

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 25-46.3, 25-46.5, 25-46.9, 25-46.11, 25-46.17, 25-46.19 through 25-46.22, 25-46.24, 25-46.25, 25-46.29, 25-46.32, 25-248, 33.1-89, and 36-27 of the Code of Virginia, relating to procedures for exercising the power of eminent domain.

[S 453]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 25-46.3, 25-46.5, 25-46.9, 25-46.11, 25-46.17, 25-46.19 through 25-46.22, 25-46.24, 25-46.25, 25-46.29, 25-46.32, 25-248, 33.1-89, and 36-27 of the Code of Virginia are amended and reenacted as follows:

§ 25-46.3. Definitions.

As used in this chapter, unless otherwise clearly indicated herein or required by the context, ~~the term:~~

(a) "Court" means the court having jurisdiction and the judge or judges thereof in vacation.

(b) "Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition, whichever occurs first.

"Freeholder" means any person owning an interest in land in fee, including a person owning a condominium unit.

(c) "Land" means land, lands and real estate and all rights and appurtenances thereto, together with the buildings and other improvements thereon, and any right, title, interest, estate or claim in or to land, lands or real estate.

(d) "Law" means any statute, general, special, private or local, of this Commonwealth, including, but not limited to, the Code of Virginia or any section thereof.

(e) "Person" may extend and be applied to bodies politic and corporate as well as individuals.

(f) "Petitioner" means any person or public or private entity possessing the power to exercise the right of eminent domain seeking to exercise such power under this chapter.

(g) "Property" means real and personal property, and land, and any right, title, interest, estate or claim in or to such property.

(h) "State" or "Commonwealth" means the Commonwealth of Virginia.

§ 25-46.5. Effort to purchase required; prerequisite to effort to purchase or filing certificate.

A. No proceedings shall be taken to condemn property until a bona fide but ineffectual effort has been made to acquire from the owner by purchase the property sought to be condemned, except where such consent cannot be obtained because of the incapacity of one or more of the owners or because one or more of such owners is unable to convey legal title to such property or is unknown or cannot with reasonable diligence be found within this Commonwealth.

B. Such bona fide effort shall include a written statement to the owner which explains the factual basis for the condemnor's offer, *and include a copy of the appraisal of the property prepared pursuant to § 25-248 upon which such offer is based.*

C. *Notwithstanding any provision of law to the contrary, a condemnor, prior to making an offer to acquire a fee simple interest in property by purchase or filing a certificate of take or certificate of deposit pursuant to § 33.1-120 or § 33.1-121, shall conduct or cause to be conducted an examination of title to the property in order to ascertain the identity of the owner or owners of such property and to determine the nature and extent of such owners' interests in the property.*

§ 25-46.9. Commencement of proceedings; notice; filing of answer and grounds of defense; election for the appointment of a commission or empanelment of a jury.

Proceedings for condemnation shall be initiated by filing the petition referred to in § 25-46.7 in the court, or in the clerk's office thereof, having jurisdiction under § 25-46.4. Upon the filing of such petition, the petitioner shall give the owners twenty-one days' notice of the filing of such petition and of its intention to apply to the court ~~for the appointment of commissioners~~ to ascertain just compensation for the property to be taken or affected as a result of the taking and use by the petitioner of the estate, interest or rights to be so acquired. In such notice, the petitioner ~~may~~ *shall* also give notice that an answer and grounds of defense shall be filed setting forth any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case and to *elect to* proceed with *either* the appointment of commissioners *or empanelment of a jury* for the determination of such just compensation.

~~Such~~ The notice may also include notice of the petitioner's application for the right of entry as provided in § 25-46.8, whenever such application is included in the petition.

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~~Such~~ The notice, along with a copy of the petition, shall be served on the owners, and within twenty-one days of the service thereof any such owner who desires to assert any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case, and to *make his election to proceed with either the appointment of commissioners or the empanelment of a jury*, shall file (i) his answer and grounds of defense designating the property in which he claims to be interested, (ii) the grounds of any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case, and (iii) *his election to proceed with either the appointment of commissioners or the empanelment of a jury* for the determination of just compensation.

