

Eminent Domain under New York State Law

Note: this article is not intended to provide legal advice

The following sections of New York law relevant to Eminent Domain have been extracted from the state's legislative information web site

<http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>

EDP - Eminent Domain Procedure

Article 1 - PURPOSE; SHORT TITLE; DEFINITIONS; APPLICABILITY

101 - Purpose.

102 - Short title.

103 - Definitions.

104 - Applicability.

§ **101. Purpose.** It is the purpose of this law to provide the exclusive procedure by which property shall be acquired by exercise of the power of eminent domain in New York state; to assure that just compensation shall be paid to those persons whose property rights are acquired by the exercise of the power of eminent domain; to establish opportunity for public participation in the planning of public projects necessitating the exercise of eminent domain; to give due regard to the need to acquire property for public use as well as the legitimate interests of private property owners, local communities and the quality of the environment, and to that end to promote and facilitate recognition and careful consideration of those interests; to encourage settlement of claims for just compensation and expedite payments to property owners; to establish rules to reduce litigation, and to ensure equal treatment to all property owners.

§ **102. Short title.** This chapter shall be known as the eminent domain procedure law and may be cited as "EDPL".

§ 103. Definitions. As used in this law:

(A) "Acquisition" means the act of vesting of title, right or interest to, real property for a public use, benefit or purpose, by virtue of the condemnor's exercise of the power of eminent domain.

(B) "Acquisition map" means the representation of the real property acquired by either a delineation of the perimeter of the particular project covering the acquisition; together with a description of the project's perimeter boundaries and of the estate, right or interest in and to such property so acquired or an individual property map representing the estate, right or interest in and to such property so acquired.

(B-1) "Assessment record billing owner" means the owner, last known owner, or reputed owner, at such person's tax billing address, of each parcel or portion thereof, of real property which may be acquired by the condemnor for such public project, as shown on the assessment records of the political subdivision in which such parcel or portion thereof is located, as this information, in its most current form, may be obtained from and ascertained by the assessor of each such political subdivision.

(C) "Condemnee" means the holder of any right, title, interest, lien,

charge or encumbrance in real property subject to an acquisition or proposed acquisition.

(D) "Condemnor" means any entity vested with the power of eminent domain.

(E) "Person" means any individual, partnership, corporation, association, trust, or legal entity.

(F) "Real property" includes all land and improvements, lands under water, waterfront property, the water of any lake, pond or stream, all easements and hereditaments, corporeal or incorporeal, and every estate, interest and right, legal or equitable, in lands or water, and right, interest, privilege, easement and franchise relating to the same, including terms for years and liens by way of mortgage or otherwise.

(G) **"Public project" means any program or project for which acquisition of property may be required for a public use, benefit or purpose.**

§ 104. **Applicability.** The eminent domain procedure law shall be uniformly applied to any and all acquisitions by eminent domain of real property within the state of New York.

ARTICLE 2: DETERMINATION OF THE NEED AND LOCATION OF A PUBLIC PROJECT PRIOR TO ACQUISITION

Section 201. Public hearings.

202. Notice.

203. Conduct of the public hearing.

204. Determination and findings.

205. Amendments for field conditions.

206. Exemptions.

207. Judicial review.

208. Jurisdiction of courts.

§ 201. **Public hearings.** Except as provided herein, prior to acquisition, the condemnor, in order to inform the public and to review the public use to be served by a proposed public project and **the impact on the environment and residents of the locality where such project will be constructed, shall conduct a public hearing in accordance with the provisions of this article at a location reasonably proximate to the property which may be acquired for such project.**

§ 202. **Notice.** (A) **Where a public hearing is required by this article** the condemnor shall give notice to the public of the purpose, time and location of its hearing setting forth the proposed location of the public project including any proposed alternate locations, at least ten but no more than thirty days prior to such public hearing by causing such notice to be published in at least five successive issues of an official daily newspaper if there is one designated in the locality where the project will be situated and in at least five successive issues of a daily newspaper of general circulation in such locality. If the official newspaper is one of general circulation in such locality, publication therein as specified shall be deemed sufficient compliance.

(B) In the event that the only newspaper available in such locality is a weekly publication the above described notice shall be published in such newspaper in at least two successive issues.

(C) (1) The condemnor shall serve, either by personal service or

certified mail, return receipt requested, a notice of the purpose, time, date, and location of a public hearing required by this article to each assessment record billing owner or his or her attorney of record.

(2) Such notice shall be served at least ten but no more than thirty days prior to such public hearing. Such notice shall clearly state that those property owners who may subsequently wish to challenge condemnation of their property via judicial review may do so only on the basis of issues, facts, and objections raised at such hearing.

(D) **Inadvertent failure to notify a person or persons entitled to notice under this section shall not be jurisdictional nor construed to affect the validity of any title acquired by a condemnor under this law.**

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§ 203. **Conduct of the public hearing.** At the public hearing the condemnor shall outline the purpose, proposed location or alternate locations of the public project and any other information it considers pertinent, including maps and property descriptions of the property to be acquired and adjacent parcels. Thereafter, any person in attendance shall be given a reasonable opportunity to present an oral or written statement and to submit other documents concerning the proposed public project. A record of the hearing shall be kept, including written statements submitted. Copies of such record shall be available to the public for examination without cost during normal business hours at the condemnor's principal office and the office of the clerk or register of the county in which the property proposed to be acquired is located. Copies shall be reproduced upon written request and payment of the cost thereof. Further adjourned hearings may be scheduled.

