

TOP TEN LIST OF THINGS TO DO WHEN....

A Tenant Receives Notice of Taking on the Property

If you have received a formal offer of compensation from a condemning authority for your business, or have heard of a public project that may impact the leased site, here is a short list of things you can do to prepare:

1. Don't panic! Don't terminate your lease and don't relocate to another site yet. If you vacate the leased site too early, your rights to compensation can be jeopardized.
2. Keep on operating your business on the leased property. Don't immediately forgo expansion, refinancing or any other business decisions that you otherwise would consider until you fully understand the project.
3. Create a file and maintain copies of all written communications from the right of way agent and/or condemning authority.
4. Pull your lease file and review your lease and all renewals, amendments and attachments. In particular, review and understand the condemnation clause, and know what rights you have as a tenant, including a leasehold claim or a right to rent relief.
5. Request the following from the condemning authority:
 - a. full size right of way drawings;
 - b. road cross sections and driveway profiles;
 - c. mitigation or "cost to cure" if any;
 - d. appraisal comparable rentals;
 - e. the 5 step summary of compensation from the appraiser, including any allocation of leasehold value;
 - f. a trade fixtures or "FF&E" appraisal report related to your business or your leased space;
6. Obtain a survey of the property, particularly if it is a shopping center with multiple retail spaces. This will be important to compare to the right of way plans.
7. Keep the lines of communication open with the landlord. It often is more productive to work together to maximize compensation from condemning authority, make changes to the plans, and address impacts to your leased site.
8. Request a meeting on site with the condemning authority to review plans, ask questions, discuss impacts to the property, and review the appraisal report (these typically are not provided to property owners).
9. Continue following up with both the landlord and the condemning authority for updates on the acquisition/condemnation schedule and the construction schedule. You will want know early and often when the project is coming your way.
10. Determine what impacts the taking will have on your business and property and your ability to lease the space for the purpose stated in the lease. If relocation of your business is necessary, request an explanation of any available relocation options and benefits.