



## JURISDICTIONS COMPARATIVE CHART:

# INVERSE CONDEMNATION

### COZEN O'CONNOR

1900 Market Street | Philadelphia, PA 19103  
P: 215.665.2000 or 800.523.2900 | F: 215.665.2013  
[www.cozen.com](http://www.cozen.com)

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### What is Inverse Condemnation?

An inverse condemnation action is an action brought by a property owner against a governmental entity or agency. This can occur when a government takes, or in some states damages, a person's property, and does not compensate the person for the taking or damage. The following chart summarizes the law of inverse condemnation in all fifty states and Washington D.C. All jurisdictions, with the exception of Ohio, recognize an action for inverse condemnation.

ALABAMA
<p><b>Case:</b> <i>City of Mobile v. Lester</i>, 804 So.2d 220, 230 (Ala. Civ. App. 2001)</p> <p><b>Basis:</b> Ala. Const. art. XII, § 235. <i>See also</i> Ala. Code § 18-1A-32.</p> <p><b>Attorney's Fees:</b> The judgment in an inverse condemnation suit allowing compensation to the plaintiff shall include the plaintiff's litigation expenses. Ala. Code § 18-1A-32(b). Litigation expenses are defined in Ala. Code § 18-1A-3(12).</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> Ala. Const. art. XII, § 235 provides for "injury" to property, as well as actual taking. <i>City of Mobile v. Lester</i>, 804 So.2d 220, 230. The injury would be the difference between the fair market value before and after. <i>Id.</i></p>
ALASKA
<p><b>Case:</b> <i>City of Kenai v. Burnett</i>, 860 P.2d 1233, 1238-39 (Alaska 1993)</p> <p><b>Basis:</b> Alaska Const. art. 1, § 18</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases if plaintiff can recover attorney's fees; however, in the event that a landowner asserted an unsuccessful inverse condemnation claim, Rules 79 and 82 of the Alaska Rules of Civil Procedure permit the defendant to recover costs and attorney's fees. <i>R &amp; Y Municipality of Anchorage</i>, 34 P.3d 289, 300 (Alaska 2001)</p> <p><b>Elements:</b> Allows a plaintiff to recover damages through an inverse condemnation action where 1) the State physically invades private property and 2) without formal eminent domain proceedings; or where the state employees land use planning regulations which deprive a property owner of the "economic advantages of ownership." <i>City of Kenai v. Burnett</i>, 860 P.2d 1233, 1238 (Alaska 1993).</p> <p><b>Other:</b> The Alaska Constitution provides for compensation for both take and damaged property. Alaska Const. art. I, § 18.</p>
ARIZONA
<p><b>Case:</b> <i>Calmat of Arizona v. State ex rel. Miller</i>, 859 P.2d 1323, 1325 (Ariz. 1993)</p> <p><b>Basis:</b> Ariz. Const. art. II, § 17. <i>See also</i> Ariz. Rev. Stat. Ann. § 28-7102 (addressing taking of land for highway development).</p> <p><b>Attorney's Fees:</b> Generally no attorney's fees awarded absent statutory authority. <i>Salaz v. Tucson</i>, 756 P.2d 348, 349-50 (Ariz. Ct. App. 1988). There is a limited statutory authorization for attorneys fees in Ariz. Rev. Stat. § 11-972(B). <i>Id.</i> at 350. But that is limited by Ariz. Rev. Stat. § 11-974, which states that it only applies when there is federal financial assistance. <i>Id.</i></p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Arizona Constitution provides for compensation for both taken and damaged land. Ariz. Const. Art. II, § 17.</p>
ARKANSAS
<p><b>Case:</b> <i>Robinson v. City of Ashdown</i>, 783 S.W.2d 53, 55 (Ark. 1990); <i>DeBoer v. Entergy Arkansas Inc.</i>, 109 S.W.3d 142, 144 (Ark. Ct. App. 2003); <i>Daniel v. City of Ashdown</i>, 232 S.W.3d 511, 514 (Ark. Ct. App. 2006).</p> <p><b>Basis:</b> Ark. Code Ann. § 18-15-410; Ark. Const. Art. 2, § 22. Inverse condemnation actions against corporations are governed by Ark. Code Ann. § 18-15-102.</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> 1) Property has been taken in fact; 2) by a governmental defendant; 3) not through eminent domain procedures. <i>Robinson v. City of Ashdown</i>, 783 S.W.2d 53, 55 (Ark. 1990).</p> <p><b>Other:</b> The Arkansas Constitution provides for compensation for taking, appropriating, and damaging property for public use. Ark. Const. Art. 2, § 22.</p>