§ 204. **Determination and findings.** (A) The condemnor, within ninety days after the conclusion of the public hearings held pursuant to this article, shall make its determination and findings concerning the proposed public project and shall publish a brief synopsis of such determination and findings in at least two successive issues of an official newspaper if there is one designated in the locality where the project will be situated and in at least two successive issues of a newspaper of general circulation in such locality. If the official newspaper is one of general circulation in such locality, publication therein as specified shall be deemed sufficient compliance. The synopsis shall include those factors set forth in subdivision (B) herein, and shall also state that copies of the determination and findings will be forwarded upon written request without cost.

(B) The condemnor, in its determination and findings, shall specify, but shall not be limited to the following:

(1) **the public use, benefit or purpose to be served by the proposed public project;**

(2) the approximate location for the proposed public project and the reasons for the selection of that location;

(3) the general effect of the proposed project on the environment and residents of the locality;

(4) such other factors as it considers relevant.

(C) Upon making the determination and findings, the condemnor shall serve, by personal service or certified mail, return receipt requested, a notice of the brief synopsis thereof upon each assessment record billing owner or his or her attorney of record whose property may be acquired. Such notice shall: (1) include the information required by paragraph two of subdivision (B) of this section; (2) state that copies of the determination and findings will be forwarded to such individuals

upon written request and without cost; (3) inform such individual that, under section two hundred seven of this article, there are thirty days from the completion of the condemnor's newspaper publication requirement to seek judicial review of the condemnor's determination and findings; and (4) inform such individual that, under sections two hundred seven and two hundred eight of this article, the exclusive venue for judicial review of the condemnor's determination and findings is the appellate division of the supreme court in the judicial department where any part of the property to be condemned is located.

§ 205. Amendments for field conditions. Subsequent to publishing its determination and findings and only in the event that further study of field conditions warrant, the condemnor shall have the right to make amendments or alterations in its proposed public project to accommodate such field conditions. Such amendments or alterations shall not require further public hearings nor invalidate any acquisition for the proposed public project.

§ 206. Exemptions. The condemnor shall be exempt from compliance with the provisions of this article when:

(A) pursuant to other state, federal, or local law or regulation it considers and submits factors similar to those enumerated in subdivision (B) of section two hundred four, to a state, federal or local governmental agency, board or commission before proceeding with the acquisition and obtains a license, a permit, a certificate of public convenience or necessity or other similar approval from such agency, board, or commission or;

(B) pursuant to article VII or article VIII of the public service law it obtained a certificate of environmental compatibility and public need or;

(C) pursuant to other law or regulation it undergoes or conducts or offers to conduct prior to an acquisition one or more public hearings upon notice to the public and owners of property to be acquired, and provided further that factors similar to those enumerated in subdivision (B) of section two hundred four herein may be considered at such public hearings, or;

(D) when in the opinion of the condemnor the acquisition is de minimis in nature so that the public interest will not be prejudiced by the construction of the project or because of an emergency situation the public interest will be endangered by any delay caused by the public hearing requirement in this article.

(E) when it complies with the procedures contained in section 41.34 of the mental hygiene law.

§ 207. Judicial review. (A) Any person or persons jointly or severally, aggrieved by the condemnor's determination and findings made pursuant to section two hundred four of this article, may seek judicial review thereof by the appellate division of the supreme court, in the judicial department embracing the county wherein the proposed facility is located by the filing of a petition in such court within thirty days after the condemnor's completion of its publication of its determination and findings pursuant to section two hundred four herein. Such petition shall be accompanied by proof of service of a demand on the condemnor to file with said court a copy of a written transcript of the record of the proceeding before it, and a copy of its determination and findings. Upon receipt of such petition and demand, the condemnor shall forthwith

deliver to the court a copy of the record and a copy of its determination and findings. The proceeding shall be heard on the record without requirement of reproduction. If such proposed public improvement is located in more than one judicial department such proceeding may be brought in any one, but only one of such departments and all such proceedings with relation to any single public project shall be consolidated with that first filed.

(B) The jurisdiction of the appellate division of the supreme court shall be exclusive and its judgment and order shall be final subject to review by the court of appeals in the same manner and form and with the same effect as provided for appeals in a special proceeding. All such proceedings shall be heard and determined by the appellate division of the supreme court, and by the court of appeals, as expeditiously as possible and with lawful preference over other matters.

(C) The court shall either confirm or reject the condemnor's determination and findings. The scope of review shall be limited to whether:

(1) the proceeding was in conformity with the federal and state constitutions,

(2) the proposed acquisition is within the condemnor's statutory jurisdiction or authority,

(3) the condemnor's determination and findings were made in accordance with procedures set forth in this article and with article eight of the environmental conservation law, and

(4) **a public use, benefit or purpose will be served by the proposed acquisition.**

§ 208. Jurisdiction of courts. Except as expressly set forth in section two hundred seven, and except for review by the court of appeals of an order or **judgment of the appellate division of the supreme court as provided for therein**, no court of this state shall have jurisdiction to hear and determine any matter, case or controversy concerning any matter which was or could have been determined in a proceeding under this article.

Article 3 - OFFER AND NEGOTIATIONS

301 - Policy.

302 - Appraisals; prevesting discovery.

303 - Offer.

304 - Advance payment; actions thereafter.

305 - Use and occupancy.

