

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 190

An Act to amend and reenact §§ 25.1-100, 25.1-108, 25.1-204, 25.1-400, 25.1-410, 25.1-411, 25.1-414, and 25.1-417 of the Code of Virginia, relating to eminent domain; procedures.

[S 1436]

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 25.1-100, 25.1-108, 25.1-204, 25.1-400, 25.1-410, 25.1-411, 25.1-414, and 25.1-417 of the Code of Virginia are amended and reenacted as follows:

§ 25.1-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

"Body determining just compensation" means a panel of commissioners empanelled pursuant to § 25.1-227.2, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a jury is appointed or empanelled.

"Court" means the court having jurisdiction as provided in § 25.1-201.

"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition pursuant to § 25.1-205, whichever occurs first.

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

"Land" means real estate and all rights and appurtenances thereto, together with the structures and other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

"Locality" or "local government" means a county, city, or town, as the context may require.

"Owner" means any person who owns property, provided that the person's ownership of the property is of record in the land records of the clerk's office of the circuit court of the county or city where the property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. This definition of the term "owner" shall not affect in any way the valuation of property.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise; club, society or other group or combination acting as a unit; the Commonwealth or any department, agency or instrumentality thereof; any city, county, town, or other political subdivision or any department, agency or instrumentality thereof; or any interstate body to which the Commonwealth is a party.

"Petitioner" or "condemnor" means any person who possesses the power to exercise the right of eminent domain and who seeks to exercise such power under this chapter. The term "petitioner" or "condemnor" includes any person required to make an effort to purchase property as provided in § 25.1-204 a state agency.

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

"State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire property by eminent domain under state law; or (iv) two or more of the aforementioned that carry out projects that cause persons to be displaced.

"State institution" means any (i) educational institution enumerated in § 23-14 or (ii) state hospital or state training center for individuals with mental retardation operated by the Department of Behavioral Health and Developmental Services.

§ 25.1-108. Offer to sell to former owner.

A. If a condemnor has acquired a fee simple interest in property by exercise of its power of eminent domain and subsequently declares that the property is surplus, the condemnor shall offer, within 30 days following such determination, to sell such property to the former owner or his heirs or other successors or assigns of record. Upon completion of the stated public use or where the stated public use has been abandoned, the condemnor shall provide written notice, pursuant to subsection B, of such completion or abandonment to the former property owner or his heirs or other successors or assigns of record. Upon completion of the stated public use or where the stated public use has been abandoned, If (i) the work

or improvements described in any written statement required by law or in the petition for condemnation made pursuant to § 25.1-206 have not been let to contract or construction commenced within a period of 20 years from the date that the fee simple interest in the property vested in the condemnor, and the property is not being used for other public uses that are within the limitations set forth in § 1-219.1 or (ii) at any time the property is no longer used or needed for the public use for which the property was taken as may be described in any written statement required by law or in the petition for condemnation or for another specific public use that is within the limitations set forth in § 1-219.1, the condemnor shall declare its fee simple interest in the property to be surplus and offer to sell the property to the former owner or his heirs or other successors or assigns. Additionally, if the conditions described in clause (i) or (ii) occur, the former property owner or his heirs or other successors or assigns of record may make a written demand that the condemnor (a) declare ~~any excess~~ its fee simple interest in the property as to be surplus and (b) offer to sell the property to the former owner or his heirs or other successors or assigns. ~~The right to the offer of repurchase cannot be waived and any~~ Any contractual provision or agreement by the former owner waiving ~~such~~ the right to receive an offer to sell from the condemnor is void and unenforceable. The offer to sell shall be made in writing by the condemnor at the price paid by the condemnor to the former owner plus interest at the annual rate of six percent, provided that the condemnor may increase the price by the fair market value of the condemnor's improvements, determined at the time the offer to sell is made. In no case shall the price established by the condemnor exceed the fair market value of the property at the time the offer to sell is made. The offer to sell shall comply with the requirements of subsection B. If ~~no written response is received by the condemnor from~~ the former owner or his heirs or other successors or assigns do not accept in writing an offer to sell that complies with the requirements of this section within 90 days six months after the offer to sell has been made as provided in subsection B, the former owner shall be deemed to have waived his right to the offer of repurchase or his heirs or other successors or assigns shall have no further right to purchase the property pursuant to this section. An offer to sell that satisfies the requirements of this subsection and subsection B shall be deemed a valid offer to sell under this section.

B. ~~Notice of~~ The condemnor shall (i) send the offer to ~~repurchase shall be sent~~ sell to the former owner by certified mail, return receipt requested, to ~~(i)~~ (a) the last known address of the former owner and ~~(ii)~~ (b) the address of the ~~last former owner of record~~ as it appears in the tax records of the ~~local~~ treasurer for the locality in which the property is located and (ii) publish the offer to sell in a newspaper having general circulation in the locality in which the property is located. The offer to sell shall be published once a week for two successive weeks, shall identify the former owner from whom the condemnor acquired the property, shall briefly describe the property and the date title vested in the condemnor, shall state the offer is made pursuant to this section, and shall state that the offer is open to any heirs, successors, or assigns of the former owner, who shall be named in the offer as parties unknown.

