

§5204. Eminent domain

The following provisions govern the exercise of eminent domain powers by the municipal officers. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

1. Adoption of resolution of condemnation. The municipal officers shall adopt a resolution of condemnation. This resolution must:

- A. Specifically describe the property, or interest in the property to be acquired, and its location by metes and bounds; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]
- B. Specify the name or names of the owner or owners; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]
- C. Set forth the amount of damages determined by the municipal officers to be just compensation for the property or interest in the property taken; and [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]
- D. Declare that the acquisition is pursuant to a duly adopted community development program. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

The resolution shall be served on the owners either personally or by registered mail, and then shall be submitted to the municipal legislative body for approval or disapproval. The municipal legislative body may not amend the resolution to decrease the amount of damages to be paid.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

2. Filing, bonds and notice. Within 3 months after the municipality approves the resolution:

A. The municipal officers shall have a copy of the resolution filed in the registry of deeds of the county in which the property is located. After this copy is filed, the municipal officers shall have filed in the Superior Court of the county in which the property is located:

- (1) A copy of the resolution; and
- (2) A statement of the sum of money approved by the municipality as just compensation for the property taken; [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. After the copy of the resolution has been filed in the registry and the statement of estimated just compensation has been filed in the Superior Court, the municipal officers shall have bonds deposited in the Superior Court with surety satisfactory to the clerk of the court, in the amounts that the court determines to be sufficient to satisfy the claims of all persons interested in the property. These bonds shall be deposited for the use of persons entitled to them. The court may, in its discretion, take evidence on the question to determine:

- (1) The amounts of the bonds to be deposited;
- (2) Title to the property; or
- (3) Interest in the property; and [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. After the copy of the resolution has been filed in the registry and the statement of just compensation has been filed in the Superior Court, the municipal officers shall have notice of the taking of the property or interest in the property served upon the owners of the property by a sheriff or deputies. Service shall be made by leaving a true and attested copy of the resolution and the statement of estimated just compensation with each owner personally or at the last known address in the State or with some person living at that address.

(1) If any owner is not a resident of the State, a true and attested copy of the resolution and statement shall be sent by registered mail, return receipt requested, to the owner at the last known address.

(2) In addition, municipal officers shall have a copy of the resolution together with the names of the owners of the property and the amount to be awarded to each of them, published in a newspaper having general circulation in the county, at least once a week for 3 consecutive weeks; and [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

After the bonds are deposited in the Superior Court, and notice is given, title to the property vests in the municipality in fee simple absolute and the municipality may take possession of the property.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

3. Unknown ownership. If ownership of the property cannot be ascertained after due and diligent search, an award shall be made to persons unknown for the value of the property, and bonds for that amount running to the treasurer of the county for the use of the persons entitled to them, shall be deposited in the Superior Court. If no person has been able to prove ownership of the property within 2 years after the bonds are deposited, the Superior Court shall order those bonds to be cancelled and delivered up to the municipality.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

4. Agreement and cancellation of bonds. When any person entitled to the bonds agrees with the municipality for the price of the property or interest in the property so taken and the sum agreed upon is paid by the municipality, the court shall order the bond deposited under this section to be cancelled and delivered up to the municipality.

[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

5. Complaint to Superior Court; trial. Any owner of the property taken under this section, who cannot agree with the municipality on the price of the property or interest in the property in which the owner is interested, may apply by complaint to the Superior Court in the county where the property is located.

A. The complaint must be made within 3 months after personal notice of the taking or, if the owner has no personal notice, within one year from the first publication of the copy of the resolution and description required in subsection 2, paragraph C. It must set forth the taking of the property or interest in property, and pray for the assessment of damages by jury or, by agreement of the parties, by a referee or referees appointed by the court. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. When the complaint is filed, the Superior Court shall have 20 days' notice of the pendency of the action given to the municipality by serving the municipal clerk with a certified copy of the complaint. The court may proceed after this notice to obtain a trial of the action. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. The trial shall determine all questions of fact relating to the value of the property or interest in the property and the amount of that interest. Judgment shall be entered upon the verdict of the jury and execution shall be issued for that judgment against the money deposited in the court. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]
[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

6. Conflicting ownership. If the municipal officers are in doubt as to conflicting ownership or interest, the municipality may file a complaint in the Superior Court for the county in which the property is located for a determination of the various rights and amounts due. If 2 or more plaintiffs make claims to the real property, or to any interest in the property, or to different interests in the same property, the Superior Court, upon motion, shall consolidate their several complaints for trial at the same time by the same jury and may frame all necessary issues for the trial of those actions.
[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

7. Appeal. An appeal from the decision of the Superior Court may be made in the manner provided for appeals in civil cases.
[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

8. Guardian ad litem. If a municipality takes any real property or interest in property in which any minor or other person not capable in law to act in the minor's or other person's own behalf is interested, the appropriate Superior Court may, upon the filing of a complaint under subsection 5 by or on behalf of the minor or other person, appoint a guardian ad litem for the minor or other person. This guardian may appear and be heard on behalf of the minor or other person and may, with the advice and consent of the Superior Court and upon such terms as the Superior Court prescribes, release to the municipality all claims for damages for the property of the minor or other person or for any interest in the property.

Any lawfully appointed, qualified and acting guardian or other fiduciary of the estate of any such minor or other person, with the approval of the Probate Court having jurisdiction to authorize the sale of real property within this State, may, before filing any complaint under this section, agree with the municipality on the amount of damages suffered by the minor or other person by any taking of property or of interest in the property and may, upon receiving that amount, release to the municipality all claims for damages of the minor or other person for the taking.
[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

9. Expedited proceedings; property devoted to public use. In any proceedings for assessment of compensation and damages for property or interest in the property taken or to be taken by eminent domain by the municipality, the following provisions apply.

A. At any time during the pendency of the action or proceedings, the municipality or an owner may apply to the court for an order directing the owner or the municipality, as the case may be, to show cause why further proceedings should not be expedited. Upon this application the court may make an order requiring that the hearings proceed and that any other steps be taken with all possible expedition. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. If any property or interest in property is devoted to a public use, it may nevertheless be acquired and the taking is effective, provided that:

(1) No property or interest in property belonging to any governmental agency may be acquired without its consent; and

(2) No property or interest in property belonging to a public utility corporation may be acquired without the approval of the Public Utilities Commission or other officer or tribunal having regulatory power over the corporation. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

C. Any property or interest in property previously deeded to or acquired by the municipality may be included within the taking for the purpose of acquiring any outstanding interests in the property. [PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]
[PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).]

10. Business relocation benefits. Whenever the acquisition of real property pursuant to this section results in the displacement of a business or farm, the municipality shall provide payment for moving and related expenses as applicable under Title 23, section 244.
[PL 2005, c. 642, §5 (NEW).]

11. Residence relocation benefits. Whenever the acquisition of real property pursuant to this section results in the displacement of a person from a dwelling, the municipality shall provide payment for moving and related expenses, as well as replacement housing as applicable under Title 23, sections 244 to 244-C.
[PL 2005, c. 642, §5 (NEW).]

SECTION HISTORY

PL 1987, c. 737, §§A2,C106 (NEW). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,10 (AMD). PL 2005, c. 642, §5 (AMD).

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