CALIFORNIA
<p><b>Case:</b> <i>San Diego Gas &amp; Elec. Co. v. Superior Court</i>, 920 P.2d 669, 697-98 (Cal. 1996)</p> <p><b>Basis:</b> Cal. Const. art. I, § 19</p> <p><b>Attorney’s Fees:</b> In any inverse condemnation proceeding, the court rendering judgment for the plaintiff shall determine and award a sum that will, in the opinion of the court, reimburse the plaintiff’s reasonable costs, including reasonably attorney, appraisal, and engineering fees because of that proceeding in the trial court or in any appellate proceeding in which the plaintiff prevails on any issue. Cal. Civ. Proc. Code § 1036.</p> <p><b>Elements:</b> 1) A deliberate act by a public entity; 2) which has as its object the direct or indirect accomplishment of the purpose for which the improvement was constructed; and 3) which causes a taking or damaging of private property. <i>Aetna Life &amp; Casualty Co. v. City of L.A.</i>, 216 Cal. Rptr. 831, 836 (Cal. Ct. App. 1985)</p> <p><b>Other:</b> The basic measure of damages in inverse condemnation actions is “market value.” <i>City of Ripon v. Sweetin</i>, 122 Cal. Rptr.2d 802, 809 (Cal. Ct. App. 2002). The California Constitution provides for compensation for both a taking and damage to property. Cal. Const. Art. I, § 19.</p>
COLORADO
<p><b>Case:</b> <i>Scott v. County of Custer</i>, 178 P.3d 1240 (Colo. App. 2007)</p> <p><b>Basis:</b> Colo. Const. art. II, § 15</p> <p><b>Attorney’s Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Property owner must show: 1) there has been a taking or damaging of a property interest; 2) for a public purpose; 3) without just compensation; and 4) by a governmental or public entity that has the power of eminent domain, but which has refused to exercise that power. <i>Scott v. County of Custer</i>, 178 P.3d 1240, 1244 (Colo. App. 2007)</p> <p><b>Other:</b> The Colorado Constitution provides for compensation for taken or damaged property. Colo. Const. art. II, § 15.</p>
CONNECTICUT
<p><b>Case:</b> <i>Cumberland Farms, Inc. v. Groton</i>, 719 A.2d 465, 468 (Conn. 1998)</p> <p><b>Basis:</b> Conn. Const. art. I, § 11</p> <p><b>Attorney’s Fees:</b> The court rendering a judgment for the plaintiff in an inverse condemnation proceeding brought against the state by the owner of real property shall determine and award such sum as will in the opinion of the court reimburse such plaintiff for his reasonable costs, including reasonable attorney, appraisal, and engineering fees, actually incurred. Conn. Gen. Stat. § 48-17b.</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Connecticut Constitution provides compensation only for property that was taken, and does not provide for compensation for property when it is merely damaged. Conn. Const. art. I, § 11.</p>
DELAWARE
<p><b>Case:</b> <i>Delmarva Power &amp; Light Co. v. City of Seaford</i>, 523 A.2d 973 (Del. Super. Ct. 1987)</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney’s Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> Undecided or no reported cases</p>
DISTRICT OF COLUMBIA
<p><b>Case:</b> <i>Redevelopment Land Agency v. Dowdey</i>, 618 A.2d 153, 164 (D.C. 1992)</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney’s Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> Undecided or no reported cases</p>

