Chapter 35

1973 REPLACEMENT PART

(1977 reprint)

Eminent Domain Procedure

35.205 Short title
35.215 Definitions
35.225 Action for condemnation as action at law
35.235 Agreement for compensation; status of resolution or ordinance of public condemner; status of action of private condemner; agreement effort not prerequisite
35.245 Commencement of action; jurisdiction; parties
35.255 Content of complaint; service of summons
35.265 Advance deposit by public condemner requiring immediate possession; effect on interest otherwise allowable
35.275 Advance occupancy by private condemner; hearing; deposit or bond; effect of size of bond or deposit on amount of just compensation
35.285 Distribution of deposits; effect of withdrawal on appeal
35.295 Defendant's answer
35.305 Conduct of trial; defendant's option; jury argument; neither side has burden of proof of just compensation
35.315 View of property by order of court
35.325 Effect of judgment; effect of payment under judgment
35.335 Effect of condemner's abandonment of action
35.346 Offer to purchase required prior to filing action for condemnation; when costs and disbursements allowed
35.355 Appeal
35.365 Effect of withdrawal of award; disposition of award
35.375 Chapter as exclusive action for condemnation
35.385 Public purpose use required of condemner; right of repurchase; specification of duration of public purpose use; effect
35.390 Effect of failure of condemner to use property as required; price of repurchase; form of offer of repurchase
35.395 Change in period of use; notice; effect of failure to agree on change; review by court
35.400 Designation of person to exercise right of repurchase; effect of failure to designate; offer to repurchase; acceptance; notice; determination of price
35.405 Designation of person to exercise right of repurchase by multiple owners
35.410 Right to contest change in public purpose use; notice of proposed change
35.415 Application of ORS 35.385 to 35.415

CROSS REFERENCES

Assessment and tender of compensation required prior to taking, except in case of the state, Const Art I, §18, Const Art. XI, §4
Conservation easements, acquisition, 271 720
Costs and attorney fees, 20 085
County road legalization procedure, 368 600
Geothermal heating districts, Ch. 523
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
Scenic easements, acquisition, 271 720
Willamette River Greenway, 390 310 to 390 368

35.235

Determination of right of railroad to cross constructed line of another railroad, 772.025

35.275

Assessment and tender of compensation required prior to taking, except in case of the state, Const. Art I, §18, Const Art. XI, §4
Deposit in lieu of bond, 22 020 to 22 070

35.325

Judgment authorizing one railroad to use another's right of way, 772.030
Taxes on land acquired by eminent domain, payment, 311 412, 311 413

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]

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; status of action of private 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) The commencement of an action to condemn property by a private condemner creates a disputable presumption of the 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.

(4) The question of the validity of the disputable presumptions created in subsection (3) of this section, if raised, shall be determined by the court in a summary proceeding prior to trial.

(5) 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, 1973 c 579 §1]

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 requiring 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; effect of withdrawal on 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 condemna-

tion. 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 [1971 c.741 §18, repealed by 1973 c.617 §1 (35 346 enacted in lieu of 35 345)]

35.346 Offer to purchase required prior to filing action for condemnation; when costs and disbursements allowed. (1) At least 20 days prior to the filing of any action for condemnation of property or any interest therein, the condemner shall make a written offer to the owner or party having an interest to purchase the property or interest, and to pay a stated amount as compensation therefor and for any compensable damages to remaining property.

(2) If a trial is held for the fixing of the amount of compensation to be awarded to the defendant owner or party having an interest in the property being condemned, the court shall award said defendant costs and disbursements including reasonable attorney fees and reasonable expenses as defined in subsection (2) of ORS 35.335 in the following cases, and no other:

(a) If the amount of just compensation assessed by the verdict in the trial exceeds the highest written offer in settlement submitted by condemner to those defendants appearing in the action at least 30 days prior to commencement of said trial; or

(b) If the court finds that the first written offer made by condemner to defendant in settlement prior to filing of the action did not constitute a good faith offer of an amount reasonably believed by condemner to be just compensation.

