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INTRODUCTION

As a land professional in Texas, you may be asked for your help in the condemnation of private property for a public infrastructure project like a road, highway, pipeline or powerline. The condemnation process is complicated, but we've created this guide to help you prepare for such a conversation.

This toolkit will help you understand the basics of condemnation and general next steps you can recommend to your clients. We've included an explanation of condemnation, an explanation of the process, information on valuation and damages, and agreement checklists. This guide also includes Chapter 21 of the Texas Property Code and a link to the Texas Landowner Bill of Rights as important additional resources.

This document is by no means exhaustive and should not be seen as a replacement for professional legal advice specific to your client's situation.

For more than 40 years, Barron, Adler, Clough & Oddo, PLLC has exclusively represented landowners in eminent domain, condemnation, and inverse condemnation matters throughout Texas. Our attorneys can help your clients fight for their property rights. While we have handled notable and precedent setting cases throughout Texas, we understand that every eminent domain, condemnation and regulatory taking case is unique and of utmost importance to the individual whose property is affected.

Let us put our experience in condemnation and eminent domain law to work for you.

Sincerely,



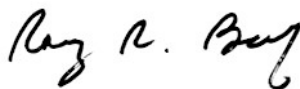
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ABOUT CONDEMNATION

What is Condemnation?

Condemnation is the government's exercise of its power of eminent domain. Eminent domain is the power of the government to take private land. The landowner is entitled to just and adequate compensation for the property interest being taken, but the taking can occur even without his or her approval of the sale. A tenant may be entitled to compensation depending on the nature of the tenant's interest in the property and the relevant lease agreement terms.

The government can take land for the public good such as to build a park, school, road or other public project. In some situations, private companies can also condemn property. These instances include oil and gas pipeline companies that are deemed to be common carriers. But in Texas, economic development cannot serve as the basis for validating a condemnation; this has been determined not to be a public use.

History of Condemnation

The Supreme Court of Texas has held that private property rights are "fundamental, natural, inherent, inalienable, not derived from the legislature" and pre-date not only the United States Constitution and the Texas Constitution, but also the United States itself. The Bill of Rights was not part of the United States Constitution ratified in 1787. Rather, it was added to address, among other things, concerns raised by citizens about the preservation of private property rights. In 1791, some 54 years before Texas became a state, the United States Constitution was amended to include the Fifth Amendment specifically stating: "nor shall private property be taken for public use, without just compensation."

In 1876, Texas adopted its own Constitution and protection of property rights, stating: "No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person..." Texas courts have uniformly recognized that one of the most fundamental rights of private property ownership is the right to exclude others from the property. Both the Supreme Court of Texas and the United States Supreme Court have recognized the right to exclude all others from use of property as one of the "most essential sticks in the bundle of rights that are commonly characterized as property."

The framework for the condemnation process in Texas was crafted in the late 1800s and was primarily used, at that time, to assist the railroads in expanding and populating the State. Although there have been significant changes since, the original framework still exists in many respects in the condemnation process that is articulated in Chapter 21 of the Texas Property Code. A copy of Chapter 21 of the Texas Property Code is included at the end of this document.

How You Can Help Your Clients

As a real estate professional, you are often a trusted advisor to your clients who may seek your advice and input for general real estate inquiries as well as eminent domain matters. By becoming familiar with the eminent domain process, how compensation is determined and, most importantly, landowners' rights, you can assist your clients in navigating what can frequently be an emotional and intimidating process. Some of the most important advice you can give your clients is to seek the assistance of experienced and knowledgeable professionals in navigating the eminent domain process and before your client signs anything related to an eminent domain matter. Seeking assistance from a trusted family member, real estate advisor or experienced eminent domain attorney can ensure your client does not waive important legal rights or act on fear and intimidation from a potential condemnor.

If a client approaches you with a potential eminent domain matter, you should ask the client to give you any and all paperwork the client has received from the condemning authority to date. It is important to review everything that has been provided early on in the process to ensure you have the most information available in assessing the matter. You should also consider reaching out to the land agent who is handling the eminent domain acquisition for any details not specified in the written materials. For example, the nature of the project, the construction timeline and other details pertinent to the acquisition. Most land agents will freely provide additional information related to the project on request.

Example Cases

There is no exhaustive list of possible condemnation matters, but the list below generally includes common takings a landowner might expect to see. We have also seen atypical takings such as the condemnation of a leasehold or deed restrictions.

- Road and highway projects
- Oil/gas underground pipeline easements
- Oil/gas pipeline surface sites
- Electric transmission line easements
- Underground water and sewer pipeline easements
- Aboveground water towers
- Raw water intake facilities
- Drainage easements
- Inundation easements
- Railroad acquisitions
- Border wall takings
- Flood levee projects
- Billboards and billboard ground leases





PROCESSES & PROCEDURES

The Condemnation Process

1

**ROE, Survey, &
Appraisal + Offer**
(Negotiation)

2

**Petition + Special
Commissioners' Hearing**
(Administrative)

3

Case Brought to Court
(Judicial)

Phase I: Right-of-Entry, Survey, Appraisal and Offer

In the first phase, the condemnor will survey the proposed acquisition area and will usually perform an appraisal inspection to make an initial offer to the landowner. Under the Texas Property Code, the condemnor must give the landowner an offer letter, a copy of the deed or other instrument the condemnor wants the landowner to sign, a copy of the Landowner's Bill of Rights and a copy of the appraisal report if an appraisal has been performed. The condemnor must give the landowner at least 30 days to consider its initial offer. If an agreement has not been reached and 30 days have passed, the condemnor can send the landowner a final offer letter.

The condemnor must provide all of the foregoing materials to the landowner, and if no appraisal report was provided with the initial offer, the condemnor must provide an appraisal report with its final offer letter. The condemnor must give the landowner at least 14 days to consider its final offer. If no agreement has been reached but the condemnor has provided all of the required information, the condemnor is considered to have made a “bona fide offer” and the condemnor may proceed with condemnation.