<b>FLORIDA</b>
<p><b>Case:</b> <i>Palm Beach County v. Tessler</i>, 538 So.2d 846, 849 (Fla. 1989)</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney's Fees:</b> Attorney's fees are recoverable in inverse condemnation proceedings. <i>Schick v. Florida Dep't of Agric. &amp; Consumer Servs.</i>, 586 So.2d 452, 453-54 (Fla. Dist. Ct. App. 1991)</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> N/A</p>
<b>GEORGIA</b>
<p><b>Case:</b> <i>Shealy v. Unified Gov't of Athens-Clark</i>, 537 S.E.2d 105 (Ga. Ct. App. 2000)</p> <p><b>Basis:</b> Ga. Const. Art. I, § III, Para. I</p> <p><b>Attorney's Fees:</b> Unknown</p> <p><b>Elements:</b> 1) A governmental entity; 2) creates a condition on private property; 3) that amounts to a taking; 4) without compensation. <i>Shealy v. Unified Gov't of Athens-Clark</i>, 537 S.E.2d 105, 108 (Ga. Ct. App. 2000).</p> <p><b>Other:</b> The Georgia Constitution provides for compensation when property is taken or damaged. Ga. Const. Art. I, § III, Para. I.</p>
<b>HAWAII</b>
<p><b>Case:</b> <i>Austin v. City and County of Honolulu</i>, 840 F.2d 678, 679-80 (9th Cir. 1988)</p> <p><b>Basis:</b> Haw. Const. art. I, § 20</p> <p><b>Attorney's Fees:</b></p> <p><b>Elements:</b></p> <p><b>Other:</b> The Hawaii Constitution provides for compensation for both taken and damaged property. Haw. Const. art. I, § 20. The <i>Austin</i> court recognized that neither the Hawaii Supreme Court nor the state legislature recognized inverse condemnation, but it also had not rejected it. <i>Austin v. City of Honolulu</i>, 840 F.2d 678, 681 (9th Cir. 1988)</p>
<b>IDAHO</b>
<p><b>Case:</b> <i>Higginson v. Wadsworth</i>, 915 P.2d 1, 3-4 (Idaho 1996); <i>Dawson Enters., Inc. v. Blaine County</i>, 567 P.2d 1257, 1268 (Idaho 1977)</p> <p><b>Basis:</b> Idaho Const. art. I, § 14</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Idaho's inverse condemnation cases form a pattern with common <b>Elements:</b> 1) a governmental project of some sort; 2) the construction or operation thereof damages or destroys the vested property rights of an adjoining land owner; and 3) after which suit is brought to recover damages. <i>Dawson Enters., Inc. v. Blaine County</i>, 567 P.2d 1257, 1268 (Idaho 1977)</p> <p><b>Other:</b> The Idaho Constitution only provides for compensation for the taking of private property. Idaho Const. Art. I, §14.</p>
<b>ILLINOIS</b>
<p><b>Case:</b> <i>Lamar Whiteco Outdoor v. West Chicago</i>, 823 N.E.2d 610, 622 (Ill. App. Ct. 2005); <i>Warner v. County of DuPage</i>, 991 F.2d 1280 (7th Cir. 1993)</p> <p><b>Basis:</b> Ill. Const. Art. I, § 15</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Illinois Constitution provides for compensation for both the taking and damaging of property. Ill. Const. Art. I, § 15.</p>

INDIANA
<p><b>Case:</b> <i>Lamar Whiteco Outdoor v. West Chicago</i>, 823 N.E.2d 610, 622 (Ill. App. Ct. 2005); <i>Warner v. County of DuPage</i>, 991 F.2d 1280 (7th Cir. 1993)</p> <p><b>Basis:</b> Ill. Const. Art. I, § 15</p> <p><b>Attorney’s Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Illinois Constitution provides for compensation for both the taking and damaging of property. Ill. Const. Art. I, § 15.</p>
IOWA
<p><b>Case:</b> <i>Scott v. City of Sioux</i>, 432 N.W.2d 144, 145 n.1 (Iowa 1988)</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney’s Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> N/A</p>
KANSAS
<p><b>Case:</b> <i>Deisher v. Kansas Dept. of Transp.</i>, 958 P.2d 656, 661 (Kan. 1998)</p> <p><b>Basis:</b> Kan. Stat. Ann. § 26-513</p> <p><b>Attorney’s Fees:</b> Attorney’s fees area available when the state received federal funding for the work done that resulted in the inverse condemnation action. <i>Estate of Kirkpatrick v. City of Olathe</i>, 215 P.3d 561, 574 (Kan. 2009)</p> <p><b>Elements:</b> 1) private property has been actually taken for public use; 2) without formal condemnation proceedings; and 3) it appears that there is no intention or willingness of the taker to bring such proceedings. <i>Nat’l Compressed Steel Corp. v. Unified Gov’t of Wyandotte County</i>, 38 P.3d 723, 728-29 (Kan. 2002)</p> <p><b>Other:</b> Kansas statute provides for compensation when private property is taken or damaged. Kan. Stat. Ann. § 26-513.</p>
KENTUCKY
<p><b>Case:</b> <i>Jones v. Com. Transp. Cabinet</i>, 875 S.W.2d 892, 893 (Ky. Ct. App. 1993) (referring to “inverse condemnation” as “reverse condemnation”)</p> <p><b>Basis:</b> Ky. Const. § 242</p> <p><b>Attorney’s Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Kentucky Constitution provides for compensation for property taken, injured or destroyed. Ky. Const. § 242.</p>
LOUISIANA
<p><b>Case:</b> <i>Dept. of Transp. &amp; Dev. v. Chambers Invest. Co., Inc.</i>, 595 So.2d 598, 602 (La. 1992)</p> <p><b>Basis:</b> La. Const. art. I, § 4</p> <p><b>Attorney’s Fees:</b> A plaintiff who establishes entitlement to compensation from the government under La. Const. art. I, § 4 for damage to their property shall be awarded reasonable attorney’s fees actually incurred. <i>Arnold v. Town of Ball</i>, 651 So.2d 313, 321, 322 (La. Ct. App. 1995); La. Rev. Stat. Ann. § 13:5111.</p> <p><b>Elements:</b> Plaintiffs must prove: 1) that property rights are at issue; 2) that the act alleged to have caused damage was undertaken for public purposes; 3) that the acts of the government violate Law. Civ. Code Ann. Art. 667-69; 4) that the government has engaged in excessive or abusive conduct; and 5) that their property has either been physically damaged or has suffered “special damage peculiar to the property.” <i>Arnold v. Town of Ball</i>, 651 So.2d 313, 318 (La. Ct. App. 1995).</p> <p><b>Other:</b> The Louisiana Constitution provides for compensation for taken and damaged property. La. Const. art. I, § 4.</p>

