



THE STATE OF TEXAS

# LANDOWNER'S BILL OF RIGHTS

This Landowner's Bill of Rights applies to any attempt to condemn your property. The contents of this Bill of Rights are set out by the Texas Legislature in Texas Government Code section 402.031 and chapter 21 of the Texas Property Code. Any entity exercising eminent domain authority must provide a copy of this Bill of Rights to you.

1. You are entitled to receive adequate compensation if your property is condemned.
2. Your property can only be condemned for a public use.
3. Your property can only be condemned by a governmental entity or private entity authorized by law to do so.
4. The entity that wants to acquire your property must notify you that it intends to condemn your property.
5. The entity proposing to acquire your property must provide you with a written appraisal from a certified appraiser detailing the adequate compensation you are owed for your property.
6. If you believe that a registered easement or right-of-way agent acting on behalf of the entity that wants to acquire your property has engaged in misconduct, you may file a written complaint with the Texas Real Estate Commission (TREC) under section 1101.205 of the Texas Occupations Code. The complaint should be signed and may include any supporting evidence.
7. The condemning entity must make a bona fide offer to buy the property before it files a lawsuit to condemn the property—meaning the condemning entity must make a good faith offer that conforms with chapter 21 of the Texas Property Code.
8. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.
9. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.
10. Before your property is condemned, you are entitled to a hearing before a court-appointed panel of three special commissioners. The special commissioners must determine the amount of compensation the condemning entity owes for condemning your property. The commissioners must also determine what compensation, if any, you are entitled to receive for any reduction in value of your remaining property.
11. If you are unsatisfied with the compensation awarded by the special commissioners, or if you question whether the condemnation of your property was proper, you have the right to a trial by a judge or jury. You may also appeal the trial court's judgment if you are unsatisfied with the result.



PREPARED BY THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS • JANUARY 2022



# CONDEMNATION PROCEDURE

Eminent domain is the legal authority certain governmental and private entities have to condemn private property for public use in exchange for adequate compensation. Only entities authorized by law to do so may condemn private property. Private property can include land and certain improvements that are on that property.

## WHO CAN I HIRE TO HELP ME?

You can hire an appraiser or real estate professional to help you determine the value of your property as well as an attorney to negotiate with a condemning entity or to represent you during condemnation proceedings.

## WHAT QUALIFIES AS A PUBLIC PURPOSE OR USE?

Your property may be condemned only for a purpose or use that serves the general public. This could include building or expanding roadways, public utilities, parks, universities, and other infrastructure serving the public. Texas law does not allow condemning authorities to exercise eminent domain for tax revenue or economic development.

## WHAT IS ADEQUATE COMPENSATION?

Adequate compensation typically means the market value of the property being condemned. It could also include certain damages if your remaining property's market value is diminished by the condemnation or the public purpose for which it is being condemned.

## OTHER THAN ADEQUATE COMPENSATION, WHAT OTHER COMPENSATION COULD I BE OWED?

If you are displaced from your residence or place of business, you may be entitled to reimbursement for reasonable expenses incurred while moving to a new site. However, reimbursement costs may not be available if those expenses are recoverable under another law. Also, reimbursement costs are capped at the market value of the property.

## WHAT DOES A CONDEMNOR HAVE TO DO BEFORE CONDEMNING MY PROPERTY?

- ◆ Provide you a copy of this Landowner's Bill of Rights before, or at the same time as, the entity first represents that it possesses eminent domain authority. It is also required to send this Landowner's Bill of Rights to the last known

address of the person listed as the property owner on the most recent tax roll at least seven days before making its final offer to acquire the property.

