

Article 3.

Condemnation by Public Condemnors.

**§ 40A-40. Notice of action.**

(a) Not less than 30 days prior to the filing of a complaint under the provisions of G.S. 40A-41, a public condemnor listed in G.S. 40A-3(b) or (c) shall provide notice to each owner (whose name and address can be ascertained by reasonable diligence) of its intent to institute an action to condemn property. (The notice shall be sent to each owner by certified mail, return receipt requested. The providing of notice shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. Notice by publication is not required. Notice to an owner whose name and/or address cannot be ascertained by reasonable diligence is not required in any manner.)

The notice shall contain a general description of the property to be taken and of the amount estimated by the condemnor to be just compensation for the property to be condemned. The notice shall also state the purpose for which the property is being condemned and the date the condemnor intends to file the complaint.

(b) In the case of a condemnation action to be commenced pursuant to G.S. 40A-42(a), the notice required by subsection (a) of this section shall substantially comply with the following requirements:

- (1) The notice shall be printed in at least 12 point bold legible type.
- (2) The words "Notice of condemnation" or similar words shall conspicuously appear on the notice.
- (3) The notice shall include the information required by subsection (a) of this section.
- (4) The notice shall contain a plain language summary of the owner's rights, including:
  - a. The right to commence an action for injunctive relief.
  - b. The right to answer the complaint after it has been filed.
- (5) The notice shall include a statement advising the owner to consult with an attorney regarding the owner's rights.

An owner is entitled to no relief because of any defect or inaccuracy in the notice unless the owner was actually prejudiced by the defect or inaccuracy, and the owner is otherwise entitled to relief under Rules 55(d) or 60(b) of the North Carolina Rules of Civil Procedure or other applicable law. (1981, c. 919, s. 1; 1981 (Reg. Sess., 1982), c. 1243, s. 3; 1999-410, s. 1.)

**§ 40A-41. Institution of action and deposit.**

A public condemnor listed in G.S. 40A-3(b) or (c) shall institute a civil action to condemn property by filing in the superior court of any county in which the land is located a complaint containing a declaration of taking declaring that property therein is thereby taken for the use of the condemnor.

The complaint shall contain or have attached thereto the following:

- (1) A statement of the authority under which and the public use for which the property is taken;
- (2) A description of the entire tract or tracts of land affected by the taking sufficient for the identification thereof;
- (3) A statement of the property taken and a description of the area taken sufficient for the identification thereof;
- (4) The names and addresses of those persons who the condemnor is informed and believes may be or, claim to be, owners of the property so far as the same can by reasonable diligence be ascertained, and if any such persons are

- infants, incompetents, inebriates or under any other disability, or their whereabouts or names unknown, it must be so stated;
- (5) A statement of the sum of money estimated by the condemnor to be just compensation for the taking; and
  - (6) A statement as to whether the owner will be permitted to remove all or a specified portion of any timber, buildings, structures, permanent improvements, or fixtures situated on or affixed to the property.
  - (7) A statement as to such liens or other encumbrances as the condemnor is informed and believes are encumbrances upon the property and can by reasonable diligence be ascertained.
  - (8) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

The filing of the complaint shall be accompanied by the deposit to the use of the owner of the sum of money estimated by the condemnor to be just compensation for the taking. Upon the filing of the complaint and the deposit of said sum, summons shall be issued to each owner of the property. The summons, together with a copy of the complaint and notice of the deposit shall be served upon the person named therein in the manner provided for the service of process under the provisions of G.S. 1A-1, Rule 4. The condemnor may amend the complaint and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in G.S. 40A-44 of this Chapter. (1935, c. 470, ss. 4, 5; 1947, c. 781; 1971, c. 382, s. 1; 1981, c. 919, s. 1.)

**§ 40A-42. Vesting of title and right of possession; injunction not precluded.**

- (a) (1) Standard Provision. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(1), (8), (9), (10), (12), or (13) title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.
- (2) Modified Provision for Certain Localities. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b1)(1), (4), (7), (10), or (11), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10), (12), or (13) title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession

thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.

