

Compensation provided by the State of Texas for Property Taken Through Eminent Domain



Over the past several legislative sessions there have been several attempts to rectify the broken Texas eminent domain laws. These changes were approved through legislation with a Constitutional Amendment in 2009 and SB18 in 2011. Those who have and utilize the power of eminent domain make claims that the system is fixed and is now fair and just for the property owner.

The Texas Attorney General's (AG) office provides legal support for state agencies utilizing the governmental power of eminent domain. The primary agency that uses this power is the Texas Department of Transportation (TxDOT), which primarily uses this authority to obtain property for right of ways for road construction and expansion across the state.

Through public information requests, the last 23 condemnation cases from across the State of Texas that were processed through the Texas AG's office show that previous attempts to provide adequate compensation for victims of eminent domain have failed. The initial offer of each of these condemnation cases was compared against the final settlement. (See chart below.) In several of these cases, there appeared to be a settlement where the victim accepted the State's offer for the property, thus avoiding a hearing. (In these instances the final settlement mirrored the initial offer, which would be extremely unlikely if a hearing before the commissioners' court had actually been held.) Even including the cases that settled, the initial offer averaged only 61% of the final offer, well below what those who use this power suggest is common.

A more realistic number is found by using those eminent domain cases that were clearly disputed and went to commissioners' court for a hearing to determine value. If you factor out the cases where the initial offers were accepted, the initial offer was 40% of the final settlement. Clearly those entities utilizing the power of eminent domain must give a fair offer to the victim for the property being taken and that is not currently happening in most instances. Note: This study only addresses land taken by the State of Texas for roadway construction; the numbers for private entities that utilize the power of eminent domain are not publicly available. It is suspected that figures for those offers would be much lower than those of the public entities.

Presently victims of eminent domain in Texas must pay their own legal expenses and any other fees associated with attempting to get fair market value for their property. To dispute the offer of a condemning entity can easily amount to thousands of dollars. Texas Senate Bill 740 and House Bill 2684 proposes that if the condemner's final offer is 20% greater or more than the amount of the initial offer, the condemning entity must pay certain expenses, including the victim's legal fees.

Texas eminent domain laws have obviously not gone far enough to protect private property rights. Additional measures must be completed to bring Texas up to the standards that Texans expect and deserve. If you believe in protecting private property rights, you must support Texas Senate Bill 740 mentioned above as well as 741 and 742. Passing them would be a good start for protecting the property of hard-working Texans.

Following is a document outlining the 23 cases including initial offer the victim received from the state and the final payment. All of this information was received from the Texas Attorney General's Office, and therefore should be considered accurate.

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Initial Offers and Final Settlements for Takings by the State of Texas for Roadways

Name	Initial Offer	Final Offer/Settlement	Percentage Initial Offer is of Final Settlement	Difference Between Initial and Final	Percent Final/Initial
Mueschke	\$68,612.00	\$185,656.00	37%	\$117,044.00	171%
Detering	\$1,361,432.00	\$3,708,074.50	37%	\$2,346,642.50	172%
Greyhawkesdene	\$23,152.00	\$36,058.00	64%	\$12,906.00	56%
Cochrum	\$22,620.00	\$33,930.00	67%	\$11,310.00	50%
Arellano	\$11,312.00	\$14,312.00	79%	\$3,000.00	27%
Bouhoutos Brown	\$74,042.00	\$74,042.00	Settled	\$0.00	0%
FBC Oak Cliff	\$3,125.00	\$3,594.00	87%	\$469.00	15%
Strata Holding	\$98.00	\$98.00	Settled	\$0.00	0%
Dickey	\$130,142.00	\$130,142.00	Settled	\$0.00	0%
Waggoner	\$1,211,629.00	\$1,785,000.00	68%	\$573,371.00	47%
Art Environmental	\$87,402.00	\$290,000.00	30%	\$202,598.00	232%
Lubbock National Bank	\$284,582.00	\$1,075,000.00	26%	\$790,418.00	278%
Downstream 973	\$24,469.00	\$94,000.00	26%	\$69,531.00	284%
Downstream 973	\$15,605.00	\$73,618.00	21%	\$58,013.00	372%
Lipcomb	\$6,081.00	\$16,000.00	38%	\$9,919.00	163%
Lipcomb	\$19,427.00	\$134,000.00	14%	\$114,573.00	590%
Branch Banking	\$126,628.00	\$126,628.00	Settled	\$0.00	0%
JP Morgan Chase	\$105,216.00	\$107,277.00	Settled	\$2,061.00	2%
Bank of America	\$32,853.00	\$34,314.00	Settled	\$1,461.00	4%
Rahmati	\$231,016.00	\$384,000.00	60%	\$152,984.00	66%
Advantage	\$44,531.00	\$112,643.00	40%	\$68,112.00	153%
Jarmillo Revis	\$5,209.00	\$5,940.00	88%	\$731.00	14%
Metro Joint Venture	\$64,919.00	\$189,152.00	34%	\$124,233.00	191%
		Average	41%	\$202,581.59	126%