

# What Are My Constitutional Rights for Eminent Domain Appeals in Ohio?

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In the last five years, several new cases have come before Ohio's Supreme Court related to [eminent domain](#) (ED) law, as well as the rulings, rights, and amendments surrounding Ohio's ED process.

It can be a complex issue to follow, so to ground myself and my fellow litigators as we navigate an ever-changing ED landscape in-state, I've compiled a short list of the main constitutional and state provisions that Ohio litigators (and appellants!) may draw on during court and appeals proceedings.

## What are the main constitutional provisions related to eminent domain?

1. [Takings Clause](#) from the Fifth Amendment of the US Constitution
2. [Articles VIII](#), Section 5 of the Ohio Constitution
  - a. Relates to eminent domain by a private corporation

## What are the primary state provisions related to eminent domain in Ohio?

1. [Article 1, Section 19](#)
  - a. Standard eminent domain provision related to case timelines and payment term
2. [R.C. 163.021\(A\)](#)
  - a. "No agency shall appropriate real property except as necessary and for a public use. In any appropriation, the taking agency shall show by a preponderance of the evidence that the taking is necessary and for a public use."
3. [R.C. 163.01\(H\)\(1\)](#):
  - a. "Public use" does not include any taking that is for conveyance to a private commercial enterprise, economic development, or solely for the purpose of increasing public revenue, unless the property is conveyed or leased to one of the following:
    - i. A public utility, municipal power agency, or common carrier;
    - ii. A private entity that occupies a port authority transportation facility or an incidental area within a publicly owned and occupied project;
    - iii. A private entity when the agency that takes the property establishes by a preponderance of the evidence that the property is a blighted parcel or is included in a blighted area.

## Three Related Case Amendments from Ohio:

1. [Norwood v. Horney](#), 110 Ohio St.3d 353, 365, 853 N.E.2d 1115, par. 43 (2006): "It is axiomatic that the federal and Ohio constitutions forbid the state to take private property for the sole benefit of a private individual...even when just compensation for the taking is provided."

2. [Henry v. Columbus Depot Co.](#), 135 Ohio St. 311, 20 N.E.2d 921, par. 1 Syllabus (1939): “When private property is appropriated for a public or quasi-public use, unless express authority is given by statute, no greater estate or interest may be taken than is necessary for such public use. In such case, where an easement is sufficient, only an easement may be taken.”
3. [Wagar v. City of Lakewood](#), 1914 WL 1225, 13 (Ohio Com.Pl. 1914) (citing [Madisonville Traction Co. v. Mining Co.](#), 196 U. S., 239): “In order to justify the exercise of the power of eminent domain, the purpose to which the property taken is to be applied must be public, primarily public, and not primarily a private interest incidentally beneficial to the public.”
4. [Wray v. Stvartak](#), 121 Ohio App.3d 462, 700 N.E.2d 347 (6 Dist.,1997): “Just compensation,” which must be paid to a property owner whose land is taken by ED has two components:
  - Compensation means the sum of money which will compensate the owner of the taken or appropriated land; that is, it is the fair market value of the land taken.
  - Damages, in the strict sense means an allowance made for any injury that may result to the remaining lands due to the construction of the proposed improvement.