Phase II: Petition & Objection

Once the offer phase has concluded, the condemnor can proceed with filing a petition in condemnation in the County in which the subject property is located. In larger counties, the condemnation case is typically filed in the County Court at Law. In more rural or smaller counties, there may not be a County Court at Law, in which case the condemnation case would usually be filed in District Court. Once the case is filed, the Court will appoint three special commissioners and two alternate special commissioners. Each party to the case has an absolute right under the Texas Property Code to strike one of the special commissioners for any reason or no reason.

Once the special commissioners have been determined, they will convene a hearing to hear evidence on compensation from both parties, although the landowner is not required to attend the special commissioners’ hearing. At the conclusion of the hearing, the special commissioners will issue an award that is filed with the Court.

If either party is dissatisfied with the award, they have the absolute right to timely object to the award. Pursuant to the Texas Property Code, objections must be filed “on or before the first Monday following the 20th day after the day the commissioners file their findings with the Court.” If a timely objection is not filed, the case concludes for the amount awarded by the special commissioners and the condemnor is typically entitled to a judgment on the petition it filed to initiate the case.

Phase III: Judicial Phase

Once an objection to the special commissioners’ award is filed, the trial court is vested with jurisdiction and the case proceeds like any other civil matter. The parties are permitted to conduct discovery, take depositions, engage in motion practice and, eventually, submit to the Court or a jury for a final determination of compensation if the case is not settled.



VALUATION & DAMAGES

Most condemnation cases include the same basic considerations. The following example describes the three components to compensation in a typical underground pipeline easement acquisition.

1. Part Acquired

First, the pipeline company or condemnor must pay for the value of the easement it is acquiring. Underground pipeline easements are usually valued at a pro-rata value of the property being acquired (i.e., \$5,000/acre), but normally discounted some amount because these are usually easement acquisitions, not acquisitions in fee simple. Here is an example:

Pipeline easement size: 3.28 acres

Land value: \$5,000/acre

Value of the “part acquired”: 3.28 acres x \$5,000/acre x 90% = \$14,760

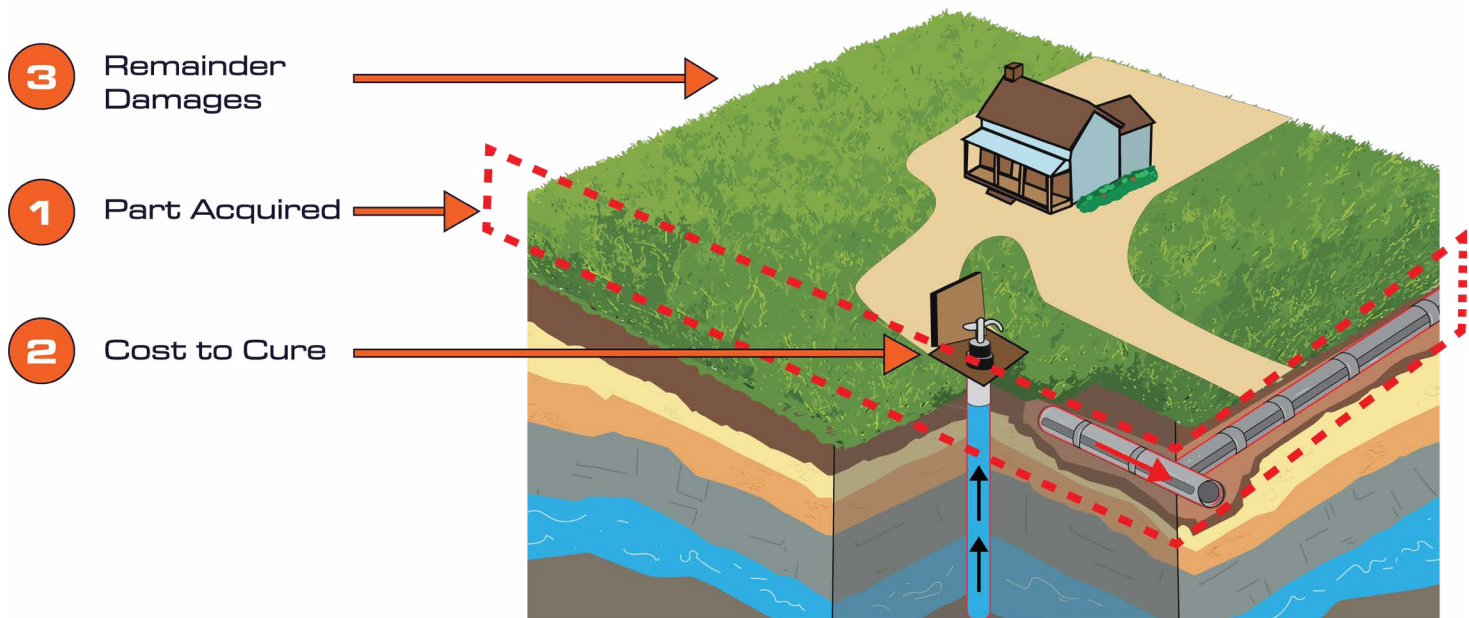
2. Cost to Cure

Second, the pipeline company or condemnor must pay for any hard costs necessary to restore the property to its pre-taking condition. As an example, if the landowner’s water well is located in the easement area and is rendered inoperable, the pipeline company or condemnor would have to pay to plug and abandon the existing water well as well as drill and construct a new water well. As another example, if the pipeline company or condemnor damaged or removed portions of the landowner’s fencing but did not restore or replace the fencing, the pipeline company or condemnor would have to pay for the cost of replacement fencing.

3. Remainder Damages

Third, the pipeline company or condemnor must pay for remainder damages, or severance damages, which is the diminished value of the rest of the landowner’s property outside of the easement area. This is usually a heavily disputed portion of the compensation as most pipeline companies or condemnors argue there are no remainder damages associated with an underground pipeline easement. However, market data and studies suggest that properties with underground pipeline easements or other encumbrances do often suffer from diminished values.

Also, in certain instances the value of a pipeline easement is determined on a linear foot or “per rod” basis. The linear foot or “per rod” basis is another way of calculating the compensation owed to the landowner and is intended to include all the components identified above.



