

**Agricultural
ECONOMICS**

Legal Affairs

Eminent Domain and Condemnation: The Taking of Private Property for Public Use in Indiana



Gerald A. Harrison
Purdue Extension Economist

Keith A. Good
Attorney, Springfield, Illinois

Contents

Introduction. 1

Eminent Domain 2

Eminent Domain and Condemnation Proceedings 2

Court Procedure 3

Rights of the Property Owner 4

Just Compensation 5

Who Shares in the Compensation? 6

Right-of-Way Agreements 6

Tax Aspects of Condemnation and Involuntary Conversion 7

 Federal Income Tax Law 7

 Severance Damages 8

Annual Payment Option 8

Indiana Income Tax 9

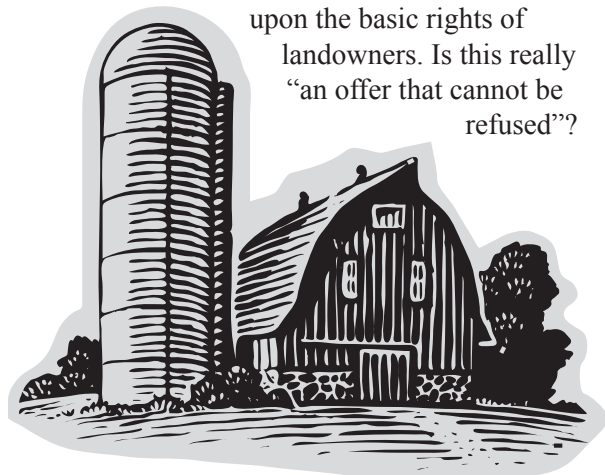
Relocation Assistance 9

Appendix A -- UNIFORM PROPERTY OR EASEMENT ACQUISITION OFFER 10

Introduction

Most landowners consider it a compliment when a neighbor says: “I sure would like to buy your farm or a site for a home: Would you consider an offer? ... Let me know when you are interested in selling.” Landowners will be interested in selling only if it suits their overall investment and estate planning strategy or they wish to accommodate family or special friends.

Much different is the situation when a stranger with an offer informs you that he or she represents a governmental agency or company that has the authority to take or use your land. This situation is often viewed as an imposition upon the basic rights of landowners. Is this really “an offer that cannot be refused”?



Must landowners give up land or an interest in their land for all causes that benefit the public? The process of acquiring private property rights in the public interest is referred to as “a taking under the power of eminent domain.” What rights do landowners have with respect to the exercise of the power of eminent domain?

In recent years, property owners have resisted environmental classifications and restrictions placed on their property. Where these classifications or demands for property for the public use have limited the current and future use of property, property owners have sought and, in some cases, been granted relief from government requests. In other cases, there may be a claim for reimbursement where the use of property has become substantially if not totally restricted.

Eminent Domain

Taking or reserving land for public use is part of our legal heritage. Eminent domain is the right of governmental bodies, agencies, utilities, and other organizations, acting in the public interest, to take private property. Eminent domain is an inherent attribute of both federal and state government sovereignty and has been reaffirmed by the Indiana legislature in the form of Indiana laws.

Both the 5th and 14th Amendments to the United States Constitution and Article 1, Section 21 of the Indiana Constitution provide for taking of private property for public use only after the landowners receives “just compensation.” The amount of just compensation depends upon the fair market value of or reduction in the value of the property involved in the taking.

While the need for federal, state, and other government unit projects (e.g., parks, libraries, schools, and roads) and private utility projects (e.g., pipe lines, power lines, and power plants) cannot be denied, the rights of the landowners must be protected. Protection from improper exercise of eminent domain and receipt of market value compensation may be obtained if landowners take timely action and are willing to be persistent in pursuing their rights.

Eminent Domain and Condemnation Proceedings

The taking-agency that has eminent domain powers will make a determination of need for rights in a given parcel. They survey and appraise the land rights to be taken and arrive at an offer. It is generally wise for landowners to cooperate in the early stages, especially with appraisers or surveyors. Property owners should alert appraisers to the good points of their property. Appraisals are the basis of an offer of just compensation.



Preliminary investigations on the property may lead to a satisfactory offer and settlement, perhaps avoiding additional inconvenience and costs. It is generally wise for property owners to keep their property in good repair, even if a taking is a certainty.

