

## CHAPTER 65

### PROPERTY TAKEN FOR PUBLIC USE AND ASSESSMENT OF DAMAGES

#### §6501. Rights of parties as to procedure

**1. Locations and damages.** All locations made and all damages assessed for the taking of property by the exercise of the right of eminent domain shall be made and assessed and the rights of the parties shall be as stated in this chapter, notwithstanding anything contained in the act granting the right.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**2. Water utilities may exercise right of eminent domain.** Water utilities may exercise the right of eminent domain for obtaining sources of supply and locations for storage and for the protection of them and locations for transmission and distribution of water to the public under this chapter and chapter 69.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**3. Exceptions.** Except as otherwise provided by law, this chapter does not apply to:

A. Property taken by the United States, the State of Maine, a county or municipality of the State, a quasi-municipal corporation or steam railroad corporation; and [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Property which, when taken, is being or is necessary to be used by the owner in the performance of a public duty. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 2001, c. 608, §5 (AMD).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 2001, c. 608, §5 (AMD).

#### §6502. Proceedings before entry; location and map; description

**1. Description.** All property taken by eminent domain shall, before it is entered upon for any purpose except to make surveys, be located by a description, signed by the party taking the property. The description shall:

A. Describe in detail the property taken; [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Give the names of the owners; and [PL 1987, c. 141, Pt. A, §6 (NEW).]

C. Be accompanied by a map showing the property as described. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**2. Filing location and map.** The party taking the property shall file the location and map with the county commissioners of the county where the property is located, who shall:

A. Endorse the time of filing on the location and map; and [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Order the location recorded. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**3. Recording location.** The taker shall record the location in the registry of deeds of the county or registry district where the property is located.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**4. Personal notice given to mortgage holder.** When there is a recorded mortgage covering any portion of the land taken, which has been recorded within 40 years of the taking and bears no record of

discharge, satisfaction or release, the taker shall give personal notice to the owner of record of the mortgage by sending to the mortgage holder's residence, if known, otherwise to the residence or address set forth in the record, by registered mail, a written notice of the taking which shall contain a description of the property taken and the name of the owner.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**5. Description corrected.** When for any reason the taker fails to acquire the property authorized to be taken and which is described in the location, or the location recorded is defective or uncertain, the taker may, at any time, correct and perfect the location and file a new description.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**6. Liability of taker.** If a description is corrected under subsection 5, the taker is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the taker shall not be liable for any acts which would have been justified if the original taking had been valid.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

#### §6503. Damages for property owners; security

**1. Owners entitled to damages.** The owners are entitled to damages for all property taken by eminent domain as if the land were taken for highway purposes under Title 23, chapter 3.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**2. Application procedure.** Upon written application of either party made within 3 years after the taking, the county commissioners shall estimate the damages and the taker shall pay the damages.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**3. Commencement of new proceedings.** If proceedings commenced fail for causes not affecting the merits, new proceedings may be commenced within one year. When no estimate is made within this time, the owner may maintain a civil action or have any remedy provided.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**4. Guardian may give release, interested persons.** The guardian of a person incapable of giving a valid conveyance whose property is taken may settle and give a valid release for damages. Persons having an interest in the property have the rights and remedies of owners to the extent of their interest.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**5. Owner may request security.** When requested by the owner, the county commissioners shall require the taker to give security for the payment of damages and costs by depositing at its risk, with the clerk, within 30 days, specie, notes or obligations of a state or public corporation, or other security satisfactory to the county commissioners.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**6. Satisfaction of judgment.** When the owner is entitled to it, he shall be paid as much of the specie deposited as will satisfy his judgment. Notes or obligations deposited by the taker shall be delivered to the officer having a warrant of distress, to sell as personal property is sold on execution, to satisfy the warrant and fees. Any balance shall be paid to the taker.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

#### §6504. Petition to county commissioners; notice to adverse party

**1. Notice of hearing on petition.** A person who petitions the county commissioners for the assessment of damages on account of property taken by eminent domain shall notify the adverse party of the time and place of the hearing on the petition by:

A. Giving the adverse party personal notice 14 days before the hearing; or [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Publishing the petition and order of notice in a newspaper that is published in the county, 2 weeks successively, the last publication being 14 days before the hearing. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

#### §6505. Terms and conditions for property taken

**1. Accommodation of the owner and taker.** The county commissioners in awarding damages for property taken by eminent domain, upon the application of the owner or the taker, may prescribe terms and conditions, for the use of the property taken, that will best accommodate the owner and the taker.

[PL 1989, c. 159, §10 (AMD).]

**2. Appeal.** In the case of appeal by either party, the only question in issue shall be the amount or measure of damages on the terms and conditions imposed by the commissioners.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1989, c. 159, §10 (AMD).

#### §6506. County commissioners' report

**1. Contents of the report.** The county commissioners shall, at a regular meeting, make a report of their general estimate of damages and cause it to be recorded. In their report, the commissioners shall state specifically:

A. The terms and conditions imposed by them; and [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. The rights and obligations of each party. [PL 1987, c. 141, Pt. A, §6 (NEW).]

