

# OHIO AGRICULTURE

## The Nuts and Bolts of Eminent Domain

Farmland is often a target for government projects or public utility corridors. Below is a description of general eminent domain concepts to help you determine if assistance is needed to protect your right to just compensation when the government or public utility intrudes upon your property.

### Eminent Domain Rights

- ▶ Government and public utilities have certain rights to take private property or rights in private property (such as easements) when claimed necessary for a public use
- ▶ Property owners have a constitutional right to just compensation for those takings
- ▶ Just compensation includes payment for land taken and damage to the remaining land

### What Rights Do Governments/Utilities Typically Take?

- ▶ Fee simple – 100% acquisition of the property
- ▶ Easement – acquisition and use of certain aspects of a property as set out in easement documents (temporary construction easements; utility/pipeline easements; flowage/flooding easements, etc.)

### Eminent Domain Proceedings

- ▶ Hiring attorneys early may avoid litigation, protect your rights, and increase your compensation
- ▶ A landowner can take legal action if the government or utility takes property without compensation
- ▶ Government/public utility may initiate legal proceedings by filing a petition to appropriate
- ▶ Certain defenses are available to landowners. For example, a taking must be limited to what is specifically necessary for presently intended public use and for speculative future “needs”
- ▶ If the taking case proceeds, a jury will determine the compensation owed to the landowner

### Estate and Succession Planning / Tax Ramifications of Eminent Domain Takings

- ▶ Eminent domain may require creating or updating estate planning and succession planning documents for purposes of estate tax planning, asset protection, and business succession
- ▶ If compensation exceed cost basis in property, it is generally treated as taxable gain for federal income tax purposes, but it is possible in some cases to shelter taxable gain under IRS Code

### Contact us for a free consultation

As a farmer, you have many issues to contend with, let the agricultural attorneys at Vorys assist you. Contact us for a free consultation by calling 833-525-2099.

### Practice Contacts



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