

Expropriation

You have rights!

Expropriation YOU HAVE RIGHTS!

➤ GROUNDS FOR EXPROPRIATION

The construction of a water and sewer system, the installation of a high-voltage line, the development of a park or the extension of a road are all examples of situations in which public interest requires to you cede part or all of your property or to grant a right-of-way or other servitude.

➤ IF THIS WERE TO HAPPEN TO YOU

For example, you own a property along a road that must be widened. The expropriator (Transport minister, municipality or other) wishes to acquire a portion of it because that piece is needed to widen the road. It will acquire the property either by negotiating a friendly agreement with you or expropriating it.

If you agree on the conditions and the price, it's a done deal. If, however, there is no agreement, the expropriator will initiate the expropriation process. You have two options:

- You can contest the right to expropriate, namely claim that the expropriator is not entitled to undertake expropriation procedures. In this case, you must address the **Superior Court**. You have 30 days in which to do so, starting on the date you received the expropriation notice.
- If you do not contest this right, but you do not agree with the compensation you are offered, the Tribunal administratif du Québec will determine the final compensation after hearing all of the parties involved.

➤ PRINCIPAL STEPS IN DETERMINING THE COMPENSATION TO BE PAID TO YOU

■ Expropriation notice

The expropriator must first submit a plan and a description of the parcel of land to be expropriated, signed by a surveyor, to the Tribunal's secretariat. Following this, it must send you an expropriation notice containing the following information:

- The number of the lot concerned by the expropriation;
- The specific reasons for the expropriation;
- The 15-day period you have to appear before the TAQ (or, in other words, let the Tribunal know that you are involved in this matter and give it both your coordinates and those of your lawyer, if you wish to be represented);
- The 30-day period you have to contest the expropriation right before the Superior Court;
- Your obligation to give the expropriator, within the 15 days following receipt of the notice, a written declaration of the names and addresses or lessees or other parties with rights occupying the parcel of land to be expropriated and the conditions of their leases or their right to occupy the land, if any.

It should be noted that you should notify any new lessee that expropriation proceedings are in progress; otherwise you may be sued if that individual is adversely affected.

■ Registration of the notice

In the 20 days following the date on which you received the notice, the expropriator must register the notice with the land register of the **Bureau de la publicité des droits** that serves the territory where the property is located.

It must append the copies of the act authorizing the expropriation and the document it sent to the Tribunal to this notice. If the expropriator does not respect these conditions, you can ask to have the Bureau de la publicité des droits strike the registration.

■ Notice to lessees and occupants

In the 15 days following the receipt of the information requested in the expropriation notice, the expropriator must give the lessees or other parties with rights a notice informing them about the expropriation procedures in progress and send a copy of this notice to the Tribunal. At the same time, the expropriator must inform them that they must appear before the Tribunal within 15 days of receiving that notice.

■ Appearance

After receiving the expropriation notice, you have 15 days to appear before the Tribunal. Should you fail to do so, legal proceedings may take place without your involvement and without you being summoned.

■ Offer from the expropriator

Within the 60 days following the date on which you receive the expropriation notice, the expropriator must submit a detailed offer of the proposed compensation to the Tribunal.

If you accept the expropriator's offer, you simply have to reach an agreement with respect to conditions for receiving the payment and releasing the parcel of land that is expropriated. A declaration indicating that there is no dispute must be submitted to the Tribunal's secretariat.

■ Claim for compensation

Within this same 60-day period, you must submit a detailed claim of the compensation you would like to receive to the Tribunal.

If you and the expropriator fail to reach an agreement, the Tribunal will set a hearing date. If either you or the other party would like to call an expert witness to be heard, three copies of that witness' report must be submitted to the Tribunal along with a copy for each party involved in the matter, at the latest 15 days before the date set for the hearing. You cannot

call this expert to be heard if you have not followed this procedure. A party interested in this case may obtain a copy of an expert report submitted to the Tribunal's secretariat by any of the parties involved. To do this, it must have already submitted the report by its expert witness or have submitted a written declaration to the effect that it does not intend to call an expert witness.

■ Hearing

During the hearing, both you and the expropriator can question the witnesses you have chosen (appraisers, engineers, agronomists, surveyors, etc.). Moreover, you should give the Tribunal the documents needed to prove your claim. The expropriator is responsible for proving that the compensation offered to you for the expropriated parcel of land is sufficient. However, you or your lessees must prove that any other claim is justified, specifically with respect to the adverse effects caused directly by the expropriation.

■ Determining the compensation

The compensation includes the value of the property or the portion of the property that is expropriated, including any improvements or arrangements made. It also includes the compensation for the adverse effects caused directly by the expropriation: moves and undertakings, loss of rent, fees for experts, trouble and bother, etc.

For the lessees or occupants of a residential building that is expropriated, the Expropriation Act (R.S.Q., c. E-24) provides for compensation equivalent to three months rent, plus moving expenses, unless they prove that the adverse effects suffered justify a larger sum.

Moreover, in the case of a partial expropriation, if you believe that the remainder of your property cannot be used suitably as a result of the expropriation of the parcel of land needed for the expropriator's work, you can ask the Tribunal

TO CONTACT US...

