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This Land is Your Land - Not Anymore



EMINENT DOMAIN SURVIVAL GUIDE

Super Lawyers®



BUSINESS NORTH CAROLINA'S
LEGAL ELITE

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B. Joan Davis



**HOWARD, STALLINGS,
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ATTORNEYS AT LAW

Joan has over thirty years of experience in handling eminent domain cases. She represents landowners, retailers, and lenders in dealing with real property disputes, eminent domain and condemnation litigation. She is regional condemnation counsel for McDonald's, Harris Teeter, Walgreens, Rite Aid, and Sam's Holdings. She has also represented BB&T, First Citizens Bank, CBL Properties and American Asset Corporation in real property disputes and eminent domain cases. Joan is a principal in the law firm of Howard, Stallings, From, Atkins, Angell & Davis, P.A.



KENNETH C. HAYWOOD

Kenneth Haywood represents land owners and business owners across North Carolina whose properties are being taken by the North Carolina Department of Transportation; private utility companies, such as Duke Power and PSNC; and local municipalities or other governmental agencies. Kenneth has been recognized in legal publications for representing a client in receiving the highest jury verdict recorded in one of the counties in North Carolina. He has significant experience in eminent domain and condemnation law. Howard Stallings is dedicated to ensuring that the rights of our clients are fully defended, and that each and every property owner and business owner we represent receives their full and fair "just compensation." Kenneth is a principal in the law firm of Howard, Stallings, From, Atkins, Angell & Davis, P.A.

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HOWARD STALLINGS SURVIVAL GUIDE FOR EMINENT DOMAIN AND CONDEMNATION

Five Essential Steps to Protect Your Commercial Property

There is nothing simple or painless when the Department of Transportation (DOT) or a municipality needs your land or building for a road widening project or to construct a new road. Whether you are a shopping center owner, national retailer, bank, restaurant, or small business owner, there are some basic steps you can take to protect your business and commercial property interests.

Step 1 Legal Analysis



If you receive notice that a roadway project is going to impact your commercial property, it is important that you seek legal advice from an attorney experienced in eminent domain law. Such an attorney will help you determine your legal rights, maximize your recovery and, in the process, protect your remaining property's value and handle issues that may arise during the construction. It is important to seek legal advice as soon as you know of a project that will impact your property. If you wait until you are served with the condemnation lawsuit to get a lawyer, you will drastically limit what your lawyer may be able to do to help you. Many law firms will help you on a contingent fee basis (meaning you do not pay for the services until you are compensated for your land, buildings, and property rights taken - and then the fee is based on the amount of money you receive from the government). Other firms will work on an hourly basis to help you through the process. Talk with your attorney about a fee arrangement that best suits your needs.

patterns will affect their customers' ability to access the property. In these instances, your attorney may engage the services of an experienced traffic engineer to help ascertain the impact of the road's design on traffic flow and access.

If the roadway design is still in the planning stage, the DOT or municipality may be persuaded to modify the road design to preserve access to your commercial property. We have helped our clients maintain or even improve traffic patterns. We have worked with the DOT to redesign portions of projects to reopen driveways that were slated to be closed, allow full access turns where medians were going to block access, and even create access points that did not exist before. In one instance, we were able to keep a bank's drive-thru access open. In another, we were able to move a national fast food restaurant's driveway from one location to another to avoid the access being permanently closed. On a rare occasion, we were able to persuade the DOT to break a controlled-access thoroughfare to keep a drugstore from going out of business.

Step 2 Road Design



In the vast majority of cases the government will only need a portion of your property. In those situations the roadway's design can be critical to how your remaining property functions after the work is done. Most commercial property owners and tenants are concerned about how the new road design and resultant new traffic

DOT officials (and local government transportation departments) are conscientious public servants who are concerned with: 1) safety, 2) traffic flow, and 3) being good stewards of our public resources. When your eminent domain attorney teams up with an experienced traffic engineer they can often persuade the DOT to revise their roadway plans so long as there is no compromise on safety or adequate traffic flow. Such concessions will also benefit the government if they reduce the damage to the property's value that would otherwise be paid in a condemnation lawsuit. Every case is different and there are no guarantees. But you will never know unless or until your attorney asks.