1	Value of part acquired	+
2	Cost to cure	+
3	Remainder damages	=
Total compensation		



AGREEMENT CHECKLISTS

** These checklists are for informational purposes only and cannot be construed as legal advice.
Please contact a licensed attorney for assistance in negotiating a powerline easement agreement.*

PIPELINE EASEMENT AGREEMENT CHECKLIST

- ☐ Limit number of pipelines
- ☐ Limit pipeline and related appurtenances to below ground only except for pipeline markers and cathodic protection test leads
- ☐ Limit size (diameter) of pipeline
- ☐ Exclude other utilities (i.e., power lines, fiber optic, etc.)
- ☐ Make easement exclusive/non-exclusive
- ☐ Limit substances to travel through pipeline
- ☐ Prohibit up-sizing
- ☐ Attached exhibit with precise legal description and plat showing permanent and temporary easement area
- ☐ Define duration of temporary easement
- ☐ Limit ingress/egress to easement area and public roads/rights-of-way
- ☐ Inspect and maintain easement area, haul off trash and construction debris
- ☐ Brace all fences before cutting, replace after construction
- ☐ Gates closed except when passing through
- ☐ Specific restoration obligations, including re-seeding with native or other grasses and time limit to complete restoration
- ☐ Short deadline to restore major ruts in the surface
- ☐ Minimum burial depth
- ☐ Precautions against invasive plants (i.e., bitterweed, African rue, etc.)
- ☐ Oak wilt mitigation
- ☐ Double ditching (top soil separated from deep soil)
- ☐ Earthen plugs for livestock crossing ditch line
- ☐ No material impairment of access to property
- ☐ Pipeline markers at property boundaries or where required by law
- ☐ Abandonment provisions
- ☐ Obligation to pay for damages (i.e., hunting losses, crop damages, fences, livestock, exotic game, etc.)
- ☐ Limit on use of chemicals/pesticides
- ☐ Reservation of rights for landowner to use easement area, including utility crossings (TEX. GOVT. CODE § 2206.002)
- ☐ No hunting or fishing equipment allowed
- ☐ No smoking and appropriate fire precautions required for welding and other dangerous activity
- ☐ Insurance requirements
- ☐ Limits on assignment
- ☐ No warranty of title
- ☐ Notice prior to access
- ☐ Indemnity
- ☐ Responsibility for change in property tax assessed value
- ☐ Subject to visible and apparent easements, existing oil and gas leases, no representations about adequacy of easement area
- ☐ Provide as-built surveys
- ☐ Required to obtain all necessary permits and governmental approvals
- ☐ Required to keep property free of all liens and encumbrances
- ☐ Texas choice of law, specify venue as county where property is located
- ☐ Addresses for notice
- ☐ Ensure pipeline company countersigns easement agreement

POWERLINE EASEMENT AGREEMENT CHECKLIST

- ☐ Limit voltage
- ☐ Limit number of poles and appurtenances
- ☐ Limit materials used for poles (i.e., metal, wood, etc.)
- ☐ Exclude other utilities (i.e., pipelines, fiber optic, etc. except as needed for power line)
- ☐ Make easement exclusive/non-exclusive
- ☐ Prohibit up-sizing
- ☐ Attached exhibit with precise legal description and plat showing permanent easement area
- ☐ Define duration of temporary easement
- ☐ Limit ingress/egress to easement area and public roads/rights-of-way
- ☐ Reserve use of the surface of the easement area to landowner
- ☐ Inspect and maintain easement area, haul off trash and construction debris
- ☐ Brace all fences before cutting, replace after construction
- ☐ Gates closed except when passing through
- ☐ Specific restoration obligations, including re-seeding with native or other grasses and time limit to complete restoration
- ☐ Precautions against invasive plants (i.e., bitterweed, African rue, etc.)
- ☐ Oak wilt mitigation
- ☐ Abandonment provisions
- ☐ Obligation to pay for damages (i.e., hunting losses, crop damages, fences, livestock, exotic game, etc.)
- ☐ Limit on use of chemicals/pesticides
- ☐ No hunting or fishing equipment allowed
- ☐ No smoking and appropriate fire precautions required for welding and other dangerous activity
- ☐ Insurance requirements
- ☐ Limits on assignment
- ☐ No warranty of title
- ☐ Notice prior to access
- ☐ Indemnity
- ☐ Responsibility for change in property tax assessed value
- ☐ Subject to visible and apparent easements, existing oil and gas leases, no representations about adequacy of easement area
- ☐ Required to obtain all necessary permits and governmental approvals
- ☐ Require powerline company to comply with all Public Utility Commission rules and regulations
- ☐ Required to keep property free of all liens and encumbrances
- ☐ Texas choice of law, specify venue as county where property is located
- ☐ Addresses for notice
- ☐ Ensure powerline company countersigns easement agreement
- ☐ No material impairment of access to property

SURVEYING TEMPORARY RIGHT-OF-ENTRY AGREEMENT CHECKLIST

- ☐ Identify the property
- ☐ Limit the permissible activities (i.e., surveying, archaeological, geotechnical inspections only)
- ☐ Beginning and end date (i.e., one month duration)
- ☐ Written notice requirements to landowner and attorney if applicable
- ☐ Right for landowner to be present during all inspections
- ☐ Limits on right to disturb landscaping, etc.
- ☐ Limit digging to hand tools only and only minor trimming of brush
- ☐ Gates closed and locked after passing through same
- ☐ No blocking of access to the property at any time
- ☐ Remove all trash and debris brought on the property
- ☐ No hazardous substances permitted
- ☐ No fences cut or damaged
- ☐ Owner's right to obtain just compensation will not be impaired by right of entry agreement
- ☐ Make available all non-privileged work-product following inspection
- ☐ Notice of dangerous conditions on property (i.e., abandoned barbed wire, poisonous animals, abandoned water wells, etc.).
- ☐ Require indemnity (may be unavailable if governmental condemnor)
- ☐ Require insurance
- ☐ Survey stakes or survey tape at regular intervals
- ☐ Ensure pipeline company countersigns easement agreement

21.0111: DISCLOSURE OF CERTAIN INFORMATION REQUIRED; INITIAL OFFER

(a) An entity with eminent domain authority that wants to acquire real property for a public use shall, by certified mail, return receipt requested, disclose to the property owner at the time an offer to purchase or lease the property is made any and all appraisal reports produced or acquired by the entity relating specifically to the owner's property and prepared in the 10 years preceding the date of the offer.

