PENDER & COWARD
ATTORNEYS AND COUNSELLORS AT LAW

PRACTICE AREA

LITIGATION AND APPEALS

Litigation in eminent domain matters most commonly arises as direct condemnation where the condemning authority has made an offer for a property but has been unable to negotiate a voluntary settlement and just compensation for the property is determined at trial. The other common form of litigation in eminent domain matters is inverse condemnation cases where landowners allege a taking or damaging of their property by a condemning authority without just compensation. Our attorneys are deeply familiar with all aspects of both types of litigation and related appeals

Understanding the Eminent Domain Process

We have filed and litigated hundreds of petitions for condemnation over the years for numerous different acquisition types and purposes, including but not limited to the follow:

Fee simple acquisitions; Temporary Construction Easements; Permanent Utility Easements; Transmission Line Easements; Prescriptive Easement Areas; Drainage Easements; Highways, streets, and roads; Sound Walls / Noise Barriers Billboards; Light Rail; Avigation Easements; Clearance / Tree Trimming Easements; Friendly condemnations to clear title or liens; Unknown owners or heirs; Owner or owners under a disability.

The other less common form of litigation in this area is so called "inverse condemnation" cases, where a property owner sues a condemning authority under a constitutional provision or statute seeking just compensation for property allegedly taken for a public use without a formal condemnation case and without payment of just compensation. Our attorneys have also litigated numerous inverse condemnation cases.

Civil Litigation in Eminent Domain Cases

Whether your entity or agency needs representation regarding formal condemnation actions or defense of an inverse condemnation, our attorneys have the necessary experience in this niche area of the law.

For example, the firm obtained a defense verdict in the jury trial portion of a consolidated inverse condemnation suit by over a dozen residential landowners against an airport authority involving claims that aircraft noise had increased and damaged their properties.

In a different example, the firm defended a department of transportation in an inverse condemnation case stemming from allegations of flooding related to a culvert under a bypass. The case was tried before the court for the first phase of a statutory bifurcated inverse condemnation proceeding. The court dismissed the case, determining that there was no grounds for the inverse condemnation action because the evidence demonstrated that the flooding was precipitated by a confluence of storm-related factors during an extraordinary

meteorological event, not by the existence of the bypass.

Appellate Advocacy and Appeals in Eminent Domain Cases

For many years, eminent domain cases in Virginia went directly to the Supreme Court of Virginia. However, with the recent opening of the Court of Appeals to eminent domain matters, we expect the number of appeals in eminent domain cases to increase. The firm is very comfortable protecting the record at the trial court level and representing clients on appeal. With our firm as your condemning authority counsel, you do not have to have a separate appellate specialist for your appeals. For example, in Johnson v. City of Suffolk, 851 S.E.2d 478, 2020 Va. LEXIS 142, 2020 WL 7251969 (Va. 2020), the firm obtained a dismissal with prejudice at the trial court level of a purported inverse condemnation claim against a city involving allegations that leased oyster beds were damaged by discharges of sewage or waste water, and successfully defended the ruling on appeal to the Virginia Supreme Court. The firm then handled the appeal as well and had the trial court's ruling sustained.

Alternative Dispute Resolution in Eminent Domain Cases

Formal condemnation cases in particular are often only about dollars and cents. There often is no question of liability, merely a need to determine the amount of compensation owed. These sorts of cases lend themselves well to alternative dispute resolution, often through mediation. Effective representation of clients at mediation is its own skill set, and our attorneys are very experienced in working in this environment, helping you select qualified third-party neutrals, and guiding you through the process to reach a settlement in these matters which can often result in significant cost savings versus litigation.

Pender & Coward's Eminent Domain and Right of Way Practice Group has extensive experience litigating all manner of eminent domain and inverse condemnation suits and their related appeals. We understand the complexities of the eminent domain process and have a track record of obtaining favorable outcomes for our clients. Our commitment to providing exceptional legal services has earned us a reputation as one of the leading eminent domain law firms in the region. Contact us today to learn more about our services and how we can help you navigate the eminent domain process. Insert Content - Conclusion should summarize our experience and commitment to providing exceptional legal services. This section should leave a positive impression on the reader and reinforce the credibility of the law firm.If you have any questions about litigation, appeals, or appellate advocacy in your eminent domain or right of way projects feel free to reach out to our attorneys and see if we can assist you.