posting; (b) the date of the sign's posting; and (c) the name, business address, and telephone number of the condemnor.
- Offer you an **opportunity to meet** with the individual(s), or a representative of that individual(s), who has the authority to decide whether or not to exercise the power of eminent domain to acquire property rights from you.

Condemnation Proceedings

The condemnor must document by appropriate method the time of the final approval of the decision to exercise its power of eminent domain to acquire property rights from you. If the decision to condemn your property is approved, the condemnor must wait at least 30 days from the time of this approval before filing a petition of condemnation in the superior

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court of the county in which your property is located. You will be served a copy of the petition of condemnation, which will contain a statement setting forth the necessity for condemning your property and describing the public use for which the condemnor seeks the property.

Unless waived by you and the condemnor, the petition will also inform you that there will be a hearing in superior court, the judge's chambers, or by telephone not less than 10 days or more than 30 days after the petition of condemnation has been filed. The purpose of this hearing will be to appoint a “**special master.**” The special master appointed by the judge must be a competent attorney at law, be of good standing in his/her` profession, and have at least three years experience in the practice of law.

The judge will then order you, the condemnor, the person in possession of the property (if someone other than yourself), and any other parties with a legal claim or interest in the property (if any) to appear at a hearing before the special master. This hearing must be held not less than 30 days or more than 60 days after the appointment of the special master. The primary purpose of the hearing before the special master is to determine how much you will be compensated if the condemnation becomes final (more on this hearing below).

Note that at any point before title to property rights in your property vests in the condemnor you may file a **motion** with the superior court asking the court to determine whether the planned use of your property is for a public use² and/or whether the condemnor has the legal authority to exercise the power of eminent domain. **A sample of this kind of motion is attached to this Statement of Rights.** These questions will not be considered unless you file a motion requesting the court to review them.

In such proceedings before the court, the condemnor has the burden of proving that the proposed property will be for a public use and that the condemnor has the legal authority to condemn your property.

Compensation

The Georgia Constitution requires that you be appropriately compensated if your property is condemned. Private property may not be taken from you without just and adequate compensation being paid to you first. This means that you are entitled to receive the fair market value of your property if it is condemned. Additionally, if you are displaced from your property, you may be entitled to relocation costs, and/or to actual direct losses as a result of moving a business or a farm operation currently on your property.

If only part of your land is condemned, you may also be entitled to recover for any reduction in the market value of the remaining property if the condemnation causes the value to go down. These are called consequential damages.

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Hearing Before the Special Master

The special master's primary role is to determine the fair market value of your property interests and other compensation issues discussed above. However, the special master will also decide all legal issues raised during the condemnation proceedings. At the hearing before the special master you will be given the opportunity to defend your rights, make claims as to the value of the property or interest, and present other matters material to your respective rights.

You have the right to hire an attorney to represent you in the condemnation action. During the hearing, you or your attorney will have the opportunity to challenge the condemnor's evidence, to question the condemnor's witnesses, and to call other witnesses to present evidence giving your perspective of the case.

Your Right to Select an Assessor

At any time at least five calendar days before commencement of the hearing before the special master, you or any other person having a right or interest in the property may, by written notice served on the condemnor and all other parties to the proceeding, select an assessor to hear and decide value issues at the hearing. However, notwithstanding the number of condemnees or any other persons having a right or interest in the property, only one assessor can be selected on behalf of all such interested parties.

If you choose to select an assessor for this purpose, within five days after receipt of your written notice, the condemnor, by written notice to you, will select a second assessor. Then the special master, your assessor, and the assessor selected by the condemnor will constitute the special master panel which will hear the evidence and decide value issues. The special master will chair the panel and will decide all issues other than value issues (only value issues will be decided by the panel).

At the hearing before the special master or the special master panel (if applicable) all evidence offered by either party as to the value of the property or of any interest therein to be taken or used, the damages incurred by the owner of the property or of any interest therein, and the benefits to the owner accruing from the use of the property or interest by the condemnor will be heard. The special master or the special master panel (if applicable) will then decide all value issues which arise at the hearing and will prepare and submit the award as provided below.

