

Know your rights

Preparing your business for possible eminent domain action **Interviewed by Marcia Passos Duffy**

With the rise of urban redevelopment and public infrastructure projects in Southern California, more businesses are facing eminent domain acquisitions and the hurdles of claiming compensation for business losses.

There are specific preventive steps business owners can take to avoid locating their business where eminent domain is likely to occur, says Charles S. Krolikowski, a land use and eminent domain attorney with Newmeyer & Dillion LLP, a full-service business law firm.

Smart Business spoke with Krolikowski about how a business can investigate if a particular location is at risk for future eminent domain, and steps to take if your business is acquired and forced to relocate.

How can a business owner know for sure that these areas will be 'taken' in the future?

Checking with the local planning office is a good place to start. In the case of redevelopment, a business owner can check with the city or county and examine land use maps, which will identify redevelopment areas. Once an area is slated for redevelopment area, the government will enter into an agreement with a private developer to construct new shopping centers, apartments or other businesses. The designation of a redevelopment area requires public hearings, and the redevelopment contracts are public documents.

Another more common occurrence is when land and buildings are taken to expand roads and highways. In this regard, business owners can avoid locating their business where the streets are in poor shape, or where there is traffic congestion because the streets are too narrow. Streets that are designated for expansion are often identified in city documents, such as a circulation element. In these documents, you can check the ultimate right-of-way or capacity of a given street and you can ask local planners if the government intends on widening that street in the near future. It often takes years to commence such a project, due to design and funding delays.



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What can a business do if it needs to be in a high-risk eminent domain area?

If you rent, read the lease conditions carefully, since there will likely be a 'condemnation provision' in the lease concerning the business owner's right to claim and recover compensation in the event of an eminent domain action. Most tenants do not pay attention to this provision of the lease, but it can have devastating effects if it is written to give the landlord all of the condemnation compensation, including leasehold value. Notwithstanding the lease provision, business owners are still entitled to seek relocation and business losses resulting from the taking.

What happens when a business owner's property is slated for eminent domain?

Before the eminent domain action begins, the property and/or business owner will be visited by at least two consultants hired by the government. The first is a right-of-way agent, who will inform you that a government entity will be taking your property and provide you with an appraisal for the real estate only. The government is not required to offer any compensation to the business owner before the

condemnation begins. The second person to visit the business will be a relocation consultant. In California, businesses displaced by eminent domain or acquisition under the threat of eminent domain are entitled to recover relocation assistance and benefits.

Do you have any suggestions that will help a business owner's case in getting the most compensation, both for the property and for the loss of business goodwill?

First, business owners must be very wary about their initial communications with the public agency's consultants who visit the property because anything an owner says may be used against him or her later, particularly if the business owner makes a claim for the loss of business goodwill.

Second, it is imperative that the property or business owner retain the services of professional appraisers to assess the value of the property or business so that the owner can decide whether to spend the money to litigate. Here, property owners should be aware that an early settlement can often be negotiated from 10 percent to 15 percent higher than the initial offer without incurring too many expenses.

What could a business owner say that could hurt the chances for a claim for business goodwill?

For example, if the business owner says, even in an offhand way, to the relocation consultant that he does not wish to be relocated because he was planning to close his business anyway. The public entity may attempt to use this information when fighting a business goodwill claim. The best advice for the business owner is to obtain as much information as possible about the proposed acquisition but try not to disclose information about the business's finances or the future intentions of the business owner.

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