(1) An entity seeking to acquire real property through the use of eminent domain shall, not later than the third business day before the date of a special commissioner's hearing, disclose to the property owner any and all current and existing appraisal reports produced or acquired by the entity relating specifically to the owner's property and used in determining the entity's opinion of value, if an appraisal report is to be used at the hearing.

(b) A property owner shall disclose to the entity seeking to acquire the property any and all current and existing appraisal reports produced or acquired by the property owner relating specifically to the owner's property and used in determining the owner's opinion of value. Such disclosure shall take place not later than the earlier of:

(1) the 10th day after the date of receipt of an appraisal report; or

(2) the third business day before the date of a special commissioner's hearing if an appraisal report is to be used at the hearing.

(c) An entity seeking to acquire property that the entity is authorized to obtain through the use of eminent domain may not include a confidentiality provision in an offer or agreement to acquire the property. The entity shall inform the owner of the property that the owner has the right to:

(1) discuss any offer or agreement regarding the entity's acquisition of the property with others; or

(2) keep the offer or agreement confidential, unless the offer or agreement is subject to Chapter 552, Government Code.

(d) A subsequent bona fide purchaser for value from the acquiring entity may conclusively presume that the requirement of this section has been met. This section does not apply to acquisitions of real property for which an entity does not have eminent domain authority.

21.0113: BONA FIDE OFFER REQUIRED

(a) An entity with eminent domain authority that wants to acquire real property for a public use must make a bona fide offer to acquire the property from the property owner voluntarily.

(b) An entity with eminent domain authority has made a bona fide offer if:

(1) an initial offer is made in writing to a property owner that includes:

(A) a copy of the landowner's bill of rights statement prescribed by Section 402.031, Government Code, including the

addendum prescribed by Section 402.031(c-1), Government Code, if applicable;

(B) a statement, in bold print and a larger font than the other portions of the offer, indicating whether the compensation being offered includes:

(i) damages to the remainder, if any, of the property owner's remaining property; or

(ii) an appraisal of the property, including damages to the remainder, if any, prepared by a certified appraiser certified to practice as a certified general appraiser under Chapter 1103, Occupations Code;

(C) an instrument of conveyance, provided that if the entity is a private entity as defined by Section 21.0114(a), the instrument must comply with Section 21.0114, as applicable, unless:

(i) the entity has previously provided an instrument complying with Section 21.0114;

(ii) the property owner desires to use an instrument different than one complying with Section 21.0114 and consents in writing to use a different instrument; or

(iii) the property owner provided the entity with the instrument prior to the issuance of the initial offer; and

(D) the name and telephone number of a representative of the entity who is:

(i) an employee of the entity;

(ii) an employee of an affiliate providing services on behalf of the entity;

(iii) a legal representative of the entity; or

(iv) if the entity does not have employees, an individual designated to represent the day-to-day operations of the entity;

(2) a final offer is made in writing to the property owner;

(3) the final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner;

(4) before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;

(5) the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;

(6) the following items are included with the final offer or have been previously provided to the owner by the entity:

(A) a copy of the written appraisal;

(B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and

(C) the landowner's bill of rights statement prescribed by Section 21.0112; and

(7) the entity provides the property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that period.

21.0114: REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE OF CERTAIN EASEMENTS

(a) In this section, “private entity”:

(1) means:

(A) a for-profit entity, as defined by Section 1.002, Business Organizations Code, however organized, including an affiliate or subsidiary, authorized to exercise the power of eminent domain to acquire private property for public use; or

(B) a corporation organized under Chapter 67, Water Code, that has a for-profit entity, however organized, as the sole or majority member; and

(2) does not include an entity governed by the Natural Gas Act (15 U.S.C. Section 717 et seq.), unless the entity seeks to acquire property under this chapter.

(b) This section:

(1) applies only to a deed, agreement, or other instrument of conveyance for a pipeline right-of-way easement or an electric transmission line right-of-way easement that is included with an offer made under this chapter to acquire a property interest for a public use; and

(2) does not apply in relation to:

(A) a pipeline or appurtenance that is:

(i) downstream of the point where natural gas is measured and custody is transferred from a transmission pipeline to a gas local distribution company for distribution to end-use customers; or

(ii) at a location where a gas utility taps a transmission pipeline to a city gate, provided that the pipeline does not exceed 100 feet; or

(B) an electric power line that operates below 60 kilovolts.

(c) Except as provided by Subsections (d), (e), and (f), a deed, agreement, or other instrument of conveyance provided to a property owner by a private entity with eminent domain authority to acquire the property interest to be conveyed must address the following general terms, as applicable:

(1) if the instrument conveys a pipeline right-of-way easement or an easement related to pipeline appurtenances:

(A) the maximum number of pipelines that may be installed under the instrument for a pipeline right-of-way;

(B) a description of the types of pipeline appurtenances that are authorized to be installed under the instrument for pipeline-related appurtenances, such as pipes, valves, compressors, pumps, meters, pigging stations, dehydration facilities, electric facilities, communication facilities, and any other appurtenances that may be necessary or desirable in connection with a pipeline;

(C) the maximum diameter, excluding any protective coating or wrapping, of each pipeline to be initially installed under the instrument for a pipeline right-of-way;

(D) the type or category of substances permitted to be transported through each pipeline to be installed under the instrument;

(E) a general description of any aboveground equipment or facility the private entity intends to install, maintain, or operate

under the instrument for a pipeline easement on the surface of the easement;

(F) a description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property;

(G) the maximum width of the easement under the instrument;

(H) the minimum depth at which each pipeline to be installed under the instrument for a pipeline right-of-way will initially be installed;

(I) a provision identifying whether the private entity intends to double-ditch areas of the pipeline easement that are not installed by boring or horizontal directional drilling;

