

Effective 5/10/2016

**Part 9
Eminent Domain**

17C-1-901 Title.

This part is known as "Eminent Domain."

Enacted by Chapter 350, 2016 General Session

17C-1-902 Use of eminent domain -- Conditions.

- (1) Except as provided in Subsection (2), an agency may not use eminent domain to acquire property.
- (2) Subject to the provisions of this part, an agency may, in accordance with Title 78B, Chapter 6, Part 5, Eminent Domain, use eminent domain to acquire an interest in property:
 - (a) within an urban renewal project area if:
 - (i) the board makes a finding of blight under Chapter 2, Part 3, Blight Determination in Urban Renewal Project Areas; and
 - (ii) the urban renewal project area plan provides for the use of eminent domain;
 - (b) that is owned by an agency board member or officer and located within a project area, if the board member or officer consents;
 - (c) within a community reinvestment project area if:
 - (i) the board makes a finding of blight under Section 17C-5-405;
 - (ii) the community reinvestment project area plan provides for the use of eminent domain; and
 - (iii) the agency creates a taxing entity committee in accordance with Section 17C-1-402;
 - (d) that:
 - (i) is owned by a participant or a property owner that is entitled to receive tax increment or other assistance from the agency;
 - (ii) is within a project area, regardless of when the project area is created, for which the agency made a finding of blight under Section 17C-2-102 or 17C-5-405; and
 - (iii)
 - (A) the participant or property owner described in Subsection (2)(d)(i) fails to develop or improve in accordance with the participation agreement or the project area plan; or
 - (B) for a period of 36 months does not generate the amount of tax increment that the agency projected to receive under the project area budget; or
 - (e) if a property owner requests in writing that the agency exercise eminent domain to acquire the property owner's property within a project area.
- (3) An agency shall, in accordance with the provisions of this part, commence the acquisition of property described in Subsections (2)(a) through (c) by eminent domain within five years after the day on which the project area plan is effective.

Renumbered and Amended by Chapter 350, 2016 General Session

17C-1-903 Prerequisites to the acquisition of property by eminent domain -- Civil action authorized -- Record of good faith negotiations to be retained.

- (1) Before an agency may initiate an action in district court to acquire property by eminent domain, the agency shall:
 - (a) negotiate in good faith with the affected record property owner;

- (b) provide to each affected record property owner a written declaration that includes:
 - (i) an explanation of the eminent domain process and the reasons for using it, including:
 - (A) the need for the agency to obtain an independent appraisal that indicates the fair market value of the property and how the fair market value was determined;
 - (B) a statement that the agency may adopt a resolution authorizing the agency to make an offer to the record property owner to purchase the property for the fair market value amount determined by the appraiser and that, if the offer is rejected, the agency has the right to acquire the property through an eminent domain proceeding; and
 - (C) a statement that the agency will prepare an offer that will include the price the agency is offering for the property, an explanation of how the agency determined the price being offered, the legal description of the property, conditions of the offer, and the time at which the offer will expire;
 - (ii) an explanation of the record property owner's relocation rights under Title 57, Chapter 12, Utah Relocation Assistance Act, and how to receive relocation assistance; and
 - (iii) a statement that the owner has the right to receive just compensation and an explanation of how to obtain it; and
- (c) provide to the affected record property owner or the owner's designated representative a notice that is printed in a type size of at least ten-point type that contains:
 - (i) a description of the property to be acquired;
 - (ii) the name of the agency acquiring the property and the agency's contact person and telephone number; and
 - (iii) a copy of Title 57, Chapter 12, Utah Relocation Assistance Act.
- (2) A person may bring a civil action against an agency for a violation of Subsection (1)(b) that results in damage to that person.
- (3) Each agency shall keep a record and evidence of the good faith negotiations required under Subsection (1)(a) and retain the record and evidence as provided in:
 - (a) Title 63G, Chapter 2, Government Records Access and Management Act; or
 - (b) an ordinance or policy that the agency had adopted under Section 63G-2-701.
- (4) A record property owner whose property is being taken by an agency through the exercise of eminent domain may elect to receive for the real property being taken:
 - (a) fair market value; or
 - (b) replacement property under Section 57-12-7.

