

Effective 5/4/2022

78B-6-509 Powers of court or judge -- Settlement offer -- Litigation expenses.

- (1) As used in this section, "litigation expenses" means costs necessary to prepare for and conduct a trial, including:
 - (a) court costs;
 - (b) expert witness fees;
 - (c) appraisal fees, except plaintiff's fees related to the additional appraisal described in Subsection (3)(b); and
 - (d) reasonable attorney fees.
- (2) The court shall have the power to:
 - (a) hear and determine all adverse or conflicting claims to the property sought to be condemned, and the damages; and
 - (b) determine the respective rights of different parties seeking condemnation of the same property.
- (3)
 - (a) A plaintiff described in Subsection 78B-6-507(1)(a) may make a settlement offer for purposes of this Subsection (3) at any time:
 - (i) following the close of discovery as ordered by the court, but no later than 60 days before the first day of trial; or
 - (ii) if no order setting the close of discovery exists:
 - (A) more than nine months from the day that the complaint is filed; and
 - (B) no later than 60 days before the first day of trial.
 - (b) If more than 90 days has passed after an appraisal of the property sought to be condemned as described in Subsection 78B-6-510(3) and no additional appraisal has been obtained related to a mediation or arbitration under Section 78B-6-522, or if an appraisal has been obtained related to a mediation or arbitration under Section 78B-6-522 and more than 90 days has passed since that appraisal, before making a settlement offer described in Subsection (3)
 - (a), the plaintiff shall unless waived in writing by the defendant:
 - (i) obtain an additional appraisal of the property sought to be condemned:
 - (A) at the plaintiff's expense; and
 - (B) that uses a valuation date no more than 120 days before the trial date; and
 - (ii) use the appraisal with the higher value as part of determining just compensation for the settlement offer.
 - (c) Subject to Subsection (3)(d), an offer under Subsection (3)(a) shall:
 - (i) be in writing;
 - (ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure, on each defendant to whom the offer is addressed;
 - (iii) be an offer made:
 - (A) to the defendant; or
 - (B) if more than one defendant, jointly to all defendants who have appeared in the case and have not been dismissed;
 - (iv) state that the offer is being made under Subsection (3)(a); and
 - (v) specify the amount, less interest and litigation expenses, that the plaintiff is willing to agree is the total just compensation to which the defendant is or defendants jointly are entitled to receive for the property identified in the pending action.
 - (d) An offer described in Subsection (3)(a) may not be filed with the court unless accepted or in connection with a motion for the award of litigation expenses following trial.
 - (e)

- (i) Unless an offer provides a time for the offer to expire, an offer under Subsection (3)(a) shall expire and be deemed rejected 45 days after service.
 - (ii) An offer that expires or is rejected under Subsection (3)(e)(i):
 - (A) is not admissible in evidence; and
 - (B) may not be referred to at trial.
 - (f) Each appraisal described in Subsection (3)(b), including the contents of each appraisal:
 - (i) are not admissible in evidence; and
 - (ii) may not be referred to at trial.
- (4)
- (a) A defendant who receives an offer under Subsection (3)(a) may accept the offer by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.
 - (b) If there is more than one defendant, defendants may accept the offer by serving a joint acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.
 - (c) Any party may file with the court an offer made under Subsection (3)(a) together with its acceptance made under Subsection (4)(b).
 - (d) A plaintiff is entitled to a final judgment of condemnation as prayed for in the complaint upon paying to the defendant or defendants, or depositing with the court clerk for the benefit of the defendants:
 - (i) the amount of total just compensation agreed to in the offer accepted as described in Subsection (4)(a); and
 - (ii) any interest due as provided by law.
 - (e) If there are multiple defendants, the court shall, upon application filed by a defendant, determine each defendant's respective share of the settlement amount.
- (5)
- (a) A defendant described in Subsection 78B-6-507(1)(b), or if there is more than one defendant that has appeared in the case and has not been dismissed, then all defendants jointly, may make an offer under this Subsection (5):
 - (i) within 30 days after they receive an offer from the plaintiff under Subsection (3)(a); or
 - (ii) if the plaintiff does not make an offer under Subsection (3)(a), any time following close of discovery as ordered by the court, but not later than 45 days before the first day of trial.
 - (b) An offer described in Subsection (5)(a) shall:
 - (i) be in writing;
 - (ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure;
 - (iii)
 - (A) be made on behalf of the defendant; or
 - (B) if there are multiple defendants, the offer shall be made by and on behalf of all defendants jointly who have appeared in the action and have not been dismissed;
 - (iv) state that the offer is being made under Subsection (5)(a); and
 - (v) specify the amount, less interest and litigation expenses, that the defendant or defendants jointly are willing to agree is the total just compensation to which the defendant is or defendants jointly are entitled to receive for the property identified in the pending action.
 - (c) An offer described in Subsection (5)(a) may not be filed with the court unless accepted or in connection with a motion for the award of litigation expenses following trial.
 - (d) An offer of settlement made by less than all defendants that have appeared in the case and have not been dismissed:
 - (i) is not an offer under Subsection (5)(a); and

