

When to Call Your Attorney

By Adam Ripple and Igor Lenzner



Quiz – Warm UP

- \$89,465
- \$134,500
- \$169,230
- **•** \$194,300



Why would you ever need to call an attorney?

- Feel like talking with someone who will pretend to care.
- Reminds you why you didn't go to law school (would have had to be around people like that all day).
- Want to talk with someone who knows nothing about engineering, but will always have some stupid opinion. (And the County Board doesn't meet for another week!)



You have no road.

i.e. – You have pavement, ditches and utilities, but nothing of record.



No Road - continued.

- Where did you look?
- Auditor, Historical Society, etc.
- Minn. Stat. § 160.05 Dedication of Roads
 - "When any road or portion of a road has been used and kept in repair and worked for at least six years continuously as a public highway by a road authority, it shall be deemed dedicated to the public to the width of the actual use and be and remain, until lawfully vacated, a public highway whether it has ever been established as a public highway or not." Subd. 1(a)
 - What is all included?
 - Ditches, permitted utilities, thrown snow?
 - 33' all across the right-of-way?



You have a road, but there is someone else's stuff on your road.

i.e. – vehicles, fish house, buildings, trees, boat lift, etc.



You have a road, but you want to use it for a boat landing or park.

Firmity Committed



You have a utility easement or drainage easement and want to use it for a temporary construction easement or permanent right-of-way.

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You have a road, but it needs to be wider (and it should be easy because it is not much land or much value).

Finally Committed:



Minimal Additional Right of Way Needed.

- Do we need an appraisal?
 - If the acquisition is GREATER THAN \$25,000, then you must obtain an appraisal (Federal money is \$10,000).
 - Minimum Damage Acquisitions qualified person with appraisal knowledge must confer with one or more of the owners of the property if reasonably possible.



Do I really need to reimburse for an appraisal when it's a \$250 acquisition?

- Minn Stat. § 117.036 "The owner is entitled to reimbursement for the reasonable costs of the appraisal from the acquiring authority up to a maximum of \$1,500 for single family and two-family residential property and minimum damage acquisitions and \$5,000 for other types of property."
- Must submit information necessary for reimbursement, including a copy of the owner's appraisal, at least five days before a condemnation commissioners' hearing.
 - You need to pay within 30 days.
 - You can pay the appraiser directly.
- For purposes of this subdivision, a "minimum damage acquisition" means an interest in property that a qualified person having an understanding of the local real estate market indicates can be acquired for \$25,000 or less.



Do we have to tell them about the appraisal reimbursement?

 Minn. Stat. § 117.036 – "The acquiring authority must inform the owner of the right to obtain an appraisal under this section."



That little strip of additional right-of-way-continued.

- That little \$250 strip may be more of an impact that you thought.
- Remember the Before and After Rule in Minnesota.
- Need to look at the entire property.
- Are we getting close to a house?
- Are we messing up parking for a business?
- Are we making their lot too small for zoning or otherwise?



Your MDA comes in at \$24,000.



You need to expand the road and there is the small issue of a house in the new right-of-way.



Relocation Benefits

YOU ARE DISPLACING PEOPLE OR A BUSINESSES:

"Displaced Person" includes any owner or tenant who moves from a dwelling (including a mobile home), business, farm or non-profit (so includes lawyers).

Minnesota – Uniform Act Benefits and Services apply regardless of federal funding (See Minn. Stat. § 117.52).

What type of services and benefits must be provided:

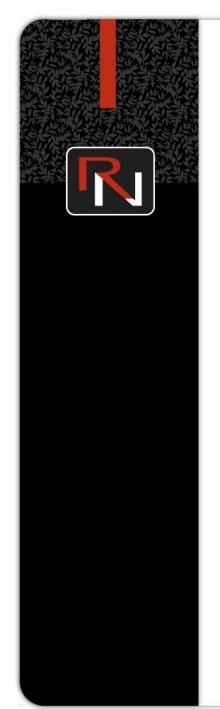
- a. Residential Occupants (owners and tenants)
 - i. Moving Expense Payment (actual, reasonable and necessary expenses)
 - ii. Housing Replacement Payment (maximum for owners \$31,000 and maximum for tenants is \$7,200). This is known as a "soft cap" because of the potential for "housing of last resort."
- b. Business
 - i. Moving Expense Payment (personal property)
 - ii. Business Reestablishment (\$50,000 maximum)(reasonable and necessary to reestablish including items such as repairs or improvements to the replacement property, modifications to the replacement property to accommodate the business, installation of signage, redecoration, advertising the replacement site, and increased costs of operation in the first two years). Cannot buy equipment and cannot build a building.



Relocation Benefits.

Waivers and fixed payments?

