

# Eminent Domain and Land Expropriation in Costa Rica

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This article is based on a personal experience. In Costa Rica there is an Expropriation Law, designed for when the Government needs to use all or part of private property for public purposes. As examples we have when a new highway or road is built or expanded, when it is necessary to install high power lines structures and when bridges are built. In these cases, it is usual to require the taking of portions located on private property, for which compensation must be provided to the legitimate proprietor.

In other countries this is known as Eminent Domain. This is defined as the power of the Government to take private property and convert it into public use, for which the Government may only exercise this power if they provide just compensation to the property owners. It is also defined as the power of local, state, or federal government agencies to take private property for “public use” as long as the government pays “just compensation.” It applies even if the owner does not wish to sell his or her property.

We have a good example in the recent construction of the route called Paquera-Naranjo in the Nicoya peninsula, with a total of 21 kilometers -about 13 miles-. To carry out such improvements it was determined that it was necessary to take portions of a total of three

hundred and twenty private owned lands. That route has already been completed and was inaugurated last year. The question is: does it mean that the owners received their payment? Not at all, just some of them.

**How does the legal procedure work? In summary, it is like this:**

- a. The government must make a declaration of public interest and request the Real Estate Property Registry to annotate it in the margin of the title.
- b. A technical report is prepared showing the areas to be affected.
- c. An appraisal of the land must be prepared.
- d. The owner must be informed of the report and the appraisal, so that he or she can decide to accept it or not. If it is accepted, supposedly the owner must go to sign a transfer document at the State Notary to receive the payment. If it is not accepted, the Government must deposit the appraisal money in a Court called Contentious-Administrative.
- e. Once the money is deposited in the Court, the Government requests a Judge to allow taking possession of the land required to do the work.
- d. The Judge authorizes the Government to take possession and notifies the owner that the money from the appraisal is ready to withdraw anytime. Owner can also request that a Court Expert gets appointed to review the appraisal and determine if the amount is correct or should be higher.
- F. Once the right price is set, all expropriated areas are recorded into the name of the Government.

So, if the procedure is clear: How is it that many do not receive payment despite accepting the appraisal? We can say that the Government uses a trap, making the owners believe that they are helping to improve the country and that they will receive the payment in an easier way. This tool is called a "letter of voluntary possession guarantee." So, they ask the owner to please sign a document that allows them to take the land and they give him a letter indicating the date of payment.

Incredible as it sounds, this is just a way to continue the work without going through the legal procedures, and even the payment date indicated in the letter is not met. Thus, in this way, the Government deceives the owners, who by not receiving payment have to hire a lawyer and file a lawsuit, where the Government itself puts lawyers to make allegations against and delay the proceedings for years, thus saving the advance payment, and legal procedures.

The same situation occurs when the appraisal is accepted, then the Government takes many months to authorize the procedures required for the owner to sign the transfer deed and receive the actual payment. In summary: pretending to be good "to help with the progress of the country" and believing that the Government acts fair, even giving letters with payment dates, it is a mistake. It seems that only those who refuse to cooperate in any way receive the timely payment.

To avoid big problems and legal expenses, it must be taken into account that the Government will not act fair when it comes to expropriations. And that accepting initial appraisal voluntarily or even allowing them to take early possession without a deposit can cause big problems, legal expenses, and huge delays. The only safe way to receive payment is to reject the initial appraisal and not allow them to take possession without the prior order of a Judge

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