Upon completion of appraisals, the taking agency makes the landowner(s) an offer to purchase property. Landowners should ask for a copy of the appraisal(s) that serves as the basis for an offer. A condemning agency need not furnish their appraisal, but if they do, the landowners or their counsel may be able to point out deficiencies that may facilitate a settlement.

A condemning agency is required to provide a **written offer to purchase at least 30 days prior to filing a condemnation suit.** Their offer must be served on the landowners personally or by certified mail. If this is not possible, notice by newspaper publication is allowed in a specific manner provided by this law. The offer must use language a person without legal expertise can understand. Additionally, the notice explains

landowners’ legal rights, including alternative courses of action. Appendix A is the ULEA Offer format, required by Indiana law.



Indiana law requires that another offer must

be made at least 10 days before a condemnation trial. A landowner has five days to respond with an acceptance or counteroffer.

Landowners may accept or reject an offer. Landowners should contact an attorney, early in the taking process, for consultation and advice regarding rights and legal alternatives available. As a practical matter, the attorney will, if desired, coordinate the acquisition of professional appraisals and other expert opinions that may be useful. Even if a landowner decides to accept an offer, an attorney's counsel is advisable to make sure all legal documents are in the best interest of the landowner. Landowners should be aware that the law requires a "good faith effort" on the part of a condemning agency to provide the fair market value to landowners.

If a landowner and the taking-agency cannot agree on a price, the agency may then initiate a condemnation suit. "Condemnation" is a court procedure followed to acquire from the landowner(s) the sought-after real estate interests.



If neither party accepts the offer of the other, the case will go to trial. When a landowner ends up with compensation

above the last offer, the court will order the condemnor to pay up to \$2,500 of the landowner's litigation expense.

Court Procedure

The usual procedure in Indiana courts is as follows.

- 1) The condemning or taking agency files a complaint in a court of the county where the property is located. A complaint will:
 - a) Name the landowner(s), mortgagee(s), lien holders, and others claiming an interest in the property, e.g., a husband and wife who may own land jointly or the landlord and tenant with an interest in the land.
 - b) Give a specific description of the property interests to be taken.
 - c) State that an offer has been made but was refused by the property owner(s).
- 2) The clerk of the court sends a copy of the complaint, along with a summons to appear, to all defendants (landowners). A specified number of days will be allowed before a hearing is set.
- 3) Landowners, through their legal counsel, have alternatives available at this point.
 - a) They may challenge the condemnor's compliance with the "Uniform Land or Easement Acquisition Offer." For example, if offers have not been made according to the requirement in the law, the condemnor's suit may fail until there is compliance with the process.
 - b) They may challenge the right to take their property.¹
 - c) They may challenge the adequacy of the complaint on procedural and technical issues.
- 4) A hearing is held at which the judge determines whether the condemning agency is within its power. If the ruling is "yes," then an "order of appropriation" is issued.
- 5) The judge appoints three landowners in the county in which the land is located to appraise the property rights being taken, including damages to remaining property, for a report back to the court.
- 6) The condemning agency may deposit with the court the value in money as ascertained by the court-appointed appraisers. After the deposit with the court, the agency may take possession

¹ A property owner may question the authority of a corporation or agency to exercise the power of eminent domain. In Indiana, a challenge of the taking authority is primarily through the condemnation proceedings. However, Indiana law provides liberal access to the power of eminent domain for public utilities when the public is served. An Indiana statute states that utilities that furnish, supply, transmit, transport, or distribute electrical energy, gas, oil, petroleum, water, heat, steam, hydraulic power, or communications by telegraph or telephone to the public shall have the right of eminent domain. See IC 32-24-4-1.

of the property and start work on the project. If an objection(s) is filed, a hearing may ensue; otherwise, there will be no need for a hearing. The property owner may withdraw the amount of the court appointed appraisers' award. If the award exceeds the condemning agency's offer, there must be a bond posted for the difference between the offer and the award.

- 7) To bring about a trial, the landowner or the condemning agency must file "exceptions" within 20 days (10 days if the condemnor is the state, a state agency, or any political subdivisions, IC 32-24-6-1(b)) of the appraisers' report being sent to the parties and counsel. "Exceptions" are any objections a landowner or condemning agency may have concerning the appraisal. **If no exceptions are filed, there is a waiver of the right to trial.** If exceptions are filed, the condemning agency and the landowner(s) may attempt a negotiated settlement.
- 8) If the parties cannot agree, the court sets a trial date. At least 10 days before trial, the agency must again make an offer to the landowner(s). Within five days thereafter, the property owner(s) may file an acceptance or a counteroffer of settlement that states what the property owner(s) feels is just compensation for their land. The property owner may get more or less than what has been previously offered as a result of a trial. A year or more delay may result before the trial.
- 9) Either the property owner or the condemning agency may request a jury trial. The property owner carries the burden of proving their damages. (Neither the amount of the offer nor the court award is admissible at trial.)
- 10) Either party may appeal to a higher court if there are grounds on which to base an appeal, such as errors by the court. Note that inadequate or "excessive" damages are not grounds for an appeal.