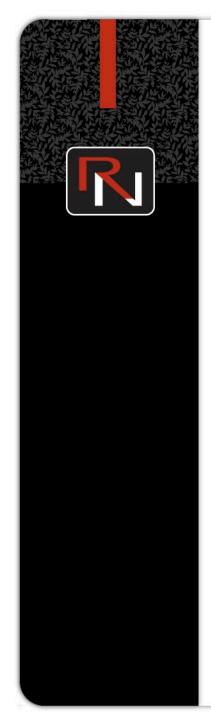
- a. Fixed Payments (i) residential not applicable; (ii) business/farm in lieu of both moving expense reimbursement and reestablishment payments. Maximum Fixed Payment for a business, farm or nonprofit is \$40,000 Fixed payments are based upon average net earnings for the prior to taxable years.
- b. Fixed Payment for Partial Acquisition for Farmers. Farm operations may also be entitled to a fixed payment if a "partial acquisition caused a substantial change in the nature of the farm operation."
- c. Waivers very limited situations can these be used basically voluntary, no threat of eminent domain (in writing say it won't happen), property for sale previously etc. (Minnesota is even more limited than Federal Rules.)



Relocation Benefits.

- At least 90 days written notice to vacate.
- After you provide replacement housing.
- Comparable decent, safe, and sanitary replacement housing within the persons financial means must be available before a person may be displaced.

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Minimum Compensation Minn. Stat. § 117.187

117.187 MINIMUM COMPENSATION.

When an owner must relocate, the amount of damages payable, at a minimum, must be sufficient for an owner to purchase a comparable property in the community and not less than the condemning authority's payment or deposit under section 117.042, to the extent that the damages will not be duplicated in the compensation otherwise awarded to the owner of the property. For the purposes of this section, "owner" is defined as the person or entity that holds fee title to the property.



Minimum Compensation – continued.

When does this apply:

- 1. Owner must relocate.
- 2. Fee title owner.

What does it mean:

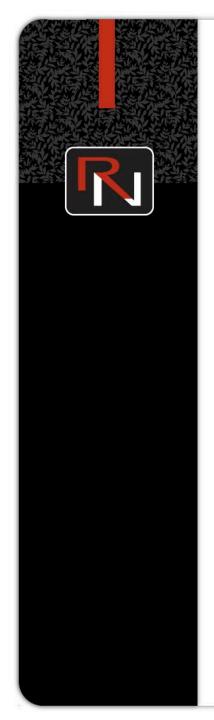
- 1. Nobody knows.
- 2. Something different than fair market value.
- 3. Something different from the housing replacement payment.
- 4. Most still look to for sale properties.



You need to re-route the road, but it goes through the middle of a farm.



You need to limit access.



Limiting Access.

Controlled Access Highways. You have the ability to regulate access to County Highways. 2023 case Wood vs. Blue Earth – no right of access to a newly constructed controlled access highway. See Minn. Stat. § 116.18 and C&R vs. Chisago.



Limiting Access.

- Closing Driveways (or creating one or two accesses where it was entirely open previously).
 Right to reasonably convenient and suitable access. Subject to Minn. Stat. § 116.18?
- Minn. Stat. § 117.186, Subd. 4 allows a business owner to claim compensation if they establish 51% or greater of their driveway access and reduction in revenue by 51% or greater. Formula for determining based upon average revenue minus cost of goods sold for three years prior to the project.



Limiting Access.

- Limiting Turning Motions (medians, pork chops, etc.) – as long as the owner retains access in one direction they are not entitled to compensation, but they must still have reasonably suitable and convenient access.
- Whether a taking occurred is a matter of law.
 Whether remaining access is reasonably suitable and convenient is a question of fact. What is reasonable access depends, in part, on the nature of the property.



You cannot find the property owner.



The title records do not show who owns the right-of-way.

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The strip of land you need contains a well and/or septic system!

- Setbacks required for septic systems 10' in many counties.
- Heavy equipment may damage septic systems.
- Wells
 - Chat GPT says risk of run off contamination from oils, chemicals, heavy metals and other pollutants. And Chat GPT warned of safety concerns about wells being located within the right-of-way.

Butterfly Effect – single action sets off a chain reaction of consequences (i.e. small lot with no other place for their septic Enjoy the new historic property the county is suddenly buying!)



Your road project requires a retaining wall.

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Retaining Wall.

- Inside permanent right-ofway?
- Maintenance.
- Drainage.
- Damages from Cars.



Your road project requires a stormwater pond.

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Your contractor goes outside of the easement.



You find a box of unrecorded easements.



You have a wind project using your right-of-way.

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You don't understand why you should be flexible in your design.



Your Recorder is requiring to pay taxes to file a deed.



Your Auditor wants you to pay taxes on property you just acquired.



You think Al can replace your attorney.



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Thank you!

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