

Chapter 35

1971 REPLACEMENT PART

Eminent Domain Procedure

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CROSS REFERENCES

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| Assessment and tender of compensation required prior to taking, except in case of the state, Const. Art. I, § 18, Const. Art. XI, § 4 | Scenic easements, acquisition, 271.720 |
| Condemnation by: | 35.235 |
| Electric utility, 758.015 | Determination of right of railroad to cross constructed line of another railroad, 772.025 |
| Governmental units and public corporations, generally, Ch. 281 | 35.275 |
| Public utilities and private corporations, generally, Ch. 772 | Assessment and tender of compensation required prior to taking, except in case of the state, Const. Art. I, § 18, Const. Art. XI, § 4 |
| State Board of Forestry, 526.168 | Deposit in lieu of bond, 22.020 to 22.070 |
| State Lands Division, 273.061 | 35.325 |
| Conservation easements, acquisition, 271.720 | Judgment authorizing one railroad to use another's right of way, 772.030 |
| Costs and attorney fees, 20.085 | Taxes on land acquired by eminent domain, payment of, 311.412, 311.413 |
| County road legalization procedure, 368.600 | |
| Procedure when pedestrian mall established, 376.785 | |
| Relocation assistance, use of federal programs by public agencies authorized, 281.060 | |
| Relocation of persons displaced by highway acquisitions, 366.323 | |

35.010 [Repealed by 1971 c.741 §38]

35.020 [Repealed by 1971 c.741 §38]

35.030 [Repealed by 1971 c.741 §38]

35.040 [Amended by 1967 c.479 §1; repealed by 1971 c.741 §38]

35.050 [Repealed by 1971 c.741 §38]

35.060 [Repealed by 1971 c.741 §38]

35.070 [Amended by 1967 c.479 §2; repealed by 1971 c.741 §38]

35.080 [Repealed by 1971 c.741 §38]

35.085 [1967 c.479 §§4, 5; repealed by 1971 c.741 §38]

35.090 [Repealed by 1971 c.741 §38]

35.100 [Repealed by 1971 c.741 §38]

35.105 [1967 c.479 §6; repealed by 1971 c.741 §38]

35.110 [Repealed by 1971 c.741 §38]

35.120 [Repealed by 1971 c.741 §38]

35.130 [Repealed by 1971 c.741 §38]

35.140 [Repealed by 1971 c.741 §38]

Note: Section 21, chapter 741, Oregon Laws 1971 provides:

Sec. 21. Sections 2 to 20 of this Act do not apply to any condemnation action or proceeding commenced prior to the effective date of this act [September 9, 1971]. Any such action or proceeding commenced prior to the effective date of this Act [September 9, 1971] shall continue under the applicable statutes in effect on January 1, 1971.

35.205 Short title. This chapter may be cited as the General Condemnation Procedure Act.

[1971 c.741 §2]

35.215 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Condemner" means the state, any city, county, school district, municipal or public corporation, political subdivision or any instrumentality or any agency thereof or a private corporation that has the power to exercise the right of eminent domain.

(2) "Owner" or "owner of the property" means the owner of property as that term is defined in subsection (5) of this section.

(3) "Person" means person as defined by subsection (3) of ORS 174.100 and also includes the state, any city, county, school district, municipal or public corporation, political subdivision or any instrumentality or any agency thereof.

(4) "Private condemner" means a private corporation that has the power to exercise the right of eminent domain.

(5) "Property" means real or personal property or any interest therein of any kind or nature, that is subject to condemnation.

(6) "Public condemner" means condemner" other than private condemner. [1971 c.741 §4]

35.225 Action for condemnation as action at law. Except as otherwise provided in this chapter, an action for condemnation of property shall be commenced and prosecuted to final determination as an action at law. [1971 c.741 §5]

35.235 Agreement for compensation; status of resolution or ordinance of public condemner; agreement effort not prerequisite. (1) Subject to ORS 492.100 and 758.015, whenever in the judgment of the condemner it is necessary to acquire property for a purpose for which the condemner is authorized by law to acquire property, the condemner shall, after first declaring by resolution or ordinance such necessity and the purpose for which it is required, attempt to agree with the owner with respect to the compensation to be paid therefor, and the damages, if any, for the taking thereof.