This subdivision applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

(b) When a local public condemnor is acquiring property by condemnation for purposes other than for the purposes listed in subsection (a) above, title to the property taken and the right to possession shall vest in the condemnor pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor:

- (1) Upon the filing of an answer by the owner who requests only that there be a determination of just compensation and who does not challenge the authority of the condemnor to condemn the property; or
- (2) Upon the failure of the owner to file an answer within the 120-day time period established by G.S. 40A-46; or
- (3) Upon the disbursement of the deposit in accordance with the provisions of G.S. 40A-44.

(c) If the property is owned by a private condemnor, the vesting of title in the condemnor and the right to immediate possession of the property shall not become effective until the superior court has rendered final judgment (after any appeals) that the property is not in actual public use or is not necessary to the operation of the business of the owner, as set forth in G.S. 40A-5(b).

(d) If the answer raises any issues other than the issue of compensation, the issues so raised shall be determined under the provisions of G.S. 40A-47.

(e) The judge shall enter such orders in the cause as may be required to place the condemnor in possession.

(f) The provisions of this section shall not preclude or otherwise affect any remedy of injunction available to the owner or the condemnor. (1981, c. 919, s. 1; 1989 (Reg. Sess., 1990), c. 871, s. 1; 1998-212, s. 9.10; 2001-36, ss. 2, 3; 2001-239, s. 1; 2001-478, s. 2; 2003-282, s. 2; 2004-203, s. 33; 2009-85, s. 1.)

#### **§ 40A-43. Memorandum of action.**

The condemnor, at the time of the filing of the complaint containing the declaration of taking and deposit of estimated compensation, shall record a memorandum of action with the register of deeds in all counties in which the land involved is located and said memorandum shall be recorded among the land records of said county. Upon the amending of any complaint affecting the property taken, the condemnor shall record a supplemental memorandum of action. The memorandum of action shall contain:

- (1) The names of those persons who the condemnor is informed and believes to be or claim to be owners of the property and who are parties to said action;
- (2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof;
- (3) A statement of the property taken for public use;
- (4) The date of institution of said action, the county in which said action is pending, and such other reference thereto as may be necessary for the identification of said action. (1981, c. 919, s. 1.)

#### **§ 40A-44. Disbursement of deposit.**

Where there is no dispute as to title the person named in the complaint may apply to the court for disbursement of the money deposited in the court, or any part thereof, as full compensation, or as a credit against just compensation without prejudice to further proceedings in the cause to determine just compensation. Upon such application, the judge shall order that the money deposited be paid forthwith to the person entitled thereto in accordance with the application. Subject to the provisions of G.S. 40A-68 the judge shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable.

No notice to the condemnor of the hearing upon the application for disbursement of deposit shall be necessary. (1981, c. 919, s. 1.)

#### **§ 40A-45. Answer, reply and plat.**

(a) Any person whose property has been taken by the condemnor by the filing of a complaint containing a declaration of taking, may within the time set forth in G.S. 40A-46 file an answer to the complaint. No answer shall be filed to the declaration of taking and notice of deposit. Said answer shall contain the following:

- (1) Such admissions or denials of the allegations of the complaint as are appropriate;
- (2) The names and addresses of the persons filing said answer, together with a statement as to their interest in the property taken;
- (3) Such affirmative defenses or matters as are pertinent to the action; and
- (4) A request that there be a determination of just compensation.

(b) A copy of the answer shall be served on the condemnor provided that failure to serve the answer shall not deprive the answer of its validity. The affirmative allegations of said answer shall be deemed denied. The condemnor may, however, file a reply within 30 days from receipt of a copy of this answer.

(c) The condemnor, within 90 days from the receipt of the answer shall file in the cause a plat of the property taken and such additional area as may be necessary to properly determine the compensation, and a copy thereof shall be mailed to the parties or their attorney; provided, however, the condemnor shall not be required to file a map or plat in less than six months from the date of the filing of the complaint. (1981, c. 919, s. 1.)

#### **§ 40A-46. Time for filing answer; failure to answer.**

Any person named in and served with a complaint containing a declaration of taking shall have 120 days from the date of service thereof to file answer. Failure to answer within said time shall constitute an admission that the amount deposited is just compensation and shall be a waiver of any further proceeding to determine just compensation; in such event the judge shall enter final judgment in the amount deposited and order disbursement of the money deposited to the owner. Provided, however, at any time prior to the entry of the final judgment the judge may, for good cause shown and after notice to the condemnor extend the time for filing answer for 30 days. (1981, c. 919, s. 1.)