Studies have shown that for a high percentage of the cases that go to trial, the award for damages (compensation) is greater than that offered by the

condemning agency prior to court proceedings. However, the property owner must pay for their legal counsel and other costs, such as professional appraisal fees, necessary in presenting their case.

The condemning agency pays the court costs of the condemnation proceeding. If the condemning agency gives up the proceedings, or does not pay the owner within the time specified in the judgment, then the agency will have to pay a landowner's costs and attorney's fees.

As stated above, if a landowner(s) is awarded an amount greater than the taking agency's last offer, the court will order the condemnor to pay up to \$2,500 of the defendant's litigation expenses.

A landowner(s) may apply break-even analysis to determine if the trial proceedings are likely to pay a dividend. For an example, let the experts and other costs amount to \$5,000 and the legal counsel is acquired for one-third of any additional award from a court judgment above the "before suit" offer.

Algebraically, solve an equation for "Break-Even Gain in Award" (BEG), i.e., $BEG = \$5,000$ (trial costs) + $1/3BEG$ (attorney fees) - $\$2,500$ (contribution to expense). For this example, $BEG = \$3,750$ because $2/3BEG = \$2,500$.

The more a landowner(s) expects the gain in award to exceed the break-even amount, the greater the inclination to enter into a condemnation suit. The cost estimates involved in preparing for and participating in a condemnation suit may be obtained from an attorney.

It should be pointed out that when a landowner with farming interests seeks additional compensation in a condemnation suit, they may end up with out a provision for crop damages when the condemning agency enters the property in the future to maintain an easement or right-of-way.

Rights of the Property Owner

In response to the exercise of the power of eminent domain, landowners cannot fully assess their rights or estimate what just compensation should be until they know exactly what is being requested. Their problem can be analyzed using

the bundle of rights concept of property ownership. Each of the elements in the bundle entails a property right. Primary in the bundle are the landlord's rights, but also important are tenants' rights, mineral rights, rights-of-way, and mortgagee's and creditor's rights. How does the taking requested interfere with these rights? For example, is there a tenant in possession? If so, there may be crop damages to share or give to the tenant for the duration of a lease. However, a lease may have a provision that terminates a tenant in event of an eminent domain taking, though such a provision may not be common for farmland leases.

Once the rights being requested by the taking agency are identified, the landowners can estimate the damages. If an offer by the taking-agency is not believed to be sufficient, the owner can force a law suit, an action in court, where a trial by jury can be obtained. Property owners can challenge the existence of a public need for the taking of their property in particular. Seldom will these challenges be successful. Therefore, the condemned landowners' greatest hope lies in forcing a court action to favorably influence the "just compensation" allowed for their property.

Just Compensation

Just compensation when simplified consists of two elements—the fair market value of property rights completely taken and damages to the remaining property in the highest and best use of the property.² Injuries that qualify for compensation must be such as to specifically affect the value of the total property because of the property interest taken. This is to distinguish from developments or factors that influence property not taken or that which affect an entire community, such as a change in zoning laws. However, fair market value may require the interests to be taken to be valued for uses other than the current use such as crop and livestock farming or timberland.

² Damages (D) could be expressed as the summation of: $D = FMVP + DFMVR + Other - IFMVR$. Where: D = net compensable damages to the property owners; FMVP = fair market value of the condemned property, including fair market value of improvements on the condemned property; DFMVR = decrease in the fair market value of the remaining property of the owners (severance damages); Other = other damages resulting from methods of construction (consequential damages) and IFMVR = increase in the fair market value of the remaining property as a result of the improvement. Indiana law does not allow IFMVR to decrease FMVP, but only as an offset to DFMVR. Thus, under Indiana law, D will be at least FMVP. If federal law applies to the taking, IFMVR can offset FMVP, so that D could be zero.