(2) The resolution or ordinance of a public condemner is presumptive evidence of the public necessity of the proposed use, that the property is necessary therefor and that the proposed use, improvement or project is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

(3) It is not a prerequisite to the exercise of the right of eminent domain by the condemner to attempt first to agree with an owner or to allege or prove any effort to agree with such owner as to reasonable value, when such owner is at the time concealed within the state or, after reasonable effort by condemner, cannot be found within the state.

[1971 c.741 §6]

35.245 Commencement of action; jurisdiction; parties. (1) If the condemner is unable to agree with or locate the owner of the property under ORS 35.235, then an action to condemn property may be commenced in the circuit court of the county in which the property proposed to be condemned, or the greater portion thereof, is located.

(2) An action may be commenced against the person in whose name the record title appears. There may be included as defendants any lessee or other person in possession and all other persons having or claiming an interest in the property.

[1971 c.741 §7]

35.255 Content of complaint; service of summons. (1) The complaint shall describe the property sought to be condemned and shall allege the true value of the property sought and the damage, if any, resulting from the appropriation thereof.

(2) 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.

[1971 c.741 §8]

35.265 Advance deposit by public condemner requiring immediate possession; effect on interest otherwise allowable. (1) When a public condemner commences an action for the condemnation of property and immediate possession of the property is considered necessary by the public condemner, a fund shall be created in the amount estimated to be the just compensation for the property and placed in the hands of the treasurer of the public condemner for deposit with the clerk of the court wherein the action was commenced, for the use of the defendants in the action.

(2) When the public condemner is a state agency and immediate possession of property is considered necessary by the agency, the agency shall certify to such facts and authorize an advancement out of funds available to the agency of the amount estimated by the agency to be just compensation for the property. Upon such certification and authorization, a warrant shall be drawn in favor of the clerk of the court in the amount authorized.

(3) Upon the deposit in court by the public condemner of the estimated amount of just compensation as provided by subsections (1) and (2) of this section, no interest shall be allowed thereon in any final judgment.

[1971 c.741 §10]

35.275 Advance occupancy by private condemner; hearing; deposit or bond; effect of size of bond or deposit on amount of just compensation. (1) At any time after an action is commenced to acquire any property, a private condemner may apply to the court for an order to occupy the property to be condemned and to make use of the property for the purposes for which it is being appropriated.

(2) At the hearing on the motion, the court shall determine the reasons for requir-

ing a speedy occupation. The court shall grant the motion if, giving consideration to the public interest involved, it finds that the interests of the owners will be adequately protected. The court may make such provisions or orders as necessary, so that the advance taking or an advance payment, as provided by subsection (3) of this section, will not be prejudicial to either party.

(3) (a) If an order to occupy the property is granted, it may also require the private condemner to deposit with the court either such sum as the court finds reasonable on account of just compensation to be awarded or to deposit a surety bond in an amount and with such surety as the court may approve. The surety bond shall be conditioned to the effect that the private condemner shall pay to the owners of the property just compensation for the property taken or restitution, if any, and costs, disbursements and reasonable attorney fees as finally determined.

(b) After an order to occupy is entered, if it appears necessary in order to protect the interests of the owners of the property, the court at any time may require the private condemner to deposit with the court an additional bond or sum on account of just compensation to be awarded.

(c) Evidence as to the finding of the court regarding the amount of such bond or deposit shall not be admissible at the trial of just compensation.

[1971 c.741 §11]

35.285 Distribution of deposits; withdrawal not to effect right of appeal. (1) The court may distribute all or any part of the funds deposited by a condemner to the persons entitled thereto for or on account of the just compensation to be awarded in the action, upon such terms and conditions as may appear just and reasonable.

