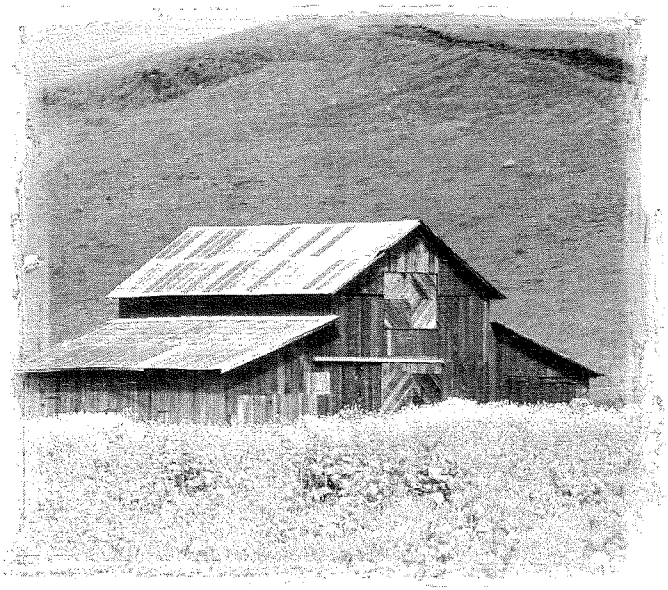
State of Illinois
Illinois Department of Transportation

A LAND OWNER'S GUIDE TO

LAND ACQUISITION

BY THE ILLINOIS DEPARTMENT OF TRANSPORTATION



AND

EMINENT DOMAIN

Illinois Department of Transportation

WHY THE STATE ACQUIRES LAND

The State of Illinois needs land in order to fulfill its basic responsibilities to its citizens. These include building new roads and improving existing ones, erecting and expanding public buildings, creating state parks, and preserving historically important places. If it could not acquire private property, the State would be unable to fulfill these fundamental responsibilities.

STATE LAND ACQUISITION METHODS

The State acquires private property either by purchasing it from the owner or through its power of "eminent domain" in a court proceeding called "condemnation."

Purchasing property.

If the Illinois Department of Transportation (the Department) needs your property, it will first approach you with an offer to purchase it, just as a private individual or corporation would. The amount of the offer will be what the Department believes your property would bring if it were put up for sale (this amount is called "the fair market value"). The Department will obtain an appraisal or waiver valuation, depending upon the complexity of the assignment, to determine the fair market value. If the Department wishes to purchase only part of your property, the amount it offers will include compensation for any damages (that is the loss in value of your remaining property) that will be caused by the acquisition.

While the Department's offer is based on its determination of fair market value, the Department's offer to purchase is not inflexible. It may consider a validly supported counteroffer from you and may make a revised offer in response. State purchases of property are concluded, just as in private sales, with the property owner giving the Department the proper deed and other documentation to transfer good title.

Acquisition through eminent domain.

Eminent domain is the State's authority to take private property for public purposes, like those mentioned earlier, upon payment of just compensation to the owner. It is based on the principle that no private interest is more important than the State's need to provide for the good of the general public. While eminent domain is inherently a power of only the federal and state governments, the State of Illinois has given this power to other units of government, such as cities and villages and, in certain cases, to railroads and utilities. The court proceeding that state agencies and these other entities use to acquire property under power of eminent domain is called "condemnation."

If you reject or don't respond to the Department's first offer, or if after counter-offering, you and the Department still can't agree on a price or other conditions for the sale of the property, the Department may decide to acquire your property under the State's power of eminent domain. Even in cases in which you and the Department have agreed on a sale price, the Department may still have to resort to acquisition by eminent domain if there is a reason you can't give the Department clear title to your property (e.g., if there are liens against it, or if a co-owner won't agree to the sale or can't be located).

"Quick-take"

In addition to the power of eminent domain, the State has given some of its agencies (such as the Illinois Department of Transportation) the power of "quick-take." "Quick-take" is an important power. It allows the Department to acquire in a short time all parcels of land needed to build a road where construction otherwise could not begin until condemnation of every parcel required had been completed.

"Quick-take," as its name suggests, lets the Department obtain title to property shortly after filing a condemnation case by paying the approximate value of the property to be taken and any resulting damages. This initial payment is called "preliminary just compensation." Unless you and the Department agree upon the amount of preliminary just compensation, it will be determined by the judge after a brief hearing.