C. This section shall apply only to a fee simple interest in real property acquired by a condemnor in the exercise of its power of eminent domain. This section shall not apply to property acquired by the Commonwealth Transportation Commissioner pursuant to Title 33.1. Further, this section shall not apply to property acquired by a locality for transportation projects, including for bond-funded transportation projects or for future transportation improvements, regardless of whether such projects are undertaken in conjunction with the Commonwealth Transportation Board, provided that as to any such acquisitions by a locality the provisions of § 33.1-90 shall apply mutatis mutandis to the property and any disposition thereof. Also, this section shall not apply to property that is acquired by the owner of a railroad for actual operating purposes if the property is unsuitable for independent development.

§ 25.1-204. Effort to purchase required; prerequisite to effort to purchase or filing certificate.

A. A condemnor shall not institute proceedings to condemn property until a bona fide but ineffectual effort to purchase from the owner the property sought to be condemned has been made. However, such effort shall not be required if the consent cannot be obtained because one or more of the owners (i) is a person under a disability or is otherwise unable to convey legal title to such property, (ii) is unknown, or (iii) cannot with reasonable diligence be found within this Commonwealth.

B. Such bona fide effort shall include delivery of, or attempt to deliver, a written offer to acquire accompanied by a written statement to the owner that explains the factual basis for the condemnor's offer. The written statement shall include a description of the public use that provides the basis for the condemnor's acquisition and shall contain a certification that the acquisition has been reviewed by the condemnor for purposes of complying with § 1-219.1.

C. If the condemnor obtains an appraisal of the property pursuant to the provisions of § 25.1-417, such written statement shall include a complete copy of the appraisal of the property upon which such offer is based. If the condemnor obtains more than one appraisal, such written statement shall include a copy of all appraisals obtained prior to making an offer to acquire or initiating negotiations for the real property.

D. 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 Chapter 3 (§ 25.1-300 et seq.) of this title or § 33.1-120, shall (i) conduct or cause to

be conducted an examination of title to the property in order to ascertain the identity of each owner of such property and to determine the nature and extent of such owner's interests in the property and (ii) provide to such owner or owners a copy of the report of status of title.

E. A state agency's acquisition of real property in connection with any programs or projects pursuant to this title or Title 33.1 shall be conducted in accordance with the following provisions:

1. Before *making an offer to acquire or initiating any related negotiations* for real property, the state agency 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 *state agency's approved appraisal of the fair market value of such property*, if such an appraisal is required. 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, shall be disregarded in determining the compensation for the property. The *state 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*, if such an appraisal is required *and, if an appraisal is required or obtained, such written statement and summary shall include a complete copy of all appraisals of the real property to be acquired that the state agency obtained prior to making an offer to acquire or initiating negotiations for the real property*. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

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

§ 25.1-400. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

"Business" means any lawful activity, except a farm operation, conducted primarily:

1. For the purchase, sale, lease and rental of personal and of real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

2. For the sale of services to the public;

3. By a nonprofit organization; or

4. Solely for the purposes of § 25.1-406, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

"Comparable replacement dwelling" means any dwelling that is (i) decent, safe and sanitary; (ii) adequate in size to accommodate the occupants; (iii) within the financial means of the displaced person; (iv) functionally equivalent; (v) in an area not subject to unreasonable adverse environmental conditions; and (vi) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

"Decent, safe, and sanitary dwelling" means a dwelling that:

1. Is structurally sound, weather tight and in good repair;

2. Has a safe electrical wiring system adequate for lighting and appliances;

3. Contains a heating system capable of maintaining a healthful temperature;

4. Is adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced household;

5. Has a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains sink, toilet, and bathing facilities (shower or bath, or both), all operational and connected to a functional water and sewer disposal system;

6. Provides unobstructed egress to safe open space at ground level. If the unit is above the first floor and served by a common corridor, there must be two means of egress; and

7. Is free of barriers to egress, ingress and use by a displaced person who is handicapped.

"Displaced person" means:

1. Any person who moves from real property, or moves his personal property from real property (i) as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part, for any program or project undertaken by a state agency or (ii) on which such person is a residential tenant or conducts a small business, a farm operation or a business described in clause 4 of the definition of "business" in this section as a direct result of rehabilitation, demolition, or other displacing activity as the state agency may prescribe, under a program or project undertaken by the state

agency in any case in which the state agency determines that such displacement is permanent;

2. Solely for the purposes of §§ 25.1-406, 25.1-407, and 25.1-411, any person who moves from real property, or moves his personal property from real property: (i) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a state agency or (ii) as a direct result of rehabilitation, demolition, or other displacing activity as the state agency may prescribe, of other real property on which such person conducts a business or farm operation, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent; and

3. Any person who moves or discontinues his business or moves other personal property, or moves from his dwelling, as the direct result of (i) federally assisted activities for the enforcement of a building code or other similar code or (ii) a program of rehabilitation or demolition of buildings conducted pursuant to a federally assisted governmental program.