Renumbered and Amended by Chapter 350, 2016 General Session

17C-1-904 Acquiring single family owner occupied residential property or commercial property -- Acquiring property already devoted to a public use -- Relocation assistance requirement.

- (1) As used in this section:
 - (a) "Commercial property" means real property used, in whole or in part, by the owner or possessor of the property for a commercial, industrial, retail, or other business purpose, regardless of the identity of the property owner.
 - (b) "Owner occupied property" means private real property that is:
 - (i) used for a single-family residential or commercial purpose; and
 - (ii) occupied by the owner of the property.
 - (c) "Relevant area" means:
 - (i) except as provided in Subsection (1)(c)(ii), the project area; or

- (ii) the area included within a phase of a project under a project area plan if the phase and the area included within the phase are described in the project area plan.
- (2) An agency may not initiate an action in district court to acquire by eminent domain a residential owner occupied property unless:
 - (a)
 - (i) a written petition requesting the agency to use eminent domain to acquire the property is submitted by the owners of at least 80% of the residential owner occupied property within the relevant area representing at least 70% of the value of residential owner occupied property within the relevant area; or
 - (ii) a written petition of 90% of the owners of real property, including property owned by the agency or a public entity within the project area, is submitted to the agency, requesting the use of eminent domain to acquire the property; and
 - (b) at least two-thirds of all board members vote in favor of using eminent domain to acquire the property.
- (3) An agency may not initiate an action in district court to acquire commercial owner occupied property by eminent domain unless:
 - (a) a written petition requesting the agency to use eminent domain to acquire the property is submitted by the owners of at least 75% of the commercial property within the relevant area representing at least 60% of the value of commercial property within the relevant area; and
 - (b) at least two-thirds of all board members vote in favor of using eminent domain to acquire the property.
- (4) For purposes of this section an owner is considered to have signed a petition if:
 - (a) owners representing a majority ownership interest in the property sign the petition; or
 - (b) if the property is owned by joint tenants or tenants by the entirety, 50% of the number of owners of the property sign the petition.
- (5) An agency may not acquire by eminent domain any real property on which an existing building is to be continued on the building's present site and in the building's present form and use unless:
 - (a) the building requires structural alteration, improvement, modernization, or rehabilitation;
 - (b) the site or lot on which the building is situated requires modification in size, shape, or use; or
 - (c)
 - (i) it is necessary to impose upon the property a standard, restriction, or control of the project area plan; and
 - (ii) the owner fails or refuses to agree to participate in the project area plan.
- (6) An agency may not acquire by eminent domain property that is owned by a public entity.
- (7) An agency that acquires property by eminent domain shall comply with Title 57, Chapter 12, Utah Relocation Assistance Act.

Renumbered and Amended by Chapter 350, 2016 General Session

17C-1-905 Court award for court costs and attorney fees, relocation expenses, and damage to fixtures or personal property.

In an eminent domain action under this part, the court may award:

- (1) costs and reasonable attorney fees to the condemnee if the amount of the court or jury award for the property exceeds the amount offered by the agency;
- (2) a reasonable sum, as determined by the court or jury, as compensation for any costs or expenses relating to relocating:
 - (a) an owner who occupied the acquired property;

- (b) a party conducting a business on the acquired property; or
 - (c) a person displaced from the property, as permitted by Title 57, Chapter 12, Utah Relocation Assistance Act; and
- (3) an amount to compensate for any fixtures or personal property that is:
- (a) owned by the owner of the acquired property or by a person conducting a business on the acquired property; and
 - (b) damaged as a result of the acquisition or relocation.

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