(3) Costs and disbursements other than reasonable attorney fees and expenses as defined in subsection (2) of ORS 35.335 shall be awarded to condemner in all cases other than those in which defendant is entitled to costs and disbursements under subsection (2) of this section.
[1973 c.617 §2 (enacted in lieu of 35 345)]

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 appropri-

ated. 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]

35.385 Public purpose use required of condemner; right of repurchase; specification of duration of public purpose use; effect. (1) If real property is acquired by a condemner by agreement with the owner of such property after commencement of an action under ORS 35.245 for the appropriation of such property but prior to judgment in such action, the condemner and the owner shall:

(a) Specify in such agreement for the real property a reasonable period within which the real property must be used by the condemner for a public purpose or specify a 10-year period for such use and provide that the right of repurchase of the real property or any portion thereof may be exercised as provided in ORS 35.385 to 35.415; or

(b) Specify that the right of repurchase of the real property has been waived by the owner and, in such case, not specify a period within which the real property must be used by the condemner for a public purpose.

(2) If real property is acquired by a condemner under this chapter by judgment given in a condemnation action under ORS 35.325, the court shall:

(a) Specify in the judgment a reasonable period within which the real property must be used by the condemner for a public purpose or specify a 10-year period, and provide that the right of repurchase may be exercised with respect to the real property as provided in ORS 35.385 to 35.415; or

(b) Specify that the right of repurchase of the real property has been waived by the owner and, in such case, not specify a period within which the real property must be used by the condemner for a public purpose.

(3) For the purposes of paragraph (a) of subsection (2) of this section, the resolution or ordinance of the condemner is presumptive evidence that the period of time that is proposed by the condemner is a reasonable period in which the real property must be used by the condemner for a public purpose; provided, however, that if the resolution or ordinance specifies a 10-year period or less, neither the owner nor his designated beneficiary can contest the reasonableness of the period specified.
[1973 c 720 §2]

35.390 Effect of failure of condemner to use property as required; price of repurchase; form of offer of repurchase. (1) If a condemner fails to use the real property or any portion thereof acquired under this chapter within the time specified in an agreement entered into under subsection (1) of ORS 35.385 or with the terms of a judgment given under ORS 35.325 and subsection (2) of ORS 35.385, whichever applies, and the prior owner of the real property has not waived the right to repurchase the real property, the condemner shall offer such property or any portion thereof, that has not been used for a public purpose within the specified period, to the prior owner or his beneficiary designated as provided in ORS 35.400. The condemner shall, at its expense, insure the title to any property or portion thereof conveyed or vested in the owner or beneficiary under any provision of ORS 35.385 to 35.415, free and clear of any and all encumbrances except those subject to which the condemner originally took such property.

(2) The prior owner or beneficiary described in subsection (1) of this section may repurchase from the condemner the real property that is subject to the right of repurchase for a price equal to the sum of the compensation and damages paid by the condemner for the real property plus interest at the rate of seven percent per year from the date of the conveyance of the real property by the prior owner to the condemner.

(3) If only a portion of the real property acquired by a condemner is subject to the right of repurchase under ORS 35.385 to 35.415, the prior owner or beneficiary may

acquire such portion for a price equal to the sum of:

(a) The fair cash market value of the portion subject to the right of repurchase, as of the date of the commencement of any action subject to ORS 35.385; and

(b) The damages for diminution in value of the remainder, if any, of the former owner's property not so acquired, as of the date of the commencement of any action subject to ORS 35.385; and

(c) Interest at the rate of seven percent per year from the date of the conveyance of the real property by the prior owner to the condemner.

(4) The offer to repurchase only a portion of real property as provided in subsection (1) of this section and subsection (3) of ORS 35.400, shall be in writing and shall include the price for repurchase as determined by the condemner, including an itemization of the components thereof, pursuant to subsection (3) of this section.
[1973 c 720 §3]

35.395 Change in period of use; notice; effect of failure to agree on change; review by court. (1) The period specified in an agreement or judgment as provided in ORS 35.385 may be changed as provided in this section, if the prior owner of the real property has not waived the right of repurchase and the condemner finds that it will be unable to use all or a portion of the real property for such purpose within the specified period and requires a reasonable extension of such period for the completion of its project on the real property.

(2) Upon a finding under subsection (1) of this section, a condemner shall notify the prior owner or designated beneficiary of the requested change in period. The condemner shall negotiate with the prior owner or beneficiary on the requested change.

(a) Notification under this subsection shall consist of mailing a letter by certified mail to the last address of the prior owner or his designated beneficiary as shown in the agreement or judgment whereby the real property was acquired or the address subsequently supplied by such owner or beneficiary. If no response has been received by the condemner within 60 days after receipt of notice by the owner or designated beneficiary, all the rights of the owner or designated beneficiary under ORS 35.385 to 35.415 shall be considered waived.

