

## Access Rights and Condemnation Damages

When a governmental entity acquires private property, a "taking" occurs and compensation must be paid to the landowner. What happens if the property isn't taken, but the property's access to a highway or road is restricted, altered, or eliminated? Rights of access can be one of the most complex issues arising in condemnation law. In general, a landowner is presumed to have a right to use an abutting street or highway for ingress and egress without obstruction. But this right does not exist without restriction. Governmental authorities using their police power can regulate traffic for the public convenience and necessity.

This police power includes the ability to control traffic and highway access. It is often exercised during road improvement projects. The design of these projects will usually modify traffic routes, improve intersections with traffic signals and turning lanes, and alter the points of access so as to reduce the number of "conflict points." But one person's conflict point is often another's business entrance.

There is no legal protection that a particular volume of traffic will be preserved, that traffic routes will be maintained, or that comparable access points will be allowed. Wisconsin law only recognizes a right to some access, not the same access.

When a highway project alters access to a property, compensation need not be paid unless access has been denied or unreasonably restricted. The reasonableness of access is left to a jury that must evaluate the access before and after it has been modified. If it is found that reasonable access exists, no compensation will be paid. But if a jury finds that the access provided after a project is unreasonable, the jury can proceed to determine the dollar amount of damages to be paid to the landowner.

Entitlement to severance damages for changes in access is not subject to hard and fast rules. In fact, appellate court cases considering these claims stress that each case must be evaluated on its own facts. Juries can consider visibility, ease of transit, location of access points, distances to be traveled and many other factors. Those factors will typically be presented by an appraiser whose expert testimony is used to show the effect access modifications will have on the value of the property.

Landowners cannot assume that they will be compensated for any change in their

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business levels following a highway project. An increase in the inconvenience to customers may not be enough to trigger the payment of damages. Landowners anticipating a highway or road project should be proactive. Seek early information and input on the proposed project, including its potential impact on property access. You may have the greatest success at a preliminary stage before plans are set in stone. If discussions with project planners do not lead to satisfaction, a severance damage claim might be considered. Our [condemnation and real estate attorneys](#) can assist in the evaluation of access right claims.

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