

Landowner rights on the provincial highway system

This information is provided for general information purposes only. Please consult The Expropriation Procedure Act and legal counsel to determine the law and your rights.

The Government of Saskatchewan is responsible for managing transportation systems to support economic growth and the quality of life in the province, as well as promoting safety and efficiency. To help achieve this mandate, the government works to improve and expand the Saskatchewan highway system, which may require the acquisition of land. It is the Government's policy to ensure that all landowners whose land is required for a public purpose are treated with respect, fairness and empathy.

Overview of steps in the acquisition process

1. Government representatives will contact you to explain the highway/public improvement project and why the land is needed. It's important to share your questions and concerns, as your input is essential to understanding your situation and requirements. All reasonable efforts will be made to purchase your land by working with you towards an agreement.
 - a. Based on your input, design changes may be considered. Timeline information will be shared to ensure the critical deadlines are mutually understood. The input you provide will also be used to calculate compensation.
 - b. To calculate compensation for land, the government typically relies on independent professional valuation opinions as determined by an Accredited Appraisal Institute of Canada member. For other types of compensation (typically called damages), compensation is based on various accepted industry standards, including other professional valuation expert methodologies and case law. You have the right to review all calculations and provide additional information for consideration. Government will arrange for independent expert opinions if they are required to determine compensation, you are not required to pay for these services.
2. There are now two possible options:
 - a. You agree with the compensation values you received and enter into an agreement with the government. You will receive payment as outlined in the agreement. If only a portion of your land parcel is required, the government will bear all surveying and titling costs to subdivide the land.
 - b. You disagree with the compensation values. Although it's an option of last resort, in this case the government may need to use expropriation to keep the project on time as critical deadlines approach. Throughout this process, the government will remain in contact and provide you with information to advise you of any changes or developments.

What is expropriation?

Expropriation grants government the ability to lawfully take your land without your consent.

In Canada, the federal government and all provincial governments have authorized some of their ministries, crown corporations and other statutory entities to expropriate land for the public purposes stated in the legislation.

Normally, government will require the landowner's entire interest in the land, meaning ownership and exclusive possession of the land. However, in some cases only a partial or lesser interest in the land will be required. Examples of a lesser interest include:

- a. a part of a parcel of land;
- b. the gravel;
- c. the right to construct and maintain a drainage easement; or
- d. temporary possession for things like a detour or temporary storage.

What happens if my land is expropriated?

You will receive a Notice of Expropriation and a final compensation offer from the government. You may choose to accept the offer and payment as full and final settlement. Or, you may reject the offer but accept payment. Accepting this payment does not prevent you from seeking additional compensation. It is your right to continue to claim additional compensation if you believe the offer you have received is inadequate.

You should be aware that when the government requires a portion of your land a Notice of Expropriation will be registered on the title for your entire parcel of land until subdivision is complete. This will likely require you to settle all interests on your parcel of land and will prevent any new interest from being registered on the entire parcel. If only a portion of your parcel of land is required, the government will bear all surveying and titling costs to subdivide. Once the subdivision process has been completed, the restricting Notice of Expropriation is removed from your remaining land parcel title.

Discussions and the exchange of information may also continue after expropriation, which may result in changes to your compensation and may lead to a settlement agreement.

In addition, *The Expropriation Procedure Act* gives you the right to ask the Public and Private Rights Board to review your situation. The Board has the power to review, but it does not have the authority to stop or set aside the route, design, expropriation or determine compensation. Proceedings before the Board are informal and non-legalistic. The contact information for the Public and Private Rights Board is:

323-3085 Albert St.
Regina, Sk.
S4S 0B1
(306) 787-4041

If you choose to contest the compensation amounts offered, *The Expropriation Procedure Act* requires you to begin legal proceedings within two years of the date of being served with a notice of compulsory acquisition. Even after legal proceedings have started, it's common for discussions between the landowner and government to continue to reach a settlement.

What do I have the right to be compensated for?

The Expropriation Procedure Act states that the landowner is entitled to "due compensation".

However, aside from declaring the general principle of "due compensation", *The Expropriation Procedure Act* does not identify:

- a. what specific types of damage are eligible or not eligible for compensation; or
- b. how compensation is to be calculated.

Reference to the case law developed by the courts is required to understand these two subjects. In general terms, the case law requires the government to compensate the landowner for all financial loss or damage resulting from the expropriation.

The Ministry of Highways and Infrastructure has found it logical and workable to use two general categories as the framework for organizing claims and calculating compensation.

1. Land

Fair market value of the land expropriated, determined as of the date of expropriation. In some cases, buildings and improvements are valued separately at depreciated value (normally not replacement cost).

2. Damages

- a. To the remainder of the land in cases of partial takings (reduced market value of the remainder).
- b. One time financial damages. Examples include crop damage, fencing, moving and relocation expenses.
- c. On-going financial damages. This category refers to re-occurring damages, such as increased operating costs.

If the facts warrant, the owner may be entitled to compensation in two additional categories:

1. Interest

An award for interest is discretionary (not automatic) and may be denied in whole or part if the judge finds that the landowner has not pursued its claim with diligence..

2. Penalty

The ministry may be required to pay an amount up to an extra ten per cent of the value of the land if the judge finds that the ministry did not fulfill its duty to make reasonable attempts to negotiate a purchase before resorting to expropriation. As in the case of interest, an award is discretionary and not automatic. It will be very fact sensitive.

There are three general limits on compensation:

1. Compensation is limited to financial damage. There is no compensation for traumatic and unsettling experiences, emotional distress and other intangible types of damage that can be caused by expropriation.
2. The entitlement to full compensation for all financial damage is subject to the limitations of reasonableness.
3. Legislation may expressly preclude compensation for certain things or give directions on how damages are to be calculated.

How do I prove I am entitled to additional compensation?

Although the government has the obligation to compensate, you have the obligation to identify and substantiate your claim.

It's important to understand that government officials are trustees of public funds, and that by law these officials cannot settle claims without evidence, which must be verifiable and reasonable. Consequently, you may need to hire the necessary experts (appraisers, accountants, agrologists, lawyers, etc.) to calculate damages. You can include the reasonable fees of these experts in your compensation claims.

The fair market value of land is determined as of the date of expropriation. This renders subsequent increases or decreases in value irrelevant.

Some damage types, such as one-time losses for moving and fencing, are fairly straightforward. However, claims for ongoing or reoccurring business loss or operating damages are usually difficult to establish and quantify. As indicated, you may need the assistance of accountants, agrologists, actuaries, lawyers or other experts to establish and quantify these damages.

Where can I get more information?

For more information, please visit the Government of Saskatchewan website at – saskatchewan.ca.
(www.saskatchewan.ca/business/transportation-and-road-construction/buying-land-for-highway-construction)

To speak to a Highway Land Agent, please contact:

Prince Albert

Land & Property Manager
(306) 953-3686

Saskatoon

Regional Land Specialist (Land Agent)
(306) 933-5892

Land & Property Manager
(306) 933-5194

Regina

Regional Land Specialist (Land Agent)
(306) 787-4879

Land and Property Manager
(306) 787-8848

For a copy of *The Expropriation Procedure Act*, contact the Queen's Printer at:

B 19 - 3085 Albert St.
Regina, Sk.
S4S 0B1
(306) 787-6894

(www.qp.gov.sk.ca/documents/English/Statutes/Statutes/E16.pdf)

To contact the Public and Private Rights Board

23-3085 Albert Street
Regina SK S4S 0B1
Phone (306) 787-4071
Fax (306) 787-0088

(www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/public-and-private-rights-board)