- If the condemnor seeks to condemn a right-of-way easement for a pipeline or electric transmission line and is a private entity, the condemnor must also provide you a copy of the Landowner's Bill of Right's addendum.
- The addendum describes the standard terms required in an instrument conveying property rights (such as a deed transferring title or an easement spelling out the easement rights) and what terms you can negotiate.
- ◆ Make a bona fide offer to purchase the property. This process is described more fully in chapter 21 of the Texas Property Code. A "bona fide offer" involves both an initial written offer as well as a final written offer.
  - The initial written offer must include:
    - » a copy of the Landowner's Bill of Rights and addendum (if applicable);
    - » either a large-font, bold-print statement saying whether the offered compensation includes damages to the remainder of your remaining property or a formal appraisal of the property that identifies any damages to the remaining property (if any);
    - » the conveyance instrument (such as an easement or deed); and
    - » the name and telephone number of an employee, affiliate, or legal representative of the condemning entity.
  - The final written offer must be made at least 30 days after the initial written offer and must include, if not previously provided:
    - » compensation equal to or more than the amount listed in a written, certified appraisal that is provided to you;
    - » copies of the conveyance instrument; and
    - » the Landowner's Bill of Rights.
  - ◆ Disclose any appraisal reports. When making its initial offer, the condemning entity must share its appraisal reports that relate to the property from the past 10 years. You have the right to discuss the offer with others and to either accept or reject the offer made by the condemning entity.

## WHAT IF I DO NOT ACCEPT AN OFFER BY THE CONDEMNING AUTHORITY?

The condemnor must give you at least 14 days to consider the final offer before filing a lawsuit to condemn your property, which begins the legal condemnation process.

## HOW DOES THE LEGAL CONDEMNATION PROCESS START?

The condemnor can start the legal condemnation process by filing a lawsuit to acquire your property in the appropriate court of the county where the property is located. When filing the petition, the condemnor must send you a copy of the petition

by certified mail, return receipt requested, and first class mail. It must also send a copy to your attorney if you are represented by counsel.

## WHAT DOES THE CONDEMNOR HAVE TO INCLUDE IN THE LAWSUIT FILED WITH THE COURT?

The lawsuit must describe the property being condemned and state the following: the public use; your name; that you and the condemning entity were unable to agree on the value of the property; that the condemning entity gave you the Landowner's Bill of Rights; and that the condemning entity made a bona fide offer to voluntarily purchase the property from you.

## SPECIAL COMMISSIONERS' HEARING AND AWARD

No later than 30 days after the condemning entity files a condemnation lawsuit in court, the judge will appoint three local landowners to serve as special commissioners and two alternates. The judge will promptly give the condemnor a signed order appointing the special commissioners and the condemnor must give you, your lawyer, and other parties a copy of the order by certified mail, return receipt requested. The special commissioners will then schedule a condemnation hearing at the earliest practical time and place and to give you written notice of the hearing.



monetary compensation for the value of the property condemned and the value of any damages to the remaining property. They do not decide whether the condemnation is necessary or if the public use is proper. Further, the special commissioners do not have the power to alter the terms of an easement, reduce the size of the land acquired, or say what access will be allowed to the property during or after the condemnation. The special commissioners also cannot determine who should receive what portion of the compensation they award. Essentially, the special commissioners are empowered only to say how much money the condemnor should pay for the land or rights being acquired.

## WHO CAN BE A SPECIAL COMMISSIONER?

Special commissioners must be landowners and residents in the county where the condemnation proceeding is filed, and they must take an oath to assess the amount of adequate compensation fairly, impartially, and according to the law.

## WHAT IF I WANT TO OBJECT TO A SPECIAL COMMISSIONER?

The judge must provide to the parties the names and contact information of the special commissioners and alternates. Each party will have up to 10 days after the date of the order appointing the special commissioners or 20 days after the date the petition was filed, whichever is later, to strike one of the three special commissioners. If a commissioner is struck, an alternate will serve as a replacement. Another party may strike a special commissioner from the resulting panel within three days after the date the initial strike was filed or the date of the initial strike deadline, whichever is later.