(J) a provision requiring the private entity to provide written notice to the property owner at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property if and when the private entity assigns the interest under the instrument to another entity, provided that the provision does not require notice by the private entity for assignment to an affiliate or to a successor through merger, consolidation, or other sale or transfer of all or substantially all of its assets and businesses;

(K) a provision describing whether the easement rights are exclusive or nonexclusive;

(L) a provision limiting the private entity's right to grant to a third party access to the easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument and of pipeline appurtenances to be installed under the instrument;

(M) a provision regarding the property owner's right to recover actual monetary damages arising from the construction and installation of each pipeline to be installed under the instrument, or a statement that the consideration for the instrument includes any monetary damages arising from the construction and installation of each pipeline to be installed under the instrument;

(N) a provision regarding the property owner's right after initial construction and installation of each pipeline to be installed under the instrument to actual monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument, or a statement that consideration for the instrument includes any monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument;

(O) a provision:

(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity under the instrument; or

(ii) providing for the payment for any damage caused by the private entity to gates and fences described by Subparagraph (i), if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument;

(P) a provision:

(i) regarding the private entity's obligation to restore the pipeline easement area and the property owner's remaining property, if any, used by the private entity to as near to original condition as is reasonably practicable

and to maintain the easement in a manner consistent with the purposes for which the easement will be used by the private entity under the instrument; or

(ii) providing for the private entity to reimburse the property owner for actual monetary damages incurred by the property owner that arise from damage to the pipeline easement area or the property owner's remaining property, if any, to the extent caused by the private entity and not restored or paid for as part of the consideration for the instrument; and

(Q) a provision describing the private entity's rights of ingress, egress, entry, and access on, to, over, and across the property owner's property under the instrument;

(2) if the instrument conveys an electric transmission line right-of-way easement:

(A) a general description of the uses of the surface of the property to be encumbered by the easement the entity intends to acquire;

(B) a description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property;

(C) the maximum width of the easement under the instrument;

(D) the manner in which the entity will access the easement under the instrument;

(E) a provision limiting the private entity's right to grant to a third party access to the easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of the electric and appurtenant facilities installed under the instrument;

(F) a provision regarding the property owner's right to recover actual monetary damages arising from the construction, operation, repair, maintenance, inspection, replacement, and future removal of lines and support facilities after initial construction in the easement, if any, or a statement that the initial consideration for the easement instrument includes such damages;

(G) a provision:

(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity under the instrument; or

(ii) providing for the payment for any damage caused by the private entity to gates and fences described by Subparagraph (i), if any, to the extent that the gates or fences are not restored or paid for as part of the consideration for the instrument;

(H) a provision regarding the private entity's obligation to restore the easement area and the property owner's remaining property to the easement area's and the remaining property's original contours and grades, to the extent reasonably practicable, unless the safety or operational needs of the private entity and the electric facilities would be impaired, and:

(i) a provision regarding the entity's obligation to restore the easement area and the property owner's remaining property following any future damages directly attributed to the use of the easement by the private entity, to the extent reasonably practicable, unless the safety or operational needs of the private entity and the electric facilities would be impaired; or

- (ii) a provision that the consideration for the easement instrument includes damages as described by Subparagraph (i) to the easement area and the property owner's remaining property;
 - (I) a provision describing whether the easement rights are exclusive, nonexclusive, or otherwise limited under the terms of the instrument; and
 - (J) a prohibition against the assignment of the entity's interest in the property to an assignee that will not operate as a utility subject to the jurisdiction of the Public Utility Commission of Texas or the Federal Energy Regulatory Commission without written notice to the property owner at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property;
 - (3) a prohibition against any use by the private entity of the property rights being conveyed by the instrument, other than a use stated in the instrument, without the express written consent of the property owner; and
 - (4) a provision that the terms of the instrument will bind the successors and assigns of the property owner and private entity.
- (d) A private entity shall notify the property owner that the property owner may negotiate for the following general terms to be included in a deed, agreement, or other instrument of conveyance described by Subsection (c):
- (1) a provision regarding the property owner's right to negotiate to recover damages, or a statement that the consideration for the instrument includes damages, for:
 - (A) damage to certain vegetation; and
 - (B) the income loss from disruption of existing agricultural production or existing leases based on verifiable loss or lease payments; and
 - (2) a provision:
 - (A) requiring the private entity to maintain at all times while the private entity uses the easement, including during construction and operations on the easement, commercial liability insurance or self-insurance:
 - (i) issued by an insurer authorized to issue liability insurance in this state, if maintaining commercial liability insurance; and
 - (ii) insuring the property owner against liability for personal injuries and property damage sustained by any person to the extent caused by the negligence of the private entity or the private entity's agents or contractors and to the extent allowed by law; or
 - (B) if the private entity is subject to the electric transmission cost-of-service rate jurisdiction of the Public Utility Commission of Texas or has a net worth of at least \$25 million, requiring the private entity to maintain self-insurance or commercial liability insurance at levels approved by the Public Utility Commission of Texas in the entity's most recent transmission cost-of-service base rate proceeding.
- (e) A private entity or the property owner may, after the entity provides an instrument in compliance with Section 21.0113(b)(1)(C):
- (1) negotiate for and agree to terms and conditions not required by Subsection (c), including terms and conditions that differ from or are not included in a subsequent condemnation petition; and
 - (2) negotiate for and agree to a deed, agreement, or other instrument of conveyance that does not include or includes terms that differ from the terms required by Subsection (c).

(f) Except as provided by this subsection, this section does not prohibit a private entity or the property owner from negotiating for or agreeing to amend, alter, or omit the terms required by Subsection (c) at any time after the private entity first provides a deed, agreement, or other instrument containing the required general terms to the property owner, whether before or at the same time that the entity makes an initial offer to the property owner. A private entity that changes the terms required by Subsection (c) must provide a copy of the amended deed, agreement, or other instrument of conveyance to the property owner not later than the seventh day before the date the private entity files a condemnation petition relating to the property unless the parties agree in writing to waive the notice.

(g) A private entity that changes or amends a deed, agreement, or other instrument has satisfied the requirements of Section 21.0113 if the requirements were previously satisfied as part of the initial offer made in accordance with Section 21.0113(b)(1)(C).

