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Eminent Domain: Summary of Recent Legislative Changes

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Arkansas law regarding eminent domain was amended in the 2013 and 2015 legislative sessions in several meaningful ways.

In 2013, a provision was added in Ark. Code Ann. § 27-67-317(b) entitling the landowner to an award of appraisal costs, expert witness fees and attorneys' fees if the compensation awarded by the jury exceeded the amount of money deposited by the State of Arkansas by ten percent (10%) or more. This provision applied only to condemnation actions filed by the State Highway and Transportation Department. The opportunity to receive fees and costs was an important step in allowing aggrieved landowners the opportunity to challenge the valuation of their property in Court. Otherwise, true "just compensation" could not be achieved in any case where the landowner disputed the value from the Highway Department and required the service of an attorney.

In 2015, the attorney and appraisal fees' provision was extended to apply to other condemning authorities in addition to the Highway Department including, for example, public utilities and improvement districts. Currently, only counties and cities are exempted from the fees and costs provision. See Ark. Code Ann. § 18-15-103(b)(11). However, the threshold for an award of fees and costs was increased from ten percent (10%) to twenty percent (20%) for the applicable condemning authorities.

Another provision added in 2015 confirmed that when a trial is required to determine just compensation, the decision must be made by a twelve-person jury. Ark. Code Ann. § 18-15-103(9). While this has always been the case for actions filed by the Highway Department, it is now true in all condemnation actions. This requirement does not prevent a landowner from settling an eminent domain action out of court, but it does ensure a right to a jury trial if needed.

Next, the term "just compensation" was substituted for "market value" in the section describing the landowner's rights. Ark. Code Ann. § 18-15-103(b)(1). This change recognizes that

“just compensation” may include damages other than the mere market value of the property taken – such as the damage done to the value of the remainder of a landowner’s property after the loss of the property taken.

Finally, the law was amended to require that the condemning authority provide an assessment of just compensation prior to or contemporaneously with a good-faith offer of just compensation. Ark. Code Ann. § 18-15-103(b)(5). The good-faith offer and the assessment must be provided before a lawsuit seeking condemnation of the property is filed.

If you have questions about your rights when property is taken by eminent domain, please do not hesitate to contact us.