

1 **EMINENT DOMAIN APPRAISAL AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Michael J. Petersen**

5 Senate Sponsor: Daniel McCay

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the requirements for making a settlement offer before an eminent
10 domain trial.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ requires a plaintiff to obtain an additional appraisal of a property before making a
14 settlement offer if more than 90 days have passed since an earlier appraisal; and
- 15 ▶ makes technical changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **78B-6-509**, as last amended by Laws of Utah 2010, Chapter 26

24 *Be it enacted by the Legislature of the state of Utah:*

25 Section 1. Section **78B-6-509** is amended to read:

26 **78B-6-509. Powers of court or judge -- Settlement offer -- Litigation expenses.**

27 (1) As used in this section, "litigation expenses" means costs necessary to prepare for
28 and conduct a trial, including:

- 29 (a) court costs;

- 30 (b) expert witness fees;
- 31 (c) appraisal fees, except plaintiff's fees related to the additional appraisal described in
- 32 Subsection (3)(b); and
- 33 (d) reasonable attorney fees.
- 34 (2) The court shall have the power to:
- 35 (a) hear and determine all adverse or conflicting claims to the property sought to be
- 36 condemned, and the damages; and
- 37 (b) determine the respective rights of different parties seeking condemnation of the
- 38 same property.
- 39 (3) (a) A plaintiff described in Subsection [78B-6-507\(1\)\(a\)](#) may make a settlement
- 40 offer for purposes of this Subsection (3) at any time:
- 41 (i) following the close of discovery as ordered by the court, but no later than 60 days
- 42 before the first day of trial; or
- 43 (ii) if no order setting the close of discovery exists:
- 44 (A) more than nine months from the day that the complaint is filed; and
- 45 (B) no later than 60 days before the first day of trial.
- 46 (b) If more than 90 days has passed after an appraisal of the property sought to be
- 47 condemned as described in Subsection [78B-6-510\(3\)](#) and no additional appraisal has been
- 48 obtained related to a mediation or arbitration under Section [78B-6-522](#), or if an appraisal has
- 49 been obtained related to a mediation or arbitration under Section [78B-6-522](#) and more than 90
- 50 days has passed since that appraisal, before making a settlement offer described in Subsection
- 51 (3)(a), the plaintiff shall unless waived in writing by the defendant:
- 52 (i) obtain an additional appraisal of the property sought to be condemned:
- 53 (A) at the plaintiff's expense; and
- 54 (B) that uses a valuation date no more than 120 days before the trial date; and
- 55 (ii) use the appraisal with the higher value as part of determining just compensation for
- 56 the settlement offer.
- 57 ~~(b)~~ (c) Subject to Subsection (3)~~(c)~~(d), an offer under Subsection (3)(a) shall:

58 (i) be in writing;

59 (ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure, on each
60 defendant to whom the offer is addressed;

61 (iii) be an offer made:

62 (A) to the defendant; or

63 (B) if more than one defendant, jointly to all defendants who have appeared in the case
64 and have not been dismissed;

65 (iv) state that the offer is being made under Subsection (3)(a); and

66 (v) specify the amount, less interest and litigation expenses, that the plaintiff is willing
67 to agree is the total just compensation to which the defendant is or defendants jointly are
68 entitled to receive for the property identified in the pending action.

69 ~~[(e)]~~ (d) An offer described in Subsection (3)(a) may not be filed with the court unless
70 accepted or in connection with a motion for the award of litigation expenses following trial.

71 ~~[(d)]~~ (e) (i) Unless an offer provides a time for the offer to expire, an offer under
72 Subsection (3)(a) shall expire and be deemed rejected 45 days after service.

73 (ii) An offer that expires or is rejected under Subsection (3)(d)(i):

74 (A) is not admissible in evidence; and

75 (B) may not be referred to at trial.

76 (f) Each appraisal described in Subsection (3)(b), including the contents of each
77 appraisal:

78 (i) are not admissible in evidence; and

79 (ii) may not be referred to at trial.

80 (4) (a) A defendant who receives an offer under Subsection (3)(a) may accept the offer
81 by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah
82 Rules of Civil Procedure.

83 (b) If there is more than one defendant, defendants may accept the offer by serving a
84 joint acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of
85 Civil Procedure.

86 (c) Any party may file with the court an offer made under Subsection (3)(a) together
87 with its acceptance made under Subsection (4)(b).

88 (d) A plaintiff is entitled to a final judgment of condemnation as prayed for in the
89 complaint upon paying to the defendant or defendants, or depositing with the court clerk for the
90 benefit of the defendants:

91 (i) the amount of total just compensation agreed to in the offer accepted as described in
92 Subsection (4)(a); and

93 (ii) any interest due as provided by law.

94 (e) If there are multiple defendants, the court shall, upon application filed by a
95 defendant, determine each defendant's respective share of the settlement amount.