~~Should~~ The failure of any ~~such~~ owner ~~fail~~ to file an answer and grounds of defense as hereinabove provided; ~~such failure~~ shall not preclude the owner from (i) appearing on the date set for the appointment of commissioners ~~or from~~ *or the empanelment of a jury*, (ii) presenting evidence as to valuation and damage, ~~or from~~ *or* (iii) sharing in the award of just compensation according to his interest therein or otherwise protecting his rights; ~~but~~. However, such failure shall preclude ~~such the~~ owner from any other defense by way of pleas in bar, abatement or otherwise. ~~Provided, however,~~ *except that* for good cause shown the time for filing such answer and grounds of defense may be extended by the court.

If the owner fails to file an answer and grounds of defense in which the owner elects to have the determination of just compensation made by either commissioners or a jury, then the petitioner may elect to have the issue of just compensation determined by either commissioners or a jury.

A copy of the notice required to be served on the owners by this section also shall be served in the same manner upon any tenant entitled to participate in the proceeding pursuant to § 25-46.21:1, whose lease has been duly recorded or whose tenancy is actually known to the petitioner; ~~but~~. However, a tenant so notified may participate in the proceeding only as permitted by § 25-46.21:1.

§ 25-46.11. Form of notice by publication.

The form of the notice by publication, to which shall be attached the signature of the clerk, or the deputy clerk for and on behalf of the clerk, shall be substantially as follows:

Virginia: In the (here insert the name of the court)

Name of petitioner

v. ~~In-Chancery~~ At Law

Name of one or more defendants, et al.,

and (.....) acres, more or less, of land in

(city or county) Virginia.

To Whom It May Concern:

Pursuant to an order entered on the day of, 19. . ., this notice is hereby given:

In this proceeding the petitioner seeks to acquire by condemnation (here state the estate, interest, or right to be acquired) to certain pieces or parcels of land situated in (county or city), Virginia, for the uses and purposes of the petitioner (here state briefly the uses and purposes and nature of the works and improvements to be made), all of which are described more particularly in the petition and exhibits attached thereto on file in the office of the clerk of this court, to which reference is hereby made for a full and accurate description thereof; and for the appointment of commissioners *or the empanelment of a jury* to ascertain just compensation to the owners of any estate or interest in the property to be taken or affected as a result of the taking and use thereof by the petitioner.

For such purposes, the petitioner will apply to the court, sitting at, Virginia, on the day of, 19. . ., at o'clock . . .m., or as soon thereafter as petitioner may be heard, for the appointment of commissioners *or the empanelment of a jury* to ascertain just compensation as aforesaid.

And it appearing by affidavit filed according to law that the following owners are not residents of the Commonwealth of Virginia, or their names and addresses are not known and that diligence has been used by and on behalf of the petitioner to ascertain such names and addresses without effect: (here set out the names of such owners or classes of owners and addresses where known), it is Ordered that the aforesaid owners do appear within ten (10) days after due publication of this order in the clerk's office of the (here insert the name of the court) and do what is necessary to protect their interests; and it is

further Ordered that if any of the above named owners desires to assert any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case and to proceed with the appointment of commissioners *or the empanelment of a jury* he shall file his answer and grounds of defense designating the property in which he claims to be interested, the grounds of any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case and to proceed with the appointment of commissioners *or empanelment of a jury* for the determination of just compensation.

Should any such owner fail to file his answer and grounds of defense as hereinabove provided, such failure shall not preclude the owner from appearing on the date set for the appointment of commissioners *or the empanelment of a jury* nor from presenting evidence as to valuation and damage nor from sharing in the award of just compensation according to his interest therein or otherwise protecting his rights, but such failure shall preclude such owner from any other defense by way of pleas in bar, abatement or otherwise.

An extract, Teste:

.....
Clerk

(Here state name and address of counsel for petitioner)

Such notice by publication may also include notice of the petitioner's application for the right of entry as provided in § 25-46.8, whenever such application is included in the petition.

§ 25-46.17. Determination of preliminary issues; fixing date of trial on issue of just compensation.

