

---

# INTRODUCTION

---

Professor Gideon Kanner, the venerable Dean of Eminent Domain, has often referred to condemnation as the “dark corner of the law.” Professor Kanner has spent much of his life’s energy attempting to shed some light on this corner. Such is the goal of the Condemnation, Zoning and Land Use Committee of the ABA Section of Litigation.

## THE PROJECT

The project to publish the law of eminent domain in each of the 50 states and the District of Columbia was started in 2004 by Susan Low, when she was the Chair of the Committee. A primary purpose was to give the serious student and practitioner the opportunity to compare the laws of different states in key areas of concern and to focus on particular issues of interest to the eminent domain attorney. At that time, there was not a compilation of each jurisdiction’s condemnation laws. Because our Committee has members practicing in each jurisdiction, Susan decided that the committee should provide such a compilation, giving a brief overview of law and procedure related to eminent domain in each of our states.

Members of the committee were asked to comment on a list of subjects and particular questions to be included in the state law outlines. The responses resulted in a list of issues and an organization to the presentation of those issues. Committee members were then solicited or volunteered to write the chapter for their particular jurisdiction.

## MANNER AND ORDER OF PRESENTATION

The decision was made to present the information for each state in a somewhat uniform manner. However, there has been no attempt to require the authors to present their chapters in the same style. The subject matters are treated in the same order of presentation, with most of the same questions answered in each of the outlines, but the style of writing of each author has been preserved. Thus, some of the outlines approach true outline form, while others take a more narrative approach. Some outlines contain footnotes and are written in the rather formal law review style, while others are much less formal.

We cannot claim that the order of presentation is necessarily the best, and we do not claim that it is an exhaustive study for any particular state. Decisions had to be made to meet the needs and concerns expressed by Committee members and to provide some logical and uniform manner of presentation.

Each state outline is organized in the following manner:

- Who is Eligible to Condemn?
- What can be Condemned?

- The Condemnation Proceedings
- Procedure to Challenge Condemnation
- Inverse Condemnation
- Just Compensation Issues
- How are Various Ownership Interests Treated?
- Abandonment
- Attorney's Fees and Costs

Each chapter in this publication was either written or updated in 2011. These chapters were first posted by the ABA Litigation Section on the Committee's Website as they were received and periodically updated. The Committee website will now serve as the location where updates to this book will appear in lieu of pocket part supplements.

The U.S. Supreme Court's decision in *Kelo v. City of New London*, 545 U.S. 469 (2005), was issued shortly after the Compendium project was under way. Commentary on a state's reaction to *Kelo* is included in many of the outlines. Posting the revisions to state outlines as new developments occurred in the wake of *Kelo* has been an important part of the Committee's website efforts. *Kelo* has done much to shed light on the dark corner of eminent domain.

## OUR AUTHORS

The authors of these chapters are all experienced eminent domain practitioners. Many of our state authors can be readily recognized as the most experienced and knowledgeable condemnation practitioners in the United States today. Their names appear repeatedly on important condemnation seminar faculty lists and in connection with major condemnation cases throughout the country. A significant number of the authors are members of Owners Counsel of America, a nation-wide network of some of the most experienced condemnation attorneys in America in private practice who focus upon representing property owners threatened with eminent domain. Several of our authors maintain blogs and websites dedicated to eminent domain. Our authors also include law professors with experience in eminent domain and related areas of law, government lawyers who represent the public in condemnation matters, and counsel for private entities with authorization to exercise the power of eminent domain. While some of the authors can be categorized as generally being on the "agency" or "owner" side, their chapters are not slanted or editorialized. Each chapter is a summary of what the law is, not what it should be.

Before agreeing to take on the job of Editor of this project in 2005, I was concerned that experienced attorneys would not be willing to put forth the time and effort necessary for a volunteer project like this. There was also concern that state authors would not be willing to follow a format thrust upon them by the Committee or by myself. Frankly, the fear of dealing with all of the egos of 51 highly successful attorneys was somewhat daunting. However, not once did any problem surface. While it took significant work by the Editor and the Committee Chairs to find the right authors, it was rare for someone to decline the opportunity or to fail to deliver. In every instance, our authors approached the matter in the spirit intended, which is to provide an educational tool for practitioners. These authors volunteered to give their time and knowledge for the benefit of their colleagues in the practice area. No remuneration has been received by any of the authors for their valuable contributions. Our authors each deserve our respect and thanks. If you find these outlines to be helpful in your practice, please feel free to extend your appreciation to the author(s) who provided that help.

*SPECIAL THANKS*

This effort could not have been completed without Susan Low, who had the idea and decided to do something with it. Nor could it have been accomplished without the continued assistance of the Committee Co-Chairs during this project, Jeffrey Beaver, Jill Gelineau, Robert Will and J. Casey Pipes. They each worked tirelessly to help in the effort of recruiting new authors and in turning the author's commitments into work product. Christopher Reid, an associate in the Editor's law firm, helped with final review of each of the outlines, and the Editor's Assistant, Linda Soderquist, successfully read the Editor's mind through countless revisions. Also, Jonathan Haugen, Committee Liaison for the ABA Litigation Section was of tremendous help in keeping our website postings current, despite the Editor's shortcomings with email messages. To each, thank you for your support, guidance and assistance. It was a pleasure working on this project with you.

William G. Blake, Editor  
Baylor, Evnen, Curtiss, Grit & Witt, LLP  
Lincoln, Nebraska

<http://www.pbookshop.com>