

Effective 5/12/2020

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78B-6-505 Negotiation and disclosure required before filing an eminent domain action.

(1) As used in this section:

(a)

(i) "Claimant" means a person who is a record interest holder of real property sought to be condemned.

(ii) "Claimant" does not include:

(A) a fee simple owner; or

(B) a utility subject to Section 72-6-116.

(b) "Fee simple owner" means the same as that term is defined in Section 57-12-13.

(2) A political subdivision of the state that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:

(a) before the governing body, as defined in Subsection 78B-6-504(2)(a), of the political subdivision takes a final vote to approve the filing of an eminent domain action, make a reasonable effort to negotiate with the fee simple owner for the purchase of the property; and

(b) except as provided in Subsection (5), as early in the negotiation process described in Subsection (2)(a) as practicable, but no later than 14 days before the day on which a final vote is taken to approve the filing of an eminent domain action:

(i) provide the fee simple owner and each claimant a complete printed copy of the materials provided on the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203 regarding the acquisition of property for a public purpose and a property owner's right to just compensation;

(ii) provide the fee simple owner a written statement in substantially the following form:

"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain, [name of political subdivision] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

1. You are entitled to receive just compensation for your property.

2. You are entitled to an opportunity to negotiate with [name of political subdivision] over the amount of just compensation before any legal action will be filed.

a. You are entitled to an explanation of how the compensation offered for your property was calculated.

b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.

3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

5. If you have a dispute with [name of political subdivision] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."; and
- (iii) provide each claimant a written statement in substantially the following form:
 1. Your interest in property may be impacted by a public improvement project and you may be entitled to receive just compensation.
 2. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].
 3. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.
 4. If you have a dispute with [name of entity] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.
 5. Oral representations or promises made during any negotiation are not binding upon the entity seeking to acquire the property by eminent domain."
- (3) Except as provided in Subsection (5), the entity involved in the acquisition of property may not bring a legal action to acquire the property under this chapter until 30 days after the day on which the disclosure and materials required in Subsections (2)(b)(ii) and (iii) are provided to the fee simple owner and each claimant.
- (4) A person, other than a political subdivision of the state, that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall:
 - (a) before filing an eminent domain action, make a reasonable effort to negotiate with the property owner for the purchase of the fee simple; and
 - (b) except as provided in Subsection (5), as early in the negotiation process described in Subsection (4)(a) as practicable, but no later than 30 days before the day on which the person files an eminent domain action:
 - (i) provide the fee simple owner and each claimant a complete printed copy of the materials provided on the Office of the Property Rights Ombudsman website in accordance with Section 13-43-203 regarding the acquisition of property for a public purpose and a property owner's right to just compensation;
 - (ii) provide the fee simple owner a written statement in substantially the following form:

"Although this letter is provided as part of an attempt to negotiate with you for the sale of your property or an interest in your property without using the power of eminent domain, [name of entity] may use that power if it is not able to acquire the property by negotiation. Because of that potential, the person negotiating on behalf of the entity is required to provide the following disclosures to you.

 1. You are entitled to receive just compensation for your property.
 2. You are entitled to an opportunity to negotiate with [name of entity] over the amount of just compensation before any legal action will be filed.
 - a. You are entitled to an explanation of how the compensation offered for your property was calculated.
 - b. If an appraiser is asked to value your property, you are entitled to accompany the appraiser during an inspection of the property.

3. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

4. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

5. If you have a dispute with [name of entity] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

6. Oral representations or promises made during the negotiation process are not binding upon the entity seeking to acquire the property by eminent domain."; and

(iii) provide each claimant a written statement in substantially the following form:

"1. Your interest in property may be impacted by a public improvement project and you may be entitled to receive just compensation.

2. You are entitled to discuss this case with the attorneys at the Office of the Property Rights Ombudsman. The office may be reached at [provide the current contact information for the Office of the Property Rights Ombudsman].

3. The Office of the Property Rights Ombudsman is a neutral state office staffed by attorneys experienced in eminent domain. Their purpose is to assist citizens in understanding and protecting their property rights. You are entitled to ask questions and request an explanation of your legal options.

4. If you have a dispute with [name of entity] over the amount of just compensation due to you, you are entitled to request free mediation or arbitration of the dispute from the Office of the Property Rights Ombudsman. As part of mediation or arbitration, you are entitled to request a free independent valuation of the property.

5. Oral representations or promises made during any negotiation are not binding upon the entity seeking to acquire the property by eminent domain."

(5) The court may, upon a showing of exigent circumstances and for good cause, shorten the 14-day period described in Subsection (2)(b) or the 30-day period described in Subsection (3) or (4)(b).