At the hearing upon the petition and application for *either* the appointment of commissioners *or the empanelment of a jury* made in accordance with § 25-46.9 if no answer and grounds of defense has been filed objecting to the jurisdiction of the court to hear the case and to proceed with the appointment of commissioners *or the empanelment of a jury*, the court shall enter an order fixing a date for the trial of the issue of just compensation and stating that such issue shall be determined by a commission, *a jury* or by the court, as provided in § 25-46.19. If any answer and grounds of defense has been filed objecting to the jurisdiction of the court, the court shall determine such issues or other matters in controversy, excepting the issue of just compensation or matters relating to the ownership of any land or other property or the interests of any party in such land or other property, and if the court determines all such issues or other matters involving the jurisdiction of the court in favor of the petitioner, the court shall enter an order fixing a date for the trial of the issue of just compensation and stating that such issue shall be determined by *either* a commission, *by a jury* or by the court, as provided in § 25-46.19.

An order of the court in favor of the petitioner on any of the foregoing preliminary issues or matters shall not be a final order for purposes of appeal but an order against the petitioner on such issues or matters shall be a final order for purposes of appeal, if the petitioner so elects. If the order against the petitioner does not dismiss the petition, the petitioner may elect to proceed with the case without waiving any of its objections and exceptions to the rulings of the court.

At such hearing the court may also determine whether the petitioner shall have the right of entry as provided in § 25-46.8.

§ 25-46.19. How issue of just compensation to be determined.

If the statute granting the power of eminent domain does not specifically provide that a specially constituted tribunal shall determine the issue of just compensation, such ~~The issue of just compensation shall be determined by a commission or a jury, upon a timely election made by an owner as provided in § 25-46.9. The commissioners or jurors shall be selected in the manner hereinafter provided in § 25-46.20. However,~~ by agreement of the petitioner and all the parties who are sui juris that have appeared or responded, or, if the defendant upon proper notice fails to appear or respond, then, upon motion of the petitioner, the issue of just compensation may be determined by the court.

§ 25-46.20. Empanelment and oath of commissioners or jurors; jury to fix value of property and damages; qualification of commissioners and jurors; strikes.

A. If the issue of just compensation is to be determined by a commission, the parties to the eminent domain proceeding may agree upon five or nine disinterested freeholders to act as commissioners, or if the parties cannot agree upon the names of commissioners to be summoned, then each party shall present to the court a list containing the names of at least six freeholders from which lists the court shall select the names of nine persons and two alternates who shall at least one week prior to their service be summoned to serve as commissioners. However, no person shall serve as such commissioner for more than one full week within any three-month period, unless agreed to by the parties, all of whom shall be residents of the county or city wherein the property or the greater portion of the property to be condemned is situated. If any party fails to submit a list containing six or more names as provided in this section, the judge may, in his discretion, submit such a list in such party's behalf. If a defendant has

filed no answer to the petition, and the attorney for the petitioner certifies that he believes the defendant is unrepresented by counsel the judge may, in his discretion, and subject to the right of the petitioner to challenge for cause, subpoena five persons who shall serve as commissioners. Once nine qualified persons are selected, the petitioner and the owners shall each have two peremptory challenges and the remaining five, or the original five if only five are summoned, shall be appointed, any three or more of whom may act. Such commissioners shall fix the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property by reason of the taking and use thereof by the petitioner. Before executing their duties the commissioners shall take an oath before some officer authorized by the laws of this Commonwealth to administer an oath, that they will faithfully and impartially ascertain what will be the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property, by reason of such taking and use by the petitioner.

B. If the issue of just compensation is to be determined by a jury, the provisions of this subsection shall apply.

1. Condemnation jurors shall be selected as follows:

The jury commissioners established pursuant to Chapter 11 (§ 8.01-336 et seq.) of Title 8.01 shall select condemnation jurors. The jury commissioners shall select as condemnation jurors persons who are residents of the county or city in which the property to be condemned, or the greater portion thereof, is situated. No person shall be eligible as a condemnation juror when he, or any person for him, solicits or requests a member of the jury commission to place his name on a list of condemnation jurors. A majority of the persons included on the list of condemnation jurors shall be freeholders of property within the jurisdiction. Except as otherwise provided in this subsection, the provisions of §§ 8.01-345, 8.01-346, 8.01-347, 8.01-356, and 8.01-358 relating to procedures for preparing this list from which members will be chosen, penalties for failure to appear and voir dire examination shall apply to condemnation jurors mutatis mutandis.