§ **301. Policy.** The condemnor, at all stages prior to or subsequent to an acquisition by eminent domain of real property necessary for a proposed public project shall make every reasonable and expeditious effort to justly compensate persons for such real property by negotiation and agreement.

§ **302. Appraisals; prevesting discovery.** Real property to be acquired by the exercise of the power of eminent domain shall be appraised on behalf of the condemnor by an appraiser. In order to adequately prepare such appraisal upon which the condemnor's offer is based, the condemnor shall have the right to inspect such property prior to vesting. The owner, his agents or employees, tenants or other occupants shall upon reasonable notice by a written request by the condemnor, provide

pertinent data or information including books and records necessary to prepare such appraisal. A party affected by such request may, where the request for such information is objected to as unreasonable or burdensome, petition a court of competent jurisdiction for relief.

Failure of the owner to comply with this section shall suspend the condemnor's obligation to make an offer to such owner pursuant to article three until such time as this information is provided.

§ 303. **Offer.** The condemnor shall establish an amount which it believes to represent just compensation for the real property to be acquired. The condemnor shall make a written offer to acquire the property for one hundred per centum of the valuation so established. In no event shall such amount be less than the condemnor's highest approved appraisal. Wherever practicable, the condemnor shall make the offer prior to acquiring the property and shall also wherever practicable, include within the offer an itemization of the total direct, the total severance or consequential damages and benefits as each may apply to the property.

§ 304. **Advance payment; actions thereafter.** (A) The written offer, or any adjustment thereof made prior to acceptance, shall state that:

(1) the offer constitutes the amount of the condemnor's highest approved appraisal of the just compensation for the property, and that payment will be made together with appropriate interest;

(2) a condemnee may accept the offer as payment in full; or

(3) a condemnee may reject the offer as payment in full and instead elect to accept such offer as an advance payment, and that such election shall in no way prejudice the right of a condemnee to claim additional compensation; however, the failure of the condemnee to file a claim within the time of filing claims as provided in subdivision (A) of section five hundred three of this law shall be deemed an acceptance of the amount paid as full settlement of such claim;

(4) upon the acceptance of the written or an adjusted offer, the condemnor shall enter into an agreement or stipulation with the condemnee providing for payment pursuant to such agreement, either as payment in full or as an advance payment. The right of the condemnee to the advance payment shall not be conditioned on the waiver of any other right.

(B) The offer shall be deemed rejected in the event that a condemnee within ninety days of the offer fails or refuses to notify the condemnor in writing that the advance payment is accepted.

(C) In the event a condemnee shall reject the offer or the offer shall be deemed rejected pursuant to subdivision (B) or a condemnee unreasonably fails to provide the condemnor with all papers reasonably necessary to effect a valid transfer of title as acquired, within ninety days of receipt, the condemnor's obligation to pay interest on the amount of the offer shall be suspended until such time as the condemnee accepts the offer as payment in full, or as an advance payment, or provides the necessary title papers as the case may be.

(D) In the event an owner accepts the offer as payment in full or as an advance payment for property in an acquisition under supreme court jurisdiction pursuant to subdivision (B) of section five hundred one of this chapter and the condemnor determines that there is a conflict of title or a conflict arises over the percentage of the condemnation award which should be paid to each of several owners of interests in the condemned property, the condemnor shall, unless it is otherwise agreed,

deposit the full or advance payment, as the case may be, with the clerk of the supreme court having jurisdiction of the claim. This deposit shall be placed in an interest bearing account until payment of such sum, including accumulated interest, is directed to be made by the court on application of any person claiming an interest in the amount deposited. After the deposit as herein provided has been made, the condemnor shall notify all persons claiming an interest in the condemnation award that the amount payable thereunder has been deposited and is subject to an application by an interested person or persons to a distribution proceeding. The determination of the supreme court and final judgment of distribution shall, unless set aside or reversed on appeal, be final and conclusive upon the owners or other persons claiming any interest in or lien or encumbrance on the property so appropriated and the amount deposited. A deposit pursuant to this section shall terminate the condemnor's obligation to pay interest on the amount so deposited provided that interest is paid on such deposit. No sum paid into court or deposited shall be charged fees, commissions or poundage.

(E) (1) In the event that an owner accepts the offer as payment in full or as an advance payment for property in an acquisition under the court of claims jurisdiction pursuant to subdivision (A) of section five hundred one of this chapter and the attorney general determines that there is a conflict of title or a conflict arises so that he is unable to make certification of the person or persons legally entitled to the amount payable under an agreement adjusting all legal damages caused by any such acquisition, the condemnor shall request the comptroller to, and the comptroller shall, deposit the amount payable under such agreement in a special interest bearing account in any bank in which moneys belonging to the fund from which such compensation is payable may be deposited, to be distributed as ordered by the court of claims on application of any person claiming an interest in the amount deposited. After making the deposit as herein provided, the attorney general shall notify all parties claiming an interest in the fund that the amount payable thereunder has been deposited and is subject to an application by an interested person or persons to a distribution proceeding. The procedure on such an application shall be the same as provided in section twenty-three of the court of claims act respecting the distribution of deposited court of claims awards, except that the proceeding shall be conducted in the court of claims, in the district in which the appropriated property is located and such application shall be made by filing the original and one copy of the verified petition with the chief clerk of the court of claims in Albany, and upon service of a copy of the verified petition upon the attorney general at his office in Albany. The determination of the court of claims and final judgment of distribution shall, unless set aside or reversed on appeal, be final and conclusive upon the owners or other persons claiming any interest in or lien or encumbrance on the property so appropriated and the amount deposited. No judgment of distribution shall be made unless the court shall first obtain personal jurisdiction over all persons certified by the attorney general as having or claiming to have an interest in the fund.