## WHAT DO THE SPECIAL COMMISSIONERS DO?

The special commissioners' job is to decide what amount of money is adequate to compensate you for your property. The special commissioners will hold a hearing where you and other interested parties may introduce evidence. Then the special commissioners will determine the amount of money that is adequate compensation and file their written decision, known as an "Award," in the court with notice to all parties. Once the Award is filed, the condemning entity may take possession and start using the property being condemned, even if one or more parties object to the Award of the special commissioners.

## ARE THERE LIMITATIONS ON WHAT THE SPECIAL COMMISSIONERS CAN DO?

Yes. The special commissioners are tasked only with determining

## WHAT WILL HAPPEN AT THE SPECIAL COMMISSIONERS' HEARING?

The special commissioners will consider any evidence (such as appraisal reports and witness testimony) on the value of your condemned property, the damages or value added to remaining property that is not being condemned, and the condemning entity's proposed use of the property.

## WHAT ARE MY RIGHTS AT THE SPECIAL COMMISSIONERS' HEARING?

You have the right to appear or not appear at the hearing. If you do appear, you can question witnesses or offer your own evidence on the value of the property. The condemning entity must give you all existing appraisal reports regarding your property used to determine an opinion of value at least three days before the hearing. If you intend to use appraisal reports to support your claim about adequate compensation, you must provide them to the condemning entity 10 days after you receive them or three business days before the hearing, whichever is earlier.

## DO I HAVE TO PAY FOR THE SPECIAL COMMISSIONERS' HEARING?

If the special commissioners' award is less than or equal to the amount the condemning entity offered to pay before the proceedings began, then you may be financially responsible for the cost of the condemnation proceedings. But, if the award is more than the condemning entity offered to pay before the proceedings began, then the condemning entity will be responsible for the costs.

## WHAT DOES THE CONDEMNOR NEED TO DO TO TAKE POSSESSION OF THE PROPERTY?

Once the condemning entity either pays the amount of the award to you or deposits it into the court's registry, the entity may take possession of the property and put the property to public use. Non-governmental condemning authorities may also be required to post bonds in addition to the award amount. You have the right to withdraw funds that are deposited into the registry of the court, but when you withdraw the money, you can no longer challenge whether the eminent domain action is valid—only whether the amount of compensation is adequate.

## OBJECTING TO THE SPECIAL COMMISSIONERS' AWARD

If you, the condemning entity, or any other party is unsatisfied with the amount of the award, that party can formally object. The objection must be filed in writing with the court and is due by the first Monday following the 20th day after the clerk gives notice that the commissioners have filed their award with the court. If no party timely objects to the special commissioners' award, the court will adopt the award amount as the final compensation due and issue a final judgment in absence of objection.

## WHAT HAPPENS AFTER I OBJECT TO THE SPECIAL COMMISSIONERS' AWARD?

If a party timely objects, the court will hear the case just like other civil lawsuits. Any party who objects to the award has the

right to a trial and can elect whether to have the case decided by a judge or jury.

## WHO PAYS FOR TRIAL?

If the verdict amount at trial is greater than the amount of the special commissioners' award, the condemnor may be ordered to pay costs. If the verdict at trial is equal to or less than the amount the condemnor originally offered, you may be ordered to pay costs.

## IS THE TRIAL VERDICT THE FINAL DECISION?

Not necessarily. After trial any party may appeal the judgment entered by the court.



## DISMISSAL OF THE CONDEMNATION ACTION

A condemnation action may be dismissed by either the condemning authority itself or on a motion by the landowner.

### WHAT HAPPENS IF THE CONDEMNING AUTHORITY NO LONGER WANTS TO CONDEMN MY PROPERTY?

If a condemning entity decides it no longer needs your condemned property, it can file a motion to dismiss the condemnation proceeding. If the court grants the motion to dismiss, the case is over, and you can recover reasonable and necessary fees for attorneys, appraisers, photographers, and for other expenses up to that date.