In any case where the issue of just compensation is to be determined by a jury, the jury shall be comprised of five members, and the jurors shall be drawn from the list submitted by the jury commission. The clerk shall, in the presence of the judge, after thoroughly mixing the ballots in the box, openly draw nine names therefrom. At the same time, two additional names shall be drawn to act as alternate jurors in the event of the death, absence, or disability of any acting juror. However, a majority of the nine names drawn as acting jurors, and at least one of the two names drawn for alternate jurors, shall be freeholders of property within the jurisdiction. As soon as practicable thereafter, the clerk shall serve notice on the jurors so drawn to appear in court on the date set for trial.

After each ballot containing a juror's name has been drawn, it shall be placed in a secure envelope maintained for the purpose of holding drawn ballots. The envelope shall be kept in the ballot box. No drawn ballot shall be returned to the pool of undrawn ballots until the pool has been exhausted, except as may be required to ensure that the required number of names drawn are freeholders of property within the jurisdiction. However, the clerk shall immediately return to the pool of undrawn ballots the ballot of any juror who was drawn but was excused by the court from appearing or was not required to appear because of trial cancellation. When the pool is exhausted, all ballots shall be returned to the box and drawing shall begin again. Alternatively, the procedures for selection by mechanical or electronic techniques as provided in § 8.01-350.1 may be utilized.

It shall be the duty of the clerk to notify each juror whose name has been drawn of the date on which he is to appear to hear the case. The notice shall be in writing and shall be delivered at least seven days prior to the trial. The clerk shall also promptly notify in writing the jurors who have been struck by pretrial challenge that they need not appear.

The court shall have the discretionary power to excuse a juror's attendance on any given day or for any specific case upon request of the juror for good cause shown. If a juror is so excused seven or more days prior to trial, a replacement juror shall be drawn and notified under the procedures provided in this section. However, if a juror is so excused within six days prior to trial, an alternate juror will be designated to serve as juror.

2. On the day set for trial, jurors who appear shall be called in such a manner as the judge may direct to be sworn on their voir dire until a disinterested and impartial panel is obtained. In addition, a juror may be stricken for cause for reasons civil jurors are excused. If all nine jurors and two alternates appear and none are stricken for cause, each party shall be entitled to exercise two peremptory strikes. However, if, because of strikes for cause and unexpected failure to appear, fewer than nine but more than five jurors remain before the court, the number of peremptory strikes for each party shall be equally reduced, and the judge shall, if necessary, strike by lot an additional name in order to reduce the jury to five members; however, the judge shall not strike a freeholder if the striking of such name would result in freeholders constituting less than a majority of the members of the jury. If fewer than seven jurors remain before the court prior to the exercise of peremptory strikes, the trial may

proceed and be heard by less than five jurors provided the parties agree. However, no trial shall proceed with fewer than three jurors.

3. Before executing the duties of a juror, each juror drawn shall take an oath before an officer authorized by the laws of this Commonwealth to administer an oath that he will faithfully and impartially ascertain the value of the property to be taken and the damages, if any, which may accrue to the residue beyond the enhancement in value, if any, to such residue by reason of such taking and use by the petitioner.

4. The jurors selected to hear the case shall fix the value of the property to be taken and the damages, if any, which may accrue to the residue beyond any enhancement in value to such residue by reason of the taking and use thereof by the petitioner. The conclusion of the jurors need not be unanimous, and a majority of the jurors may act in the name of the jury.

§ 25-46.21. View by commissioners or jurors; hearing of testimony; report; exceptions to report and hearing thereon.

Upon either the selection of the commissioners or the empanelment of the jurors, as applicable, the court shall direct them, in the custody of the sheriff or sergeant or one of his deputies, to view the property described in the petition with the owner and the petitioner, or any representative of either party, and none other, unless otherwise directed by the court; and, upon motion of either party, the judge shall accompany the commissioners or jurors upon such view. Such view shall not be considered by the commission or jury or the court as the sole evidence in the case. Upon completion of the view, the court shall hear the testimony in open court on the issues joined. When the commissioners or jurors shall have arrived at their conclusion they shall make their report in writing to the court, or to the judge thereof in vacation. The report may be confirmed or set aside forthwith by the court, or the judge, as the case may be, provided that when the report is so filed and before the court or judge passes thereon, either party shall have the right to file written exceptions to the report, which shall be filed not later than ten days after the rendering of the report by the commissioners or the jurors. The court or the judge, as the case may be, shall have the same power over the commissioners' or jurors' reports as it now has over verdicts of juries in civil actions.