A deposit made pursuant to this paragraph shall terminate the condemnor's obligation to pay interest on the amount so deposited provided that interest is paid on such deposit. No sum paid into court or deposited shall be charged fees, commissions or poundage.

In the event a condemnee at any time subsequent to a deposit made pursuant to this paragraph one, but prior to an application for

distribution, provides the condemnor with the papers referred to in subdivision (C) of this section in a form satisfactory to the attorney general, the condemnor shall request the comptroller to, and the comptroller shall, without any court order being required, withdraw the sum deposited together with all interest accrued thereon, and redeposit the same, including the interest thereon, to the account from which it was withdrawn for the purpose of effecting payment by the comptroller as provided by law.

(2) In the event that an owner does not accept the offer as payment in full or as an advance payment for property in an acquisition under the court of claims jurisdiction pursuant to subdivision (A) of section five hundred one of this chapter, at any time subsequent to the vesting of title in the state of New York, but in no event after ninety days from the vesting of title in the state of New York, the condemnor shall, upon receiving written approval of the attorney general, request the comptroller to, and the comptroller shall, after his audit and acceptance of the highest approved appraisal referred to in section three hundred three and paragraph one of subdivision (A) of section three hundred four herein, deposit the amount of the condemnor's offer in a special interest bearing account in any bank in which moneys belonging to the fund from which such compensation is payable may be deposited, to be distributed as ordered by the court of claims on application of any person claiming an interest in the amount deposited.

Notwithstanding any other provision of law to the contrary, if such an acquisition is being made for a federally-aided project and the condemnor determines it necessary to deposit the amount of the highest appraised value without delay in order to proceed with the letting of a construction contract and to comply with federal laws, rules and regulations, the condemnor may request the comptroller to make the deposit herein provided at any time subsequent to the vesting of title in the state of New York and provided an offer of payment in full or as an advance payment has been made to the owner. The written approval of the attorney general shall not be necessary under this paragraph, but the comptroller shall, after making the aforesaid deposit, transmit to the attorney general a notice in writing approximately identifying the proceeding or project, the map and parcel number or numbers and the name of the depository bank, together with the date and amount of the deposit.

After the deposit has been made as herein provided, the attorney general shall notify all parties having or claiming to have an interest in the fund that the amount payable thereunder has been deposited and is subject to an application by an interested person or persons to a distribution proceeding. The procedure on such an application shall be the same as provided in section twenty-three of the court of claims act respecting the distribution of deposited court of claims awards, except that the proceeding shall be conducted in the court of claims, in the district in which the appropriated property is located and such application shall be made by filing the original and one copy of the verified petition with the chief clerk of the court of claims in Albany, and upon service of a copy of the verified petition upon the attorney general at his office in Albany. The determination of the court of claims, and final judgment of distribution shall, unless set aside or reversed on appeal, be final and conclusive upon the owners or other persons claiming any interest in or lien or encumbrance on the property so appropriated and the amount deposited. No judgment of distribution shall be made unless the court shall first obtain personal jurisdiction over all persons certified by the attorney general as having or claiming

to have an interest in the fund.

A deposit made pursuant to this paragraph shall terminate the condemnor's obligation to pay interest on the amount so deposited provided that interest is paid upon such deposit. No sum paid into court or deposited shall be charged fees, commissions or poundage.

In the event an offer is accepted subsequent to a deposit made pursuant to this paragraph and if no application for distribution has been made, the condemnor shall request the comptroller to, and the comptroller shall, without any court order being required, withdraw the sum deposited together with all interest accrued thereon, and redeposit the same including interest thereon to the account from which it was withdrawn for the purpose of effecting payment by the comptroller as provided by law.

(3) Nothing contained in this section shall, in any way, affect the right of a condemnee who has not accepted the condemnor's offer as payment in full from filing a claim in the court of claims within the time limited therefor.

Furthermore, in the event three years from the date of any deposit made pursuant to this subdivision have elapsed, and no application for distribution as aforesaid has been made, the comptroller may, without any court order, withdraw the sum deposited together with all interest accrued thereon and redeposit the same in the account from which such sum was withdrawn for the purpose of effecting payment by the comptroller as provided by law.

(4) Notwithstanding the provisions of paragraphs one and two of this subdivision, the comptroller is authorized, at his discretion, to make any deposits required pursuant to paragraphs one and two of this subdivision into the eminent domain account created pursuant to section ninety-seven-dd of the state finance law. Such deposits may be invested with other state moneys by the comptroller in those obligations specified in section ninety-eight-a of the state finance law. Notwithstanding the provisions of section sixteen of the state finance law or any other general or special law to the contrary, if moneys are deposited by the comptroller in the eminent domain account established pursuant to section ninety-seven-dd of the state finance law, the condemnee shall be entitled to receive interest at the rate determined by the comptroller based on the rate of earnings of such investments during the period of deposit.

(F) At any time subsequent to making the written offer, the amount of such offer may be adjusted or revised by the condemnor to reflect correction of error or miscalculation.

(G) The reservation of the right to claim additional compensation, pursuant to paragraph three of subdivision (A) of this section, shall not extend or affect in any way the time limit for the filing of such claim as provided in section five hundred three of this law.