### WHAT IF I DO NOT THINK THE CONDEMNING ENTITY HAS THE RIGHT TO CONDEMN MY PROPERTY?

You can challenge the right to condemn your property by filing a motion to dismiss the condemnation proceeding. For example, a landowner could challenge the condemning entity's claim that it seeks to condemn the property for a public use. If

the court grants the landowner's motion, the court may award the landowner reasonable and necessary fees and expenses incurred to that date.

### CAN I GET MY PROPERTY BACK IF IT IS CONDEMNED BUT NEVER PUT TO A PUBLIC USE?

You may have the right to repurchase your property if your property is acquired through eminent domain and:

- ◆ the public use for which the property was acquired is canceled before that property is put to that use,
- ◆ no actual progress is made toward the public use within 10 years, or
- ◆ the property becomes unnecessary for public use within 10 years.

The repurchase price is the price you were paid at the time of the condemnation.

## ADDITIONAL RESOURCES AND ADDENDA

For more information about the procedures, timelines, and requirements outlined in this document, see chapter 21 of the Texas Property Code. An addenda discussing the terms required for an instrument of conveyance under Property Code section 21.0114(c), and the conveyance terms that a property owner may negotiate under Property Code section 21.0114(d), is attached to this statement.

The information in this statement is intended to be a summary of the applicable portions of Texas state law as required by HB 1495, enacted by the 80th Texas Legislature, Regular Session, and HB 2730, enacted by the 87th Texas Legislature, Regular Session. This statement is not legal advice and is not a substitute for legal counsel.

# THE STATE OF TEXAS LANDOWNER'S BILL OF RIGHTS

## ADDENDUM A:

### Required Terms for an Instrument Conveying a Pipeline Right-of-Way Easement or an Easement Related to Pipeline Appurtenances<sup>1</sup>

(1) The maximum number of pipelines that may be installed in the right-of-way acquired through this instrument is \_\_\_\_.

(2) The types of pipeline appurtenances that are authorized to be installed under this instrument for pipeline-related appurtenances, such as pipes, valves, compressors, pumps, meters, pigging stations, dehydration facilities, electric facilities, communication facilities, and any other appurtenances that may be necessary or desirable in connection with a pipeline, are described as follows: \_\_\_\_.

(3) The maximum diameter, excluding any protective coating or wrapping, of each pipeline to be initially installed under this instrument for a pipeline right-of-way is \_\_\_\_.

(4) For each pipeline to be installed under this instrument, the type or category of substances permitted to be transported through each pipeline is \_\_\_\_.

(5) Any aboveground equipment or facility that Grantee<sup>2</sup> intends to install, maintain, or operate under this instrument on the surface of the pipeline easement is described as follows: \_\_\_\_.

(6) A description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property, is attached as Exhibit \_\_\_\_.

(7) The maximum width of the easement under this instrument is \_\_\_\_.

(8) For each pipeline to be installed under this instrument, the minimum depth at which the pipeline will initially be installed is \_\_\_\_.

(9) The entity installing pipeline(s) under this instrument: (check one)

- intends to double-ditch areas of the pipeline easement that are not installed by boring or horizontal directional drilling.
- does not intend to double-ditch areas of the pipeline easement that are not installed by boring or horizontal directional drilling.

(10) Grantee shall provide written notice to Grantor<sup>3</sup>, at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property, if and when Grantee assigns any interest conveyed under this instrument to another entity, provided that this provision does not require notice by Grantee for assignment to an affiliate or to a successor through merger, consolidation, or other sale or transfer of all or substantially all of its assets and businesses.

(11) The easement rights conveyed by this instrument are: (check one)

- exclusive.
- nonexclusive.

<sup>1</sup> The easement terms listed in this addendum may be amended, altered, or omitted by the agreement of the condemning authority and the landowner, pursuant to Sections 21.0114(d), (e), and (f) of the Texas Property Code.

<sup>2</sup> "Grantee" is the private entity, as defined by Section 21.0114(a) of the Texas Property Code, that is acquiring the pipeline easement.

<sup>3</sup> "Grantor" is the property owner from whom the Grantee is acquiring the pipeline easement.