In rare instances, your attorney may persuade the DOT that it no longer needs to acquire your property. In most cases, however, a road redesign will only partially mitigate the damage to your property. You and your attorney will still need to work with the state to insure that you receive the appropriate amount of monetary compensation for the taking.

Step 3 Valuation



The United States Constitution and North Carolina law provide that you are entitled to “just compensation” when the government takes your private property for a public use. The government will hire an appraiser and offer to purchase your property based on that appraiser’s valuation of your property. You are not required to accept the amount the government offers. We never advise accepting this number without an independent valuation. An independent appraisal will help guide your strategy going forward, and give you a sound negotiating position with important independent expert evidence should the case proceed to trial.

A condemnation appraisal is more specialized and complex than a purchase or financing appraisal. The appraiser must be able to pinpoint the market value of your property using methodology that will be recognized as competent in court. The appraiser must be prepared and able to testify at depositions or trial if necessary and be qualified and experienced in this field. Also, an appraiser experienced with condemnation cases will best be able to value the unique property rights often taken by the state, such as a temporary construction easements and permanent easements for utilities, drainage, grading and slopes. Your attorney can help you retain an experienced commercial condemnation appraiser.

Step 4 The Lawsuit



In the event of a condemnation lawsuit, the government agency will be the Plaintiff and you and anyone else with an interest in your property (lender, tenant, easement holders, etc.) are the Defendants. The government will deposit with the court the amount of money that it believes is “just” for the property rights acquired, and

you must choose whether to accept that amount or litigate over whether the property was truly acquired for a “public purpose” and/or whether the deposit constitutes “just compensation.” All of the rules of court and rules of evidence apply, though the time deadlines and certain legal motions are different in a condemnation case. Your attorney will help you navigate the legal process, draw down the deposit (if appropriate), prove the value of your property, and negotiate a settlement or try the case in court.

Step 5 Apportionment.



If there are multiple Defendants in a condemnation action, you must apportion the settlement or judgment proceeds among these multiple interest holders. This can be tricky. Many commercial leases and deeds of trust provide for the distribution of the proceeds from a condemnation award. The language of these agreements will likely govern the split of the award. If the lease or deed of trust is silent as to apportionment, common law rules will apply to divide the award among the stakeholders. The guidance of an experienced condemnation attorney is essential to ensure that you receive the full amount to which you are entitled, whether you are a lender, owner, or tenant.

Conclusion.

The condemnation process can be long and confusing with risk and uncertainty, even for sophisticated landowners and business people. Understanding these Five Essential Steps can help you take control in navigating this process. With an experienced condemnation attorney as your guide, you can be assured of the best possible outcome for your business and property interests.

* WE GET RESULTS

While every case is unique, and there is never a guarantee of a particular result in any case, listed below are some of our monetary successes that are a matter of public record:

	Initial Deposit	Award
Car Repair Shop	\$1,227,900	\$2,300,000 (Remnant sold for \$2,905,375)
Total Recovery \$5,205,375		
Fast Food Restaurant	\$534,200	\$990,000
Hotel	\$542,444	\$1,200,000
Drugstore	\$474,300	\$1,800,000
Drugstore	\$213,400	\$1,750,000
Drugstore	\$1,305,575	\$3,000,000
Drugstore	\$744,900	\$1,200,000
Fast Food Restaurant	\$351,300	\$1,500,000

BUT SOMETIMES OUR CLIENTS *NEED MORE THAN MONEY!* Monetary results only tell half of the story. While maximizing our clients' "just compensation" is important, and certainly our goal in every case, many of our commercial clients are more concerned about the long-term impact of roadway projects on their properties. By far, the most compelling aspect of these cases is to maintain convenient customer access, visibility and ample parking. Our team of lawyers, appraisers and traffic engineers analyze the impact of highway projects early in the process and in many cases have worked with the DOT to redesign the road in a manner that is advantageous to our clients' businesses. For example, when we have been involved early in the process, we have been able to convince the DOT:

- to leave open driveways that were slated to be closed,
- to redesign major roadways to allow direct access to fast food restaurants and other drive-thru businesses where only service road access was planned, and
- to allow a break on a controlled-access thoroughfare and build an entirely new driveway to replace an inferior access for a Steakhouse and the neighboring businesses.