(H) When an advance payment to a condemnee made pursuant to this section by the condemnor exceeds the award of the court for that property, the court shall, on motion, enter judgment in favor of the condemnor for the amount of such excess and appropriate interest. Such motion shall be made on notice served within thirty days after delivery to the condemnor of the decision of the court making the award.

§ 305. Use and occupancy. (A) A condemnee, tenant or other person holding, using or occupying property acquired pursuant to this chapter, shall be liable to the condemnor for the fair and reasonable value of such holding, use or occupancy from the date of acquisition to the date

the property is vacated and possession surrendered to the condemnor. Provided, however, that in the event the property at the time of acquisition is occupied by the former owner for residential purposes, the liability of such former owner for the fair and reasonable value of such residential holding shall not commence until ninety days after the date of acquisition or until the date on which the property ceases to be occupied by the former owner for residential purposes, whichever occurs first.

(B) The amount of the fair and reasonable value for such temporary use and occupancy established by the condemnor shall be paid to the condemnor at reasonable intervals; any amount due and payable may be retained by the condemnor from any unpaid damage or consideration to be paid by it to such condemnee, tenant or other person for the property or interest therein acquired from him. Either party may bring an action and make application to a court of competent jurisdiction to establish the fair and reasonable amount of money due for such holding, use or occupancy of the property, in the event the value established by the condemnor is unacceptable. The condemnor may enforce any judgment ensuing from such actions according to the applicable provisions of law.

(C) Where a condemnee, tenant or other person holding, using or occupying property acquired pursuant to this chapter is entitled to an award for the acquisition of the property by the condemnor, any unpaid portion of the sum fixed for use and occupancy either by agreement, expressed or implied, or by court action to establish the same, shall be a lien against such award, or payment by agreement, subject only to liens of record at the time of the vesting of title in the condemnor and liens under section four hundred seventy-five of the judiciary law.

Article 4 - VESTING; POSSESSION; ABANDONMENT

401 - Time for acquisition.

402 - Filing of acquisition maps; vesting.

403 - Names of reputed condemnees.

404 - Right of entry prior to acquisition.

405 - Possession.

406 - Abandonment.

§ 401. Time for acquisition. (A) The condemnor may commence proceedings under this article to acquire the property necessary for the proposed public project up to three years after conclusion of the later of:

- (1) publication of its determination and findings pursuant to section two hundred four, or
- (2) the date of the order or completion of the procedure that constitutes the basis of exemption under section two hundred six, or
- (3) entry of the final order or judgment on judicial review pursuant to section two hundred seven of this chapter.

(B) If the condemnor has not commenced the proceedings under this article to acquire the property prior to the expiration of such three year period the project shall be deemed abandoned, and thereafter, before commencing proceedings under this article the condemnor must again comply with the provisions of article two; provided, however, that the preceding shall not operate to bar the acquisition of property for which title cannot be certified by the state attorney general or appropriate legal officer or attorney of the condemnor in acquisition pursuant to subdivision (B) of section five hundred one of this chapter within such three year period. Such property shall be acquired

thereafter as soon as practicable.

(C) In the event property is to be acquired for a public project in stages, the condemnor after conducting a required public hearing for the entire project need not conduct additional hearings for subsequent stages, provided that proceedings under this article with respect to the property necessary for the first stage were commenced within such three year period and provided further, that all proceedings under this article with respect to property for the project are commenced within ten years from the dates hereinabove set forth in paragraphs one, two and three of subdivision (A).

(D) In the event additional property must be acquired after the three year period, because of field conditions, such acquisition shall be made as soon as practicable.

§ 402. Filing of acquisition maps; vesting. (A) In all acquisitions under the court of claims jurisdiction provided in subdivision (A) of section five hundred one herein, prior to acquiring property, the state of New York, within the time prescribed by section four hundred one of this law, shall:

(1) file in the main office of the agency, department, or authority or public benefit corporation for which the acquisition is being made, the original tracing of the acquisition map or a microfilm or computer digitized copy of the original acquisition map of any real property which it deems necessary for purposes connected with a proposed public project, indicating and describing in each instance the particular easement, interest or right, in the real property that is acquired including metes and bounds or section, block and lot numbers; and

(2) notify condemnees by first class mail that the condemning party is now taking steps to acquire such property, thereupon, subject to the provisions of this law, the people of the state of New York, their officers and agents may immediately enter upon and take possession of the real property so described for any and all purposes connected with the proposed public project; and

(3) file a certified copy of such acquisition map in the office of the county clerk or register of each county in which such property or any portion thereof is situated, and thereupon, the acquisition of the property by the state, described in such map shall be deemed complete and title to such property shall be vested in the state.

