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CONDEMNATION 101

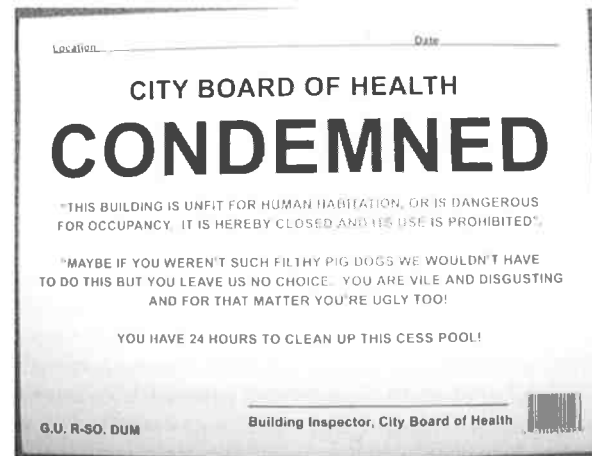
You are in a meeting one morning when your legal assistant interrupts to tell you that a very good client is on the phone demanding to speak to you about a "condemnation matter." As you walk hurriedly back to your office, you begin thinking about the phrase "condemnation matter." You have visions of yourself in one of your nicest business suits standing in front of a rat-infested, tenement slum, right next to a very large "condemned" sign. You think to yourself "I didn't go to law school and work hard all these years to wind up there!"

On the phone with your client, you are somewhat relieved to learn that the "condemnation matter" was actually an eminent domain lawsuit. Your client tells you that she has been meaning to talk to you for the last couple of months about the fact that the State of Tennessee wants to acquire part of her building and parking lot for a new highway project. Negotiations have evidently ground to a halt and the State has served her with a Petition for Condemnation. She wants to come in and talk with you about it. What do you do?

Well, the easiest thing to do would be to just refer her to me. After all, I am one of a handful of lawyers in Knoxville who actually enjoys handling condemnation cases; and, over the years, I have handled a number of them for both the condemning authority and the landowner.

However, if, after talking with your client, you still want to handle the matter, here are a few pointers to get you started:

1. Set up a meeting with your client. Have her bring copies of all papers served on her. That typically consists of a Summons, a Petition for Condemnation, and a Notice of Possession Hearing. Also, ask her to bring copies of any documents given to her during the negotiation process. This would typically include a copy of the State's appraisal and a written offer.
2. If your client has a mortgage, ask for copies of the mortgage papers. They usually contain a provision about how condemnation proceeds are to be handled. After receiving these papers, contact the mortgage company.
3. If your client is the lessor or lessee of the property being condemned, ask for a copy of her lease. Again, most leases set forth the rights of the parties to the lease in the event of condemnation, including how the proceeds are to be split. After you review the lease, contact the other party.
4. Contact the Court Clerk to confirm the date upon which your client was served. Generally, that is the date upon which your client has first been given notice of the condemnation proceedings. The State cannot take any further action toward obtaining possession of the property until thirty days after your client has been given notice.
5. Also, confirm with the Court Clerk's office the date of the possession hearing. Unless you plan to object to the right to take, there is not much that you need to do to prepare for this hearing; however, the date upon which the Order of Possession is entered is the "magic date" upon which the property being condemned is to be valued.
6. Analyze whether you have any grounds to object to the right to take. While volumes have been written upon this subject, the basic concepts are that the condemning authority must be able to show that the property is being taken for a public use and that the property is necessary for that use. If you do determine that your client has valid grounds for objecting to the right to take (and these instances are very rare), then you will need to file a written objection to the right to take within thirty days of your client receiving notice.
7. If your client does not have a valid objection to the right to take, go ahead and file an Answer on your client's behalf stating that the amount of money paid into Court is inadequate and does not provide your client just compensation for the property that is being taken.
8. If your client is not objecting to the right to take, talk with your client about withdrawing the funds from the Court. If your client is interested, you can do so with an Agreed Order. It will contain a provision that your client agrees to pay back the difference, in the event that the jury awards an amount less than the amount paid into Court.
9. Obtain copies of the plans for the project for which your client's property is being acquired. Compare them against your client's Deed to make sure that you agree with what is purportedly being taken from your client and that you understand the project's effects on the remainder of the property.
10. As soon as possible after the date of possession, hire an appraiser to value the property as of that date. If you delay, you might be opening your appraiser up to cross examination at trial.
11. As soon as possible after the date of possession, take pictures of the property to be acquired and the remainder. These will be helpful to you later when you are meeting with your client and appraiser and will also be good exhibits for use at trial.
12. Consider filing a Motion to Stay the Trial until after the highway project is completed. By statute, the landowner has an absolute right to put off the trial until the project is completed. During construction, the condemning authority sometimes realizes that it needs to make changes to the plans. For that reason, it just makes sense to wait until the construction is completed to see the final effects on your client's property.
13. Then, mark your calendar, sit back and relax. It could take a couple of years or more before the project is completed and your client's case can be set for trial.



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