(b) If the condemner cannot locate the prior owner or his designated beneficiary at his last-known address, notice may be effected by publication. The publication shall be made in a newspaper published in the county where the property is located, or if no newspaper is published in the county, then in a newspaper designated as being most likely to give notice to the prior owner or his beneficiary. The newspaper utilized shall meet the requirements of ORS 193.020. The notice shall contain the name of the public project, a general description of the location of the property, the change in purpose or extension of time desired by the condemner and a time within which the owner or his beneficiary must respond to the notice. The notice shall be published not less than once each week for four weeks. The publication of notice may be directed to one or more owners or beneficiaries affected by the same project. If no response is received by the condemner within 10 days after the date of the last publication of notice, all rights of the prior owner or designated beneficiary shall be considered waived.

(3) If, after negotiation, the prior owner or beneficiary and the condemner agree on the proposed change in period, the period as changed shall, for the purposes of ORS 35.385 to 35.415, be considered the period as specified in the agreement or judgment under ORS 35.385. In the case of real property acquired by a condemner by judgment under ORS 35.325, the condemner shall notify the court by which the judgment was given of the agreed upon change in period and the court shall modify such judgment accordingly.

(4) If the prior owner or beneficiary and the condemner cannot, after negotiation, agree on the proposed change in period, the condemner may:

(a) In the case of real property acquired by an agreement under subsection (1) of ORS 35.235, petition the circuit court for the county within which such real property is situated for a hearing to determine whether the proposed change in period is reasonable and necessary in the public interest; or

(b) In the case of real property acquired by a judgment given under ORS 35.325, petition the court by which such judgment was given for a hearing to determine whether it is reasonable and necessary in the public interest to modify such judgment to permit the proposed change in period. The condemner in its petition may include as parties and serve all or any owners and designated beneficiaries

whose property is affected by the same project.

(5) If, after a hearing under subsection (4) of this section, the court finds that the proposed change in period is reasonable and necessary in the public interest, the court shall grant such change. For the purposes of ORS 35.385 to 35.415, a period as changed by the court shall be considered the period specified in the agreement or judgment described in ORS 35.385. For the purposes of this subsection, the resolution or ordinance of the condemner is presumptive evidence that the change in period proposed by the condemner is reasonable and necessary in the public interest.

(6) If, after a hearing under subsection (4) of this section, the court finds that the proposed change in period is unreasonable or not necessary in the public interest, the court shall deny the requested change. In such case, the terms of the original agreement or judgment shall control for the purpose of the exercise of the right of repurchase under ORS 35.385 to 35.415.
[1973 c 720 §4]

35.400 Designation of person to exercise right of repurchase; effect of failure to designate; offer to repurchase; acceptance; notice; determination of price. (1) At the time of entering into an agreement pursuant to subsection (1) of ORS 35.385 for the acquisition of real property by a condemner or prior to the time of giving judgment for the acquisition of real property by a condemner under ORS 35.325, the owner of the real property to be acquired may, if such owner has not waived the right of repurchase under ORS 35.385 to 35.415, designate a person to exercise such right of repurchase. Such designation shall constitute an assignment of the right of the owner of such property to exercise the right of repurchase otherwise available under ORS 35.385 to 35.415. The name and address of the person so designated shall be included in such agreement or judgment. Such owners and designated beneficiaries shall also notify the condemner in writing of any change of address so that their respective current addresses shall be of record with the condemner. The person so designated may not assign or transfer the right of repurchase.

(2) If an owner of real property to be acquired by a condemner does not designate a person to exercise the right of repurchase under ORS 35.385 to 35.415 and such owner has not waived such right of repurchase, only the owner may exercise the right of repurchase under ORS 35.385 to 35.415. If such owner dies while real property is still subject to a right of repurchase by him, the personal representative of such owner's estate may act as the owner to exercise the right of repurchase with respect to such property on behalf of the estate of the owner at any time prior to his discharge under ORS 116.213.

(3) Upon receipt from a condemner of an offer to repurchase any real property or portion thereof in accordance with ORS 35.385 to 35.415:

(a) In the case of an offer to repurchase the entire parcel of real property to which ORS 35.385 applies, if the owner or beneficiary of such right of repurchase does not accept such offer within 30 days, the right of repurchase is terminated and the condemner may use and dispose of such property or portion as otherwise provided by law.

(b) In the case of an offer to repurchase only a portion of a parcel of real property to which ORS 35.385 applies, the owner or beneficiary of such right of repurchase may:

(A) Accept such offer within 30 days; or

(B) Notify the condemner within 30 days of his desire to exercise such right, but refuse to accept the price established by the condemner in the offer to repurchase made pursuant to subsection (4) of ORS 35.390.