(4) if the condemnor deems it necessary to acquire immediately any property which is in the bed or beds of any streams, lakes, streets, roads, highways, or rights of way for purposes connected with the proposed public project, it shall cause to be prepared an accurate description and map of such property, indicating and describing in each case the particular easement, interest or right. On the approval of such description and map by the condemnor, it may proceed to vest title in such property, easements, interests or rights by acquisition in the manner hereinafter provided. Such description and the original tracing of such map or a microfilm or computer digitized copy of the original tracing shall be filed in the office of the condemnor. On the filing of such description and map in the office of the condemnor, the people of the state, their officers and agents, may immediately enter upon and take possession of the property so described for any and all purposes connected with the proposed public project. A certified copy of such description and map shall be filed by the condemnor in the office of the county clerk or register of each county in which such property is situated and thereupon the acquisition by the state of the property

described in such description and map shall be deemed complete, and the title to such property shall vest in the people of the state. Upon the completion of the filing in the office of the county clerk or register as aforesaid, the condemnor shall cause a notice of such filing of the description and map, together with a description of such property, to be published at least once in a newspaper published and having general circulation in each county where such property is situated. Claims for the value of the property acquired and for legal damages caused by any such acquisition may be adjusted by the condemnor in the manner provided by law notwithstanding that a claim has been filed with the court of claims, and in all cases where claims for such damages have been agreed upon or an award has been made by the court of claims, the claimant shall submit to the attorney general such proof of title to the property so acquired as shall be satisfactory to the attorney general. All other statutory provisions relating to claims on account of such acquisition shall apply to claims which may arise under this subdivision with the same force and effect.

(B) In all acquisitions under supreme court jurisdiction provided in subdivision (B) of section five hundred one herein, the condemnor, prior to filing an acquisition map within the time prescribed by section four hundred one, shall obtain an order to acquire such property and for permission to file such map by presentation of a verified petition to the supreme court in the judicial district where the real property to be acquired or any part thereof, is situated, in accordance with the following procedure:

(1) The condemnor shall cause to be filed in the office of the clerk of each county where the real property to be acquired or any part thereof is situated, a notice of the pendency of such proceeding. Such notice shall briefly state the object of the proceeding and shall contain a general description by metes and bounds or by section, block and lot number of the real property to be acquired thereby. It shall also state the names of such of the reputed condemnees of such real property as may be known to the condemnor, and in case any of the condemnees are unknown, a statement to that effect shall be made in such notice.

(2) The condemnor shall, at least twenty days prior to the return date of the petition, serve a notice of the time, place and object of the proceeding upon the owner of record of the property to be acquired, as the same appears from the record of the office in which the acquisition map is to be filed. Said notice shall contain a copy of that portion of the proposed acquisition map affecting the owner's property. Service shall be made pursuant to the civil practice law and rules or by registered or certified mail, return receipt requested. If service is made by mail it shall be sent to the last known address of the owner, and the following provisions shall also apply:

(a) At least ten but not more than thirty days before the return date of the application, the condemnor shall also cause a copy of a diagram or representation of the acquisition map showing the perimeters to be acquired and a notice generally describing the property to be acquired by metes and bounds or by section, block and lot numbers, to be advertised by publishing in at least ten successive issues of an official newspaper if there is one designated in the locality where the property is situated, and in at least ten successive issues of a newspaper of general circulation in such locality. If the official newspaper is one of general circulation in such locality, publication therein as specified shall be deemed sufficient compliance. In the event that the only newspaper available in such locality is a weekly

publication the above described notice shall be published in such newspaper in at least three successive issues. Where the condemnor has conducted an article two public hearing or when the condemnor is exempt from compliance with article two pursuant to section two hundred six the condemnor may dispense with the requirement of publication in ten successive issues of a newspaper of general circulation.

(b) Where practicable, the condemnor shall cause copies of such notice in the form of handbills to be posted for the same period in at least three conspicuous places, upon or near such real property. The inadvertent failure to notify any condemnee, whether of record or not, will not invalidate any proceedings brought hereunder or any title acquired by the condemnor under this law.

(3) The condemnor shall present to the court a petition verified by an authorized officer of the condemnor setting forth:

(a) a statement providing either the compliance with the requirements of article two of this law, including a copy of the condemnor's determination and findings or a statement providing the basis of exemption from article two;

(b) a copy of the proposed acquisition map to be filed and the names and places of residence of the condemnees of the property to be acquired;

(c) a description of the real property to be acquired and its location, either by metes and bounds of each individual parcel, or section, block and lot number, and by reference to the acquisition map and notice of pendency attached to the petition;

(d) the public use, benefit or purpose for which the property is required;

(e) a request that the court direct entry of an order authorizing the filing of the acquisition map in the office of the appropriate county clerk or register and that upon such filing, title shall vest in the condemnor;

(f) if a non-governmental condemnor subject to the jurisdiction, supervision and regulation of the public service commission or the commissioner of transportation, it shall include in its petition for acquisition, notice that it shall deposit a bond or undertaking with the clerk of the court prior to vesting of title to the real property described in such petition in an amount to be fixed by the court on the return date of the petition. The court shall direct that the bond or undertaking will be applied in the amount necessary, for any default by the condemnor in the payment of all or part of the damages determined in the acquisition proceeding or the abandonment thereof.

The requirement for a bond or undertaking under this subdivision, may be waived by stipulation of the parties. If the amount deposited is insufficient to pay such damages and all costs and expenses awarded to a condemnee, judgment shall be entered against the condemnor for the deficiency, to be enforced and collected in the same manner as a judgment in the supreme court;

(g) if the property is to be used for the construction of a major utility transmission facility, as defined in section one hundred twenty of the public service law, or major steam electric generating facility as defined in section one hundred forty of such law with respect to which a certificate of environmental compatibility and public need has been issued under such law, a statement that such certificate relating to such property has been issued and is in force.

(4) Upon the presentation of the petition and notice with proof of service thereof, a condemnee may appear and interpose a verified answer, which must contain specific denial of each material allegation of the

petition controverted by him, or of any knowledge or information thereof, sufficient to form a belief, or a statement of new matter constituting a defense to the proceeding.