Not only may there be compensation for basic rights in real estate, but also for loss of improvements, such as buildings, fences, crops, and woodlands. But past court cases have shown many items to be not compensable, such as:

- 1) "Mere conjecture, fancy or imagination,"
- 2) "Remote" possibilities, and
- 3) Loss of aesthetic or sentimental value.

As an example of the above, it is an open dispute as to whether electromagnetic fields such as those arising from high voltage power lines warrant compensation. ("Stray voltage" cases have been providing recoveries for property owners in recent years in Indiana courts, though the impact of "stray voltage" is disputed.)

To leave the property owner as well off after a property taking as before the taking, it may be necessary to pay for damages to property not taken.

Some prime examples are damages for:

- 1) Land between utility poles or towers,
- 2) Weeds and insects that may be prevalent at the base of towers, and
- 3) Cost of moving buildings.

How are the damages that constitute "just compensation" ascertained? The guidelines set by law are that "just compensation" means the full and perfect equivalent in money of the property taken. The standard test is the fair market value that, in short, is the price at which the property would change hands between a willing buyer and a willing seller in a freely competitive situation.

Appraising of property taken under eminent domain authority is often very difficult. This is especially true when there is a partial taking, for example, the right-of-way for an electric power line or gas line. In the case of a roadway, all of the ownership rights in a strip of land are usually taken. Appraisal of damages in such cases is more

difficult than appraising an entire farm or acreage. These circumstances suggest the need for a qualified appraiser.

The guideline for estimating damages is the difference in the value of the whole property before and after the taking. That is, “all things” considered, what is the fair market value of the property before versus after the road or power line goes through?

If a taking of property results in a condemnation suit in Indiana, the guidelines for estimating just compensation used by the court-appointed appraisers will be fair market value of:

- 1) The property rights taken, including improvements, plus
- 2) Damage to remaining property (severance damages), including those resulting from methods of construction to be utilized (consequential damages), reduced by
- 3) Value of benefits resulting from the condemning agency’s project that add to a property owner(s) remaining property. How increases in value to the remaining property are taken into account depends on whether the project is under federal law or Indiana law. Indiana law only allows special benefits to offset damages to the remaining property. If federal law applies, the benefits are to be set-off against both the amount of damage to the remaining property and the value of the property taken. Note that federal funds may be involved in a land acquisition, but Indiana law may be applicable to the taking. For example, federal law applies in Army Corps of Engineer reservoir projects.

Many factors are taken into consideration to determine fair market value for a given acreage:

- 1) Rental values;
- 2) Buildings, other improvements, and standing timber;
- 3) Crop yields; and
- 4) Highest and best use for property.

The values placed on the above items depend upon what facts are presented and how the court or

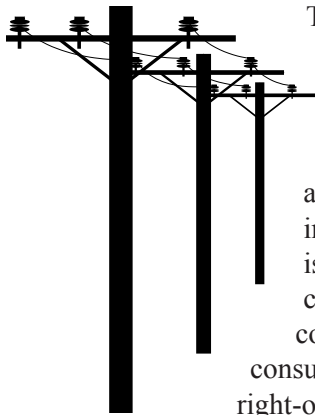
jury interprets the facts. In court, these facts will be introduced by testimony of the property owner, professional appraisers, and other qualified experts. A key factor in deciding whether a property owner should go to trial is the evidence available to support a value higher than the last offer. Is it reasonable to expect that the offer is less than what a court judgment will bring based upon the evidence?

Who Shares in the Compensation?

All persons with a legal property interest in the condemned real estate have a right to be compensated out of the total award in proportion to the injury to their interest. But the condemning agency cannot be made to pay more than would be necessary if one person had a complete and perfect title to the property. This is referred to as the “unit rule,” meaning that the property must be evaluated as a whole. For example, a given compensation may be divided between tenants or lease holders, life tenants, and remainder interests, or between joint tenants or tenants in common. However, the court in a condemnation suit may require only one check from the condemning agency. The division of the payment is a matter to be settled among the parties with the various interests.

Right-of-Way Agreements

The taking agency may only desire the right to use property, commonly known as a “right-of-way” or a “right-of-way easement” in contrast to taking all the rights in a property or parcel (a fee simple interest). A right-of-way is commonly needed for power transmission and gas lines. Regardless of whether a right-of-way or a fee simple is being taken, in general, the condemnation procedure outlined above applies. A right-of-way presents unique problems because of the continuing relationship between condemning agency and property owner. Both have property interests in the right-of-way. Their continuing relationship can be the source of many problems. However, many of these problems can be avoided by an appropriate right-of-way agreement.



