



Breaking Down Wisconsin's Eminent Domain Law

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What is Eminent Domain??

- The **Wisconsin** Constitution, Article. 1, section 13 establishes **eminent domain** authority.
- Eminent Domain otherwise known as Condemnation is “the power to take private property for a public purpose with payment of just compensation.”



What entities can use Eminent Domain??

- **32.02 Who may condemn; purposes.** The following departments, municipalities, boards, commissions, public officers, and business entities may acquire by condemnation any real estate and personal property appurtenant thereto or interest therein which they have power to acquire and hold or transfer to the state, for the purposes specified, in case such property cannot be acquired by gift or purchase at an agreed price:
- **(1)** Any county, town, village, city, including villages and cities incorporated under general or special acts, school district, the department of health services, the department of corrections, the board of regents of the University of Wisconsin System, the building commission.



What entities can use Eminent Domain??

- **(2)** The governor and adjutant general for land adjacent to the Wisconsin state military reservation at Camp Douglas for the use of the Wisconsin national guard.
- **(3)** Any railroad corporation, any grantee of a permit to construct a dam to develop hydroelectric energy for sale to the public, any Wisconsin plank or turnpike road corporation, any drainage corporation, any interstate bridge corporation, or any corporation formed under [chapter 288, laws of 1899](#), for any public purpose authorized by its articles of incorporation.



What entities can use Eminent Domain??

- **(4)** Any Wisconsin telegraph or telecommunications corporation for the construction and location of its lines.
- **(5)** “Foreign transmission provider” means a foreign corporation that satisfies each of the following:
 - 1. The foreign corporation is an independent system operator, as defined in s. [196.485 \(1\) \(d\)](#), or an independent transmission owner, as defined in s. [196.485 \(1\) \(dm\)](#), that is approved by the applicable federal agency, as defined in s. [196.485 \(1\) \(c\)](#).
 - 2. The foreign corporation controls transmission facilities, as defined in s. [196.485 \(1\) \(h\)](#), in this and another state.



What entities can use Eminent Domain??

- **(5) (B):** Any Wisconsin corporation engaged in the business of transmitting or furnishing heat, power or electric light for the public or any foreign transmission provider for the construction and location of its lines or for ponds or reservoirs or any dam, dam site, flowage rights or undeveloped water power.
- **(6)** Any Wisconsin corporation furnishing gas, electric light or power to the public, for additions or extensions to its plant and for the purpose of conducting tests or studies to determine the suitability of a site for the placement of a facility.
- **(7)** Any Wisconsin corporation formed for the improvement of any stream and driving logs therein, for the purpose of the improvement of such stream, or for ponds or reservoir purposes.



What entities can use Eminent Domain??

- **(8)** Any Wisconsin corporation organized to furnish water or light to any city, village or town or the inhabitants thereof, for the construction and maintenance of its plant.
- **(9)** Any Wisconsin corporation transmitting gas, oil or related products in pipelines for sale to the public directly or for sale to one or more other corporations furnishing such gas, oil or related products to the public. (Enbridge)
- **(10)** Any rural electric cooperative association organized under ch. [185](#) which operates a rural electrification project.



What entities can use Eminent Domain??

- **(11)** Any housing authority created under ss. [66.1201](#) to [66.1211](#); redevelopment authority created under s. [66.1333](#); community development authority created under s. [66.1335](#); local cultural arts district created under subch. [V of ch. 229](#), subject to s. [229.844 \(4\) \(c\)](#); or local exposition district created under subch. [II of ch. 229](#).
- **(11m)** The Wisconsin Aerospace Authority created under subch. [II of ch. 114](#).
- **(12)** Any person operating a plant which creates waste material which, if released without treatment would cause stream pollution, for the location of treatment facilities. This subsection does not apply to a person with a permit under ch. [293](#) or subch. [III of ch. 295](#).



What entities can use Eminent Domain??

- **(13)** Any business entity authorized to do business in Wisconsin that shall transmit oil or related products including all hydrocarbons which are in a liquid form at the temperature and pressure under which they are transported in pipelines in Wisconsin.
- **(14)** The department of transportation for the acquisition of abandoned rail and utility property under s. [85.09](#).
- **(15)** The department of natural resources.



What entities can use Eminent Domain??

- The Eminent Domain Statute requires specific entities to make a relocation order that provides for the laying out, relocation and improvement of a transportation-related facility prior to initiating negotiations.
- The order must include a map or plat showing the old and new facility locations, as well as the land and interests required for the project. Within 20 days of its issue, a copy of the order must be filed with the county clerk where the lands are located.



Eminent Domain Process: Appraisal

- The acquiring authority must obtain at least one appraisal for each property it will acquire prior to initiating negotiations.
- When obtaining and drafting the appraisal, the appraiser must consult with the property owner. Once completed, the appraiser must provide the property owner with a full narrative appraisal.
- Also, the acquiring authority must notify the property owner that he may obtain his own appraisal at the (reasonable) expense of the acquiring authority, which must be submitted to the acquiring authority within 60 days of obtaining the acquiring authority's appraisal.



Eminent Domain Process: Negotiations

- The acquiring authority must negotiate with the property owner for the property purchase and must consider the full narrative appraisal to establish the property's fair market value during negotiations.
- In partial acquisitions, fair market value is the greater of either the fair market value of the part acquired or the difference between the entire property value before acquisition and its value after.
- If good faith negotiations fail, the first step in the eminent domain/condemnation process is the issuance of a jurisdictional offer.
- The jurisdictional offer is a notice sent by the condemning authority to the landowner. There are strict statutory requirements the authority must include in the jurisdictional offer. The jurisdictional offer must include the amount of compensation offered for the property the authority intends to take.