(5) At the time and place mentioned in such notice, unless the court shall adjourn the application to a subsequent date, and in that event at the time and place to which the same may be adjourned, upon due proof of service of notice and upon filing of such petition and proof to its satisfaction that the procedural requirements of this law have been met, the court shall direct the immediate filing and entry of the order granting the petition, which order the condemnor shall file and enter together with the acquisition map and the bond or undertaking if required, in the office of the county clerk or register in each county in which the real property or any part thereof is situated. Upon the filing of the order and the acquisition map, the acquisition of the property in such map shall be complete and title to such property shall then be vested in the condemnor.

(6) When it appears to the satisfaction of the court at any stage of the proceedings, that the public interests will be prejudiced by delay, it may direct that the condemnor be permitted to enter immediately upon the real property to be taken, and devote it temporarily to the public use specified in the petition, upon the deposit with the court of a sum to be fixed by the court upon a notice to the parties of not less than eight days, and such sum when so fixed and deposited, shall be applied, so far as it may be necessary for that purpose, to the payment of any award that may be made with interest thereon from the date of the entry of the condemnor upon such real property, and the costs and expenses of the proceeding, and the residue, if any, returned to the condemnor and, in case the petition should be dismissed, or no award should be made, or the proceedings should be abandoned by the condemnor, the court shall direct that the money so deposited, so far as it may be necessary, shall be applied to the payment of any damages which a condemnee may have sustained by such entry upon and use of his property, and his costs and expenses of the proceedings, such damages to be ascertained by the court, and if the sum so deposited shall be insufficient to pay such damages, and all costs and expenses awarded to the property owner, judgment shall be entered against the condemnor for the deficiency, to be enforced and collected in the same manner as a judgment in supreme court; and the possession of the property shall be restored.

§ 403. Names of reputed condemnees. The condemnor shall deliver to its appropriate legal officer or attorney, (who shall be in acquisitions pursuant to subdivision (A) of section five hundred one, the state attorney general) a copy of such acquisition map, whereupon it shall be the duty of such legal officer or attorney to advise and certify to the condemnor the names of the reputed condemnees of parcels to be acquired.

§ 404. Right of entry prior to acquisition. The condemnor, its officers, agents or contractors when acquiring real property in accordance with this law, or when engaged in work connected with a proposed public project, as described in this law, shall have the right to enter upon any real property for the purpose of making surveys, test pits and borings, or other investigations, and also for temporary occupancy during construction. At a reasonable time prior to such entry, the condemnor shall deliver notice personally or by first class mail, to the property owner stating the necessity for the entry. The condemnor shall be liable to the owner for any damages caused by the condemnor as

a result of the entry; but such damages shall not entail duplicate payment of damages to be compensated for by the condemnor pursuant to article three of this law. Entry damages, if any, shall not be deemed an acquisition.

§ 405. **Possession.** (A) If the condemnor has a right to possession of real property as provided for in this law, and the condemnor shall deem it necessary to cause the removal of a condemnee or other occupant it may cause such condemnee or other occupant to be removed therefrom and possession to be delivered to it, pursuant to the procedures of landlord and tenant law, or by application to the supreme court in which the proceeding is pending for a writ of assistance for possession or pursuant to other law, except that no condemnee shall be required to surrender possession prior to the condemnor's payment to him of its advance payment or the deposit of such amount in accordance with article three of this law, unless the condemnee has not complied with section three hundred two of this law.

(B) No execution shall include costs in a dispossess proceeding. Proceedings may be brought separately against one or more of the condemnees or other occupants of a property, or one proceeding may be brought against all or several of the condemnees or other occupants of any or all property within the territorial jurisdiction of the court.

§ 406. **Abandonment.** (A) If, after an acquisition in fee pursuant to the provisions of this chapter, the condemnor shall abandon the project for which the property was acquired, and the property has not been materially improved, the condemnor shall not dispose of the property or any portion thereof for private use within ten years of acquisition without first offering the former fee owner of record at the time of acquisition a right of first refusal to purchase the property at the amount of the fair market value of such property at the time of such offer. In the event that the acquisition was a partial taking in fee, such offer need not be made unless such former fee owner has title to the contiguous remainder parcel at the time the condemnor determines to dispose of the property. A notice of the offer shall be served on the former fee owner by registered or certified mail return receipt requested. Such former fee owner shall have sixty days after service of such notice to serve a written acceptance upon the condemnor.

(B) Where the condemnor has in good faith and with reasonable diligence attempted to ascertain the identity of persons entitled to notice under this section and mailed notice to the last known address of record of those ascertained, the failure to in fact notify those persons entitled thereto shall not invalidate any subsequent disposition of property pursuant to this section.

[Article 5](#) - PROCEDURE FOR DETERMINING JUST COMPENSATION

[501](#) - Jurisdiction.

[502](#) - Service of notice of acquisition.

[503](#) - Filing and service of claims; notice of appearance.

[504](#) - Content of claim, or notice of appearance.

[505](#) - Proof of title; conflicting claims.

[506](#) - Note of issue; statement of readiness.

[507](#) - Answer; affirmative defenses.

[508](#) - Filing of appraisals; reports of other expert witnesses.

[509](#) - Pretrial conferences.

[510](#) - View.

[511](#) - Joint or consolidated trials.

[512](#) - Decision of the court.

[513](#) - Judgment.

[514](#) - Interest; suspension.

§ 501. Jurisdiction. (A) The court of claims shall have exclusive jurisdiction to hear and determine all claims arising from the acquisition of real property by or in the name of the people of the state of New York, or when jurisdiction is specifically conferred upon it by statute.

