

**§1813. Acquisition of railroad rights-of-way for open space or recreation corridors**

For the purpose of establishing, preserving or enhancing corridors for use for open space or recreation, the director may acquire with the consent of the Governor and the commissioner, by license, lease, purchase, gift or eminent domain, railroad rights-of-way upon which rail service is no longer operated except that the right of eminent domain may not be exercised without prior review by the joint standing committee of the Legislature having jurisdiction over conservation matters. When railroad rights-of-way or interests in railroad rights-of-way are taken by eminent domain, the proceedings must be in accordance with this section and are not subject to Title 35-A, chapter 65. For purposes of these acquisitions, the term "owner" as used in this section means the person holding the dominant rights in the property immediately prior to the termination of the operation of rail service and that person's successors and assigns. Acquisitions pursuant to this subsection are not subject to any limitation in acreage. [PL 2009, c. 356, Pt. B, §2 (AMD).]

If the bureau decides to acquire property by eminent domain, it must have the property appraised and offer to the owner just compensation for the interests acquired. The bureau must file in the registry of deeds for each county in which the property lies a notice of the taking that contains a description of the property and of the interest taken and the name or names of the owner or owners. The bureau may join one or more properties in the same notice, whether those properties are in the same or different ownership. A check in the amount of the award and a copy of the notice of taking must be served upon the owner or owners. If there is more than one owner, the check may be served upon any one of the owners of each separate property. The notice of the taking must be published once in a newspaper of general circulation in each county where the property lies, and that publication constitutes service on any unknown owner or owners or other persons who may have a claim or interest in the property. [PL 1997, c. 678, §13 (NEW); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §24 (REV).]

Railroad rights-of-way or other interests within the jurisdiction of the United States Interstate Commerce Commission may not be acquired by eminent domain. [PL 1997, c. 678, §13 (NEW).]

If any owner is aggrieved by the bureau's award, the owner may appeal from it to the Kennebec County Superior Court or the Superior Court in the county in which the land lies within 30 days after the date of service or publication of the notice of the taking. The appeal must be taken by filing a complaint setting forth the facts upon which the case will be tried according to the Maine Rules of Civil Procedure. The Superior Court shall determine damages by a jury verdict or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for any damages, with interest when it is due. [PL 1997, c. 678, §13 (NEW); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §24 (REV).]

Except in the case of an acquisition by license or lease and unless otherwise specifically excepted by the bureau, all reversionary and servient rights in and any other conflicting claims to property acquired pursuant to this section terminate and are extinguished forever as of the date of the acquisition by the bureau. Any person who makes a claim to the property must mail a written notice to the owner and the bureau. Any person damaged by the extinguishing of those rights may make claim for damages in accordance with the eminent domain appeal procedures of this section within 2 years of the date of the acquisition. The burden of proving the validity, compensability and value of any claim is upon the claimant. Notice of the acquisition must be given to the apparent holders of such interests as provided in this section. If the bureau determines that the property acquired may be subject to reversionary or servient interests or other conflicting claims, in order to avoid double or multiple liability, the bureau may make a blanket award of compensation for the acquisition and, instead of serving the award check on the owner, request that the Treasurer of State establish an interest-bearing account into which the full amount of that compensation is deposited. The funds and any interest accrued must be disposed of

as follows. [PL 1997, c. 678, §13 (NEW); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §24 (REV).]

**1. No claims made or action filed within 2-year period.** If the 2-year period for filing a claim for damages for the extinguishment of a reversionary or servient right or other conflicting claim expires and no claim has been made or action filed, then the Treasurer of State upon request by the bureau shall pay the funds deposited, including any interest accrued, to the owner as defined in this section. [PL 1997, c. 678, §13 (NEW); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §24 (REV).]

**2. Claims made or action filed within 2-year period.** If one or more claims have been made or an action filed prior to the expiration of the 2-year period for filing a claim for damages, then the owner as defined in this section must be made a party to those claims and the Treasurer of State shall distribute the deposited funds, including any interest accrued, in accordance with the final order entered in such proceedings, including any appeals. [PL 1997, c. 678, §13 (NEW).]

As a result of the difficulty of determining the identities and addresses of the possible holders of reversionary or servient rights or other conflicting claims, personal notice to those holders and their mortgagees is deemed given if the bureau mails a notice of the acquisition, including a description of its effect of extinguishing those rights, first class postage prepaid, to each person shown in the real estate tax records of the municipality in which the property lies as the apparent owner of land abutting the property taken. Notice must be posted in the municipal office building, if any, for that municipality and must be published once in a newspaper of general circulation in the county in which the property lies. [PL 1997, c. 678, §13 (NEW); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §24 (REV).]

#### SECTION HISTORY

PL 1997, c. 678, §13 (NEW). PL 2009, c. 356, Pt. B, §2 (AMD). PL 2011, c. 657, Pt. W, §7 (REV). PL 2013, c. 405, Pt. A, §24 (REV).

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