Upon hearing of exceptions to the commissioners' report the court shall not recall and question the commissioners or jurors, as applicable, as to the manner in which their report was determined unless there be an allegation in such written exceptions that fraud, collusion, corruption or improper conduct entered into the report. If such allegation is made the judge shall summon the commissioners or jurors to appear and he alone shall question them concerning their actions. If the court be satisfied that fraud, collusion, corruption or improper conduct entered into the report of the commissioners or jurors, the report shall be set aside and new commissioners appointed or new jurors empanelled, as applicable, to rehear the case.

If the court be satisfied that no such fraud, collusion, corruption or improper conduct entered into the report of the commissioners or jurors, or no other cause exists which would justify setting aside or modifying a jury verdict in civil actions, the report shall be confirmed.

§ 25-46.21:1. Participation of certain tenants in condemnation proceedings.

Any tenant for a term expiring more than twelve months after the filing of the petition referred to in § 25-46.7 under a lease with a term of twelve months or longer may participate in the proceedings described in § 25-46.21 to the same extent as his landlord or the owner, if, not less than ten days prior to the date for the trial of the issue of just compensation, such tenant shall file his petition for intervention, in the manner provided in § 25-46.16, including a verified copy of the lease under which he is in possession, and an affidavit by the tenant or his duly authorized agent or attorney, stating

(1) That he claims an interest in the award; and

(2) That he desires to offer admissible evidence concerning the value of the property being taken or damaged.

For the purposes of this section, the unexpired portion of the term of a tenant's lease shall include any renewals or extensions for which the tenant has an enforceable written option. The term "tenant" shall include the assignee of the original tenant, as well as any sublessee of the entire demised premises of the owner for the full unexpired term of the sublessor.

Nothing in this section shall be construed, however, as authorizing such tenant to offer any evidence in the proceedings described in § 25-46.21 concerning the value of his leasehold interest in the property involved therein or as authorizing the commissioners or jurors, as applicable, to make any such determination in formulating their report.

§ 25-46.22. Compensation of commissioners or jurors.

The commissioners appointed or jurors empanelled, as the case may be, shall, for every day or portion thereof they may be employed in the performance of their duties, receive an allowance in the amount of sixty dollars as compensation for their attendance, travel and other costs, regardless of the number of cases heard on any particular day, to be paid by the petitioner. The persons summoned who

appear, but are not appointed to serve as commissioners *or empanelled to serve as jurors*, shall be allowed thirty dollars for each day they are summoned to appear.

§ 25-46.24. Payment of compensation and damages into court; vesting of title.

Upon the return of the report of the commissioners, *jurors* or the court, as the case may be, and the confirmation, alteration or modification thereof in the manner provided in this chapter, the sum so ascertained by the court as compensation and damages, if any, to the property owners may be paid into court, upon which title to the property and rights condemned shall vest in the petitioner to the extent prayed for in the petition, unless such title shall have already vested in the petitioner in a manner otherwise provided by law, and the petitioner or its agent shall have the right to enter and construct its works or improvements upon or through the property described in its petition.

§ 25-46.25. When petitioner may begin work during pendency of proceedings; no injunction to be awarded.

Upon the return of the report of the commissioners, *jurors* or the court, as the case may be, and upon payment into court of the sum ascertained therein, the petitioner or its agents may enter and construct its works or improvements upon or through the property as described in its petition, notwithstanding the pendency of proceedings on any objections to such report in the trial court, or upon an appeal of the case, or the ordering of a new trial of the issue of just compensation or otherwise. And no order shall be made nor any injunction awarded by any court or judge to stay the petitioner in the prosecution of its work unless it is manifest that the petitioner or its agents are transcending their authority and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

§ 25-46.29. Appointment of other commissioners or empanelment of other jurors when new trial ordered; costs upon new trial.

