

Chapter 8.25 RCW
ADDITIONAL PROVISIONS APPLICABLE TO EMINENT DOMAIN PROCEEDINGS

Sections

- 8.25.010 Pretrial statement of compensation to be paid in event of settlement.
- 8.25.020 Payment to defray costs of evaluating offer—Amount.
- 8.25.070 Award of attorney's fees and witness fees to condemnee—Conditions to award.
- 8.25.073 Award of costs in air space corridor acquisitions—Conditions.
- 8.25.075 Costs—Award to condemnee or plaintiff—Conditions.
- 8.25.120 Conclusions of appraisers—Order for production and exchange between parties.
- 8.25.210 Special benefits to remaining property—Purpose.
- 8.25.220 Special benefits to remaining property—Options—Election by owner—Consent to creation of lien.
- 8.25.230 Special benefits to remaining property—Satisfaction or release of lien—Trial—Expiration of lien by operation of law.
- 8.25.240 Special benefits to remaining property—Judgment—Maximum amounts—Offsets—Interest.
- 8.25.250 Special benefits to remaining property—Attorney fees—Witness fees.
- 8.25.260 Special benefits to remaining property—Lien foreclosure proceedings—Stay.
- 8.25.270 Appointment of guardian ad litem for minors, alleged incapacitated persons—Protection of interests.
- 8.25.280 Valuation of public water systems.
- 8.25.290 Condemnation final actions—Notice required—"Final action" defined.

Property subject to unpaid or delinquent local improvement assessments: RCW 79.44.190.

Publication of notice: RCW 4.28.120.

RCW 8.25.010 Pretrial statement of compensation to be paid in event of settlement. In all actions for the condemnation of property, or any interest therein, at least thirty days prior to the date set for trial of such action the condemnor shall serve a written statement showing the amount of total just compensation to be paid in the event of settlement on each condemnee who has made an appearance in the action. [1965 ex.s. c 125 § 1.]

RCW 8.25.020 Payment to defray costs of evaluating offer—Amount. There shall be paid by the condemnor in respect of each parcel of real property acquired by eminent domain or by consent under threat thereof, in addition to the fair market value of the property, a sum equal to the various expenditures actually and reasonably incurred by those with an interest or interests in said parcel in the process of evaluating the condemnor's offer to buy the same, but not to exceed a total of seven hundred fifty dollars. In the case of

multiple interests in a parcel, the division of such sum shall be determined by the court or by agreement of the parties. [1999 c 52 § 1; 1967 ex.s. c 137 § 1; 1965 ex.s. c 125 § 2.]

RCW 8.25.070 Award of attorney's fees and witness fees to condemnee—Conditions to award. (1) Except as otherwise provided in subsection (3) of this section, if a trial is held for the fixing of the amount of compensation to be awarded to the owner or party having an interest in the property being condemned, the court shall award the condemnee reasonable attorney's fees and reasonable expert witness fees in the event of any of the following:

(a) If condemnor fails to make any written offer in settlement to condemnee at least thirty days prior to commencement of said trial; or

(b) If the judgment awarded as a result of the trial exceeds by ten percent or more the highest written offer in settlement submitted to those condemnees appearing in the action by condemnor in effect thirty days before the trial.

(2) The attorney general or other attorney representing a condemnor in effecting a settlement of an eminent domain proceeding may allow to the condemnee reasonable attorney fees.

(3) Reasonable attorney fees and reasonable expert witness fees authorized by this section shall be awarded only if the condemnee stipulates, if requested to do so in writing by the condemnor, to an order of immediate possession and use of the property being condemned within thirty days after receipt of the written request, or within fifteen days after the entry of an order adjudicating public use whichever is later and thereafter delivers possession of the property to the condemnor upon the deposit in court of a warrant sufficient to pay the amount offered as provided by law. In the event, however, the condemnor does not request the condemnee to stipulate to an order of immediate possession and use prior to trial, the condemnee shall be entitled to an award of reasonable attorney fees and reasonable expert witness fees as authorized by subsections (1) and (2) of this section.

(4) Reasonable attorney fees as authorized in this section shall not exceed the general trial rate, per day customarily charged for general trial work by the condemnee's attorney for actual trial time and his or her hourly rate for preparation. Reasonable expert witness fees as authorized in this section shall not exceed the customary rates obtaining in the county by the hour for investigation and research and by the day or half day for trial attendance.