(2) Any persons entitled to withdraw any or all of the deposit, as provided by subsection (1) of this section, may do so at any time without waiving rights of appeal provided by ORS 35.355.

[1971 c.741 §12]

35.295 Defendant's answer. The defendant in his answer may set forth any legal defense he may have to the condemnation. He shall also allege the true value of the property and the damage, if any, resulting from the appropriation thereof.

[1971 c.741 §13]

35.305 Conduct of trial; defendant's option; jury argument; neither side has burden of proof of just compensation. (1) Evidence shall be received and the trial conducted in the order and manner prescribed by ORS chapter 17, except that the defendant shall have the option of proceeding first or last in the presentation of evidence, if notice of such election is filed with the court and served on the condemner at least seven days prior to the date set for trial. If no notice of election is filed, the condemner shall proceed first in the presentation of evidence. Unless the case is submitted by both sides to the jury without argument, the party who presents evidence first shall also open and close the argument to the jury.

(2) Condemner and defendant may offer evidence of just compensation, but neither party shall have the burden of proof of just compensation.
[1971 c.741 §14]

35.315 View of property by order of court. If motion is made by either party before the formation of the jury, the court shall order a view of the property in question; and, upon the return of the jury, the evidence of the parties may be heard and the verdict of the jury given.
[1971 c.741 §15]

35.325 Effect of judgment; effect of payment under judgment. Upon the assessment of the compensation by the jury, the court shall give judgment appropriating the property in question to the condemner, conditioned upon the condemner's paying into court the compensation assessed by the jury; and, after the making of such payment, the judgment shall become effective to convey the property, and the right of possession thereof to the condemner if not previously acquired.
[1971 c.741 §16]

35.335 Effect of condemner's abandonment of action. (1) If an action is abandoned by the condemner, the court shall enter judgment in favor of the defendant for his costs and disbursements in the action and for reasonable attorney fees and reasonable expenses as determined by the court.

(2) Expenses mean costs of appraisals and fees for experts incurred in preparing and conducting the defense to the action.

(3) An action is considered abandoned if, at any time after filing a complaint, the case is dismissed or terminated or the condemner

files an election not to take the property. If an election is not filed within 60 days after the verdict, the condemner is considered to have elected to take the property.
[1971 c.741 §17]

35.345 Costs and disbursements. The costs and disbursements of the defendant, including a reasonable attorney fee and reasonable expenses as defined in subsection (2) of ORS 35.335 to be fixed by the court, shall be taxed by the clerk and recovered from the condemner unless the condemner tendered the defendant, before commencing the action, an amount equal to or greater than that assessed by the jury, in which case the condemner shall recover his costs and disbursements from the defendant but not including an attorney fee or expenses as defined in subsection (2) of ORS 35.335.
[1971 c.741 §18]

35.355 Appeal. Either party to the action may appeal from the judgment in like manner and with like effect as in ordinary cases, but the appeal shall not stay the proceedings so as to prevent the condemner from taking possession of the property and using it for the purposes for which it is being appropriated. In the event the defendant prevails on an appeal, the costs and disbursements of the defendant, including a reasonable attorney fee to be fixed by the court, shall be taxed by the clerk and recovered from the condemner.
[1971 c.741 §19]

35.365 Effect of withdrawal of award; disposition of award. If the defendant withdraws the compensation awarded by the court or jury, 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 an unknown owner of the property or other defendant 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.
[1971 c.741 §20]

35.375 Chapter as exclusive action for condemnation. Except as provided in ORS 368.405 to 368.540, any action for the condemnation of property under the power of eminent domain shall be conducted according to this chapter.
[1971 c.741 §3]

EMINENT DOMAIN PROCEDURE

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on December 1, 1971.

Robert W. Lundy
Legislative Counsel

CHAPTERS 36 TO 40
[Reserved for expansion]

