



What Does Your Lawyer Really Know About the Right of Way?

Eminent Domain Lawyer 101

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“Getting to know someone else involves curiosity about where they have come from, who they are.” —Penelope Lively

Square One

You're a right of way agent in an all-hands meeting to discuss legal issues concerning an appeal of a denied relocation assistance claim for professional services. You are also looking for guidance on how to respond to an intimidating property owner attorney demanding \$500,000 compensation for loss of business goodwill even before a business appraisal is performed. The agency lawyer in your meeting appears to be a newly minted recently hired attorney who replaced the seasoned lawyer that you had been working with for 25 years. Are you confident that the new attorney will have the answers to your right of way legal questions?

Most Lawyers – Experience through Interactions with Right of Way Agents

There are only two law school classes offered that mention eminent domain: Property law and Constitutional law. These year-long classes briefly discuss the relevant portion of the Fifth Amendment of the U.S. Constitution:

“... No person ...[shall] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”





Out of the allotted 150-180 class hours for each of these law school classes, maybe 1-2 hours are reserved to review important U.S. Supreme Court and state cases that analyze Constitutional protections against the taking of private property for public use. Eminent domain law is sometimes offered as a semester-long elective course but typically only in the third and final year of law school, and right of way functions are never mentioned.

Most attorneys obtain their base knowledge of right of way issues and functions through direct interactions with right of way agents, engineers, appraisers and public works staff. Attorneys are called upon to review the legal impacts of the agency proposed designs, environmental studies, land use and zoning, federal and state regulations, project funding requirements and impacts, the state constitution and relevant state statutes relating to acquisitions by resolutions of necessity and eminent domain.

Property owner attorneys have fewer opportunities to directly interact with right of way agents through their routine law practice. The majority of contact will be as an advocate for property owners. Right of way agents are employed by or on behalf of an agency, therefore there will be no candid informal conversations about the adequacy of right of way work product provided nor should the right of way agent volunteer their qualifications, or lack thereof.

Many Lawyers – Secondary and Continuing Education and Professional Organization Membership

Eminent domain attorneys have many options available for learning about the right of way profession and the public project process. First and foremost, there is IRWA, which provides a great resource for attorneys, representing agency or property owners, to familiarize themselves with the various right of way functions, laws and regulations, professional practice requirements and the several industry standards. Of equal importance is the gathering of meaningful industry professional right of way contacts. Over the years, the best and most useful information received was through informal conversations before and after attending professional conferences, seminars and luncheons. There have been many attorneys that have served on IRWA Chapter boards, executive committees and as Chapter presidents.

Excellent continuing education for attorneys on right of way and related topics are also provided by the Appraisal Institute, CLE International, and local attorney professional bar associations.

A Few Lawyers – Right of Way Agent to Lawyer

I've met a few lawyers who started their career as right of way agents later becoming eminent domain attorneys. They are very well versed about the intersection of the right of way profession and the law. My journey began as a right of way agent for the State of California, then as an attorney for the State of California and eventually moving to private practice representing agencies and private property owners.

Working for the State as a new right of way agent, we attended a mandatory in-house, week-long Right of Way Academy with classes in right of way engineering, acquisition, appraisal and legal. This was the foundation for success as a right of way agent and later as an attorney. As a right of way agent, one of the most impactful IRWA classes that I attended was an IRWA-sponsored Mock Condemnation Trial seminar. After that seminar, I truly understood why both right of way agents and lawyers are essential for acquisitions using the power of the eminent domain and for ensuring that property owners are provided due process under law.

No Single Path

The truth is that most experienced right of way agents will know more about the details of the individual right of way functions than the attorneys they interact with. Please share with them your right of way education, training, experience and work product.

And the opposite is true for right of way agents and the law. Attorneys are trained to understand the applicable local, state and federal laws, and the agency specific administrative rules and regulations. They are required to know the legal system including court rules for appearances, deadlines, and how to prepare clients for mediations and trials. Lawyers are responsible for assembling the evidence needed to prove their case, to defend against contradicting opinions, and in a form that is admissible under rules of evidence and due process.

Finally, be curious and get to know the lawyer you work with and help them learn more about you and the right of way profession. ⚡



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