- (ii) may not be a basis for awarding litigation expenses under Subsection (7).
- (e)
 - (i) Unless an offer provides a time for the offer to expire, an offer under Subsection (5)(a) shall expire and be deemed rejected 21 days after service.
 - (ii) An offer that expires or is rejected under Subsection (5)(e)(i) is not admissible in evidence and may not be referred to at trial.
- (6)
 - (a) A plaintiff who receives an offer under Subsection (5)(a) may accept the offer by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.
 - (b) Any party may file with the court an offer made under Subsection (5)(a) together with its acceptance made under Subsection (6)(a).
 - (c) A plaintiff is entitled to a final judgment of condemnation as prayed for in the complaint upon paying to the defendant or defendants, or depositing with the court clerk for the benefit of the defendants:
 - (i) the amount of total just compensation agreed to in the offer accepted as described in Subsection (6)(a); and
 - (ii) any interest due as provided by law.
 - (d) If there are multiple defendants, the court shall, upon application filed by a defendant, determine each defendant's respective share of the settlement amount.
- (7)
 - (a) Subject to Subsection (7)(b), if the total just compensation awarded to a defendant or defendants, less interest and litigation expenses, is greater than the amount of total just compensation specified in the last settlement offer made by a defendant or defendants under Subsection (5)(a), the court shall award the defendant or defendants litigation expenses not to exceed 1/3 of the amount by which the award of just compensation exceeds the amount offered in the last settlement offer under Subsection (5)(a).
 - (b) An award under Subsection (7)(a) may not exceed:
 - (i) if there is one defendant in the case, \$50,000; or
 - (ii) if there are multiple defendants in the case, \$100,000 total.
 - (c) The court shall include any amounts awarded under Subsection (7)(a) in the judgment awarding compensation.
- (8)
 - (a) Subject to Subsection (8)(b), if the total just compensation awarded to a defendant or defendants, less interest and litigation expenses, is less than the amount of total just compensation specified in the last settlement offer made by a plaintiff under Subsection (3)(a), the court shall award the plaintiff litigation expenses not to exceed 1/3 of the amount by which the last offer of settlement made under Subsection (3)(a) exceeds the total just compensation awarded.
 - (b) An award under Subsection (8)(a) may not exceed \$50,000.
 - (c) The court shall reduce the judgment awarding just compensation by the amount of litigation expenses awarded to the plaintiff under Subsection (8)(a).
- (9) If the total just compensation awarded to a defendant, less interest or litigation expenses, is between an offer made by a plaintiff under Subsection (3)(a) and an offer made by the defendant under Subsection (5)(a), the court may not award litigation expenses to either plaintiff or a defendant.
- (10)
 - (a) If a plaintiff does not make an offer under Subsection (3)(a), the court may not award:

- (i) the plaintiff litigation expenses; or
 - (ii) the defendant litigation expenses more than the defendant's last offer under Subsection (5)(a), if the defendant made an offer under Subsection (5)(a).
- (b) If a defendant does not make an offer under Subsection (5)(a), the court may not award:
- (i) the defendant litigation expenses; or
 - (ii) the plaintiff litigation expenses more than the plaintiff's last offer under Subsection (3)(a), if the plaintiff made an offer under Subsection (3)(a).
- (11) A claim for attorney fees under this section must be supported by an hourly billing statement.
- (12) Subsections (3) through (10) do not apply to an action filed before July 1, 2010.

Amended by Chapter 371, 2022 General Session