(5) In no event may any offer in settlement be referred to or used during the trial for any purpose in determining the amount of compensation to be paid for the property. [1984 c 129 § 1; 1971 ex.s. c 39 § 3; 1967 ex.s. c 137 § 3.]

Court appointed experts: Rules of court: ER 706.

RCW 8.25.073 Award of costs in air space corridor acquisitions—Conditions. A superior court having jurisdiction of a proceeding instituted by a condemnor to acquire an air space corridor together with other property rights shall award the condemnee costs including reasonable attorney fees and reasonable expert witness fees, subject to the provisions of subsection (4) of RCW 8.25.070, if—

(1) there is a final adjudication that the condemnor cannot acquire the air space corridor or other property rights by condemnation; or

(2) the proceeding is abandoned by the condemnor. [1971 ex.s. c 39 § 2.]

RCW 8.25.075 Costs—Award to condemnee or plaintiff—Conditions.

(1) A superior court having jurisdiction of a proceeding instituted by a condemnor to acquire real property shall award the condemnee costs including reasonable attorney fees and reasonable expert witness fees if:

(a) There is a final adjudication that the condemnor cannot acquire the real property by condemnation; or

(b) The proceeding is abandoned by the condemnor.

(2) In effecting a settlement of any claim or proceeding in which a claimant seeks an award from an acquiring agency for the payment of compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner, the attorney general or other attorney representing the acquiring agency may include in the settlement amount, when appropriate, costs incurred by the claimant, including reasonable attorneys' fees and reasonable expert witness fees.

(3) A superior court rendering a judgment for the plaintiff awarding compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner shall award or allow to such plaintiff costs including reasonable attorney fees and reasonable expert witness fees, but only if the judgment awarded to the plaintiff as a result of trial exceeds by ten percent or more the highest written offer of settlement submitted by the acquiring agency to the plaintiff at least thirty days prior to trial.

(4) Reasonable attorney fees and expert witness fees as authorized in this section shall be subject to the provisions of subsection (4) of RCW 8.25.070 as now or hereafter amended. [1977 ex.s. c 72 § 1; 1971 ex.s. c 240 § 21.]

RCW 8.25.120 Conclusions of appraisers—Order for production and exchange between parties. After the commencement of a condemnation action, upon motion of either the condemnor or condemnee, the court may order, upon such terms and conditions as are fair and equitable the production and exchange of the written conclusions of all the appraisers of the parties as to just compensation owed to the condemnee, as prepared for the purpose of the condemnation action, and the comparable sales, if any, used by such appraisers. The court shall enter such order only after assurance that there will be mutual, reciprocal and contemporaneous disclosures of similar information between the parties. [1969 ex.s. c 236 § 8.]

RCW 8.25.210 Special benefits to remaining property—Purpose.

It is the purpose of *this 1974 act to provide procedures whereby more just and equitable results are accomplished when real property has been condemned for a highway, road, or street and an award made which

is subject to a setoff for benefits inuring to the condemnee's remaining land. [1974 ex.s. c 79 § 1.]

***Reviser's note:** For codification of "this 1974 act" [1974 ex.s. c 79], see Codification Tables.

RCW 8.25.220 Special benefits to remaining property—Options—Election by owner—Consent to creation of lien. Whenever land, real estate, premises or other property is to be taken or damaged for a highway, road, or street and the amount offered as just compensation includes a setoff in recognition of special benefits accruing to a remainder portion of the property the property owner shall elect one of the following options:

- (1) Trial on the question of just compensation which shall finally determine the amount of just compensation; or
- (2) Acceptance of the offered amount as a final determination of just compensation; or
- (3) Demand the full amount of the fair market value of any property taken plus the amount of damages if any caused by such acquisition to a remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property as those several amounts are agreed to by the parties; or
- (4) Demand a trial before a jury unless jury be waived to establish the fair market value of any property taken and the amount of damages if any caused by such acquisition to a remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property.

The selection of the option set forth in subsections (3) or (4) of this section is subject to the consent by the property owner to the creation and recording of a lien against the remainder in the amount of the fair market value of any property taken plus the amount of damages caused by such acquisition to the remainder of the property without offsetting the amount of any special benefits accruing to a remainder of the property, plus interest as it accrues. [1974 ex.s. c 79 § 2.]