Award of the Special Master/Special Master Panel

The award of the special master or the special master panel (if applicable) will be served to you and filed with the clerk of the superior court within three days after the date on which the hearing is completed. The special master will mail the award to you (or your attorney)

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and the condemnor on the date of filing of the award and provide a certificate of service evidencing the mailing of such award.

The award will become part of the record of the proceedings and will condemn and vest title to the property or other interest in the condemnor upon deposit of the amount of the award by the condemnor into the registry of the court, subject to your demand (and others, if any, according to their respective interests).

Rights to Appeal

You may file both a value appeal and non-value exceptions. A value appeal or any non-value exceptions must be filed within 10 days (plus 3 additional calendar days for mail delivery) after the special master's award is mailed to you.

Appeal Based on Issues of Just and Adequate Compensation (value appeal)

If you are not satisfied with the amount of the award for your property, you may file an appeal asking the court for a jury trial. You are entitled to a jury trial only for issues related to the amount of compensation awarded by the special master or special master panel (if applicable). If separate and distinct parcels of property are condemned in the same proceeding, you may file a separate appeal for each parcel. Note that acceptance of the award will not prevent you from carrying out an appeal nor will the appeal hinder or delay in any way the condemnor's work and progress on the condemned property.

If the amount awarded by the special master or the special master panel (if applicable) is less than that found by the verdict of the jury, the condemnor will be bound to pay the additional amount in order to retain the property. **However, if the jury's verdict is that the amount of the special master's award was too high, then the award would be reduced accordingly**, which means that if you have already accepted the special master's award, **the condemnor would be entitled to a judgment against you for the difference.**

Appeal Based On Non-Value Exceptions

Procedural Issues:

In addition to a value appeal, you may file exceptions on matters of law regarding the condemnation proceedings. However, as stated above, **you are entitled to a jury trial only for issues related to the amount of compensation awarded by the special master, or special master panel (if applicable).** Generally, by filing non-value exceptions, you are asking the court to rule on whether the special master appropriately decided legal issues and conducted the hearings in accordance with specific legally required procedures.

Public Use/Legal Authority to Exercise Eminent Domain:

If the court has not already ruled based on a **motion** (see first gray block above), you may file an exception with the court to determine whether the condemnor's exercise of the power of eminent domain is for a public use and/or whether the condemnor has the legal

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authority to exercise the power of eminent domain. Note that the law specifically providing for this exception filing states that the exception must be filed "... within ten days of the entry of the special master's award" It is unclear whether or not you will have the 3 additional calendar days for mail delivery.

In such proceedings before the court, the condemnor has the burden of proving that the proposed property will be for a public use and that the condemnor has the legal authority to condemn your property. These questions will not be considered unless you file either a motion prior to title vesting in the condemnor, or an exception after the special master's award has been mailed to you, but prior to title vesting in the condemnor (as stated above, title does not vest in the condemnor until the condemnor has deposited the award amount into the registry of the court).

Reimbursement of Your Expenses if Condemnation Denied or Abandoned

If the final judgment of the superior court is that the condemning authority cannot acquire your property by condemnation, or if the condemnor abandons the condemnation proceedings, you are entitled to a reimbursement of reasonable costs that you incur for attorney, appraisal, and engineering fees because of these condemnation proceedings. The actual amount of your reimbursement award would be determined by the court.

Relevant Code sections

The Code sections described herein are in Title 22 of the Official Code of Georgia Annotated, which can be accessed online at: <http://www.legis.ga.gov/legis/GaCode> .

¹ **Generally speaking "public utilities" include publicly, privately, or cooperatively owned entities that provide telephone communications, electricity, light, heat, gas, oil products, water, steam, clay, waste management, storm water management not connected with highway drainage, common carriers, railroads, and other similar services.**

² **Public benefits derived from economic development do not fall within the legal definition of "public use." However, the condemnation of land for the creation or functioning of public utilities, the opening of roads, and the providing of channels of trade or travel are specifically included within this definition. O.C.G.A. 22-1-1(9)**