<b>MAINE</b>
<p><b>Case:</b> <i>Larrabee v. Town of Knox</i>, 744 A.2d 544, 545 n.3 (Me. 2000)</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> N/A</p>
<b>MARYLAND</b>
<p><b>Case:</b> <i>Reichs Ford Rd. Joint Venture v. State Rds. Comm'n</i>, 880 A.2d 307, 313 (Md. 2005)</p> <p><b>Basis:</b> Md. Const. art. III, § 40.</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Maryland Constitution provides only for compensation for the taking of private property. Md. Const. art. III, § 40.</p>
<b>MASSACHUSETTS</b>
<p><b>Case:</b> <i>Gilbert v. City of Cambridge</i>, 932 F.2d 51, 64-65 (1st Cir. 1991)</p> <p><b>Basis:</b> Mass. Gen. Laws ch. 79, § 10</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> N/A</p>
<b>MICHIGAN</b>
<p><b>Case:</b> <i>Hart v. City of Detroit</i>, 331 N.W.2d 438, 441 (Mich. 1982)</p> <p><b>Basis:</b> Mich. Const. art. X, § 2.</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> 1) The taking of private property; 2) for a public use; 3) without the commencement of condemnation proceedings. <i>Hart v. City of Detroit</i>, 331 N.W.2d 438, 441 (Mich. 1982)</p> <p><b>Other:</b> The Michigan Constitution provides for compensation for the taking of private property. Mich. Const. art. X, § 2. If a principal residence is taken for public use, the amount of compensation shall not be less than 125% of the property's fair market value. <i>Id.</i></p>
<b>MINNESOTA</b>
<p><b>Case:</b> <i>Johnson v. City of Minneapolis</i>, 667 N.W.2d 109, 111 n.1 (Minn. 2003)</p> <p><b>Basis:</b> Minn. Const. Art. I, § 13</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Minnesota Constitution provides compensation for private property that was taken, destroyed, or damaged. Minn. Const. Art. I, § 13. The fact that no physical invasion of a person's property occurred does not bar compensation under the damages provision of the Minnesota Constitution. <i>Johnson v. City of Minneapolis</i>, 667 N.W.2d 109, 115 (Minn. 2003)</p>
<b>MISSISSIPPI</b>
<p><b>Case:</b> Could not find a case that talked about it, but there is a statute that has inverse condemnation for a forest or agricultural land. See Miss. Code Ann. § 49-33-9</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> N/A</p>