RCW 8.25.230 Special benefits to remaining property—Satisfaction or release of lien—Trial—Expiration of lien by operation of law. A lien established as provided in RCW 8.25.220 shall be satisfied or released by:

- (1) Agreement between the parties to that effect; or
- (2) Payment of the lien amount plus interest at the rate of five percent per annum; or
- (3) Payment of the amount of offsetting special benefits as established pursuant to RCW 8.25.220(3) plus interest at the rate of five percent per annum within four years of the date of acquisition; or
- (4) Satisfaction of a judgment lien entered as a result of a trial before a jury unless jury be waived to establish the change in value of the remainder of the original parcel because of the construction of the project involved: PROVIDED, That if the result of the trial is to find no special benefits then the lien is extinguished by operation of law. Trial may be had on the petition of any party to the superior court of the county wherein the subject remainder lies after notice of intent to try the matter of special benefits has been

served on all persons having an interest in the subject remainder. Such notice shall be filed with the clerk of the superior court and personally served upon all persons having an interest in the subject remainder. Filing a notice of intent to try the matter of special benefits shall be accompanied by a fee in the amount paid when filing a petition in condemnation.

(5) Upon expiration of six years time from the date of acquisition without commencement of proceedings to foreclose the lien or try the matter of special benefits to the remainder of the property, the lien shall terminate by operation of law. [1974 ex.s. c 79 § 3.]

RCW 8.25.240 Special benefits to remaining property—Judgment—Maximum amounts—Offsets—Interest. A judgment entered as a result of a trial on the matter of special benefits shall not exceed the previously established sum of (1) the fair market value of any property taken; (2) the amount of damages if any to a remainder of the property, without offsetting against either of them the amount of any special benefits accruing to a remainder of the property; (3) the interest at five percent per annum accrued thereon to the date of entry of the judgment. [1974 ex.s. c 79 § 4.]

RCW 8.25.250 Special benefits to remaining property—Attorney fees—Witness fees. Attorney fees and expert witness fees of the condemnee may be allowed by the attorney general or other attorney representing a condemnor to the extent provided in RCW 8.25.070 and shall be awarded by the court as authorized by this section to the extent provided in RCW 8.25.070 for trial and trial preparation: (1) In the event a trial is held as authorized by RCW 8.25.220 except the judgment awarded to the condemnor must exceed by ten percent or more the highest written offer in settlement of the issue to be determined by trial submitted by the condemnor to those condemnees appearing in the action at least thirty days prior to commencement of the trial; (2) in the event of a trial on the matter of special benefits as authorized by RCW 8.25.230(4) except the judgment awarded to the condemnor must be no more than ninety percent of the lowest written offer in settlement submitted by the condemnor to the condemnees appearing in the action at least thirty days prior to commencement of the trial on the matter of special benefits. [1974 ex.s. c 79 § 5.]

RCW 8.25.260 Special benefits to remaining property—Lien foreclosure proceedings—Stay. A condemnor may foreclose the lien authorized by RCW 8.25.220 by bringing an action and applying for summary judgment pursuant to civil rule 56 and may execute first upon the remainder property but such proceedings shall not be commenced before five years time has passed from the date of acquisition by the condemnor. A property owner may stay proceedings to enforce the lien authorized by RCW 8.25.220 by commencement of an action to try the matter of special benefits. [1974 ex.s. c 79 § 6.]

RCW 8.25.270 Appointment of guardian ad litem for minors, alleged incapacitated persons—Protection of interests. When it

appears in any petition or otherwise at any time during the proceedings for condemnation brought pursuant to chapters 8.04, 8.08, 8.12, 8.16, 8.20, and 8.24 RCW that any minor, or alleged incapacitated person is interested in any property that is to be taken or damaged, the court shall appoint a guardian ad litem for the minor or alleged incapacitated person to appear and assist in the person's defense, unless a guardian or limited guardian has previously been appointed, in which case the duty to appear and assist shall be delegated to the properly qualified guardian or limited guardian. The court shall make such orders or decrees as it shall deem necessary to protect and secure the interest of the minor or alleged incapacitated person. [1996 c 249 § 6; 1977 ex.s. c 80 § 12.]

