



# Protect Your Domain From Eminent Danger

As private companies and government agencies engage in a continued push to make needed infrastructure upgrades and improvements, eminent domain and condemnation remain hot-button issues. No matter how well intended, these actions often lead to unavoidable conflicts of interest between the condemning agency and private property owners.

Frequently, an eminent domain action is a partial taking — the proposed seizure of one segment of an existing property. While these seizures are intended to facilitate new roads, road widening or infrastructure improvements, the loss of one part of a property can have a disproportionately large impact on the utility, viability and profitability of the remaining property. The short- and long-term value of the property is potentially compromised, and the determination of damage to the property/business owner in order to provide fair compensation requires a nuanced and sophisticated appreciation for the complexities that often result from these takings.

While a partial taking can present difficulties for any business, automobile dealers face some unique challenges and potential liabilities from the seizure of even a small piece of property.

## Impact

The important point to consider when assessing the impact of a seizure is that the dealer is entitled to compensation not just for the seized portion of the property, but for the loss in value of the remaining property. That loss of value can be significant. We recently worked with an automotive client who saw that dynamic revealed when one dealership he owned that was partially condemned experienced a dramatic sales decline in comparison to another similar dealership he owned just five miles away.

For automobile dealers, the following issues should be considered when calculating just compensation:

**Reduced visibility:** Losing a strip of land along the front-facing edge of the property (a common form of partial taking

for utilities upgrades and road-widening projects) has a potentially dramatic impact for automobile dealers' ability to display their inventory. The front lot of a car dealership is essentially an outdoor showcase, and limiting space or altering the aesthetic presentation of that space can be a costly liability for a dealer. Auto dealers also often wrestle with altered or reduced signage.

**Business slowdown:** While the dealership frontage space operates as an essential outdoor showroom, the front lot is also a critical lead generator. Not only would business decline during the construction period, it could be adversely impacted afterward.

**Poor sales experience:** Traditionally, automobile dealers provide an expansive stretch of pedestrian-friendly open space, a right of way that allows potential customers to browse and walk past the vehicle inventory without feeling sales pressure. A loss or reduction of that fundamental layout/design feature many dealers rely on as a key sales facilitator makes a partial taking even more challenging for dealers.

## Response

Business owners facing eminent domain proceedings often feel overwhelmed and uncertain of how to proceed. It is critical that anyone confronted with a proposed seizure educate himself or herself about the process to understand how best to proceed. Often, knowing what *not* to do is just as important as knowing what you *should* do.

After written notification of a partial taking is submitted to the dealer, a trained appraiser hired by the government will evaluate the property and make an offer. Automobile dealers need to proceed with caution at this point. The ability to evaluate the offer requires the experience and expertise of an eminent domain attorney and a licensed appraiser. If the dealer and his counsel determine the offer is insufficient and reject it, the condemning authority will typically file a complaint to seize and the issue could

ultimately be resolved in court.


Automobile dealers facing a land seizure should stick to these of dos and don'ts:

## Do

- Consult with and/or retain experienced legal counsel who specializes in eminent domain and condemnation proceedings.
- Hire an appraiser who understands the ins and outs of operating an automobile dealership.
- Hit the books. Review any and all relevant legal guidelines, statutes or legislative nuances that apply to your circumstance.

## Do Not

- Discuss compensation issues or property values with anyone other than your attorney.
- Submit an application for any new permits, variances or other zoning or ordinance changes.
- Hand over any proprietary documentation or allow any testing or taking of samples without your attorney's prior approval.

When confronted with a partial taking that might impact business and the bottom line, automobile dealers obviously have a vested interest in making sure they receive full and fair compensation based on the best possible use of their property. Understanding the issues specific to the automotive sales industry and how to proceed when faced with these challenging circumstances is the best way to ensure the dealer receives that compensation and minimizes the long-term loss of value to the property and to the business. 



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