21.012: CONDEMNATION PETITION

(a) If an entity with eminent domain authority wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the entity may begin a condemnation proceeding by filing a petition in the proper court.

(b) The petition must:

- (1)** describe the property to be condemned;
- (2)** state with specificity the public use for which the entity intends to acquire the property;
- (3)** state the name of the owner of the property if the owner is known;
- (4)** state that the entity and the property owner are unable to agree on the damages;
- (5)** if applicable, state that the entity provided the property owner with the landowner's bill of rights statement in accordance with Section 21.0112; and
- (6)** state that the entity made a bona fide offer to acquire the property from the property owner voluntarily as provided by Section 21.0113.

(c) An entity that files a petition under this section must concurrently provide a copy of the petition to the property owner by certified mail, return receipt requested, and first class mail. If the entity has received written notice that the property owner is represented by counsel, the entity must also concurrently provide a copy of the petition to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail

21.013: VENUE; FEES AND PROCESSING FOR SUIT FILED IN DISTRICT COURT

(a) The venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located.

(b) Except where otherwise provided by law, a party initiating a condemnation proceeding in a county in which there is one or more county courts at law with jurisdiction shall file the petition with any clerk authorized to handle such filings for that court or courts.

- (c) A party initiating a condemnation proceeding in a county in which there is not a county court at law must file the condemnation petition with the district clerk. The filing fee shall be due at the time of filing.
- (d) District and county clerks shall assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the clerk serves.

21.014: SPECIAL COMMISSIONERS

- (a) The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall, not later than the 30th calendar day after the petition is filed, appoint three disinterested real property owners who reside in the county as special commissioners to assess the damages of the owner of the property being condemned and appoint two disinterested real property owners who reside in the county as alternate special commissioners. The judge appointing the special commissioners shall give preference to persons agreed on by the parties, if any, before the court appoints the special commissioners. The judge shall provide the names and contact information of the special commissioners and alternate special commissioners to the parties. Each party shall have until the later of 10 calendar days after the date of the order appointing the special commissioners or 20 days after the date the petition was filed to strike one of the three special commissioners. Any strike of a special commissioner must be filed electronically with electronic service provided concurrently to any represented party and first class mail service provided concurrently to any other party. If a person fails to serve as a special commissioner or is struck by a party to the suit in accordance with this subsection, an alternate special commissioner shall serve as a replacement for the special commissioner based on the order that the alternate special commissioners are listed in the initial order of appointment. If a party exercises a strike, the other party may, by the later of the third day after the date of filing of the initial strike or the date of the initial strike deadline, strike a special commissioner from the resulting panel, provided the other party has not earlier exercised a strike.
- (b) The special commissioners shall swear to assess damages fairly, impartially, and according to the law.
- (c) Special commissioners may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt in the same manner as a county judge.
- (d) Each party in an eminent domain proceeding is entitled to a copy of the court's order appointing special commissioners under Subsection (a). The court must promptly provide the signed order to the party initiating the condemnation proceeding and that party must provide a copy of the signed order to the property owner and each other party by certified mail, return receipt requested. If the entity has received written notice that the property owner is represented by counsel, the party initiating the condemnation proceeding must concurrently provide a copy of the signed order to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail.

21.015: HEARING

- (a)** The special commissioners in an eminent domain proceeding shall promptly schedule a hearing for the parties at the earliest practical time but may not schedule a hearing to assess damages before the 20th day after the date the special commissioners were appointed. The special commissioners shall schedule a hearing for the parties at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.
- (b)** After notice of the hearing has been served, the special commissioners shall hear the parties at the scheduled time and place or at any other time or place to which they may adjourn the hearing.

21.016: NOTICE

- (a)** Each party in an eminent domain proceeding is entitled to written notice issued by the special commissioners informing the party of the time and place of the hearing.
- (b)** Notice of the hearing must be served on a party not later than the 20th day before the day set for the hearing. A person competent to testify may serve the notice.
- (c)** A person who serves a notice shall return the original notice to the special commissioners on or before the day set for hearing. The person shall write a return of service on the notice that states how and when it was served.
- (d)** Notice may be served:

 - (1)** by delivering a copy of the notice to the party or to the party's agent or attorney;
 - (2)** if the property being condemned belongs to a deceased's estate or to a minor or other legally disabled person and the person or estate has a legal representative, by delivering a copy of the notice to the legal representative; or
 - (3)** if the property being condemned belongs to a nonresident of this state and there has been no personal service on the owner, if the identity or the residence of the property owner is unknown, or if the property owner avoids service of notice by hiding, by publication in the same manner as service of citation by publication in other civil cases in the district courts or county courts at law.

21.018: APPEAL FROM COMMISSIONERS' FINDINGS

- (a)** A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court.
- (b)** If a party files an objection to the findings of the special commissioners, the court shall cite the adverse party and try the case in the same manner as other civil causes.

21.021: POSSESSION PENDING LITIGATION

- (a) After the special commissioners have made an award in a condemnation proceeding, except as provided by Subsection (c) of this section, the condemnor may take possession of the condemned property pending the results of further litigation if the condemnor:
- (1) pays to the property owner the amount of damages and costs awarded by the special commissioners or deposits that amount of money with the court subject to the order of the property owner;
 - (2) deposits with the court either the amount of money awarded by the special commissioners as damages or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages by the court in excess of the award of the special commissioners; and
 - (3) executes a bond that has two or more good and solvent sureties approved by the judge of the court in which the proceeding is pending and conditioned to secure the payment of additional costs that may be awarded to the property owner by the trial court or on appeal.
- (b) A court shall hold money or a bond deposited under Subdivision (1) or (2) of Subsection (a) to secure the payment of the damages that have been or that may be awarded against the condemnor.
- (c) This state, a county, or a municipal corporation or an irrigation, water improvement, or water power control district created under legal authority is not required to deposit a bond or the amount equal to the award of damages under Subdivisions (2) and (3) of Subsection (a).
- (d) If a condemnor deposits money with a court under Subdivision (2) of Subsection (a), the condemnor may instruct the court to deposit or invest the money in any account with or certificate or security issued by a state or national bank in this state. The court shall pay the interest that accrues from the deposit or investment to the condemnor.