#### **§ 40A-47. Determination of issues other than damages.**

The judge, upon motion and 10 days' notice by either the condemnor or the owner, shall, either in or out of session, hear and determine any and all issues raised by the pleadings other than the issue of compensation, including, but not limited to, the condemnor's authority to take, questions of necessary and proper parties, title to the land, interest taken, and area taken. (1981, c. 919, s. 1.)

#### **§ 40A-48. Appointment of commissioners.**

(a) A request to the clerk for the appointment of commissioners to determine compensation for the taking may be made in the answer of the owner, or may be made by motion of either the owner or the condemnor within 60 days after the filing of the answer. After the determination of other issues as provided by G.S. 40A-47, the clerk shall appoint three competent, disinterested persons residing in the county to serve as commissioners. The commissioners shall be sworn and shall go upon the land to appraise the compensation for the property taken and report their findings to the court within a time certain. Each commissioner shall be a person who has no right, title, or interest in or to the property being condemned, is not related within the third degree to the owner or to the spouse of the owner, is not an officer, employee, or agent of the condemnor, and is disinterested in the rights of the parties in every way.

(b) The commissioners shall have the power to inspect the property, hold hearings, swear witnesses, and take evidence as they may, in their discretion, deem necessary, and shall file with the court a report of their determination of the damages sustained.

(c) The report of commissioners shall be in writing and in a form substantially as follows:

TO THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

We, \_\_\_\_\_ and \_\_\_\_\_ Commissioners appointed by the Court to assess the compensation to be awarded to \_\_\_\_\_, the owner of property interest in certain land lying in \_\_\_\_\_ County, North Carolina, which has been taken by the \_\_\_\_\_ (condemnor), for public purposes, do hereby certify that we convened, and, having first been duly sworn, visited the premises, and took such evidence as was presented to us, and after taking into full consideration the quality and quantity of the land and all other facts which reasonably affect its fair market value at the time of the taking, we have determined the fair market value of the property taken to be the sum of \$\_\_\_\_\_ and the compensation for the damage to the remainder of the land of the owner by reason of the taking to be the sum of \$\_\_\_\_\_ (if applicable). GIVEN under our hands, this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

(d) A copy of the report shall at the time of filing be mailed certified or registered mail by the clerk to each of the parties or to their counsel of record. Within 30 days after the mailing of the report, either the condemnor or the owner, may except thereto and demand a trial de novo by a jury as to the issue of compensation. Upon the receipt of such demand the action shall be placed on the civil issue docket of the superior court for trial de novo by a jury as to the issue of compensation, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of compensation in the superior court, nor shall evidence of the deposit by the condemnor into the court be competent upon the trial of the issue of compensation. If no exception to the report of commissioners is filed within the time prescribed, final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners plus interest computed in accordance with G.S. 40A-53 of this Chapter, awards to the property owners just compensation. In the event that the judge is of the opinion and, in his discretion, determines that the award does not provide just compensation, he shall set aside the award and order the case placed on the civil issue docket for determination of the issue of compensation by a jury. (1981, c. 919, s. 1; 1999-456, s. 59.)

**§ 40A-49. No request for commissioners.**

After the determination of other issues as provided by G.S. 40A-47, if no request has been made for the appointment of commissioners within the time permitted by G.S. 40A-48(a), the

cause shall be transferred to the civil issue docket for trial as to the issue of just compensation. (1981, c. 919, s. 1.)

**§ 40A-50. Parties, orders; continuances.**

The judge shall appoint an attorney to appear for and protect the rights of any party or parties in interest who are unknown, or whose residence is unknown and who has not appeared in the proceeding by an attorney or agent. The State Treasurer as custodian of the Escheat Fund shall be notified of the appointment of such an attorney. The judge shall appoint guardians ad litem for such parties as are infants, incompetents, or other parties who may be under a disability, and without general guardian, and the judge shall have the authority to make such additional parties as are necessary to the complete determination of the proceeding.

