

Do Tenants Get Compensated When the Government Takes Property By Eminent Domain?

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Do Tenants Get Compensated When the Government Takes Property by Eminent Domain?

Written by Brandon C. Meadows, Esq. – 3/19/19

When the government takes property from a land owner under eminent domain, it is given that the government must pay the owner for the value of the property taken. However, tenants and leaseholders of property are often unsure as to their rights to compensation. The reality is that owners of an interest less than title ownership, such as tenants, are also entitled to compensation from the government. While a tenant may not own the property he or she occupies, the tenant has a right to possess the property, and the tenant is entitled to compensation when the government takes that right. *K-Mart v. State, Dept. of Transportation*, 636 So. 2d 131 (Fla. 2d DCA 1994). Because a tenant's property rights are typically created and governed by a lease agreement, the terms of the lease will often control how much compensation the tenant will ultimately recover.

A Tenant's Right To Compensation May Be Governed By The Lease

Many lease agreements contain provisions that specifically address the effect of eminent domain takings. Specifically, such lease provisions may provide that the lease is terminated

automatically upon the event of a taking. If a lease provides for automatic termination, and nothing more, courts will generally find that the tenant has a claim for compensation for the possessory interest taken. Courts will generally interpret a lease in favor of compensation to the tenant, unless expressly provided otherwise. If a tenant is deemed to contractually waive its rights to compensation, the lease must express a clear intent by the tenant to waive that compensation. *Winn Dixie Stores, Inc. v. Dept. of Transportation*, 839 So. 2d 727 (Fla. 2d DCA 2003).

Some lease provisions may address exactly how the eminent domain proceeds should be divided amongst the owner and the tenant, expressly allowing compensation for the tenant. *Elmore v. Broward County*, 507 So. 2d 1220 (Fla. 4th DCA 1987). If the lease does not require a specific apportionment of proceeds, the tenant is entitled to compensation for the decrease in value of the possessory rights. *Trump Enterprises, Inc. v. Publix Supermarkets, Inc.*, 682 So. 2d 168 (Fla. 4th DCA 1996).

Whether residential or commercial, tenants are often concerned about improvements, fixtures, expenses to relocate, and business damages. Depending on the circumstances, the tenant may be entitled to fair compensation for such items.

Tenants should take care not to abandon the property too soon, as such premature action could result in a denial of compensation to the tenant. For instance, a tenant who abandons the property before the date of the taking is not

entitled to compensation. *Orange State Oil Co. v. Jacksonville Expressway Authority*, 143 So. 2d 892 (Fla. 1st DCA 1962). However, in some circumstances, a commercial tenant may be entitled to compensation after early abandonment, where the tenant could show business damages that were caused by the threat of eminent domain. *Coleman v. Escambia County*, 405 So. 2d 227 (Fla 1st DCA 1981).

How Do We Calculate The Compensation Due To A Tenant Or Leaseholder?

Generally, the total compensation for the landowner, the tenant and any other property interest is determined by valuing the property as if it were owned by one person without any other interests. *Division of Administration, State of Florida, Dept. of Transportation v. Allen*, 447 So. 2d 1383 (Fla. 5th DCA 1984). This so-called “undivided fee rule” initially ignore all of the various property rights to the property to establish one award of fair market value.

Once the undivided award is determined, it is then allocated into proportionate shares, depended on the value of each property interest in the property. This process is called “apportionment.” An apportionment hearing is typically held to divide the compensation between the owner and tenant. See Fla. Stat. § 73.101. At this hearing, tenants are entitled to demonstrate the value of his or her share of the proceeds based upon the value of the leasehold interest taken. Afterward, the court should divide the total compensation

fairly to compensate the tenant for the established value of his or her property right. *Dama v. Record Bar, Inc.*, 512 So. 2d 206 (Fla. 1st DCA 1987).

Fair compensation is measured by determining the fair market value of the lease or the value of the right to remain in possession of the property throughout the term of the lease. *Orange State Oil Co. v. Jacksonville Expressway Authority*, 110 So. 2d 687 (Fla. 1st DCA 1959). Leasehold value is typically measured by the difference between fair rental value at the time of taking and the contract rent due to the owner/landlord for the remainder of the lease. If a tenant bargained for a great deal of lower rent than what would otherwise be paid for a similar home on the market, the difference between the contract rent and market rent is known as the "leasehold advantage," and that advantage is measured for the remainder of the term of the lease to establish the leasehold value.

How Do Options To Renew The Lease Affect Tenant Compensation?

When a lease allows the option to extend the term beyond its original expiration date, courts must measure the value of the lease through its longest limit. An unexercised option to renew may afford compensation to the tenant, so long as there is a demonstration that the lease would have been renewed in the absence of the taking. *Dama v. Record Bar, Inc.*, 512 So. 2d

206 (*Fla. 1st DCA 1987*). However, a mere expectation that a lease will be renewed is not sufficient to allow for compensation.

How Do We Measure A Commercial Tenant's Business Damages?

Lessees are statutorily entitled to compensation for business damages. Fla. Stat. §§ 73.015(2) and 73.071(3)(b). Tenant business damages, similar to leasehold damages, are limited to the period of time that the tenant has the right to possess the property. *Seminole County v. Sanford Court Investors, Ltd.*, 743 So. 2d 1165 (*Fla. 5th DCA 1999*). The right to recover business damages and the period of time the tenant has to possess the property is measured from the time of entry of the order of taking. *Id.* at 1169. Commercial tenants should be aware that the leasehold advantage may be included in the business damages claim, but, if so, the tenant cannot also seek apportionment for its leasehold interest, as that would allow for double recovery to the commercial tenant. *AAA Million Auto Parts, Inc. v. Affron*, 379 So. 2d 707 (*Fla. 3d DCA 1980*).

Conclusion On Lost Property Rights Compensation

Leasehold interests, such like virtually any interest in property, can be affected by eminent domain. If the rights to possess property through a lease is adversely affected, compensation is due to the tenant. Every tenant should consider the terms of the lease agreement to access the full scope of his or her rights to compensation. The tenant should then engage in the process of valuing the leasehold interest for the remainder of the lease

term, and consider relocation and other business damages. Only then will the tenant be in the best position to negotiate and obtain the fullest compensation for the taking of the easement.

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