Contact one of our offices, Monday through Friday, from 8:30 a.m. to 4:30 p.m., by dialing one of the following numbers:

IN QUÉBEC CITY

(418) 643-3418

IN MONTRÉAL

(514) 873-7154

ELSEWHERE IN QUÉBEC

Toll-free number: 1-800-567-0278

OUR OFFICES

IN QUÉBEC CITY

TRIBUNAL ADMINISTRATIF DU QUÉBEC

Secrétariat

Édifice Lomer-Gouin

575, rue Saint-Amable

Québec (Québec) G1R 5R4

Fax: (418) 643-5335

IN MONTRÉAL

TRIBUNAL ADMINISTRATIF DU QUÉBEC

Secrétariat

500, boul. René-Lévesque Ouest, 21^e étage

Montréal (Québec) H2Z 1W7

Fax: (514) 873-8288

 Square-Victoria

Email: tribunal.administratif@taq.gouv.qc.ca

You can also visit our Internet site:

www.taq.gouv.qc.ca

to order the expropriation of an additional piece or the entire property. However, you must prove the adverse effects suffered.

■ Amount paid in advance (provisional compensation)

While waiting for the Tribunal to determine the definitive compensation, the expropriator may have the parcel of land transferred and take possession of it. To do this, it must, however, pay you, as well as your lessees and occupants, a substantial portion of the compensation offered.

In the case of an owner of a residential building, this provisional indemnity cannot be less than 70% of the amount offered or the municipal evaluation of the parcel of land expropriated, whichever amount is greater.

In the case of the lessees and occupants of a residential building, the expropriator must pay them provisional compensation equal to three months rent.

If the expropriated building is used for industrial, trade or agricultural purposes, the Tribunal will determine the provisional compensation upon being petitioned to do so and this petition shall be judged on a priority basis.

■ Discontinuance

Before paying provisional compensation, the expropriator may decide it no longer wants to expropriate your property. In this case, it must submit a petition to the Tribunal and notify you of its intentions. If you wish, you can express your point of view before the Tribunal, in a hearing.

After receiving authorization from the Tribunal, the expropriator must notify you, as well as your lessees and those who have rights, about the discontinuance. If you ask for it, the Tribunal may grant you compensation for the adverse effects

resulting from the expropriator's discontinuance. You must submit your application to this effect within 90 days after receiving the notice of discontinuance.

TRANSFER OF OWNERSHIP AND POSSESSION OF THE PROPERTY

The ownership may be transferred in three ways.

1) Registration of an ownership transfer notice

The expropriator must send you the ownership transfer notice first and then register it with the **Bureau de la publicité des droits**. This transfer notice must satisfy the following conditions:

- a) you must have been given a detailed offer;
- b) the provisional compensation must have been paid to you;
- c) at least 90 days must have passed since the expropriation notice was registered.

2) Emergency procedure

In the case of an emergency, when respecting the 90-day period required by law could result in significant adverse effects for the expropriator, the expropriator may ask the Superior Court for permission to transfer the ownership before this period has expired.

If the Superior Court grants this authorization, the registration of its decision allows the expropriator to take possession of the expropriated parcel of land earlier, as long as the provisional compensation has been paid.

3) Approving the Tribunal's decision

If the expropriator does not register the ownership transfer notice, and does not use the emergency procedure, it can become the owner of the parcel of land in question by submitting a copy of the Tribunal's decision to the Bureau de la publicité des droits for the real estate district where the building to be expropriated is located.

This copy must be accompanied by a certificate from the protonotary of the **Superior Court** certifying that the decision has been submitted to the clerk for that court and by documents indicating that the compensation has either been paid to you or deposited for you with the same court clerk.

The expropriator may then take possession of the expropriated parcel of land 15 days after the Tribunal's decision has been registered with the **Bureau de la publicité des droits**.

DECISION BY THE TRIBUNAL ADMINISTRATIF

The Tribunal issues a decision determining the compensation to be paid to you. However, in order for this decision to be executed, namely in order for you to be in a position to require the expropriator to pay you the compensation, either you or the expropriator must submit a certified true copy of the decision to the Superior Court clerk for approval. The party that submits the decision must first notify the other parties as to the date on which the decision is submitted for approval.

APPEALING THE DECISION

If you or the expropriator is not satisfied with the compensation determined by the Tribunal's decision, you can ask the Court of Québec for permission to appeal the Tribunal's decision.

The request for permission to appeal the decision must be submitted to the clerk of the court of Québec for the district where the expropriated property is located, within 30 days of the Tribunal's decision. Once this time period has expired, you may lose your right to appeal and the Tribunal's decision shall be final.

FORCED POSSESSION

If you or your lessees or occupants resist the change in ownership, the expropriator may ask the Superior Court to issue an order requiring your expulsion.

YOUR CREDITORS

If individuals have rights to your property, such as mortgages or other real rights, they are entitled to a portion of the compensation.

In this case, the protonotary for the Superior Court receives the compensation and distributes it to your creditors in keeping with the formula applied when a property is seized.

PAYMENT OF FEES AND HONORARIA

The expropriator reimburses the person whose property has been expropriated, in full or in part, for the judicial fees of advocates and expert's appraisals deemed useful and reasonable by the members of the Tribunal who determined the final compensation.

You can consult experts, solicitors, chartered appraisers and other individuals who will advise you at the various phases in this undertaking.

REMINDER

The *Expropriation Act* provides for other situations in which you may address the Tribunal administratif du Québec, including:

- the imposition and abandonment of a reserve for a future expropriation;
- the offer of a replacement property instead of monetary compensation;
- the re-location of structures off the property.

In this document the masculine is used without discrimination solely to make the text easier to read.