

Enrolled
Senate Bill 794

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to condemnation; creating new provisions; and amending ORS 35.346 and 35.348.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 35.346 is amended to read:

35.346. (1) At least 40 days before the filing of any action for condemnation of property or any interest in property, the condemner shall make [*an initial*] a written offer to the owner or party having an interest to purchase the property or interest, and to pay just compensation therefor and for any compensable damages to remaining property.

(2) The offer shall be accompanied by any written appraisal upon which the condemner relied in establishing the amount of compensation offered. If the condemner determines that the amount of just compensation due is less than \$20,000, the condemner, in lieu of a written appraisal, may provide to the owner or other person having an interest in the property a written explanation of the bases and method by which the condemner arrived at the specific valuation of the property. The amount of just compensation offered shall not be reduced by amendment or otherwise before or during trial except on order of the court entered not less than 60 days prior to trial. An order for reduction of just compensation offered, pleaded by the condemner in the complaint or deposited with the court for the use and benefit of the owner pending outcome of the condemnation action, may be entered only upon motion of the condemner and a finding by clear and convincing evidence that the appraisal upon which the original offer is based was the result of a mistake of material fact that was not known and could not reasonably have been known at the time of the original appraisal or was based on a mistake of law.

(3) Unless otherwise agreed to by the condemner and the owner, prior to appraising the property the condemner shall provide not less than 15 days' written notice to the owner of the planned appraisal inspection. The property owner and designated representative, if any, shall be invited to accompany the condemner's appraiser on any inspection of the property for appraisal purposes.

(4) The owner has not less than 40 days from the date the owner receives the [*initial*] written offer required by subsection (1) of this section, accompanied by the appraisal or written explanation required by subsection (2) of this section, to accept or reject the offer. If the owner rejects the condemner's offer and obtains a separate appraisal, the owner shall provide the condemner with a copy of the owner's appraisal not less than 60 days prior to trial or arbitration.

(5)(a) Failure to provide the opposing party with a copy of the appropriate appraisal as provided in subsections (2) and (4) of this section shall prohibit the use of the appraisal in arbitration or at trial.

(b) In the event the owner and condemner are unable to reach agreement and proceed to trial or arbitration as provided in subsection (6) of this section, each party to the proceeding shall pro-

vide to every other party a copy of every appraisal obtained by the party as part of the condemnation action.

(6)(a) If an action based on the condemnation is filed, the owner may elect to have compensation determined by binding arbitration if the total amount of compensation claimed by any party does not exceed \$20,000. Notice of an election of binding arbitration must be given to the condemner at least 90 days prior to the date on which an arbitration hearing is scheduled under ORS 36.420.

(b) Notwithstanding the amount established under ORS 36.400, if the owner elects to proceed with binding arbitration, the arbitration shall be conducted according to the mandatory arbitration program established under ORS 36.400 to 36.425. Notwithstanding ORS 36.425, no party may request a trial de novo after the filing of the decision and award of the arbitrator. Within 20 days after the filing of the decision and award of the arbitrator under ORS 36.425, any party may file a motion with the court for the vacation, modification or correction of the award. The court may vacate an award only if there is a basis to vacate the award described in ORS 36.705 (1)(a) to (d). The court may modify or correct an award only for the grounds given in ORS 36.710. Except as provided in this subsection, no party may appeal from the decision and award of an arbitrator if the owner elects binding arbitration in lieu of trial.

(c) If the total amount of compensation claimed exceeds \$20,000 but is less than \$50,000, the owner may elect to have compensation determined by nonbinding arbitration under the applicable provisions of ORS 36.400 to 36.425.

(7) If a trial is held or arbitration conducted 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 or arbitrator shall award *[said]* **the** defendant costs and disbursements including reasonable attorney fees and reasonable expenses as defined in ORS 35.335 (2) in the following cases, and no other:

(a) If the amount of just compensation assessed by the verdict in the trial exceeds the *[initial]* **highest** written offer in settlement submitted by condemner **before the filing of the action** to those defendants appearing in the action pursuant to subsection (1) of this section; or

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

(8) If any appraisal provided to a party under this section relies on a written report, opinion or estimate of a person who is not an appraiser, a copy of the written report, opinion or estimate must be provided with the appraisal. If any appraisal provided under this section relies on an unwritten report, opinion or estimate of a person who is not an appraiser, the party providing the appraisal must also provide the name and address of the person who provided the unwritten report, opinion or estimate.