It is always best if we can be involved early in the design stages of a project, but even late in the process we have had extraordinary success. In one case, we were able to reopen a mall access point that the DOT had already closed and replaced with curb, gutter and sidewalk. This driveway was important to our mall client because it served as a primary access point for a restaurant and a bank drive-thru. Without that driveway, the mall would have lost two very lucrative, long-term out parcel tenants (a bank and a restaurant).

*This list and the anecdotal information provided here represents only a sample of the eminent domain matters handled by our law firm. Neither the law firm, nor any of the attorneys in our eminent domain practice, would suggest that these results are indicative of the results that could be obtained in your particular case. The result in any case is subject to many variables, and you would need to consult with an attorney about the specific facts and merits of your case in order to know what outcome you might expect.

TESTIMONIALS

"My nephew's hotel was caught up in a major NCDOT roadway project right before the U.S. Open came to town. The entrances to the hotel were blocked with "Road Closed" signs, and the construction crew used much of the parking lot as a staging area for their equipment. We feared he would lose his business. The state deposited money with the Court, but it simply wasn't enough. I hired Joan to help him. She negotiated with his lenders to reduce the payments on the hotel loans and helped him to refinance his debt. Then she persuaded the state to pay \$1.2 million for the new right of way and staging area, which was more than double what they had offered him. At Joan's insistence, they also repaired the damage to the parking lot and gave us a sign easement to help direct traffic to the hotel around the construction. I cannot thank her enough."

Suren Meyers



"We rely on Joan's exemplary skill to handle our eminent domain and real estate litigation in North Carolina, South Carolina, Virginia, Tennessee and Georgia. Her approach to state and municipal roadway projects is the most innovative that I have seen. She is proactive in keeping up with state and city roadway projects and often addresses a situation before it becomes a major problem for us. She has worked with state and local officials to redesign many projects to reduce their impact on our business. She ensures that our property rights are protected and that we receive just compensation for the rights are taken from us. She seeks compromise where appropriate, but does not hesitate to litigate an issue that requires judicial resolution. Her expertise in dealing with commercial real estate litigation has proven invaluable to us time and again."

Joe Lancaster
Real Estate Director
Rite Aid Corporation



"The state was poised to take over twenty acres of family farmland (inherited from my great-grandfather) for a highway project. My cousins and I were not sure what to do. Some wanted to settle for the state's offer, but others thought the land was worth more. Joan managed to corral all seven stakeholders and gave us one voice. She kept us informed and engaged, and she worked diligently with us to achieve an amazing result. Joan and her team did an excellent job. Ultimately, we settled for \$1.8 million - far more than the state's initial offer. I would highly recommend her to anyone who needs a knowledgeable condemnation attorney."

Dwight D Henninger
DVM, PhD



"Dear Joan, Our students at GGU public administration department and GGU law school have cited your eminent domain articles in their research papers. Thank you for helping not just your clients but also America's classrooms."

Joaquin Jay Gonzalez III, Ph. D.
Professor & Chair Department of
Public Administration



GOLDEN GATE UNIVERSITY

WHY HOWARD STALLINGS FOR YOUR CONDEMNATION CASE?



At Howard, Stallings, From, Atkins, Angell & Davis, P.A., we have a proven track record of success. We bring our experience and expertise to each case to address the client's concerns with creative solutions that usually include both monetary and critical non-monetary concessions on the part of the government. The earlier we are involved in the process, the more likely we are to construct a win-win solution for our clients. We work closely with a team of experienced appraisers and traffic engineers to achieve our clients' goals.

HOW CAN WE HELP YOU?

We appreciate your interest in our condemnation work and welcome the opportunity to address any questions that you may have. Just give us a call **(919) 821-7700** or send an email to jdavis@hsfh.com or khaywood@hsfh.com, and we would be happy to help.



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