

78B-6-510 Occupancy of premises pending action -- Deposit paid into court -- Procedure for payment of compensation.

- (1)
 - (a) At any time after the commencement of suit, and after giving notice to the defendant as provided in the Utah Rules of Civil Procedure, the plaintiff may file a motion with the court requesting an order permitting the plaintiff to:
 - (i) occupy the premises sought to be condemned pending the action, including appeal; and
 - (ii) to do whatever work on the premises that is required.
 - (b) Except as ordered by the court for good cause shown, a defendant may not be required to reply to a motion for immediate occupancy before expiration of the time to answer the complaint.
- (2) The court shall:
 - (a) take proof by affidavit or otherwise of:
 - (i) the value of the premises sought to be condemned;
 - (ii) the damages that will accrue from the condemnation; and
 - (iii) the reasons for requiring a speedy occupation; and
 - (b) grant or refuse the motion according to the equity of the case and the relative damages that may accrue to the parties.
- (3)
 - (a) If the motion is granted, the court shall enter its order requiring that the plaintiff, as a condition precedent to occupancy, file with the clerk of the court a sum equal to the condemning authority's appraised valuation of the property sought to be condemned.
 - (b) That amount shall be for the purposes of the motion only and is not admissible in evidence on final hearing.
- (4)
 - (a) Upon the filing of the petition for immediate occupancy, the court shall fix the time within which, and the terms upon which, the parties in possession are required to surrender possession to the plaintiff.
 - (b) The court may issue orders governing encumbrances, liens, rents, assessments, insurance, and other charges, if any, as required.
- (5)
 - (a) The rights of just compensation for the land taken as authorized by this section or damaged as a result of that taking vests in the parties entitled to it.
 - (b) That compensation shall be ascertained and awarded as provided in Section 78B-6-511.
 - (c)
 - (i) Except as provided in Subsection (5)(c)(ii), judgment shall include, as part of the just compensation awarded, interest at the rate of 8% per annum on the amount finally awarded as the value of the property and damages, from the date of taking actual possession of the property by the plaintiff or from the date of the order of occupancy, whichever is earlier, to the date of judgment.
 - (ii) The court may not award interest on the amount of the judgment that was paid into court.
- (6)
 - (a) Upon the application of the parties in interest, the court shall order that the money deposited in the court be paid before judgment as an advance on the just compensation to be awarded in the proceeding.
 - (b) This advance payment to a defendant shall be considered to be an abandonment by the defendant of all defenses except a claim for greater compensation.

- (c) If the compensation finally awarded exceeds the advance, the court shall enter judgment against the plaintiff for the amount of the deficiency.
- (d) If the advance received by the defendant is greater than the amount finally awarded, the court shall enter judgment against the defendant for the amount of the excess.
- (7) Arbitration of a dispute under Section 13-43-204 or 78B-6-522 is not a bar or cause to stay the action for occupancy of premises authorized by this section.

Renumbered and Amended by Chapter 3, 2008 General Session