(9) Costs and disbursements other than reasonable attorney fees and expenses as defined in ORS 35.335 (2) shall be awarded to condemner in all cases other than those in which defendant is entitled to costs and disbursements under subsection (7) of this section.

SECTION 2. ORS 35.348 is amended to read:

35.348. Notwithstanding ORS 35.346, if a condemner determines that an emergency that poses a threat to persons or property exists and that immediate possession of the property is necessary, the condemner may immediately file a condemnation action after making *[an initial]* **the** written offer **required** under ORS 35.346 (1) accompanied by the appraisal or explanation required by ORS 35.346 (2).

SECTION 3. The amendments to ORS 35.346 and 35.348 by sections 1 and 2 of this 2009 Act apply only to condemnation actions filed on or after the effective date of this 2009 Act.

SECTION 4. Section 5 of this 2009 Act is added to and made a part of ORS chapter 35.

SECTION 5. (1) **After the filing of a condemnation action, a condemner may serve an offer of compromise on the defendant in the action. An offer of compromise must be served on the defendant not later than 10 days before the trial of the action. The offer of compromise must identify the amount offered as just compensation for the property and as**

compensable damages to remaining property of the defendant. The offer of compromise must also indicate whether the offer includes any amount for costs and disbursements, attorney fees and expenses and, if so, the amounts included for costs and disbursements, attorney fees and expenses. If the defendant accepts the amount offered as just compensation for the property and as compensable damages to remaining property of the defendant, the defendant shall file with the court an acceptance signed by the defendant or the defendant's attorney. The acceptance must be filed not more than three days after the time the offer was served on the defendant. A copy of the offer must be attached to the acceptance.

(2) If an offer of compromise under this section does not specifically include amounts for costs and disbursements, attorney fees and expenses, upon acceptance of the offer the court shall give judgment to the defendant for the amount offered as just compensation for the property and as compensable damages to remaining property of the defendant and, in addition, for costs and disbursements, attorney fees and expenses that are determined by the court to have been incurred before service of the offer on the defendant.

(3) If an offer of compromise under this section specifically includes amounts for costs and disbursements, attorney fees and expenses, the defendant may accept all amounts offered, or may accept only that portion of the offer identified as just compensation for the property and as compensable damages to remaining property of the defendant. If the defendant accepts only that portion of the offer identified as just compensation for the property and as compensable damages to remaining property of the defendant, the defendant is entitled to an award for costs and disbursements, attorney fees and expenses incurred by the defendant before service of the offer on the defendant. The court shall determine the amount of costs and disbursements, attorney fees and expenses to be awarded to the defendant after acceptance of the offer is filed under subsection (1) of this section.

(4) If an offer of compromise is not accepted within the time allowed under subsection (1) of this section, the offer is withdrawn and may not be given in evidence at trial. If the defendant fails to obtain a judgment more favorable than the offer:

(a) The defendant may not recover prevailing party fees or costs and disbursements, attorney fees and expenses that were incurred on and after service of the offer;

(b) Unless the parties agree otherwise, the court shall give judgment to the defendant for costs and disbursements, attorney fees and expenses that were incurred by the defendant before service of the offer; and

(c) The court shall give judgment to the condemner for the condemner's costs and disbursements, other than prevailing party fees, incurred by the condemner on and after service of the offer.

(5) For the purpose of determining whether the defendant has failed to obtain a judgment more favorable than an offer of compromise that specifically includes amounts for costs and disbursements, attorney fees and expenses, the court shall first determine the amount of costs and disbursements, attorney fees and expenses incurred by the defendant before service of the offer on the defendant. The court shall add that amount to the amounts awarded under the judgment as just compensation for the property and as compensable damages to remaining property of the defendant. If the sum of those amounts is equal to or less than the total amount specified in the offer of compromise, the defendant has not obtained a judgment more favorable than the offer of compromise.

(6) For the purposes of this section, "expenses" has the meaning given that term in ORS 35.335.

Passed by Senate May 5, 2009

Repassed by Senate June 12, 2009

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Secretary of Senate

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President of Senate

Passed by House June 10, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State