(c) If the owner or beneficiary of the right of repurchase fails to timely notify the condemner pursuant to either subparagraph (A) or (B) of paragraph (b) of this subsection, the right of repurchase is terminated and the condemner may use or dispose of such portion of property as otherwise provided by law.

(d) If timely notice of intent to exercise the right of repurchase is given by the owner or beneficiary as provided by subparagraph (B) of paragraph (b) of this subsection, he must within 60 days thereafter commence an action, in the court in which the original action by the condemner to acquire such real property was commenced, to determine the sole issue of the price to be paid upon such repurchase, pursuant to the provisions of subsection (3) of ORS 35.390. Failure to commence such an action within such 60-day period shall void such notice of intention to exercise repurchase for the purposes of paragraph (c) of this subsection.

(A) Upon the determination of the price for repurchase by the court or jury, the court shall give judgment vesting title to the property in the owner or the beneficiary, conditioned upon payment into court of the as-

sessed price by the owner or beneficiary within 90 days after the date of the judgment; and upon the making of such payment, the judgment shall become effective to convey the property and the right of possession thereof to the owner or beneficiary. Failure to make such payment into court within 90 days of the date of the judgment shall void the notice of intent to exercise the right of repurchase for the purposes of paragraph (c) of this subsection, and the judgment shall be withdrawn by the court.

(B) If the price determined pursuant to the provisions of this paragraph is less than the price established by the condemner in its written offer to repurchase, the costs and disbursements of the owner or beneficiary, as specified in ORS 35.335 and 35.345, shall be taxed by the clerk; and the judgment rendered shall reflect such costs and disbursements only as an offset against the price to be paid into court by the owner or beneficiary.
[1973 c 720 §5]

35.405 Designation of person to exercise right of repurchase by multiple owners. Notwithstanding any other provision of ORS 35.385 to 35.415, in any instance in which ORS 35.385 applies, where the agreement by which the condemner acquired the property is executed by more than one person exclusive of the condemner, or where the judgment given in a condemnation action by which the condemner acquired the property includes more than one named defendant, all such persons executing such agreement, or all such named defendants must designate one person to act as beneficiary in the exercise of the right of repurchase, unless all such persons executing such agreement, or all such named defendants, waive such right of repurchase as provided in ORS 35.385 to 35.415. Such designated beneficiary thereafter shall exclusively have and exclusively may exercise all rights, remedies and obligations provided in ORS 35.385 to 35.415.
[1973 c.720 §6]

35.410 Right to contest change in public purpose use; notice of proposed change. A prior owner of real property acquired pursuant to an agreement entered into under subsection (1) of ORS 35.385 or a judgment given under ORS 35.235 and subsection (2) of 35.385, whichever applies, or the designated beneficiary of such owner, may contest any proposed change by the condemner in the public purpose for which such real property was acquired in the manner provided for contesting a change in the period specified for the use of such real property by the condemner under subsection (4) of ORS 35.395. The resolution or ordinance of the condemner is presumptive evidence that a proposed change of use proposed by the condemner is reasonable and necessary in the public interest. Each condemner proposing any such change in public purpose shall notify each such owner or designated beneficiary of such proposed change and the reasons therefor in the manner provided in subsection (2) of ORS 35.395 for notification of a proposed change in the period specified for use of such real property by the condemner. Each such notice shall be mailed to the most recent address of the owner or designated beneficiary of record with the condemner.
[1973 c.720 §7]

35.415 Application of ORS 35.385 to 35.415. (1) ORS 35.385 to 35.415 applies only to property acquired after the filing of a complaint pursuant to a resolution or ordinance adopted as provided in subsection (1) of ORS 35.235 on or after October 5, 1973, and for which a condemnation action is commenced on or after October 5, 1973.

(2) Notwithstanding ORS 35.375, ORS 35.385 to 35.415 applies to real property acquired by a county pursuant to ORS 368.405 to 368.540.

(3) ORS 35.385 to 35.415 shall not apply to any real property acquired under subsections (1) and (2) of ORS 35.385 after the date the real property is used for the purpose for which it was acquired nor shall ORS 35.385 to 35.415 apply to any tract of real property where the compensation and damages paid to the owner is less than $1,000.
[1973 c 720 §8]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173 170, I, Thomas G Clifford, 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,
November 1, 1973

Thomas G Clifford
Legislative Counsel

CHAPTERS 36 TO 40

[Reserved for expansion]