

PROCESS

1. Route Study
 - Public hearing – notices
 - Presentation of alternative routes
 - Public comment

FDOT - Secretary of Transportation signs resolution

COUNTY - Board of Commission signs

CITY - City Commission signs
2. Possible pre-appraisal contact by government's consultants.
3. Notice Appraisal – stakes
4. Pre-suit negotiation with government right of way agent
5. Notice to business owner: (Business must submit business damage claim with backup data within 180 days)
6. Right of way agent makes first offer to purchase
 - Must provide appraisal
 - Must provide engineering plans and right of way maps
7. Opportunity to negotiate purchase, changes in engineering, continued occupancy
8. Government files lawsuit
9. Owner submits discovery
 - Interrogatories
 - Request to produce
10. Court Hearing on Order of Taking
 - Issues: (a) Is take reasonably necessary for a public purpose? Did government correctly consider factors, cost, long range planning, safety?
 - (b) Is good faith estimate based on a valid appraisal? Not correct but valid appraisal methodology and recent

11. Court issues order of taking. Government has twenty (20) days to deposit estimate into registry of court or order of taking is null and void. Government ordinarily entitled to possession of land taken upon deposit into registry of court.

Possession can be negotiated longer if project is delayed.
12. Owner files motion to withdraw funds, usually held same day as order of taking.

Good faith estimate is subject to real property taxes, mortgages, easement interest and tenant interest. (Eminent domain clause).

Good faith estimate does not include business damages.
13. Date of deposit is the date of value for property taken.
14. Experts' analyze documents and reports provided by condemnor in response to discovery requests.
15. Owners' reports are completed. Initial business damage report may have been completed sooner due to the deadline established by the date the notice to business owner was received.
16. Either party may notice case for trial. Trial order requires exchange of data and mandatory mediation.
17. **Mediation** - Settlement agreement later converted to Stipulated Final Judgment.

Payment thirty days after receipt of signed final judgment.
 - **Settlement** may include changes in engineering plans, extended occupancy, and money.
18. **Trial** - Twelve-person jury trial. Trial usually lasts four to five days. Jury views property which has been staked. Jury returns verdict.

Verdict is converted to Final Judgment.

19. Fees and Costs are determined after completion of case. Attorney fees are based on benefits obtained for client and described by F.S. 73.091.
Costs are required to be paid and include: engineer, appraiser, contractor, planner and any other expert needed to meet the condemnor on an equal basis.
20. **Apportionment** - Should a tenant, easement holder, or mortgage holder seek a portion of the funds awarded for the property taken, an apportionment hearing may be held. Mortgages are usually simply a matter of contract. Easements – the owner of an easement is entitled to the value of its easement interest and impairment thereto. Tenant is entitled to the bonus value of its leasehold interest. Bonus value means difference between rent paid and actual market value of leasehold. (Note tenant apportionment claim can be modified or completely eliminated by an apportionment clause placed in the lease.)
21. Case is over after final judgment, apportionment and payment of fees and costs.
22. Case may be re-opened if condemnor constructs other than as indicated in the final judgment and plans incorporated therein.
23. Construction by condemnor's consultants may begin immediately after deposit of good faith estimate or delayed for years depending on acquisition and funding issues.
24. **Cures** - Many times the acquisition and construction of the new facility will require site modification of the remainder property. There are times when part or all of the cure should be delayed until the road construction is complete to avoid the need to construct two cures. There are times when portions of the cure

should begin sooner, such as sign relocation. Each case is unique and must be evaluated on a case-by-case basis. Coordination is required.

COMPENSATION

1. **Part taken** - Land value
Improvements located in take
2. **Severance Damages** - The diminution in value of the remainder property as the result of the loss of use of the part taken. Typically severance damages are caused by the change in size, shape, elevation, use the government puts the part taken to. Severance damages may not exceed the value of the remainder as part of the whole.

Example: Lost parking, lost drainage, etc.

CURE - A cure is the amount of money needed to institute site modifications to reduce severance damages. Cure cost may not exceed severance damages unless to cure business damages.

Payment for part taken and severance damages are constitutional protected and part of full compensation.

BUSINESS DAMAGES - Are a creature of legislative largesse. No constitutional right. Business damage statutes are strictly construed against the business owner.

To be eligible for business damages the business must operate on the remainder of the part taken for five years prior to the take. The whole take of property eliminates eligibility for business damages!

Business damages are typically payment for lost future earnings for the remaining length of lease or into future if property is owned in fee.

CASE PLANNING -A non-compensable whole take can become compensable by renting adjacent property for parking or entering into cross parking agreement with adjoining property. This must be done prior to take and is best if done as early as possible.