<b>MISSOURI</b>
<p><b>Case:</b> <i>Shaw v. City of St. Louis</i>, 664 S.W.2d 572, 574 (Mo. Ct. App. 1983)</p> <p><b>Basis:</b> Mo. Const. art. I, § 26.</p> <p><b>Attorney’s Fees:</b> Attorney’s fees are not authorized under Missouri law. <i>v. Mo. Hwys. &amp; Transp. Comm’n</i>, 224 S.W.3d 615, 619 (Mo. Ct. App. 2007)</p> <p><b>Elements:</b> To state a claim for inverse condemnation, a plaintiff must allege his property was taken or damaged by the state for public use without just compensation. <i>v. City of St. Louis</i>, 664 S.W.2d 572, 574 (Mo. Ct. App. 1983)</p> <p><b>Other:</b> The Missouri Constitution provides for compensation for taking and damaging private property. Mo. Const. art. I, § 26.</p>
<b>MONTANA</b>
<p><b>Case:</b> <i>Rausser v. Toston Irrigation.. Dist.</i>, 565 P.2d 632, 637 (Mont. 1977)</p> <p><b>Basis:</b> Mont. Const. art. II, § 29.</p> <p><b>Attorney’s Fees:</b> The Montana Constitution states that just compensation includes “necessary expenses of litigation to be awarded when the private property owner prevails.” Mont. Const. art. II, § 29.</p> <p><b>Elements:</b> The court looks at five factors: 1) The damage to this property, if reasonably foreseeable, would have entitled the property owners to compensation; 2) the likelihood of public works not being engaged in because of unforeseen and unforeseeable possible direct physical damage to real estate is remote; 3) the property owners did suffer direct physical damage to their properties as the proximate result of the works as deliberately planned and carried out; 4) the cost of such damage can better be absorbed, and with infinitely less hardship, by the taxpayers as a whole, than by owners of the individual parcels, and 5) the owner of the damaged property if uncompensated would contribute more than his proper share to the public undertaking. <i>Rausser v. Toston Irrigation.. Dist.</i>, 565 P.2d 632, 638 (Mont. 1977)</p> <p><b>Other:</b> The Montana Constitution provides for compensation for taken or damaged private property. Mont. Const. Art. II, § 29.</p>
<b>NEBRASKA</b>
<p><b>Case:</b> <i>Metzger v. Village of Cedar Creek Nebraska</i>, 370 F.3d 822 (8th Cir. 2004)</p> <p><b>Basis:</b> Neb. Const. art. I, § 21; Neb. Rev. Stat. § 76-705</p> <p><b>Attorney’s Fees:</b> Attorney’s fees are awarded in a proceeding instituted by a condemnee under § 76-705 provided that (a) the court renders a judgment in favor of the condemnee or (b) a settlement is effected. Neb. Rev. Stat. § 76-726.</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Nebraska Constitution provides for compensation for property that was taken and damaged. Neb. Const. Art. I, § 21.</p>
<b>NEVADA</b>
<p><b>Case:</b> <i>Dep’t of Transp. v. Cowan</i>, 103 P.3d 1, 3 (Nev. 2004)</p> <p><b>Basis:</b> Nev. Const. Art. 1, § 8(6)</p> <p><b>Attorney’s Fees:</b> In inverse condemnation actions, the plaintiff may receive attorney’s fees from the other party if the plaintiff that is the subject of the action makes a request for attorney’s fees from the other party to the action. Nev. Const. Art. 1, § 8(8)(d).</p> <p><b>Elements:</b> To state a cause of action for inverse condemnation, there must be an invasion or an appropriation of some valuable property right which the landowner possesses and the invasion or appropriation must directly and specially affect the landowner to his injury. <i>Sproul Homes v. State</i>, 611 P.2d 620, 621-22 (Nev. 1980).</p> <p><b>Other:</b> The Nevada Constitution only provides for compensation for a taking of private property. Nev. Const. Art. 1, § 8(6).</p>
<b>NEW HAMPSHIRE</b>
<p><b>Case:</b> <i>Arcidi v. Town of Rye</i>, 846 A.2d 535, 539 (N.H. 2004)</p> <p><b>Basis:</b> N.H. Const. pt. 1, art. 12.</p> <p><b>Attorney’s Fees:</b> There is no per se rule that allows all plaintiffs to recover attorney’s fees in successful inverse condemnation suits. Instead, attorney’s fees may be awarded when then plaintiff is forced to seek judicial assistance to secure a clearly defined and established right and the opposing party has acted in bad faith. <i>Arcidi v. Town of Rye</i>, 846 A.2d 535, 544 (N.H. 2004)</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The New Hampshire Constitution applies only to a taking of property. N.H. Const. pt. 1, art. 12.</p>

