Chapter 35

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Eminent Domain Procedure

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CROSS REFERENCES

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- Electric utility, 758.015
- Governmental units and public corporations, generally, Ch. 281
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- State Board of Forestry, 526.172
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Judgment authorizing one railroad to use another's right of way, 772.030
Taxes on land acquired by eminent domain, payment of, 311.412, 311.413

NOTE

This chapter embraces the standard procedure for condemnation by corporations, which is adopted, either specifically or by implication, by various statutes conferring a right to condemn for designated purposes. Most of the statutes granting the right of condemnation to corporations are compiled in chapter 772, but some are compiled in the individual chapters dealing with the particular corporation having the right of condemnation.

The statutes relating to condemnation by governmental units and public corporations are, for the most part, compiled in chapter 281, but in some instances where the right of condemnation is for a limited purpose, as in the case of highways, the condemnation statute is compiled in the chapter that embraces the subject to which the power of condemnation relates.

35.010 When corporation may bring action to condemn; jurisdiction. Whenever any corporation authorized, as in the provisions of ORS 772.015 to 772.060 or 772.105, to condemn land, or a right of way, right to cut timber, or other right or easement in land, including the right to cross or intersect with a located but unconstructed line of railway, is unable to agree with the owner thereof as to the compensation to be paid therefor, or if the owner is absent from this state, the corporation may maintain an action in the circuit court of the proper county, against the owner, for the purpose of having such land, right or easement condemned to its own use, and for determining the compensation to be paid to the owner therefor.

35.020 Commencement and prosecution of action. The action shall be commenced and prosecuted to final determination in the same manner as ordinary actions, except as otherwise specially provided in ORS 35.010 to 35.140.

35.030 Defendant. The action shall be commenced against the person in the actual possession of the land at the time; or if the property is not in the actual possession of anyone, then against the person acting as the owner thereof; or if there is no one in the actual possession, or acting as owner thereof, then against an owner unknown.

35.040 Complaint; publication of summons. The complaint shall describe with convenient certainty the land, right or easement sought to be condemned. If the defendant, or either of several defendants, is a nonresident of this state or unknown, service of the summons may be made by publication.

35.050 Plaintiff's occupancy pending action. At any time after the action is commenced, except in a proceeding for the condemnation of rights of way for logging roads, logging railroads or logging ways, or a condemnation proceeding brought under ORS 768.180, the court may, upon motion, hold a hearing and enter an order permitting the plaintiff to occupy the premises sought to be condemned, pending the action, and do work, lay tracks and erect structures required for the purpose for which the land is sought to be condemned. The order shall be entered only after 10 days notice, of the time and place of hearing as to the occupying of the premises, to defendants by registered mail, addressed to them at their last-known addresses, as shown on the last tax roll of the county in which the premises are situated; provided, the court may require a longer period of notice than 10 days. The judge shall take proof in open court at the time fixed for the hearing, to establish the reasonable probable value of the premises and the amount of damages, if any, which will accrue from the condemnation, and of the reasons for requiring a speedy occupation, and shall grant or refuse the motion according to the equity of the case and the relative damages which may accrue to the parties, giving consideration also to the public interest involved.

35.060 Plaintiff's bond for occupancy pending action. If the motion for occupancy pending action is granted, the order shall require the plaintiff to execute and file with the clerk a bond, approved by the court, to the defendants, with sureties as otherwise provided by law; the bond to be in such penal sum as may be adjudged, but in no event less than double the probable value of the premises sought to be condemned, with the damages, if any, which will ensue from condemnation and speedy occupation; the bond to be payable to the defendants as their respective interests may subsequently appear in the action and to be conditioned for the payment of the adjudged value of the premises and the damages which will ensue in case the property is condemned in the action, and for payment of all damages arising from the occupation before judgment in case the premises are not condemned, and all costs, disbursements, interest and attorney fees adjudged to the defendants in the action. Evidence as to the finding or judgment of the court regarding the amount of such bond shall not be admissible at the trial.

35.070 Answer. The defendant in his answer may set forth any legal defense he may have to the condemnation, and may also allege the true value of the land, right

or easement and the damage resulting from the condemnation thereof.

35.080 Substitution of landlord for tenant defendant. A defendant in actual possession may, for answer, plead that he is in possession only as the tenant of another, naming him and his place of residence if known. Thereupon the landlord, if he applies therefor, shall be made defendant in place of the tenant, and thereafter the action shall proceed as if originally commenced against the landlord.

35.090 View of premises. If motion is made before the formation of the jury, the court, upon the request of either party, shall order a view of the lands or premises in question, and upon the return of the jury the evidence of the parties may be heard and the verdict of the jury given.

35.100 Judgment of condemnation. Upon the assessment of the damages by the jury, the court shall give judgment condemning the land, right or easement in question to the plaintiff, conditioned upon the plaintiff's paying into court the damages assessed by the jury; and after the making of such payment the judgment shall become effective to pass title and the right of possession to the plaintiff.

35.110 Costs and disbursements. The costs and disbursements of the defendant, including a reasonable attorney's fee to be fixed by the court at the trial, shall be taxed by the clerk and recovered from the plaintiff, unless the plaintiff tendered the defendant before commencing the action an amount equal to or greater than that assessed by the jury, in which case the plaintiff shall recover his costs and disbursements from the defendant, but not including an attorney's fee.

35.120 Appeal. Either party may appeal from the judgment in like manner and with like effect as in ordinary cases, except that the plaintiff may not appeal after he has paid the damages into court and has taken possession of the property or proceeded to exercise the right condemned, and except that the defendant's right to appeal may be waived as provided in ORS 35.130. An appeal by the defendant shall not stay the proceedings so as to prevent the plaintiff from taking the land into possession and using it or from proceeding to exercise the right or enjoy the easement condemned.

35.130 Waiver of appeal; unclaimed damages. If the defendant accepts the damages paid to the clerk, he waives his right of appeal, and if he does not, such sum shall remain in the control of the court, to abide the event of the appeal. If the defendant or unknown owner of the land does not appear and claim the sum, it shall be invested for the benefit of whom it may concern, as in case of unclaimed moneys in the sale and partition of lands.

35.140 New trial after reversal. If a judgment is reversed, and a new trial had, and at the second trial the jury assesses the damages of the defendant at a greater sum than before, the court shall, in addition to the judgment condemning the land, right or easement, give judgment in favor of the defendant for such excess.

CHAPTERS 36 TO 40

[Reserved for expansion]