Upon his own motion, or upon motion of any of the parties the judge may, in his discretion, continue the cause until the project is completed or until such earlier time as, in the opinion of the judge, the effect of condemnation upon said property may be determined. The motion may be heard at a hearing pursuant to G.S. 40A-47 or upon the coming on of the cause for trial, and shall be granted upon a proper showing that the effect of condemnation upon the subject property cannot presently be determined. (1981, c. 919, s. 1.)

**§ 40A-51. Remedy where no declaration of taking filed; recording memorandum of action.**

(a) If property has been taken by an act or omission of a condemnor listed in G.S. 40A-3(b) or (c) and no complaint containing a declaration of taking has been filed the owner of the property, may initiate an action to seek compensation for the taking. The action may be initiated within 24 months of the date of the taking of the affected property or the completion of the project involving the taking, whichever shall occur later. The complaint shall be filed in the superior court and shall contain the following: the names and places of residence of all persons who are, or claim to be, owners of the property, so far as the same can be ascertained by reasonable diligence; if any persons are under a legal disability, it must be so stated; a statement as to any encumbrances on the property; the particular facts which constitute the taking together with the dates that they allegedly occurred, and; a description of the property taken. Upon the filing of said complaint summons shall issue and together with a copy of the complaint be served on the condemnor. The allegations of said complaint shall be deemed denied; however, the condemnor within 60 days of service summons and complaint may file answer thereto. If the taking is admitted by the condemnor, it shall, at the time of filing the answer, deposit with the court the estimated amount of compensation for the taking. Notice of the deposit shall be given to the owner. The owner may apply for disbursement of the deposit and disbursement shall be made in accordance with the applicable provisions of G.S. 40A-44. If a taking is admitted, the condemnor shall, within 90 days of the filing of the answer to the complaint, file a map or plat of the property taken. The procedure hereinbefore set out in this Article and in Article 4 shall be followed for the purpose of determining all matters raised by the pleadings and the determination of just compensation.

(b) The owner at the time of filing of the complaint shall record a memorandum of action with the register of deeds in all counties in which the property involved is located. The memorandum is to be recorded among the land records of the county. The memorandum of action shall contain:

- (1) The names of those persons who the owner is informed and believes to be or claim to be owners of the property;
- (2) A description of the entire tract or tracts affected by the alleged taking sufficient for the identification thereof;
- (3) A statement of the property allegedly taken; and

(4) The date on which owner alleges the taking occurred, the date on which said action was instituted, the county in which it was instituted, and such other reference thereto as may be necessary for the identification of said action.

(c) Nothing in this section shall in any manner affect an owner's common-law right to bring an action in tort for damage to his property. (1981, c. 919, s. 1.)

**§ 40A-52. Measure of compensation.**

The commissioners, jury or judge shall determine the issue of compensation in accordance with the provisions of Article 4 of this Chapter. (1981, c. 919, s. 1.)

**§ 40A-53. Interest as a part of just compensation.**

To the amount awarded as compensation by the commissioners or a jury or judge, the judge shall add interest at the rate of six percent (6%) per annum on said amount from the date of taking to the date of judgment. Interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article. (1981, c. 919, s. 1.)

**§ 40A-54. Final judgments.**

Final judgments entered in actions instituted under the provisions of this Article shall contain a description of the land affected, together with a description of the property acquired by the condemnor and a copy of said judgment shall be certified to the register of deeds in each county in which the land or any part thereof lies and be recorded among the land records of said county. (1981, c. 919, s. 1.)

**§ 40A-55. Payment of compensation.**

If there are adverse and conflicting claimants to the deposit made into the court by the condemnor or the additional amount determined as just compensation, on which the judgment is entered in said action, the judge may direct the full amount determined to be paid into said court by the condemnor and may retain said cause for determination of who is entitled to said moneys. The judge may by further order in the cause direct to whom the same shall be paid and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made. (1981, c. 919, s. 1.)

**§ 40A-56. Refund of deposit.**

In the event the amount of the final judgment is less than the amount deposited by the condemnor pursuant to the provisions of this Article, the condemnor shall be entitled to recover the excess of the amount of the deposit over the amount of the final judgment and court costs incident thereto. In the event there are not sufficient funds on deposit to cover said excess, the condemnor shall be entitled to a judgment for said sum against the person or persons having received said deposit. (1981, c. 919, s. 1.)

**§§ 40A-57 through 40A-61. Reserved for future codification purposes.**