

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 803

An Act to amend and reenact § 33.1-120 of the Code of Virginia, relating to allowing the owner of property condemned by the Commonwealth Transportation Commissioner to receive payment before the owner is forced to vacate.

[H 834]

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-120 of the Code of Virginia is amended and reenacted as follows:

§ 33.1-120. Payments into court or filing certificate of deposit before entering upon land.

A. Before entering upon, or taking possession of land pursuant to § 33.1-119, the Commissioner shall either:

1. Pay into the court wherein condemnation proceedings are pending, or are to be instituted such sum as is required by subsection B; or

2. File with the court wherein condemnation proceedings are pending, or are to be instituted, a certificate of deposit issued by the Commissioner for such sum as is required by subsection B, which shall be deemed and held for the purpose of this chapter to be payment into the custody of such court.

B. The amount to be paid into the court as provided in subdivision A 1 or represented by a certificate of deposit as provided in subdivision A 2 shall be the amount that the Commissioner estimates to be the fair value of the land taken, or interest therein sought, and damage done, which estimate shall be based on a bona fide appraisal if required by § 25.1-417.

C. If the Commissioner makes a payment into court as provided in subdivision A 1, it shall also record a certificate of take pursuant to § 33.1-122.

D. Payment against a certificate of deposit, when ordered by the court named therein, shall be paid by the Commissioner.

E. As used in this article:

"Certificate" means an instrument that, when recorded in the office of the clerk of the circuit court wherein condemnation proceedings are pending or are to be instituted by the Commissioner, terminates the interest or estate of the owner of the property described therein and vests defeasible title to such property or interest or estate of the owner in the Commonwealth. "Certificate" includes a certificate of deposit and a certificate of take.

"Certificate of deposit" means a certificate issued by the Commonwealth Transportation Commissioner and countersigned by the State Treasurer, stating that any sum or sums designated therein shall be paid pursuant to the order of the court, and which is filed by the Commissioner with the court wherein condemnation proceedings are pending or are to be instituted in lieu of the payment of funds into court, as provided in subdivision A 2.

"Certificate of take" means a certificate recorded by the Commissioner with the court wherein condemnation proceedings are pending or are to be instituted, in connection with which the Commissioner has deposited funds with the court as provided in subdivision A 1.

F. *The Commissioner shall not be permitted to force relocation on improved owner-occupied property until the owner is permitted to withdraw the funds represented by the certificate filed with the court. However, if the owner refuses to withdraw the funds represented by the certificate filed with the court or if the Commissioner reasonably believes that the owner does not possess clear title to the property being taken, that ownership of the property is disputed, or that certain owners cannot be located, the Commissioner may petition the court to establish that the owner does not possess clear title, that the ownership of the property is in dispute, that certain owners can not be located, or that the owner has refused to withdraw the funds represented by the certificate filed with the court, and request that the Commissioner be given authority to force relocation.*