If the commission *or jury* fails to report its award of just compensation within a reasonable time after the issue of just compensation is submitted to it, or the commission *or jury* reports that it is unable to make such award, or the commissioners' *or jurors'* report is set aside, or a final order upon its report has been set aside upon appeal and a new trial ordered, the court shall, without further notice, as often as seems to it proper, appoint other commissioners *or empanel other jurors, as the case may be*, and the matter may be proceeded in as hereinbefore prescribed in this chapter.

If a new trial of the issue of just compensation is ordered, either in the trial court or upon appeal, upon an exception by an owner with respect to the insufficiency of the award of just compensation, and the subsequent report of the award of just compensation, which is confirmed, is for the same or a lesser total amount, the court shall tax all the costs of the new trial against the owner making such exception and shall order repayment to the petitioner of any sum paid to such owner out of the fund paid into court by the petitioner in excess of the total sum ascertained by the second report with interest thereon at the rate of eight percent annually from the date the original payment was made to such owner until the date such excess is repaid to the petitioner except that any interest accruing prior to July 1, 1970, shall be paid at the rate of five ~~per centum~~ *percent*; and interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six percent; and if such owner fails to make such repayment within thirty days from the date of the entry of such order, the court shall enter judgment therefor against such owner.

§ 25-46.32. Costs.

Except as otherwise provided in this chapter, all costs of the proceeding in the trial court which are fixed by statute shall be taxed against the petitioner. The court may in its discretion tax as a cost a fee for a survey for the landowner, such fee not to exceed ~~\$400~~ *\$1,000*. All costs on appeal shall be assessed and assessable in the manner provided by law and the Rules of Court as in other civil cases.

§ 25-248. General rules for conduct of acquisition.

Whenever real property is acquired by a state agency, on or after April 10, 1972, in connection with any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in accordance with the following provisions:

(a) An agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(c) Before the initiation of negotiations for real property, the state agency concerned shall establish an amount which it believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement,

other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for the amount it established as just compensation, *together with a copy of the agency's approved appraisal of the fair market value of such property upon which the agency has based the amount offered for the property.* Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(d) No owner shall be required to surrender possession of real property before the agency concerned pays the agreed purchase price, or deposits with the state court in accordance with applicable law, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(e) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available), or to move his business or farm operation, without at least ninety days' written notice from the agency concerned, of the date by which such move is required.

(f) If the agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term for a period subject to termination by the state agency on a short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(g) In no event shall the agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(h) If any interest in real property is to be acquired by exercise of the power of eminent domain, the agency concerned shall institute formal condemnation proceedings. No agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(i) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the agency concerned shall offer to acquire the entire property.

§ 33.1-89. Power to acquire lands, etc., by purchase, gift or eminent domain; conveyance to municipality after acquisition; property owners to be informed and briefed.

The Commonwealth Transportation Commissioner is hereby vested with the power to acquire by purchase, gift, or power of eminent domain such lands, structures, rights-of-way, franchises, easements and other interest in lands, including lands under water and riparian rights, of any person, association, partnership, corporation, or municipality or political subdivision, deemed to be necessary for the construction, reconstruction, alteration, maintenance and repair of the public highways of the Commonwealth and for these purposes and all other purposes incidental thereto may condemn property in fee simple and rights-of-way of such width and on such routes and grades and locations as by the Commissioner may be deemed requisite and suitable, including locations for permanent, temporary, continuous, periodical or future use, and rights or easements incidental thereto and lands, quarries, and locations, with rights of ingress and egress, containing gravel, clay, sand, stone, rock, timber and any other road materials deemed useful or necessary in carrying out the purposes aforesaid. For the purpose of this article "public highway" means highway, road and street; and when applicable, the term "public highway" also includes bridge, ferry, causeway, landing and wharf.