21.0211: PAYMENT OF AD VALOREM TAXES

- (a) A court may not authorize withdrawal of any money deposited under Section 21.021 unless the petitioner for the money files with the court:
- (1) a tax certificate issued under Section 31.08, Tax Code, by the tax collector for each taxing unit that imposes ad valorem taxes on the condemned property showing that there are no delinquent taxes, penalties, interest, or costs owing on the condemned property or on any larger tract of which the condemned property forms a part; and
 - (2) in the case of a whole taking that occurs after the date the ad valorem tax bill for taxes imposed by a taxing unit on the property is sent, a tax receipt issued under Section 31.075, Tax Code, by the tax collector of the taxing unit that imposes ad valorem taxes showing that the taxes on the condemned property for the current tax year, prorated under Section 26.11, Tax Code, have been paid.
- (b) For purposes of Subsection (a)(2), a “case of a whole taking” means a case in which the location, size, and boundaries of the property assessed for ad valorem taxes are identical to that of the condemned property.

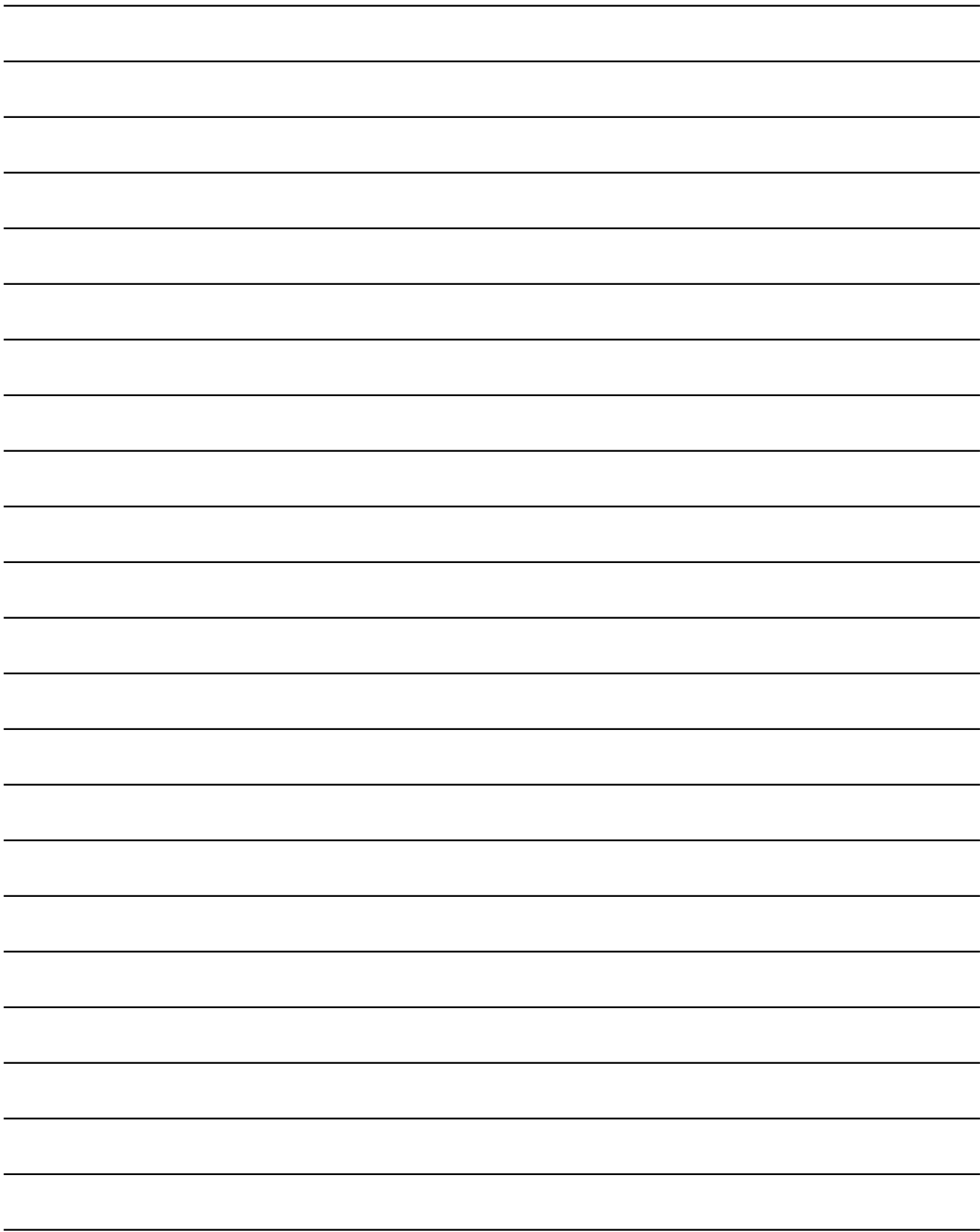
21.063: APPEAL

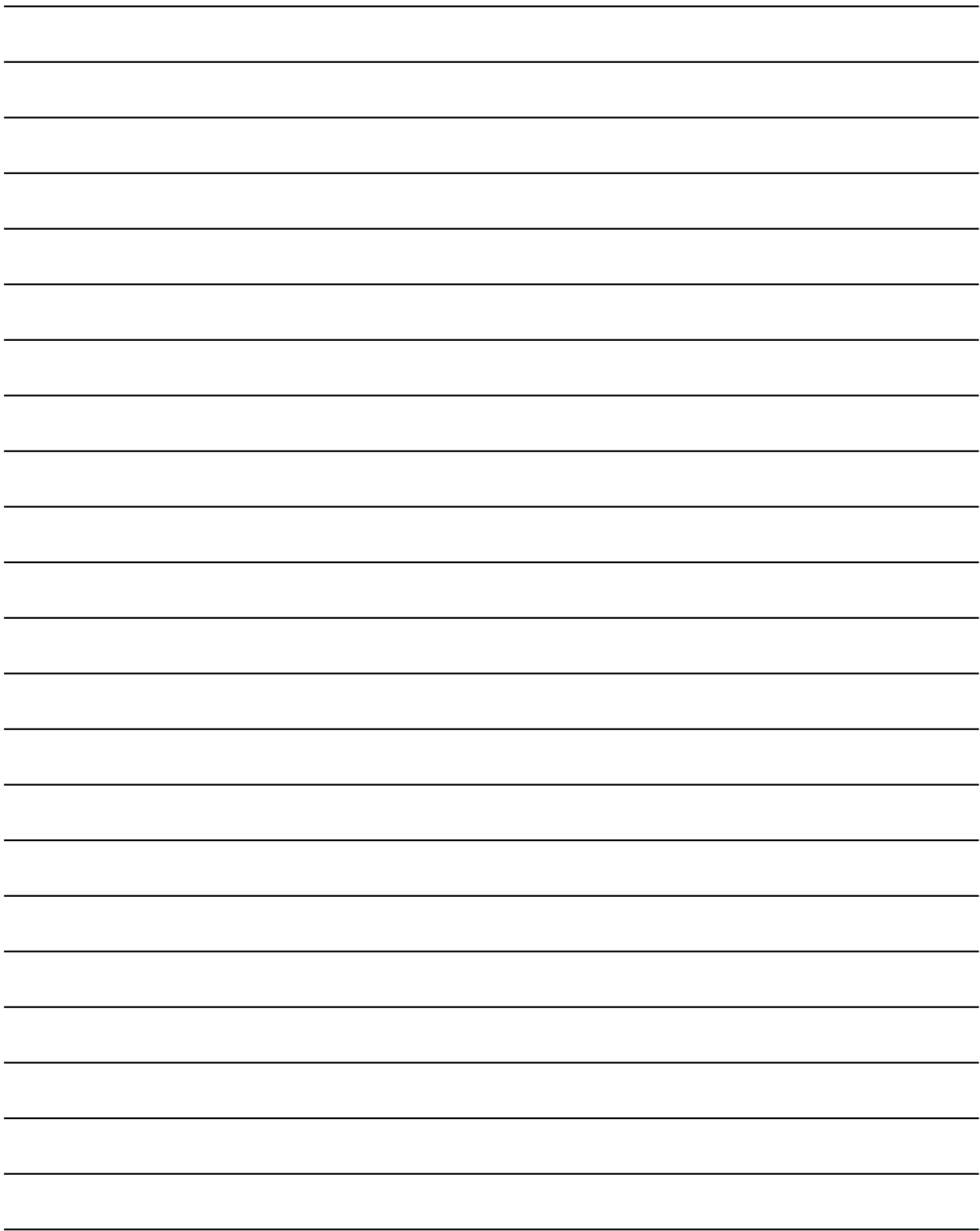
- (a)** The appeal of a judgment in a condemnation proceeding is as in other civil cases.
- (b)** A court hearing an appeal from the decision of a trial court in a condemnation proceeding may not suspend the judgment of the trial court pending the appeal.

21.101: RIGHT OF REPURCHASE

- (a)** A person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person's heirs, successors, or assigns, is entitled to repurchase the property as provided by this subchapter if:
 - (1)** the public use for which the property was acquired through eminent domain is canceled before the property is used for that public use;
 - (2)** no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the 10th anniversary of that date;
 - (3)** the property becomes unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the 10th anniversary of the date of acquisition;
 - (4)** the entity that acquired the property through eminent domain:
 - (A)** has an obligation to pay ad valorem taxes on the acquired property;
 - (B)** has received a tax bill from the taxing authority for the ad valorem taxes on the acquired property; and
 - (C)** has failed to pay any ad valorem taxes on the acquired property before the third anniversary of the date on which the unpaid taxes became due; or
 - (5)** the entity:
 - (A)** acquired through eminent domain a fee simple interest in the property;
 - (B)** has an obligation to pay ad valorem taxes on the acquired property;
 - (C)** has received a tax bill from the taxing authority for the ad valorem taxes on the acquired property; and
 - (D)** has failed to pay any ad valorem taxes on the acquired property before the third anniversary of the date on which the unpaid taxes became due.
- (b)** In this section, "actual progress" means the completion of three or more of the following actions:
 - (1)** the performance of a significant amount of labor to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;
 - (2)** the provision of a significant amount of materials to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;
 - (3)** the hiring of or contracting with and the performance of a significant amount of work by an architect, engineer, or surveyor to prepare a plan, plat, or easement that includes the property or other property acquired for the same public use project for which the property owner's property was acquired;

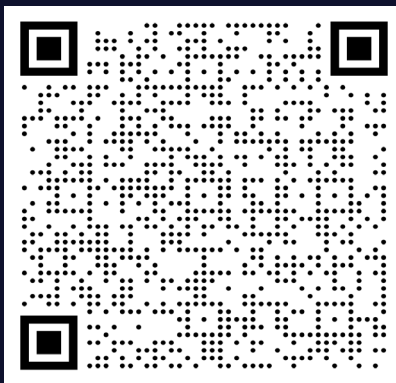
- (4)** application for state or federal funds to develop the property or other property acquired for the same public use project for which the property owner's property was acquired; or
 - (5)** application for a state or federal permit or certificate to develop the property or other property acquired for the same public use project for which the property owner's property was acquired.
- (b-1)** Notwithstanding Subsection (b), a navigation district or port authority, or a water district implementing a project included in the state water plan adopted by the Texas Water Development Board, may establish actual progress for purposes of this section by:
- (1)** the completion of one action described by Subsection (b); and
 - (2)** the adoption by a majority of the entity's governing body at a public hearing of a development plan for a public use project that indicates that the entity will not complete more than one action described by Subsection (b) before the 10th anniversary of the date of acquisition of the property.
- (c)** A district court may determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns.





ADDITIONAL RESOURCES

The State of Texas Landowner's Bill of Rights



Other Helpful Links

- www.statutes.capitol.texas.gov/Docs/PR/htm/PR.21.htm
- www.texasattorneygeneral.gov/sites/default/files/files/divisions/general-oag/landowners-bill-of-rights-2022.pdf



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