The following is a list of items a property owner should consider for inclusion into an agreement when involved in a right-of-way sale. It is not intended to be a complete list. Legal counsel should be consulted before signing a right-of-way agreement.

- 1) The grantor (property owner of the right-of-way) and the grantee (taking agency) should be identified by name.
- 2) The tract of land should be identified by a number for easy identification in correspondence.
- 3) The dollar payment, or other consideration paid, should be stated.
- 4) Generally, the agreement should provide that the original contour of the land must be restored by the grantee and that suitable ground cover be established. This should include repairing all track damage caused at any time by heavy equipment.
- 5) Provisions for the use of the rest of the land by the property owners should be included, such as crossovers for ditching and placing equipment and materials in suitable areas.
- 6) The agreement should provide that any damage to fencing, ditching, buildings, crops, trees, or shrubs should be either repaired or compensated for at market value or replacement cost. These items should be part of the compensation at the initial taking and construction.
- 7) The agreement should specify that the landowner has the right to use the right-of-way in any manner not inconsistent with the rights given to the grantee.
- 8) The agreement should provide that both parties may assign their rights under the agreement and that all obligations be binding on heirs, administrators, executors, successors, and assigns of both parties.
- 9) The agreement should state that it contains all agreements between the parties, that no oral agreements will be binding, and that the grantee or their agents have made their provision clear to the landowners.
- 10) The agreement should be properly signed by the parties, including the grantee's agent, with their title or authority clearly noted.
- 11) And the agreement should cover not only the initial project, but also damages that may arise in the future due to maintenance and repair of the project.

Tax Aspects of Condemnation and Involuntary Conversion

Federal Income Tax Law

When property is condemned, the owner generally realizes either a taxable gain or loss; that is, just compensation is either more or less than the "adjusted basis" of the taking (e.g., what was paid for the property plus improvements and minus depreciation). In the typical case, there will be a gain. Generally, gains from a sale are subject to income taxation in the year when realized. However, the federal income tax law provides the taxpayer an election to postpone the gain from an involuntary conversion (property taken under eminent domain). Postponement of recognition of all gain can be accomplished only if the taxpayer uses the entire proceeds of sale to invest in property similar or related in service or use to the property condemned or sold under threat of condemnation.

The reinvestment must be made within three years following the taxable year in which any part of the gain from the taking or sale under the threat of condemnation is realized, unless the IRS grants an extension. Thus, if there is gain realized in January, the calendar year taxpayer has nearly four years (47 months) to find the appropriate replacement property. Even if the "replacement period" begins in December, the same taxpayer would have three calendar years to select suitable reinvestment property.

For example, X purchased 100 acres of farmland in 1960 for \$50,000. In 2000, the state of Indiana initiated condemnation proceedings against X, at which time he agreed to just compensation of \$200,000. Thus, his gain was \$150,000 (\$200,000 - \$50,000). Taxpayer X would include the \$150,000 long-term capital gain in the 2000 tax return. However, X decided to purchase “like-kind” replacement acreage for \$220,000 in 2001. The entire proceeds are reinvested in similar property within the allowable three-year period. Thus, X pays no taxes on the gain realized in 2000. The basis on the new acreage is \$70,000 = \$220,000 - \$150,000 (the amount reinvested less the gain postponed).

In this manner, the taxes are deferred on the \$150,000 capital gain realized in 2000. If the new property is sold later for \$300,000, a gain of \$230,000 is realized. However, if the taxpayer dies owning the replacement property, the basis for gains purposes may become the value at the taxpayer’s death. Thus, it is possible to avoid the gains tax indefinitely as property is passed from deceased owners to their heirs.

Postponement is generally advantageous for taxpayers, especially those currently in high tax brackets who anticipate a lower tax bracket in the future. If a market sale is not planned (e.g., in an estate plan for giving the property to children or other heirs), the property goes through X’s estate. The income tax basis is generally stepped-up to the fair market value at death. In this case, the untaxed gain from the payment for the property from the condemning agency may totally avoid income taxation.