(12) Grantee may not grant to a third party access to the easement area for a purpose that is not related to one of the following: the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under this instrument or of pipeline appurtenances to be installed under this instrument.

(13) Grantor: (check one)

- may recover from Grantee actual monetary damages, if any, arising from the construction and installation of each pipeline to be installed under this instrument.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, arising from the construction and installation of each pipeline to be installed under this instrument.

(14) After initial construction and installation of each pipeline installed under this instrument, Grantor: (check one)

- may recover from Grantee actual monetary damages, if any, arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under this instrument.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under this instrument.

(15) Grantor: (check one)

- and Grantee agree, with regard to Grantee's removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by Grantee under this instrument, that Grantee will access and secure the easement acquired under this instrument as follows: \_\_\_\_\_.
- may recover from Grantee payment for monetary damages, if any, caused by Grantee to gates and fences, if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to gates and fences.

(16) With regard to restoring the pipeline easement area acquired under this instrument and Grantor's remaining property used by Grantee to as near to original condition as is reasonably practicable and maintaining the easement in a manner consistent with the purposes for which the easement is to be used under this instrument: (check one)

- Grantee will be responsible for the restoration.
- Grantee will reimburse Grantor for monetary damages that arise from damage to the pipeline easement area or the Grantor's remaining property, if any, caused by the Grantee and not restored or paid for as part of the consideration for the instrument.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to the pipeline easement area or the Grantor's remaining property.

(17) Grantee's rights of ingress, egress, entry, and access on, to, over, and across Grantor's property under this instrument are described as follows: \_\_\_\_\_.

(18) Grantee may not make use of the property rights acquired by this instrument, other than as provided by this instrument, without the express written consent of Grantor.

(19) The terms of this instrument bind the heirs, successors, and assigns of Grantor and Grantee.

## THE STATE OF TEXAS LANDOWNER'S BILL OF RIGHTS

### ADDENDUM B:

#### Required Terms for an Instrument Conveying an Electric Transmission Line Right-of-Way Easement<sup>4</sup>

(1) The uses of the surface of the property to be encumbered by the electric transmission line right-of-way easement acquired by Grantee<sup>5</sup> under this instrument are generally described as follows: \_\_\_\_\_.

(2) A description or illustration of the location of the electric transmission line right-of-way easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property, is attached as Exhibit \_\_\_\_\_.

(3) The maximum width of the electric transmission line right-of-way easement acquired by this instrument is \_\_\_\_\_.

(4) Grantee will access the electric transmission line right-of-way easement acquired under this instrument in the following manner: \_\_\_\_\_.

(5) Grantee may not grant to a third party access to the electric transmission line right-of-way easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of the electric and appurtenant facilities installed under this instrument.

(6) Grantor<sup>6</sup>: (check one)

- may recover from Grantee actual monetary damages, if any, arising from the construction, operation, repair, maintenance, inspection, replacement, and future removal of lines and support facilities after initial construction in the easement, if any.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, arising from the construction, operation, repair, maintenance, inspection, replacement, and future removal of lines and support facilities after initial construction in the easement.

(7) Grantor: (check one)

- and Grantee agree, with regard to Grantee's removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by Grantee under this instrument, that Grantee will access and secure the easement acquired under this instrument as follows: \_\_\_\_\_
- may recover from Grantee payment for monetary damages, if any, caused by Grantee to gates and fences, if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument.
- acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to gates and fences.

<sup>4</sup> The easement terms listed in this addendum may be amended, altered, or omitted by the agreement of the condemning authority and the landowner, pursuant to Sections 21.0114(d), (e), and (f) of the Texas Property Code.

<sup>5</sup> "Grantee" is the private entity, as defined by Section 21.0114(a) of the Texas Property Code, that is acquiring the electric transmission line right-of-way easement.

<sup>6</sup> "Grantor" is the property owner from whom the Grantee is acquiring the electric transmission line right-of-way easement.