The term "displaced person" does not include (i) a person who has been determined, according to criteria established by the state agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this chapter; or (ii) in any case where the state agency acquires property for a program or project, any person, other than a person who was an occupant of the property at the time it was acquired, who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

"Dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house, a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

"Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

"Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.

"Nonprofit organization" means an organization that is exempt from paying federal income taxes under § 501 of the Internal Revenue Code (26 U.S.C. § 501).

"Person" means any (i) individual or (ii) partnership, corporation, limited liability company, association, or other business entity.

"State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire property by eminent domain under state law; or (iv) any two or more of the aforementioned, which carries out projects that cause persons to be displaced.

"Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the state agency has determined has little or no value or utility to the owner.

§ 25.1-410. Replacement housing for tenants and certain homeowners.

A. In addition to amounts otherwise authorized by this article, a state agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under § 25.1-409 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (i) the initiation of negotiations for acquisition of the dwelling or (ii) if the displacement is not a direct result of acquisition, such other event as the *state* agency shall prescribe. Such payment shall consist of the amount necessary to enable such displaced person to lease or rent, for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$5,250. At the discretion of the *state* agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

B. Any person eligible for a payment under subsection A may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the state agency, be eligible under this subsection for the maximum payment allowed under subsection A, except that if the displaced homeowner has owned and occupied the dwelling from which he is displaced for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under subsection A of § 25.1-409 had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

§ 25.1-411. Relocation planning, assistance coordination, and advisory services.

A. Programs or projects undertaken by a state agency shall be planned in a manner that (i)

recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions that will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (ii) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

B. The state agency shall ensure that the relocation assistance advisory services described in subsection C are made available to all persons displaced by ~~such~~ *the state* agency. If the state agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer such person relocation advisory services under such program.

C. Each relocation assistance advisory program required by subsections A and B shall include such measures, facilities, or services as may be necessary or appropriate in order to:

1. Determine, and make timely recommendations on, the need and preferences, if any, of displaced persons for relocation assistance;

2. Provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

3. Assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of (i) a major disaster declared by the Governor; (ii) a national emergency declared by the President of the United States; or (iii) any other emergency that requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

4. Assist a person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

5. Supply information concerning federal and state housing programs, disaster loan programs, and other federal or state programs offering assistance to displaced persons; and

6. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

D. The head of a state agency shall coordinate the relocation activities performed by ~~such~~ *the state* agency with other project activities and other planned or proposed governmental actions in the community or nearby areas that may affect the efficient and effective delivery of relocation assistance and related services.

§ 25.1-414. Authority of state agency where replacement housing not available; requiring person to move.

A. If a program or project undertaken by a state agency cannot proceed to actual construction on a timely basis because comparable replacement dwellings are not available, and the state agency determines that such dwellings cannot otherwise be made available, ~~such~~ *the state* agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The state agency may use this section to exceed the maximum amounts that may be paid under §§ 25.1-409 and 25.1-410 on a case-by-case basis for good cause as determined in accordance with such regulations as the state agency shall issue.

B. No person shall be required to move from his dwelling on account of any project, unless the head of the state agency is satisfied that comparable replacement housing is available to such person.

§ 25.1-417. General provisions for conduct of acquisition.

A. If a state agency acquires real property in connection with any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in accordance with the following provisions:

1. The state agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

2. 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; however, the requirements of this subdivision shall not apply if the state agency's official who is responsible for the acquisition determines that the value of the property being acquired is less than \$10,000, based on assessment records or other objective evidence.

3. Before *making an offer to acquire or* initiating *any related* negotiations for real property, the state agency 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 *state* agency's approved appraisal of the fair market value of such property, if such an appraisal is required. 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, shall be disregarded in determining the compensation for the property. The *state* 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, if such an appraisal is required and, if an appraisal is required or obtained, such written statement and summary shall include a complete copy of all appraisals of the real property to be acquired that the state agency obtained prior to making an offer to acquire or initiating any related negotiations for the real property.~~ Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

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

5. 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 90-days' written notice from the state agency, of the date by which such move is required.

6. If the state 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.

7. In no event shall the state 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.

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

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

10. A person whose real property is being acquired in accordance with this article may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a state agency, as such person shall determine.

B. The provisions of this section create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

2. That the provisions of this act shall not apply to the acquisition of real property by a railroad, public service corporation, municipal corporation, local governmental unit, or political subdivision of the Commonwealth or any department, agency, or instrumentality thereof, or two or more of the aforementioned, that is (i) the subject of a certificate recorded prior to July 1, 2011, in the clerk's office where deeds are recorded; (ii) the subject of a petition for condemnation filed prior to July 1, 2011; or (iii) required to construct a project funded by bonds approved for issuance by a locality prior to July 1, 2011.