The Commissioner is authorized to exercise the above power within municipalities on projects which are constructed with state or federal participation, if requested by the municipality concerned. Whenever the Commissioner has acquired property pursuant to a request of the municipality, he shall convey the title so acquired to the municipality, except that rights-of-way or easements acquired for the relocation of a railroad, public utility company, public service corporation or company, another political subdivision, or cable television company in connection with said projects shall be conveyed to that entity in accordance with § 33.1-96. The authority for such conveyance shall apply to acquisitions made by the Commissioner pursuant to previous requests as well as any subsequent request.

Any offer by the Commissioner to a property owner with respect to payment of compensation for the prospective taking of property and damage to property not taken incident to the purposes of this section shall separately state (i) the property to be taken and the amount of compensation offered therefor and (ii) the nature of the prospective damage or damages and the amount of compensation offered for each such prospective damage. *The amount of the offer shall not be less than the amount of the approved appraisal of the fair market value of such property, in accordance with the provisions of § 25-248. Any such appraisal used by the Commissioner as the basis for an offer shall be prepared by a certified general real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.*

The Commissioner shall also provide to a property owner a copy of any report of status of title

prepared in connection with such acquisition, if prepared pursuant to subsection C of § 25-46.5.

In negotiating with a property owner with respect to payment for prospective damage to property not taken incident to the purposes of this section, the Commissioner shall ensure that such property owner or his authorized representative is properly informed as to the type and amount of foreseeable damage and/or enhancement. Adequate briefing will include: (i) the giving of plats and profiles of the project, showing cuts and fills, together with elevations and grades; (ii) explanation, in lay terms, of all proposed changes in profile, elevation and grade of the highway and entrances, including the elevations of proposed pavement and shoulders, both center and edges, with relation to the present pavement, and approximate grade of entrances to the property.

Any option or deed executed by the property owner shall contain a statement that the plans as they affect his property have been fully explained. Provided, however, that the requirements of this section with respect to information and briefing and the acknowledgment thereof in options and deeds shall in no way be construed to affect the validity of any conveyance or to create any right to compensation or to limit the Commissioner's authority to reasonably control the use of public highways so as to promote the public health, safety and welfare.

§ 36-27. Eminent domain.

An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which may be necessary for the purposes of such authority under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in Chapter 1.1 (§ 25-46.1 et seq.) of Title 25. The commissioners before which condemnation proceedings are conducted may hear evidence as to the value of the property including but not limited to the owner's appraisal and the effect that any pending application for a zoning change, special use permit application or variance application may have on the value of the property. The court may also determine whether there has been unreasonable delay in the institution of the proceedings after public announcement by the condemnor of a project which necessitates acquisition by the condemnor of a designated land area consisting of or including the land sought to be condemned. If the court determines that such unreasonable delay has occurred, it shall instruct the commissioners in such proceedings to allow any damages proved to their satisfaction by the landowner or landowners to have been sustained to his or their land during and because of such delay, in addition to and separately from the fair market value thereof, but such damages shall not exceed the actual diminution if any in fair market value of the land in substantially the same physical condition over the period of the delay. This provision shall not apply to any such public announcement made prior to July 1, 1960.

Prior to the adoption of any redevelopment plan pursuant to § 36-49 or any conservation plan pursuant to § 36-49.1, an authority shall send by certified mail, postage prepaid, to at least one of the owners of every parcel of property to be acquired pursuant to such plan a notice advising such owner that (i) the property owned by such owner is proposed to be acquired and (ii) such owner will have the right to appear in any condemnation proceeding instituted to acquire the property and present any defense which such owner may have to the taking. Such notice shall not be the basis for eligibility for relocation benefits. At the time it makes its price offer, the authority shall also provide to the property owner a certificate signed copy of the appraisal of the fair market value of such property upon which the authority has based the amount offered for the property, prepared by a certified general real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1, which shall include a certificate setting forth the appraiser's opinion of the fair market value, together with two comparable property sales, if available, of the property to be acquired.

In all such cases the proceedings shall be according to the provisions of Chapter 1.1 (§ 25-46.1 et seq.) of Title 25, so far as they can be applied to the same, the term "company" as used in such chapter, and any officers of a "company" referred to therein, to be construed as meaning the authority and the commissioners thereof, respectively. An authority may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. No real property belonging to the city, the county, the Commonwealth or any other political subdivision thereof may be acquired without its consent.

2. That the provisions of this act shall expire on July 1, 2002.