NEW JERSEY
<p><b>Case:</b> <i>Greenway Dev. Co., Inc. v. Paramus</i>, 750 A.2d 764, 767-68 (N.J. 2000)</p> <p><b>Basis:</b> N.J. Const. Art. I, para. 20</p> <p><b>Attorney's Fees:</b> When a plaintiff brings an action to compel condemnation against a defendant having the power to condiment, the court shall, in its discretion, award such plaintiff his reasonable costs, including attorney's fees. N.J. Stat. § 20:3-26(c).</p> <p><b>Elements:</b> A property owner is barred from any claim to a right to inverse condemnation unless deprived of all or substantially all of the beneficial use of the totality of his property. <i>Greenway Dev. Co., Inc. v. Paramus</i>, 750 A.2d 764, 767-68 (N.J. 2000)</p> <p><b>Other:</b> The New Jersey Constitution provides compensation for the taking of private property. N.J. Const. Art. I, para. 20.</p>
NEW MEXICO
<p><b>Case:</b> <i>North v. Pub. Serv. Co. of New Mexico</i>, 680 P.2d 603, 607 (N.M. Ct. App. 1983)</p> <p><b>Basis:</b> N.M. Stat. § 42A-1-29.</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The New Mexico inverse condemnation statute provides for a cause of action whenever property is taken or damaged. N.M. Stat. § 42A-1-29.</p>
NEW YORK
<p><b>Case:</b> <i>Evans v. City of Johnstown</i>, 96 Misc.2d 755, 759 (N.Y. Sup. Ct. 1978)</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> A finding of inverse condemnation or de facto taking requires a showing that the government has intruded onto the property and interfered with the owner's property rights to such a degree that the conduct amounts to a constitutional taking requiring the government to purchase the property from the owner. <i>Weaver v. Town of Rush</i>, 768 N.Y.S.2d 58, 61 (N.Y. App. Div. 4th Dep't 2003).</p> <p><b>Other:</b> N/A</p>
NORTH CAROLINA
<p><b>Case:</b> <i>Smith v. Charlotte</i>, 339 S.E.2d 844, 847 (N.C. Ct. App. 1986)</p> <p><b>Basis:</b> N.C. Gen. Stat. § 40A-51</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> N/A</p>
NORTH DAKOTA
<p><b>Case:</b> <i>Minch v. City of Fargo</i>, 297 N.W.2d 785, 789-90 (N.D. 1980)</p> <p><b>Basis:</b> N.D. Const. art. I, § 16</p> <p><b>Attorney's Fees:</b> When a landowner brings an action in inverse condemnation through which he receives compensation for the taking or damaging of his property for public use it is proper for the trial court to award reasonable costs and attorney's fees under N.D. Cent. Code § 32-15-32. <i>Arneson v. Fargo</i>, 331 N.W.2d 30, (N.D. 1983). 39.</p> <p><b>Elements:</b> A property owner must prove a 1) public entity took or damaged the owner's property; 2) for a public use; 3) and the public use was the proximate cause of the taking or damages. <i>Aasmundstad v. State</i>, 763 N.W.2d 748, 756 (N.D. 2008).</p> <p><b>Other:</b> The North Dakota Constitution provides for compensation for both the taking and damaging of private property. N.D. Const. Art. I, § 16.</p>

OHIO
<p><b>Case:</b> Does not recognize inverse condemnation. <i>Painesville Mini Storage, Inc. v. City of Painesville</i>, 2009 Ohio 3656 (Ohio Ct. App. 2009); <i>State ex rel. Livingston Court Apts. v. City of Columbus</i>, 130 Ohio App. 3d 730, 740 (Ohio Ct. App. 1998)</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney's Fees:</b> N/A</p> <p><b>Elements:</b> N/A</p> <p><b>Other:</b> N/A</p>
OKLAHOMA
<p><b>Case:</b> <i>Drabek v. City of Norman</i>, 946 P.2d 658, 659-60 (Okla. 1996)</p> <p><b>Basis:</b> Okla. Const. art. II, § 24; Okla. Stat. tit. 66, § 57.</p> <p><b>Attorney's Fees:</b> Attorney's fees are awarded in the event that a plaintiff is successful. Okla. Stat. tit. 27, § 12.</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Oklahoma Constitution provides for compensation for private property that is both taken and damaged. Okla. Const. art. II, § 24.</p>
OREGON
<p><b>Case:</b> <i>Butchart v. Baker County</i>, 166 P.3d 537, 545 (Or. Ct. App. 2007)</p> <p><b>Basis:</b> Or. Const. art. I, § 18</p> <p><b>Attorney's Fees:</b> In a proceeding brought under Or. Const. art. I, § 18 or art. XI, § 4, by an owner of property or by a person claiming an interest in property, if the owner or other person prevails, the other person shall be entitled to costs and disbursements and reasonable attorney fees at trial and on appeal. Or. Rev. Stat. § 20.085.</p> <p><b>Elements:</b> 1) A governmental entity; 2) with the power of eminent domain; 3) has taken private property for public use; 4) without initiating condemnation proceedings. <i>Butchart v. Baker County</i>, 166 P.3d 537, 545 (Or. Ct. App. 2007)</p> <p><b>Other:</b> Oregon's Constitution provides for compensation for the taking of private property. Or. Const. Art. I, § 18.</p>
PENNSYLVANIA
<p><b>Case:</b> <i>Stein v. City of Philadelphia</i>, 557 A.2d 1137, 1138-39 (Pa. Commw. Ct. 1988) (also called de facto taking instead of inverse condemnation)</p> <p><b>Basis:</b> 26 Pa.C.S. § 502(c)</p> <p><b>Attorney's Fees:</b> Attorney's fees are awarded where proceedings are instituted by a condemnee. 26 Pa.C.S. § 709.</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> N/A</p>
RHODE ISLAND
<p><b>Case:</b> <i>Harris v. Town of Lincoln</i>, 668 A.2d 321, 326-27 (R.I. 1995)</p> <p><b>Basis:</b> R.I. Const. art. 1, § 16</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The courts have construed the Rhode Island Constitution broadly to mean that a taking must consist of the "actual seizing or direct taking of specific property for public use, as distinguished from incidental injury to it when not taken." <i>Harris</i>, 668 A.2d at 327.</p>
SOUTH CAROLINA
<p><b>Case:</b> <i>Hawkins v. City of Greenville</i>, 594 S.E.2d 557, 562 (S.C. Ct. App. 2004)</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> To establish an inverse condemnation, a plaintiff must show: 1) an affirmative, positive, aggressive act on the part of the governmental agency; 2) a taking; 3) the taking is for a public use; and 4) the taking has some degree of permanence." <i>Hawkins v. City of Greenville</i>, 594 S.E.2d 557, 562 (S.C. Ct. App. 2004).</p> <p><b>Other:</b> N/A</p>