(8) Grantee shall restore the easement area and Grantor's remaining property to their original contours and grades, to the extent reasonably practicable, unless Grantee's safety or operational needs and the electric facilities located on the easement would be impaired. With regard to restoring the electric transmission line right-of-way easement area acquired under this instrument and Grantor's remaining property used by Grantee to as near to original condition as is reasonably practicable following future damages, if any, directly attributed to Grantee's use of the easement: (check one)

- Grantee will be responsible for the restoration, unless the safety or operational needs of Grantee and the electric facilities would be impaired.
- Grantor acknowledges that the consideration paid for the easement acquired under this instrument includes future damages, if any, caused by Grantee to the easement area or the Grantor's remaining property.

(9) The easement rights acquired under this instrument are: (check one)

- exclusive.
- nonexclusive.
- otherwise limited under the terms of the instrument as follows: \_\_\_\_\_.

(10) Grantee may not assign Grantee's interest in the property rights acquired under this instrument to an assignee that will not operate as a utility subject to the jurisdiction of the Public Utility Commission of Texas or the Federal Energy Regulatory Commission without written notice to Grantor at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property.

(11) Grantee may not make use of the property rights acquired by this instrument, other than as provided by this instrument, without the express written consent of Grantor.

(12) The terms of this instrument bind the heirs, successors, and assigns of Grantor and Grantee.

# THE STATE OF TEXAS LANDOWNER'S BILL OF RIGHTS

## ADDENDUM C:

### Optional Terms for an Instrument Conveying a Pipeline Right-of-Way Easement, an Easement Related to Pipeline Appurtenances, or an Electric Transmission Line Right-of-Way Easement<sup>7</sup>

(1) With regard to the specific vegetation described as follows: \_\_\_\_\_, Grantor<sup>8</sup>: (check one):

- may recover from Grantee<sup>9</sup> payment for monetary damages, if any, caused by Grantee to the vegetation.
- Grantor acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to the vegetation.

(2) With regard to income loss from disruption of existing agricultural production or existing leases based on verifiable loss or lease payments caused by Grantee's use of the easement acquired under this instrument, Grantor: (check one)

- may recover from Grantee payment for monetary damages, if any, caused by Grantee to Grantor's income.
- Grantor acknowledges that the consideration paid for the easement acquired under this instrument includes monetary damages, if any, caused by Grantee to Grantor's income.

(3) Grantee shall maintain commercial liability insurance or self-insurance at all times, including during Grantee's construction and operations on the easement, while Grantee uses the easement acquired under this instrument. The insurance must insure Grantor against liability for personal injuries and property damage sustained by any person to the extent caused by the negligence of Grantee or Grantee's agents or contractors and to the extent allowed by law. If Grantee maintains commercial liability insurance, it must be issued by an insurer authorized to issue liability insurance in the State of Texas.

(4) If Grantee is subject to the electric transmission cost-of-service rate jurisdiction of the Public Utility Commission of Texas or has a net worth of at least \$25 million, Grantee shall maintain commercial liability insurance or self-insurance at levels approved by the Public Utility Commission of Texas in the entity's most recent transmission cost-of-service base rate proceeding.

<sup>7</sup> Pursuant to Section 21.0114(d) of the Texas Property Code, in addition to the terms set forth in Addenda A and B, a property owner may negotiate for the inclusion of the terms in this Addendum in any instrument conveying an easement to a private entity, as defined by Section 21.0114(a) of the Texas Property Code. The easement terms listed in this addendum may be amended, altered, or omitted by the agreement of the condemning authority and the land-owner, pursuant to Sections 21.0114(d), (e), and (f) of the Texas Property Code.

<sup>8</sup> "Grantor" is the property owner from whom the Grantee is acquiring the pipeline or electric transmission line right-of-way easement.

<sup>9</sup> "Grantee" is the private entity, as defined by Section 21.0114(a) of the Texas Property Code, that is acquiring the easement.