

Enrolled
House Bill 2269

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Oregon Law Commission)

CHAPTER

AN ACT

Relating to immediate possession of property subject to condemnation.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 and 3 of this 2005 Act are added to and made a part of ORS chapter 35.

SECTION 2. This chapter does not affect the ability of a public body, as defined in ORS 174.109, to take immediate possession of property in an emergency that poses a threat to persons or property.

SECTION 3. (1) At any time after a condemnation action is commenced, a public condemner may serve notice that the public condemner will take immediate possession of the property that is the subject of the action. The notice must be served in the manner provided by ORCP 9 on all defendants in the action.

(2) If notice is served under this section, a defendant in a condemnation action may object to immediate possession of property by a public condemner by filing a written objection with the court within 10 days after notice is served on the defendant under this section and serving a copy of the objection on the public condemner in the manner provided by ORCP 9. The objection must request that the court schedule a hearing on the objection at the earliest possible time. The only issues that a court may consider upon objection are:

- (a) Whether the condemnation is legal; and
- (b) Subject to the presumption established by ORS 35.235 (2), whether the public condemner has acted in bad faith, engaged in fraud or engaged in an abuse of discretion under a delegation of authority.

(3) If notice is served under this section and an objection is not filed with the court within the time allowed under subsection (2) of this section, the public condemner may at any time thereafter file with the court a form of order confirming the public condemner's possession of the property as of the date specified in the notice. The form of order must be accompanied by an affidavit attesting to service of the notice as required by subsection (1) of this section, and a statement that an objection was not filed within 10 days after notice was served on the defendants in the action. Upon filing of the affidavit, the clerk of the court shall affix the seal of the court to the form of order. The order may thereafter be enforced in the same manner as any other order of the court.

(4) A notice under this section must be in substantially the following form:

**CIRCUIT COURT FOR THE
COUNTY OF _____**

Plaintiff,)
))
) **NOTICE OF**
) **IMMEDIATE**
) **POSSESSION**
))
) **Case No. _____**
))

Defendant.)

TO THE DEFENDANTS:

By service of this notice, you are advised that the plaintiff will take possession of the property described in the complaint on:

(1) _____, 2_____, if the deposit required by ORS 35.265 has been made by that date; or

(2) The date on which the deposit required by ORS 35.265 is made if that date is later than the date specified above.

You may file an objection with the court within 10 days after this notice is served on you. An objection may be made only to determine:

(1) Whether the condemnation is legal; and

(2) Subject to the presumption established by ORS 35.235 (2), whether the public condemner has acted in bad faith, engaged in fraud or engaged in an abuse of discretion under a delegation of authority.

Attorney for Plaintiff

Address

Telephone Number

(5) The court shall expeditiously consider any objection filed under this section to prevent prejudice to the public condemner's need for immediate possession.

(6) The ability of the defendant in a condemnation action to assert legal defenses in the answer of the defendant under ORS 35.295 is not affected solely by reason of the filing of an objection to a notice served under this section, or by reason of the failure to file an objection.

(7) This section does not impose a requirement that a public condemner use the procedure described in this section, and the procedure described in this section is not the exclusive method by which a public condemner may obtain possession of property.

Passed by House June 8, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 27, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State