

VIRGINIA ACTS OF ASSEMBLY -- 2013 RECONVENED SESSION

CHAPTER 764

An Act to amend and reenact §§ 25.1-204, 25.1-305, 25.1-417, 33.1-89, and 33.1-120 of the Code of Virginia, relating to eminent domain; just compensation; tax assessments.

[H 2306]

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ 25.1-204, 25.1-305, 25.1-417, 33.1-89, and 33.1-120 of the Code of Virginia are amended and reenacted as follows:

§ 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.) 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, *or the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater.* 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, 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 the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater,* or (ii) the amount of the award of compensation in the condemnation

proceeding for such property.

F. Nothing in this section shall make evidence of tax assessments admissible as proof of value in an eminent domain proceeding.

§ 25.1-305. Authorized condemnor to make payment into court or file certificate of deposit before entering upon land.

A. Before entering upon or taking possession of property, the authorized condemnor 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 authorized condemnor 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 authorized condemnor 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; *however, such estimate shall not be less than the current assessed value of the land for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment has been made is to be acquired.*

C. If the condemning authority makes a payment into court as provided in subdivision A 1, it shall also record a certificate of take as provided in § 25.1-307.

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

E. Nothing in this section shall make evidence of tax assessments admissible as proof of value in an eminent domain proceeding.

§ 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 \$25,000, based on assessment records or other objective evidence. Whenever the value of the property being acquired is determined to be between \$10,000 and \$25,000, the state agency, at the time an offer is made initiating negotiations, shall disclose to the owner or his designated representative that the offer has been established based on assessment records or other objective evidence and not an appraisal and that he may request that an appraisal be prepared and used as the basis for establishing just compensation pursuant to this section.

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, *or the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater.* 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 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 the current assessed value of such property*

for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater, 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.

C. *Nothing in this section shall make evidence of tax assessments admissible as proof of value in an eminent domain proceeding.*

§ 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.

A. The Commissioner of Highways 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 the Commissioner may deem 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.

B. 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.

C. 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 § 25.1-417, *or the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater.* Any such appraisal used by the Commissioner as the basis for an offer shall be prepared by a real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

D. 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 D of § 25.1-204.

E. 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 includes: (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.

F. 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. However, 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.

G. For the purposes of this article, "owner" means any person owning land, buildings, structures or improvements upon land where such ownership is of record in the land records of the clerk's office of the circuit court of the city or county where the property is located. 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. In proceedings instituted by the Commissioner of Highways under Title 25.1 or this title, owner also includes persons owning structures or improvements for which an outdoor advertising permit has been issued by the Commissioner of Highways pursuant to § 33.1-360. This definition of owner shall not alter in any way the valuation of such land, buildings, structures or improvements under existing law.

H. Nothing in this section shall make evidence of tax assessments admissible as proof of value in an eminent domain proceeding.

§ 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; *however, such estimate shall not be less than the current assessed value of the land for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment has been made is to be acquired.*

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 Commissioner of Highways 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.

G. Nothing in this section shall make evidence of tax assessments admissible as proof of value in an eminent domain proceeding.