SOUTH DAKOTA
<p><b>Case:</b> <i>Krier v. Dell Rapids Tp.</i>, 709 N.W.2d 841, 846-47 (S.D. 2006)</p> <p><b>Basis:</b> S.D. Const. art. VI, § 13</p> <p><b>Attorney's Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The damage clause of the South Dakota Constitution affords more rights than the Fifth Amendment. <i>Krier v. Dell Rapids Tp.</i>, 709 N.W.2d 841, 847 (S.D. 2006).</p>
TENNESSEE
<p><b>Case:</b> <i>Edwards v. Hallsdale-Powell Utility Dist.</i>, 115 S.W.3d 461, 463 (Tenn. 2003)</p> <p><b>Basis:</b> Tenn. Code Ann. § 29-16-123</p> <p><b>Attorney's Fees:</b> The court rendering a judgment for the plaintiff shall determine and award the plaintiff a sum as will in the opinion of the court reimburse such plaintiff for reasonable costs, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred. Tenn. Code Ann. 29-16-123(b).</p> <p><b>Elements:</b> A plaintiff must allege 1) a direct and substantial interference with the beneficial use and enjoyment of the property at issue; 2) the interference must be repeated and not just occasional; and 3) the interference must peculiarly affect the property at issue and result in a loss of market value, in other words, must be greater than or different from, that suffered by the general public as a whole. <i>Jackson v. Metro. Knoxville Airport Auth.</i>, 922 S.W.2d 860, 865 (Tenn. 1996)</p> <p><b>Other:</b> N/A</p>
TEXAS
<p><b>Case:</b> <i>Tarrant Regional Water Dist. v. Gragg</i>, 151 S.W.3d 546, 554 (Tex. 2004)</p> <p><b>Basis:</b> Tex. Const. art. I, § 17</p> <p><b>Attorney's Fees:</b> Attorney's fees are not available for inverse condemnation suits. <i>City of Austin v. Travis County Landfill Co.</i>, 25 S.W.3d 191, 206-07 (Tex. App. 2000), <i>rev'd on other grounds</i>, 73 S.W.3d 234 (Tex. 2002).</p> <p><b>Elements:</b> The property owner must establish 1) a governmental entity intentionally performed acts; 2) that resulted in a taking of the property; 3) for public use. <i>Alodial Ltd. P'ship v. N. Tex. Tollway Auth.</i>, 176 S.W.3d 680, 684 (Tex. App. 2005)</p> <p><b>Other:</b> The Texas Constitution provides for compensation for the taking, damaging, or destroying of a person's property. Tex. Const. art. I, § 17.</p>
UTAH
<p><b>Case:</b> <i>Farmers New World Life Ins. v. Bountiful City</i>, 803 P.2d 1241, 1243-44 (Utah 1990)</p> <p><b>Basis:</b> Utah Const. art. I, § 22.</p> <p><b>Attorney's Fees:</b> The owner is reimbursed for attorney's fees if it is part of a project that was federally funded. Utah Administrative Code r.933-1-1 (incorporating by reference 49 C.F.R. 24.107)</p> <p><b>Elements:</b> An inverse condemnation action requires 1) property; 2) a taking or damages; and 3) public use. <i>Farmers New World Life Ins. Co. v. Bountiful City</i>, 803 P.2d 1241, 1243-44 (Utah 1990).</p> <p><b>Other:</b> The Utah Constitution provides for compensation for the taking or damaging of private property. Utah Const. Art. I, § 22.</p>
VERMONT
<p><b>Case:</b> <i>Dep't of Forests, Park and Recreation v. Town of Ludlow Zoning Board</i>, 869 A.2d 603, 605 (Vt. 2005)</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney's Fees:</b> In the event the plaintiff prevails, the plaintiff may be reimbursed for reasonable attorney's fees. Vt. Stat. Ann. Tit. 19, § 512.</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> N/A</p>

