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Eminent Domain

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Counties, through the county legislative body, may condemn and take property, including land, buildings, privileges, rights and easements of individuals and private corporations and other private entities for county purposes. T.C.A. § 29-17-201. Property owners must be compensated for damages involved in condemnation. The amount of payment may be agreed upon by the parties or determined by a court of law. T.C.A. § 29-17-701.

There are limitations on the use of the power of eminent domain. Private use or the indirect public benefits resulting from private economic development and private commercial enterprise, including increased tax revenue and increased employment opportunity, are generally excluded from the definition of public use for which this power may be used. However, the following designated purposes are excepted and allowed even if there are private benefits:

- The acquisition of any interest in land for a road, bridge, or other public transportation project.
- The acquisition of any interest in land necessary to the function of a utility, common carrier or any entity authorized to exercise the power of eminent domain under Title 65.
- The acquisition of property by a housing authority or community development agency for urban renewal or redevelopment in a blighted area under Title 13, Chapters 20 and 21.
- Private use that is incidental to a public use if no land is condemned primarily to convey or permit the incidental private use.

As of 2017, cities and counties may no longer exercise the power of eminent domain to acquire property to be used for an industrial park. See Public Chapter 422 (2017). Also, the definition of "public use" in T.C.A. § 29-17-102 was amended in 2024 to exclude recreational facilities, recreational purposes, and parks.

An appraisal of property sought to be condemned is required. The appraisal must be based upon the highest and best use, its use at the time of the taking, and any other use to which the property is legally adaptable at the time of the taking. The appraiser must be a Member of the Appraisal Institute or be otherwise licensed and qualified under Title 62, Chapter 39, Tennessee Code Annotated. The condemning authority must deposit with the court the amount determined as the value by the required appraisal. The deposited amount does not fix the amount to be awarded, and any amount awarded in excess of the deposited amount bears interest from the date of the taking or possession.

The statute provides that under no circumstance may land used predominately in the production of agriculture be considered blighted. T.C.A. § 13-20-201.

Land acquired by eminent domain may be sold, leased, or otherwise transferred to another public entity or to a private person or entity if fair market value is received for the land. T.C.A. § 29-17-1003. T.C.A. § 29-17-1005 provides that if a condemning entity determines that property taken by eminent domain is not used for the purpose for which it was condemned, or for some other authorized public use, or if the condemning entity decides to sell the property within 10 years of taking the property, then the condemning entity must first offer the property for sale to the persons from which the property was taken. Such persons may purchase the property for the lessor of the price paid to the former owner by the local government acquiring the property plus fair market value of any improvements made after condemnation plus the average interest that would have been accrued on the amount paid to the former owner had the money been held in treasury bonds or the fair market value of the property. If the former owner does not purchase the property within the 30 days, then the property may be sold in any commercially reasonable manner for not less than fair market value plus costs.

Former owners have the right to request a statement of intent for public use from the local government every 24 months following condemnation. T.C.A. § 29-17-1005. The right of the former owner to request such a statement does not transfer to the former owner's heirs or other parties.

Public Chapter 748 enacts a new section at Title 29, Chapter 17, Part 1 to require condemning authorities to show proof of the following by a preponderance of evidence: (1) The land, real estate, premises, or other property the condemner seeks to acquire is required for a public use; (2) The condemner has a plan that reflects a reasonable schedule to complete the public use after the condemner takes ownership of the property; (3) The condemner has access to funding to complete the public use; and (4) The public use cannot be accomplished by using or acquiring other property within the vicinity of the condemned property with the consent of the owner of the other property without an unreasonable increase in cost, delay, or a reduction in the effectiveness of the property.

The property owner has a right to have a court of competent jurisdiction determine if the taking is necessary to accomplish the public use. The property owner may raise this section's required

determination of necessity as a defense in an answer filed under§ 29- 17-104(a)(2) or in a separate cause of action notwithstanding § 29-17-104(a)(2), subject to the statute of limitations pursuant to § 29-16-124.

This new section does not apply to condemnation actions for projects or uses regarding streets, highways, roads, bridges, transportation, utility water, public water projects, sewer, electricity, and utilities, including, but not limited to, gas and natural gas utilities.

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