Severance Damages

Severance damages may arise when less than the entire tract of property belonging to a taxpayer is condemned. Severance damages may result when there is a partial taking, and the value of the remaining property may be decreased. Money received for severance damages is not subject to taxation if documentation of severance damages is available. Instead of taxing these damages, they are applied to reduce the basis of the remaining

property. Such treatment is available only if the taxpayer can provide itemized documentation, provided by the taking agency at the time of the settlement, that proves that a specific amount of the compensation awarded was for severance damages. In a condemnation suit, a jury or judge is asked to establish damages. They can be asked to determine the amount of severance damages. Their determination should satisfy the documentation requirement for the IRS.

When property has a low income tax basis, the severance damages may exceed the basis. In this case, there is still taxable gain unless the excess is invested in appropriate property as explained above in order to defer or avoid taxable gain. The importance of handling severance damages as a reduction in the basis of the remaining property may depend upon the property owner’s overall investment and estate planning objectives, as well as the current tax rates versus what is expected in the future. Tax counsel should be consulted at the beginning of negotiations over a taking of property under the threat of condemnation in order to avoid surprises and to understand the application and benefits of the tax law.

Annual Payment Option

A payment option in the Indiana law gives landowners a right to select an annual payment award with interest instead of a lump sum if the offer or settlement amount is in excess of \$5,000 (IC 32-24-4-4). Their option is available when the public utility makes an offer for a right-of-way easement. Annual payments may not be for more than twenty (20) years.

A landowner must make the election at the time of:

- 1) Accepting the public utility’s offer to purchase an easement,
- 2) Accepting the appraiser’s award, or
- 3) When awarded damages by a judgment in a condemnation proceeding.

The annual amount payable must be equal to the lump sum payment that would have otherwise been made by the utility divided by the number of years the landowners elects to receive the annual

payments. Interest (at a rate agreed upon by the utility and the landowners) on the annual balance is provided. The public utility shall make the payments as close as practicable to the anniversary date of the landowner's acceptance of the public utilities' offer or the date of the judgment granting the easement to the utility.

If the parties are unable to agree upon the interest rate, then the interest rate shall be the average, annual, effective interest rate for all new "Federal Land Bank" loans (now comparable Farm Credit Service loans, because Federal Land Banks no longer exist), computed on the basis of the 12-month period immediately preceding the date of the settlement.

The law provides that if the land burdened by the easement is no longer zoned or used for agricultural purposes, the utility shall pay to the landowner the balance due and terminate the public utilities' payment obligations.

An examination of this statute will reveal other provisions, including a requirement for the public utilities' offer to include a statement of this election in at least 10-point boldface capital letters:

"IF THIS OFFER IS OVER FIVE THOUSAND DOLLARS (\$ 5,000), YOU MAY ELECT UNDER IC 32-24-4-4 TO ACCEPT PAYMENT IN A LUMP SUM PAYMENT OR IN ANNUAL PAYMENTS FOR A PERIOD NOT TO EXCEED TWENTY (20) YEARS WITH INTEREST. IF YOU ELECT ANNUAL PAYMENTS, THEN POSSESSION WILL BE REQUIRED THIRTY (30) DAYS AFTER YOU HAVE RECEIVED YOUR FIRST ANNUAL PAYMENT."

Indiana Income Tax

In Indiana, the adjusted gross income applies for income from sales related to involuntary conversions. The federal law is applicable in interpreting the Indiana statute for the application of the adjusted gross income tax.

Relocation Assistance

Relocation assistance is available under both federal and Indiana legislation to assist people who

are required to move as the result of federally or state funded projects. Such legislation may have been necessary because eminent domain takings law does not provide for the cost of finding and moving to a new location.

One portion of relocation assistance is "replacement housing allowance." When a residence is taken, this benefit can result in the displaced owner obtaining an amount more than the fair market value of a house.



Indiana's Relocation Assistance Act of 1971 (IC 8-23-17-1, et. seq.) as amended provides for benefits where there is an acquisition of real estate for public improvement by agencies of the State of Indiana or political subdivisions with the power of eminent domain. All payments under the Indiana Act are exempt from Indiana's income tax.

Federal relocation assistance law is the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Public Law 91-646). It was enacted "to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs." In 1971, P.L. 91-646, provided in 42 U. S. C. Section 4636 that payments under the Uniform Relocation Assistance provisions of the Relocation Assistance and Real Property Acquisition Policies Act of 1970 are not income for federal tax purposes.