96 (5) (a) A defendant described in Subsection 78B-6-507(1)(b), or if there is more than
97 one defendant that has appeared in the case and has not been dismissed, then all defendants
98 jointly, may make an offer under this Subsection (5):

99 (i) within 30 days after they receive an offer from the plaintiff under Subsection (3)(a);
100 or

101 (ii) if the plaintiff does not make an offer under Subsection (3)(a), any time following
102 close of discovery as ordered by the court, but not later than 45 days before the first day of trial.

103 (b) An offer described in Subsection (5)(a) shall:

104 (i) be in writing;

105 (ii) be served in accordance with Rule 5, Utah Rules of Civil Procedure;

106 (iii) (A) be made on behalf of the defendant; or

107 (B) if there are multiple defendants, the offer shall be made by and on behalf of all
108 defendants jointly who have appeared in the action and have not been dismissed;

109 (iv) state that the offer is being made under Subsection (5)(a); and

110 (v) specify the amount, less interest and litigation expenses, that the defendant or
111 defendants jointly are willing to agree is the total just compensation to which the defendant is
112 or defendants jointly are entitled to receive for the property identified in the pending action.

113 (c) An offer described in Subsection (5)(a) may not be filed with the court unless

114 accepted or in connection with a motion for the award of litigation expenses following trial.

115 (d) An offer of settlement made by less than all defendants that have appeared in the
116 case and have not been dismissed:

117 (i) is not an offer under Subsection (5)(a); and

118 (ii) may not be a basis for awarding litigation expenses under Subsection (7).

119 (e) (i) Unless an offer provides a time for the offer to expire, an offer under Subsection
120 (5)(a) shall expire and be deemed rejected 21 days after service.

121 (ii) An offer that expires or is rejected under Subsection (5)(e)(i) is not admissible in
122 evidence and may not be referred to at trial.

123 (6) (a) A plaintiff who receives an offer under Subsection (5)(a) may accept the offer
124 by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah
125 Rules of Civil Procedure.

126 (b) Any party may file with the court an offer made under Subsection (5)(a) together
127 with its acceptance made under Subsection (6)(a).

128 (c) A plaintiff is entitled to a final judgment of condemnation as prayed for in the
129 complaint upon paying to the defendant or defendants, or depositing with the court clerk for the
130 benefit of the defendants:

131 (i) the amount of total just compensation agreed to in the offer accepted as described in
132 Subsection (6)(a); and

133 (ii) any interest due as provided by law.

134 (d) If there are multiple defendants, the court shall, upon application filed by a
135 defendant, determine each defendant's respective share of the settlement amount.

136 (7) (a) Subject to Subsection (7)(b), if the total just compensation awarded to a
137 defendant or defendants, less interest and litigation expenses, is greater than the amount of total
138 just compensation specified in the last settlement offer made by a defendant or defendants
139 under Subsection (5)(a), the court shall award the defendant or defendants litigation expenses
140 not to exceed 1/3 of the amount by which the award of just compensation exceeds the amount
141 offered in the last settlement offer under Subsection (5)(a).

142 (b) An award under Subsection (7)(a) may not exceed:
143 (i) if there is one defendant in the case, \$50,000; or
144 (ii) if there are multiple defendants in the case, \$100,000 total.
145 (c) The court shall include any amounts awarded under Subsection (7)(a) in the
146 judgment awarding compensation.

147 (8) (a) Subject to Subsection (8)(b), if the total just compensation awarded to a
148 defendant or defendants, less interest and litigation expenses, is less than the amount of total
149 just compensation specified in the last settlement offer made by a plaintiff under Subsection
150 (3)(a), the court shall award the plaintiff litigation expenses not to exceed 1/3 of the amount by
151 which the last offer of settlement made under Subsection (3)(a) exceeds the total just
152 compensation awarded.

153 (b) An award under Subsection (8)(a) may not exceed \$50,000.

154 (c) The court shall reduce the judgment awarding just compensation by the amount of
155 litigation expenses awarded to the plaintiff under Subsection (8)(a).

156 (9) If the total just compensation awarded to a defendant, less interest or litigation
157 expenses, is between an offer made by a plaintiff under Subsection (3)(a) and an offer made by
158 the defendant under Subsection (5)(a), the court may not award litigation expenses to either
159 plaintiff or a defendant.

160 (10) (a) If a plaintiff does not make an offer under Subsection (3)(a), the court may not
161 award:

162 (i) the plaintiff litigation expenses; or
163 (ii) the defendant litigation expenses more than the defendant's last offer under
164 Subsection (5)(a), if the defendant made an offer under Subsection (5)(a).

165 (b) If a defendant does not make an offer under Subsection (5)(a), the court may not
166 award:

167 (i) the defendant litigation expenses; or
168 (ii) the plaintiff litigation expenses more than the plaintiff's last offer under Subsection
169 (3)(a), if the plaintiff made an offer under Subsection (3)(a).

170 (11) A claim for attorney fees under this section must be supported by an hourly billing
171 statement.

172 (12) Subsections (3) through (10) do not apply to an action filed before July 1, 2010.