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**2. Notice of damage award.** After the report has been recorded, the county commissioners' clerk shall prepare a notice to each person, stating the amount of damages awarded to him. An officer shall serve the notice on those residing in the State. Notice to others shall be by publication 3 weeks successively in a newspaper printed in the county. If there is no newspaper printed in the county, the notice shall be published in a newspaper of general circulation in the area where the property is located. [PL 1987, c. 141, Pt. A, §6 (NEW).]

**3. Expense of notice.** The expense of the notice shall be added to the costs of the proceedings which the taker shall pay.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

#### §6507. Appeals

**1. Aggrieved person may appeal within 30 days of report.** A person aggrieved by the county commissioners' decision as to damages for property taken may appeal to the Superior Court in the county where the property is situated, within 30 days from the date the commissioners' report is made. [PL 1987, c. 141, Pt. A, §6 (NEW).]

**2. Complaint and notice of appeal.** The appellant shall:

A. Include in the complaint a statement setting forth substantially the facts of the case; and [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Give written notice of the appeal with a copy of the complaint to the opposite party. [PL 1987, c. 141, Pt. A, §6 (NEW).]  
[PL 1987, c. 141, Pt. A, §6 (NEW).]

**3. Court to determine amount of damages.** The court shall determine the amount of damages by a committee of reference if the parties agree or by a jury verdict. The court shall render judgment and issue execution.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**4. Recovery of costs.** The parties may recover costs as follows.

A. If the owner appeals and the damage finally recovered is not more than the county commissioners' award, the taker shall recover costs from the time of appeal, otherwise the owner shall recover costs. [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. If the taker appeals and the damage finally recovered is not less than the county commissioners' award, the owner shall recover costs from the time of appeal, otherwise the taker shall recover costs. [PL 1987, c. 141, Pt. A, §6 (NEW).]  
[PL 1987, c. 141, Pt. A, §6 (NEW).]

**5. Additional review.** An appeal may be taken to the Law Court as in other actions.  
[PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

#### §6508. Deposit of awards

When the proceedings are closed, the taker may deposit with the clerk of the court the amount of damages awarded with interest to the time of deposit, which shall be in full satisfaction of all claims, unless a demand has been made previously and payment neglected. [PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

#### §6509. Damages remaining unpaid; proceedings

**1. Damages unpaid for more than 30 days.** When the damages remain unpaid for more than 30 days after they are due and demanded or the security is not deposited, the owner may file in the Superior Court a complaint praying for an injunction against the use or occupation of his property taken. [PL 1987, c. 141, Pt. A, §6 (NEW).]

**2. Proceedings for damages not commenced within 3 years.** If proceedings for an estimation of damages are not commenced within 3 years and the owner of the property files a complaint for them, the court may estimate the damages, decree their payment and issue an execution for the amount. [PL 1987, c. 141, Pt. A, §6 (NEW).]

**3. Court may issue an injunction prohibiting use.** The court, after summary notice to the taker and upon proof of the facts, may, without any bond filed, issue an injunction prohibiting his use and

occupation until he pays all damages and costs. If payment has not been made within 90 days, the court may issue a permanent injunction and all rights acquired by taking the property cease and the owner may maintain an action for its recovery and protection.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

#### §6510. Service of injunction

**1. Injunction may be served on a person who is not a party.** An injunction issued against a person may be served on that person whether or not he is a party to the action and he shall be liable to all the penalties and consequences provided for a breach of the injunction.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**2. Violation of injunction.** The court may order a person who violates the injunction, after service, or who uses the property to show cause at a time fixed why a decree should not be entered and execution issued against him and his goods and estate for the damages, interest, costs and for additional damages and costs for breach of the injunction.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**3. Court may enter decree.** Upon service and return of the order, the court may enter a decree that is just and equitable against the person and issue execution accordingly or may proceed against him for breach of injunction.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

#### §6511. Failure to apply for assessment not a waiver

The property owner's failure to apply for the assessment of damages within 3 years may not be held to be a waiver by him of compensation for property taken by eminent domain. [PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

#### §6512. Proceedings to correct defect in taking by eminent domain

When a taking or attempted taking by eminent domain has been adjudged defective either from formal errors in proceedings or substantial error, judgment of ouster or writ of possession shall be stayed as follows. [PL 1987, c. 141, Pt. A, §6 (NEW).]

**1. Formal errors.** If the error is a formal error in proceedings, the judgment or writ shall be stayed until the utility exercising the right of eminent domain has an opportunity to retake pursuant to the act conferring the right.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**2. Substantial error.** Failure to provide, in an act expressly conferring the right of eminent domain, for an act necessary to carry out the taking is a substantial error and the plaintiff shall be given judgment of title. If the error is substantial, the judgment of ouster or writ of possession shall be stayed until remedial legislation is passed at the session of the Legislature following the rendition of judgment and a new taking had pursuant to the amended Act.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

**3. New taking; civil action not stayed.** The new taking shall be had within 90 days from the rendition of the judgment when the error is merely formal and within 6 months from the adjournment

of the Legislature following the rendition of judgment when the error is substantial. Nothing in this section precludes or stays a civil action for damages, and the owner of the land may maintain a civil action for damages as if in possession.

[PL 1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW).

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