Acknowledgments

The authors extend special thanks for improvements to this publication to Dennis McKinney, Staff Attorney for the Indiana Supreme Court Disciplinary Commission and former Indiana Deputy Attorney General; John Werner, Attorney, Tell City, Indiana; and Jay Luse, land appraiser, Frankfort Indiana. Thanks also to Department of Agricultural Economics reviewers Michael Boehlje, Craig Dobbins, and Alan Miller, and to editor Laura Hoelscher, Department of Agricultural Communication.

Those who have questions or need assistance may contact Gerald A. Harrison at Purdue University Department of Agricultural Economics, 403 West State Street, West Lafayette, IN 47907-2056. Phone: 765-494-4216. E-mail: <harrisog@purdue.edu>. His other publications and papers are located at his at his Agricultural Law course site at: <http://www.agecon.purdue.edu/academic/agec455/>. At that site click on "papers and publications." Agricultural Economics Extension publications are at: <http://www.ces.purdue.edu/extmedia/agecon.htm>

Appendix A

IC 32-24-1-5

UNIFORM PROPERTY OR EASEMENT ACQUISITION OFFER

_____ (condemnor) is authorized by Indiana law to obtain your land or an easement across your land for certain public purposes. _____ (condemnor) needs (your property) (an easement across your property) for a _____ (brief description of the project) and needs to take _____ (legal description of the property or easement to be taken; the legal description may be made on a separate sheet and attached to their document if additional space is required.)

It is our opinion that the fair market value of the (property) (easement) we want to acquire from you is \$ _____ and, therefore, _____ (condemnor) offers you \$ _____ for the above described (property) (easement). You have twenty-five (25) days from their date to accept or reject their offer. If you accept their offer, you may expect payment in full within ninety (90) days after signing the documents accepting their offer and executing the easement, and provided there are no difficulties in clearing liens or other problems with title to land. Possession will be required thirty (30) days after you have received your payment in full.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, _____ (condemnor) is required to make a good faith effort to purchase (your property) (an easement across your property).
2. You do not have to accept their offer.
3. However, if you do not accept their offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), _____ (condemnor) has the right to file suit to condemn and appropriate the (land) (easement) in the county in which the real estate is located.
4. **You have the right to seek advice of an attorney**, real estate appraiser, or any other person of your choice on their matter.
5. You may object to the public purpose and necessity of their project.
6. If _____ (condemnor) files a suit to condemn and acquire (your property) (an easement) and the court grants its request to condemn, the court will then appoint three appraisers who will make an independent appraisal of the (property) (easement) to be acquired.



7. If we both agree with the court appraisers' report, then the matter is settled. However, if either of us disagrees with the appraisers' report to the court, either of us has the right to ask for a trial to decide what should be paid to you for the (property) (easement) condemned.

8. If the court appraisers' report is not accepted by either of us, then _____ (condemnor) has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, _____ (condemnor) is legally entitled to immediate possession of the (property) (easement). You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of your case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.

9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than their offer. You may employ, at your cost, appraisers and attorneys to represent you at their time or at any time during the course of the proceeding described in their notice. (The condemnor may insert here any other information pertinent to their offer or required by circumstances or law).

10. If you have any questions concerning their matter you may contact us at:

(full name, mailing and street address and phone of the condemnor)

Their offer was made to the owner(s):

_____ of _____,
_____ of _____,
_____ of _____,
_____ of _____.

BY: _____
(signature)

(printed name and title)
Agent of: _____
(condemnor)

on the ____ day of ____ 20__.

If you decide to accept the offer of \$ _____ made by _____ (condemnor) sign your name below and mail their form to the address indicated above. An additional copy of their offer has been provided for your file.

ACCEPTANCE OF OFFER: I (We), _____, _____, _____,
owner(s) of the above described property or interest in property, hereby accept the offer of \$ _____ made by _____
_____ (condemnor) on their ____ day of _____, 20_____.

(printed name and title), _____
(printed name and title)

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored.



Disclaimer: This paper is intended as a source of information that is believed to be accurate. Individuals and businesses with problems and questions should seek the services of legal counsel and other experts and references as the situation merits.

PURDUE AGRICULTURE

REV 9/04

It is the policy of the Purdue University Cooperative Extension Service, David C. Petritz, Director, that all persons shall have equal opportunity and access to the programs and facilities without regard to race, color, sex, religion, national origin, age, marital status, parental status, sexual orientation, or disability. Purdue University is an Affirmative Action employer. This material may be available in alternative formats.

1-888-EXT-INFO

<http://www.ces.purdue.edu/new>

Purdue Extension
Knowledge to Go
1-888-EXT-INFO