<b>VIRGINIA</b>
<p><b>Case:</b> <i>Kitchen v. City of Newport News</i>, 657 S.E.2d 132, 136-37 (Va. 2008)</p> <p><b>Basis:</b> Va. Const. art. I, § 11; Va. Code Ann. § 8.01-187.</p> <p><b>Attorney’s Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Virginia Constitution provides compensation where private property is both taken or damaged. Va. Const. art. I, § 11.</p>
<b>WASHINGTON</b>
<p><b>Case:</b> <i>Phillips v. King County</i>, 968 P.2d 871, 876 (Wash. 1998)</p> <p><b>Basis:</b> Wash. Const. art. I, § 16.</p> <p><b>Attorney’s Fees:</b> Undecided or no reported cases</p> <p><b>Elements:</b> A party alleging inverse condemnation must establish: (1) a taking or damaging; (2) of private property; (3) for public use; (4) without just compensation being paid; and (5) by a governmental entity that has not instituted formal proceedings. <i>Phillips</i>, 968 P.2d at 876.</p> <p><b>Other:</b> The measure of damage is the diminution in the fair market value of the property caused by the governmental taking or damaging. <i>Phillips</i>, 968 P.2d at 876. The Washington Constitution provides for compensation for both the taking and damaging of private property. Wash. Const. Art. I, § 16.</p>
<b>WEST VIRGINIA</b>
<p><b>Case:</b> <i>West Virginia Dept. of Transp. v. Dodson Mobile Homes</i>, 624 S.E.2d 468, 470 n.2 (W.V. 2005)</p> <p><b>Basis:</b> N/A</p> <p><b>Attorney’s Fees:</b> Pursuant to 49 C.F.R. § 24.107(c), if there is a federally funded program, the plaintiff is entitled to attorney’s fees. <i>West Virginia Dept. of Transp. v. Dodson Mobile Homes</i>, 624 S.E.2d 468, 473-74 (W.V. 2005)</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> N/A</p>
<b>WISCONSIN</b>
<p><b>Case:</b> <i>Howell Plaza, Inc. v. State Highway Com.</i>, 226 N.W.2d 185, 186-87 (Wis. 1975)</p> <p><b>Basis:</b> Wis. Const. art. I, § 13; Wis. Stat. § 32.10.</p> <p><b>Attorney’s Fees:</b> Wis. Stat. § 32.28(3)(c) states that litigation expenses shall be awarded to the condemnee if the judgment is for the plaintiff in an action under Wis. Stat. § 32.10.</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The Wisconsin Constitution provides compensation for the taking of property. Wis. Const. art. I, § 13.</p>
<b>WYOMING</b>
<p><b>Case:</b> <i>Waid v. State ex rel. Dept. of Transp.</i>, 996 P.2d 18, 22-23 (Wyo. 2000)</p> <p><b>Basis:</b> Wyo. Stat. Ann. § 1-26-516.</p> <p><b>Attorney’s Fees:</b> Litigation expenses are awarded if damages are awarded to the owner. Wyo. Stat. § 1-26-516.</p> <p><b>Elements:</b> Undecided or no reported cases</p> <p><b>Other:</b> The explicit language of Wyo. Stat. Ann. § 1-26-516 makes it only applicable to conduct on adjoining land. <i>Waid</i>, 996 P.2d at 25.</p>

**Note:** This document is intended to provide a general overview of the laws enacted in each state. Many of the statutes listed are complex, and do not lend themselves to a concise summary. Also, while we have made every effort to verify the accuracy of the materials summarized as of the date indicated, these statutes and cases are subject to revision, amendment and modification, as well as to differing court interpretations. It therefore is intended that this document should serve only as a guideline, for purposes of general reference, and is not a substitute for legal advice from a qualified attorney. Please feel free to contact any Cozen O’Connor attorney for additional information and assistance.