

**§154. Condemnation proceedings**

If the department determines that public exigency requires the taking of property or any interest in property, or is unable to purchase a property or any interest in a property, or the necessary ways and access to a property at what it considers a reasonable valuation, or if the title in a property is defective, it shall file in the registry of deeds for the county or registry district where the land is located a notice of condemnation which must contain a description of the project specifying the property and the interest taken and the name or names of the owner or owners of record so far as they can be reasonably determined. The department may prescribe procedures for the reasonable determination of the owner or owners of record. The department may join in the notice one or more separate properties whether in the same or different ownership and whether or not taken for the same use. [PL 1997, c. 272, §2 (AMD).]

The department shall serve a check in the amount of the determined net damage and offering price and a copy of the notice of condemnation on the owner or owners of record. In case there is multiple ownership, the check may be served on any one of the owners. With that copy the department must serve on each individual owner of record a copy of that part of the plan as relates to the particular parcel or parcels of land taken from that owner and a statement by the department with respect to the particular parcel or parcels of land taken from that owner which must: [PL 1997, c. 272, §2 (AMD).]

**1. Date of proposed possession.** State the proposed date of taking possession; [PL 1981, c. 470, Pt. A, §125 (AMD).]

**2. Compensation involving severance damage.** Where the department appraisals disclose severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:

- A. The highest and best use of the property at the date of taking;
- B. The highest and best use of the property remaining after the taking;
- C. The fair market value of the property before the taking;
- D. The fair market value of the property after the taking;
- E. The gross damage, showing separately:
  - (1) The fair market value of the real property taken; and
  - (2) Severance damages including the impairment or destruction of facilities and structures; [PL 1981, c. 470, Pt. A, §126 (AMD).]
- F. Special benefits, accruing to the remaining property by reason of the public improvement for which part of the property is taken, to be set off against severance damages; [PL 1975, c. 431, §4 (AMD).]
- G. The net damage showing separately:
  - (1) The fair market value of the real property taken;
  - (2) The amount of severance damages in excess of special benefits; and
  - (3) The offering price; [PL 1997, c. 272, §2 (AMD).]
- H. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within said 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and [PL 1987, c. 395, Pt. A, §94 (AMD).]
- I. Enclosed Check No.: ..... Amount: \$ .....

Payable to: .....

Sent to: .....

[PL 1997, c. 272, §2 (AMD).]

**3. Compensation not involving severance damage.** Where the department appraisals disclose no severance damages, state the amount of compensation itemized in accordance with the department's determination of the following elements of damage:

- A. The highest and best use of the property at the date of taking;
  - B. [PL 1975, c. 431, §6 (RP).]
  - C. The fair market value of the real property taken as of the date of taking; [PL 1975, c. 431, §7 (AMD).]
  - D. [PL 1975, c. 431, §8 (RP).]
  - E. Offering price; [PL 1975, c. 431, §9 (RPR).]
  - F. The check represents the State's offer of just compensation. If the offer is not acceptable and the State cannot negotiate an agreement on the amount of just compensation within 60 days from the date of taking, the owner may apply to the department within the 60 days and have the matter referred to the State Claims Commission for assessment of the damage. Acceptance and cashing this check will not jeopardize negotiation and will not be construed as acceptance of the offer; and [PL 1997, c. 272, §2 (AMD).]
  - G. Enclosed Check No.: ..... Amount: \$ .....
- Payable to: .....
- Sent to: .....

[PL 1997, c. 272, §2 (AMD).]

**4. Compensation in cases involving the facilities of a public utility.** Where the condemnation involves the taking of established rights and facilities owned by a public utility and located outside of an established highway right-of-way, no statement by the department as provided above may be sent to the public utility concerned. In any negotiations for an agreement with such public utility with regard to such rights and facilities, the department shall consider, without being limited to, the following elements of damage:

- A. Relocation costs, which must include the cost of acquisition of substitute rights and the cost of establishing either existing or substitute facilities in a new location; [PL 1997, c. 272, §2 (AMD).]
- B. The salvage value of facilities removed;
- C. Cost of removal; and [PL 1981, c. 470, Pt. A, §129 (AMD).]
- D. The value of betterments where the function of the substitute facilities exceeds the function of the replaced facilities. [PL 1981, c. 470, Pt. A, §129 (AMD).]

[PL 1997, c. 272, §2 (AMD).]

Service of the notice of condemnation with a copy of the plan, check and the statement by the department must be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. A notice describing the condemnation must be published once in a newspaper of general circulation in the county where the property is located and such publication constitutes service on any unknown owner or owners or other persons who may have or claim an interest in the property. The notice must consist of an area map depicting the general location of the property interests to be condemned and such other information as the department determines will sufficiently identify the area in which the property interests are to be taken; an informative summary listing the parcel or item numbers to be condemned, the name of the apparent owner or owners of record of the property interests, the estimated areas to be condemned and the nature

of the interests to be condemned; and a location at which the complete notice of layout and taking may be examined. [PL 1997, c. 272, §2 (AMD).]

If such owner is a person under the age of 18 years, or an incompetent person, the commission shall cause such notice and check to be served upon the legal guardian of such person or incompetent. If there is no such guardian, then the department shall apply to the judge of probate for the county wherein the property is situated, briefly stating the facts and requesting the appointment of a guardian. The reasonable fee of such guardian as approved by the court must be paid by the department. [PL 1997, c. 272, §2 (AMD).]

In case there is a mortgage, tax lien of record or other encumbrance covering any of said land, a copy of the notice of condemnation must be sent forthwith by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to the holder's office or place of abode if known, otherwise to the office, abode or address as set forth in said record. [PL 1997, c. 272, §2 (AMD).]

The recording of the notice of condemnation is the date of taking and vests title to the property therein described in the State in fee simple or such lesser state as is specified in the notice of condemnation. Within one year after the completion of the project for which the land is taken, the department shall file a plan for recording in the registry of deeds for the county or registry district where the land is located. [PL 1997, c. 272, §2 (AMD).]

If a condemnation proceeding is instituted and then abandoned, the owner of any right, title or interest in any real property included in said proceeding must be reimbursed by the department for reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings. [PL 1997, c. 272, §2 (AMD).]

#### SECTION HISTORY

PL 1965, c. 297, §§1-4 (AMD). PL 1965, c. 492, §2 (AMD). PL 1969, c. 433, §58 (AMD). PL 1971, c. 333, §3 (AMD). PL 1971, c. 593, §22 (AMD). PL 1971, c. 598, §46 (AMD). PL 1975, c. 431, §§4-9 (AMD). PL 1975, c. 771, §§237,238 (AMD). PL 1981, c. 470, §§A124-A129 (AMD). PL 1987, c. 395, §§A94,A95 (AMD). PL 1997, c. 272, §2 (AMD).

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