Intent—1996 c 249: See note following RCW 2.56.030.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

RCW 8.25.280 Valuation of public water systems. Consistent with standard appraisal practices, the valuation of a public water system as defined in RCW 70A.125.010 shall reflect the cost of system improvements necessary to comply with health and safety rules of the state board of health and applicable regulations developed under chapter 43.20, 43.20A, or 70A.100 RCW. [2021 c 65 § 9; 1990 c 133 § 9.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

RCW 8.25.290 Condemnation final actions—Notice required—"Final action" defined. (1) The condemnor must provide notice as required by this section before:

(a) A state agency or other entity subject to chapter 8.04 RCW takes a final action to authorize the condemnation of a specific property;

(b) A county or other entity subject to chapter 8.08 RCW takes a final action deeming a specific property to be "for county purposes" as provided in RCW 8.08.010;

(c) A city or town or other entity subject to chapter 8.12 RCW takes a final action authorizing condemnation as provided in RCW 8.12.040;

(d) A school district or other entity subject to chapter 8.16 RCW takes a final action selecting property for condemnation as provided in RCW 8.16.010;

(e) Any other corporation authorized to condemn property takes a final action to authorize condemnation as provided in RCW 8.20.010; or

(f) Any other entity subject to chapter 8.04, 8.08, 8.12, 8.16, or 8.20 RCW takes any final action to authorize the condemnation of a specific property.

(2) (a) (i) Notice of the planned final action shall be mailed by certified mail to each and every property owner of record as indicated

on the tax rolls of the county to the address provided on such tax rolls, for each property potentially subject to condemnation, at least fifteen days before the final action. If no address is provided for a property on the tax rolls of the county, the potential condemnor shall conduct a diligent inquiry for the address for each and every property owner of record and send the notice to that address. In case the property sought to be appropriated is school or county land, such notice shall be mailed to the auditor of the county in which the property sought to be acquired and appropriated is situated.

(ii) The notice must contain a general description of the property such as an address, lot number, or parcel number and specify that condemnation of the property will be considered during the final action. The notice must also describe the date, time, and location of the final action at which the potential condemnor will decide whether or not to authorize the condemnation of the property.

(iii) Mailing of the certified letter to the proper addressee or addressees is deemed to be sufficient notice under this subsection (2) (a).

(b) (i) Notice of a planned final action described in subsection (1) of this section shall also be given by publication in the legal newspaper with the largest circulation in the jurisdiction where such property is located once a week for two successive weeks before the final action. A second publication must also be given in the legal newspaper routinely used by the potential condemnor, where such newspaper does not also have the largest circulation in the jurisdiction. Proof of circulation shall be established by publisher's affidavit filed with the potential condemnor. Such publication shall be deemed sufficient notice in lieu of a certified letter for each property owner of record for the property whose address is unknown and cannot be ascertained after a diligent inquiry.

(ii) The notice published under this subsection (2) (b) shall contain the same information as is required under (a) of this subsection.

(3) In a condemnation action subject to this section in which a condemnee alleges insufficient notice under this section, the court may determine whether the condemnor made a diligent attempt to provide sufficient notice and issue a finding on the sufficiency of the notice. Lack of sufficient notice under this section shall render the subsequent proceedings void as to the person improperly notified, but the subsequent proceedings shall not be void as to all persons or parties having been notified as provided in this section, either by publication or otherwise. A potential condemnor may cure insufficient notice under this section by providing an additional sufficient notice prior to taking a new final action, and filing a new petition if one was previously filed, for condemnation for the property owner of record who received insufficient notice. In such a case, RCW 8.12.530 shall not apply and a subsequent proceeding may be filed sooner than one year after discontinuance.

(4) (a) For potential condemnors subject to chapter 42.30 RCW, the open public meetings act, "final action" has the same meaning as that provided in RCW 42.30.020.

(b) For state agencies not subject to chapter 42.30 RCW, the office of the attorney general shall publish procedures that define "final action" for state agencies to ensure that property owners of record are provided with notice and opportunity for comment before the agency makes a final decision to authorize the condemnation of specific property.

(c) For all other entities subject to chapter 68, Laws of 2007, "final action" means a public meeting at which the entity informs potentially affected property owners of record about the scope and reasons for a potential condemnation action. A meeting must be held in each county where property being considered for condemnation is located. The meeting must be open to the public and conducted by a duly authorized representative of the entity. [2007 c 68 § 1.]