After the Department has acquired title to the property through "quick-take," the exact amount of just compensation due for the acquisition of your property and any damage is determined. This amount is called "final just compensation." You and the Department may be able to reach an agreement as to the amount of final just compensation, but if you can't, it will be determined through a trial. If the amount of final just compensation is more than the amount of preliminary just compensation, you will be entitled to interest on the difference from the date the Department took possession of your property through the date it pays final just compensation. (Conversely, if the amount of final just compensation is less, you will be required to refund the Department the difference.)

Payment of compensation

When a State agency has filed a condemnation case, it cannot by law make the preliminary and final just compensation payments directly to you, but must deposit them with the treasurer of the county in which your property is located. This is so that there will be an opportunity to pay off any claims (judgments, delinquent taxes, etc.) which may be recorded against your property.

To receive compensation payments after deposit, you will be required to present a petition (a written request) to the judge asking to have the payment released to you. *It is your responsibility to present this petition*, either yourself or through your attorney, since the Attorney General only represents the Department in condemnation cases. Ordinarily, the judge will direct the county to release the payment to you unless a judgment creditor, tax collector, or other claimant appears and shows that he or she is entitled to all or part of the payments.

YOUR RIGHTS IN STATE LAND ACQUISITIONS

When acquiring your property, the Department must observe your rights under the federal and Illinois constitutions and those given you as a property owner by Illinois law. Some of the more important of these rights are:

- The right to be presented with a purchase offer for your property before a condemnation case is filed. In Illinois, state agencies and other entities which have eminent domain power must attempt to purchase your property before they file a condemnation case, unless attempting to do so would be clearly fruitless.

- For State acquisitions, the right to be provided with certain information about the acquisition before a condemnation case is filed. When the Department first contacts you about acquiring your property, it must identify itself and the purpose of the acquisition, including any facility that will be constructed on the property. Also, the Department must give you a description of the property it wishes to acquire and provide you with the name, address and telephone number of the Department's representative to answer questions about the acquisition.

- Additionally, at least 60 days before filing for condemnation, the Department must send you a certified letter stating the amount it will pay for the property and the basis for computing that amount. This letter must also state that the Department still desires to negotiate a purchase of the property from you, but that if this isn't possible, it will file for condemnation. Only state agencies are required to provide this information to you.

- Both prior to and during a condemnation case, you have the right to be represented by an attorney of your own choosing and to have a jury trial. However, the State is not obligated to reimburse you for attorney's fees and other litigation expenses. You also have a right to have a jury decide the amount of final just compensation (there is no right, however, to have a jury decide the amount of preliminary just compensation in "quick-take" proceedings).

- The right to just compensation for the acquisition of your property. Both the federal and Illinois constitutions require payment of just compensation for your property when it is taken by condemnation. Just compensation is the fair market value of the property taken on the date that the condemnation case is filed. If only part of your property is taken and there are damages (loss in value) to the remainder because of the acquisition, Illinois law requires that just compensation also include the amount of damages.

- If you have to relocate your home or business because the Department acquires your property for a state transportation project, you may be eligible for reimbursement of reasonable and necessary moving and related expenses under the Department's relocation assistance and payments program. Additionally, if you rent or own your home, you may also be eligible for supplemental housing payments that will help you lease or buy appropriate replacement housing. These payments are not part of, but are in addition to, just compensation for the taking of the property. To be eligible, you must meet certain occupancy requirements as of the date the Department first offered to purchase the property.

THE ATTORNEY GENERAL'S ROLE IN STATE LAND ACQUISITIONS

The Illinois Constitution and State law require the Attorney General to represent state agencies in condemnation cases and other land acquisition transactions. The Attorney General does this either through one of the Assistant Attorney Generals on staff or through a Special Assistant Attorney General, who is a private attorney hired by the office for a particular case or other matters. Because the Attorney General represents state agencies in condemnation and land transactions, the Attorney General's office can neither advise nor represent you in these matters. If you would like legal advice or representation on a state purchase of your property or condemnation case, you must consult a private attorney.

DISCLAIMER

Note: This brochure is intended to give you only general information about eminent domain and state land acquisition. Any legal advice about condemnation or state acquisition of your property should be obtained from a qualified attorney of your choosing.

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