

ADVISING A CLIENT PRIOR TO CONDEMNATION

Warren R. Power

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A. Settling With the Agency Before Condemnation

The statutory guidelines require that the condemnor make every reasonable effort to acquire the property voluntarily and in a timely manner. This obligation provides the landowner an opportunity to negotiate if the landowner is not willing to accept the initial offer. The landowner may want to use available information, appraisals, and studies to try to elicit a better offer from the condemnor.

- Allegations of improper conduct by the condemnor during pretrial negotiations are not admissible in a condemnation case and may not be introduced to establish an element of fair market value. The proper procedure for asserting complaints arising from the negotiations process is motion and hearing pursuant to O.C.G.A. § 32-3-11. DOT v. Clay, 198 Ga. App. 155 (1990).

B. Obtaining Your Appraisal

The involvement in a condemnation case will almost always require an appraisal of the subject property. To make sure the appraisal is satisfactory there are certain steps that need to be taken. First, the appraiser should be hired as soon as possible. Many times an appraiser can bring additional insight to the problem at hand, and the extra early advice could pay off in the long run. Of course, there is a chance that the appraiser's opinion will not benefit the client's interest. In this event, time should be allowed to hire another appraiser. Once a "friendly" appraiser is hired, the appraiser will need ample time to run data searches and complete the subsequent analysis. Lastly, most professionals will not endanger their reputation by taking "last minute" offers of employment when time for a thorough analysis is waning.

As mentioned earlier, the appraiser should have experience and credentials indicating his or her professional competency. Two professional designations, the MAI and SRA, informally known as Member of the Appraisal Institute, and Senior Real Estate Appraiser, show that the appraiser is educated and has maintained the required continuing education to remain certified. The MAI designation is held by appraisers who are experienced in the valuation and evaluation of commercial and industrial properties while the SRA designation

are for those professionals experienced in residential real property analysis.

An appraiser with experience not only with appraising similar property to that of the subject property, but also in testifying, is definitely a wise decision. Prior to hiring the appraiser, ask for names of attorneys he or she has worked for and names of attorneys on the other side of the issue. These contacts will be helpful in determining the appraisers strengths and weaknesses. It is also helpful to hire an appraiser who does not depend exclusively on condemnors or condemnees for work because objectivity could become an issue. While a local appraiser may lack the experience, credentials, and expertise of an out of town expert, it is always good to have someone with extensive knowledge of local market conditions available for consultation.

Conflicts of interest sometimes arise between a client and an appraiser and need to be avoided. Appraisals done for family members or other close contacts who may have needed the appraisers testimony on related cases could prove costly down the road.

It is also necessary that the fee arrangement be understood by the parties involved. By no means should the appraiser have an interest in the outcome of the case. Any evidence of this would be devastating to the client, as well as the attorney and the appraiser. It should also be understood that the appraisal fee is still due whether or not the appraisal supports the clients case. Most professional fees are based on the amount of time necessary to complete the assignments and the parties should have some understanding of the total amount of the fee. The hourly fee could include pre-trial conferences, depositions, updates and testimony which are generally not included in the appraisal fee. This is another very good reason to hire the appraiser as soon as possible; you may need to hire another one whose opinion of value is more akin to yours.