Eminent Domain Process: Jurisdictional Offer

- The landowner has 20 days from the completion of service of the jurisdictional offer to accept or reject the jurisdictional offer. If the landowner accepts the jurisdictional offer, the transfer of title must occur within 60 days. Thereafter, a certificate of compensation is recorded with the register of deeds.
- If the landowner rejects the jurisdictional offer, the condemning authority may make an “award of damages.” After payment of the award has been made, the award of damages must be recorded in the county register of deeds office. Once the award of damages is recorded, the property passes in fee simple to the acquiring authority.
- The jurisdictional offer is also relevant should the landowner appeal the amount of compensation they receive as a result of the land taking. Under Wisconsin eminent domain law, the landowner may recover all attorney’s fees and costs if the appeal results in the landowner receiving at least 15% more than the jurisdictional offer.



Eminent Domain Process: Contesting Condemnation

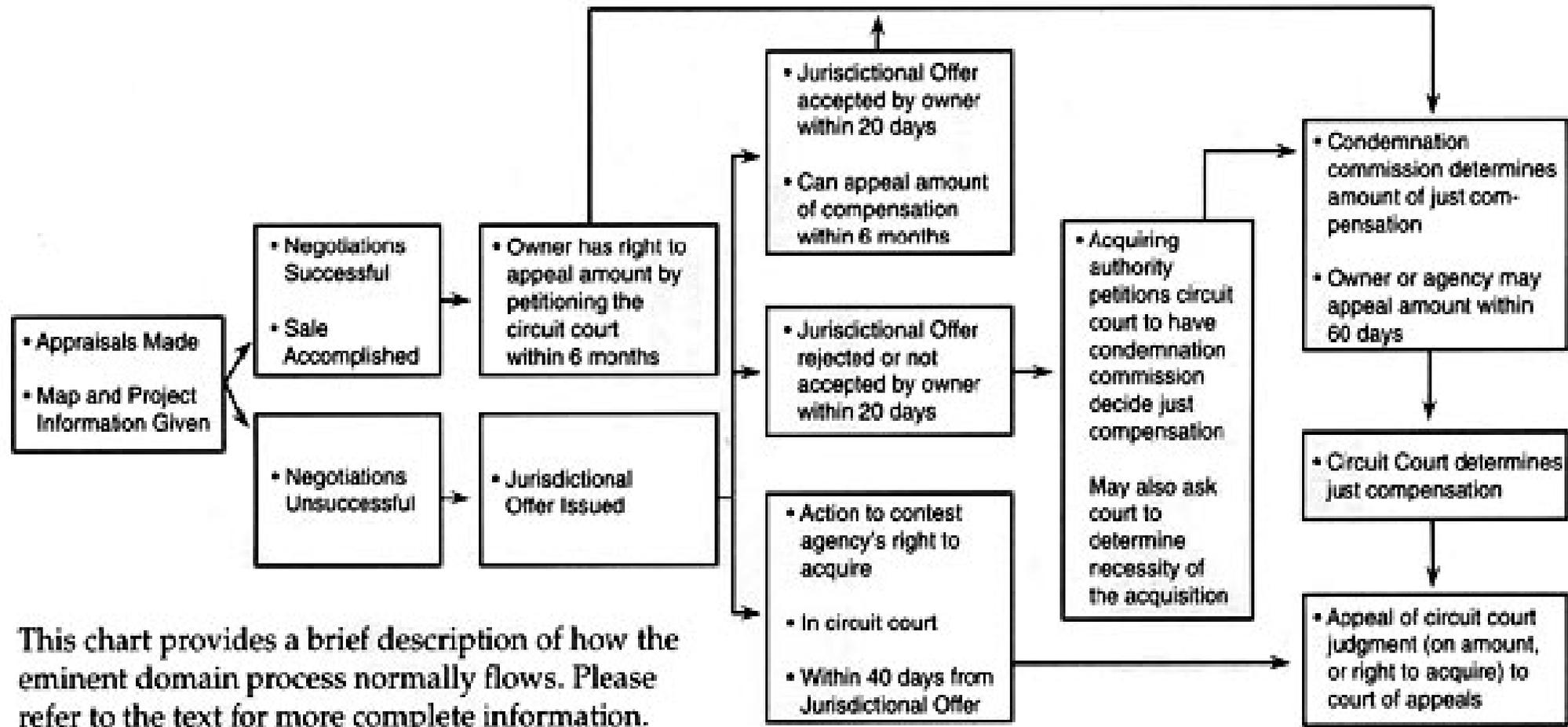
- Within 40 days from the date of service of the mailing date of the jurisdictional offer, an owner who wants to contest the right of condemnation for any reason other than the inadequacy of the amount of compensation, must commence an action in circuit court with the condemning authority as the defendant.
- To block eminent domain, the landowner must prove that the taking fails to serve a public purpose or public necessity.



Eminent Domain Process: Contesting Compensation

- Any party having ownership interest in acquired property has two years from the date of evaluation to challenge the compensation award.
- Similar to the warranty deed, once this time passes the respondent loses their right to appeal and can no longer appeal. It is very important to talk to an experienced eminent domain attorney to determine when the appeal time runs out.
- Under Wisconsin law, the [acquiring authority](#) is responsible for compensating a displaced person for the actual and reasonable moving expenses. Wisconsin Administrative Code outlines what actual and reasonable moving expenses include.

The WI PSC Eminent Domain Regulatory Process



This chart provides a brief description of how the eminent domain process normally flows. Please refer to the text for more complete information.



The End

Questions??

Discussion??