(B) In all claims arising from the acquisition of real property other than as provided in subdivision (A) of this section, the supreme court, held in the judicial district where the real property or any portion thereof is situated, shall have exclusive jurisdiction to hear and determine all claims arising from the acquisition of real property and shall hear such claims without a jury or without referral to a referee or commissioners.

§ 502. Service of notice of acquisition. (A) In all acquisitions in which the court of claims has jurisdiction under subdivision (A) of section five hundred one, and provided certification pursuant to section four hundred three of this law has been made, the condemnor, within ninety days after filing the acquisition map pursuant to subdivision (A) of section four hundred two of this law, shall serve, either by personal service or by certified mail, upon each condemnee a notice of acquisition and a copy of that portion of the acquisition map affecting the condemnee's property. Thereupon, the condemnor shall:

(1) cause proof of such service to be filed and recorded in the office of the county clerk or register whose duty it shall be, upon the filing of the proof of such service, to record the same in the books in his office used for recording deeds, and to index the same in the deed index books in his office, listing the names of the persons served as grantors. The record of the proof of such service shall be presumptive evidence of due service of such map and notice of acquisition on the person served. Service of a copy of such map and notice shall not be required to be made on any condemnee whose claim arising from or growing out of such acquisition has been adjusted; and

(2) if it is unable to serve a copy of such map and notice of acquisition, or cause the same to be served upon a condemnee personally within the state, after making an effort so to do, service in lieu thereof may be made by the condemnor by causing such map and notice of acquisition to be filed in the office of the county clerk or register aforesaid, and by causing such notice to be recorded in said office; and

(3) simultaneously therewith, cause a certificate to be filed and recorded in said office, which certificate shall state that the condemnor has been unable to serve a copy of such map and notice of acquisition, or cause the same to be served upon such condemnee personally within the state after a reasonable and proper effort to do so. The certificate shall direct that service be effected by filing and recording as herein provided. It shall be the duty of such county clerk or register, upon filing of the notice of acquisition and certificate, to record the same in the books in his office used for recording deeds, and to index the same in the deed index books in his office, listing the

person named in such certificate as a grantor. The record of such notice and certificate shall be presumptive evidence of due service of such acquisition map and notice of acquisition on the person named in said certificate.

(B) In all acquisitions in which the supreme court has jurisdiction under subdivision (B) of section five hundred one, the condemnor, within thirty days after entry of the order granting the petition vesting title, shall cause a notice of acquisition to be either served upon each condemnee or his attorney of record pursuant to the civil practice law and rules or published in at least ten successive issues of the official newspaper in the locality where the project will be situated or in at least ten successive issues of a newspaper of general circulation in such locality. In the event that the only newspaper available in such locality is a weekly publication, the above described notice shall be published in such newspaper in at least three successive issues. In the event the notice of acquisition is published, a copy of such notice shall also be mailed by first class mail to each condemnee or his attorney of record. The notice shall contain a general description of the real property acquired, and shall also set forth:

- (1) the date the order vesting title was entered,
 - (2) that the acquisition map has been filed,
 - (3) the office where such order has been entered and where such map has been filed; and
- (4) direct that condemnees of such property shall, on or before a date therein specified, file a written claim, or notice of appearance pursuant to section five hundred three herein with the condemnor and the clerk of the court of the county in which the order has been filed.

§ 503. Filing and service of claims; notice of appearance. (A) In a claim for damages arising from the acquisition of real property under subdivision (A) of section five hundred one herein, a condemnee shall file within three years after service of the notice of acquisition or date of vesting, whichever is later, or within such time as is fixed by order of the court pursuant to sections five hundred five and five hundred twelve, a claim for damages with the clerk of the court having jurisdiction of the matter, and a copy of said claim upon such other official designated in the notice of acquisition to receive such service. In any acquisition pursuant to subdivision (A) of section five hundred one service shall be upon the attorney general. The claimant may, at any time subsequent to the running of the three year period, receive the amount of the condemnor's offer upon proof of his entitlement thereto. The failure of a condemnee to file a claim within such three year period shall be deemed an acceptance of the amount paid as full settlement of such claim.

(B) In a claim for damages arising from the acquisition of real property under subdivision (B) of section five hundred one herein, a condemnee shall, within the time specified by the court, file a written claim, or notice of appearance with the clerk of the court having jurisdiction of the matter and a copy of the same shall be served upon either the condemnor's chief legal officer or upon such other official designated in the notice of acquisition.

(C) In the event that a claim is made for compensation for fixtures or for any interest other than the fee in the real property acquired, a copy of such claim together with a schedule of fixture items, where applicable, shall also be served by such claimant upon the fee owner of the real property, and the condemnor's chief legal officer or upon such

other official designated in the notice of acquisition.

§ 504. Content of claim, or notice of appearance. The claim, or notice of appearance shall include:

(A) the name and post office address of the condemnee;

(B) reasonable identification by reference to the acquisition map or otherwise, of the property affected by the acquisition, and the condemnee's interest therein;

(C) a general statement of the nature and type of damages claimed, including a schedule of fixture items which comprise part or all of the damages claimed;

(D) if represented by an attorney, the name of the condemnee's attorney and his office and post office address and telephone number subscribed at the end of the claim.

The claims and copies thereof, may be either typewritten, printed, or photocopies of the original.

§ 505. Proof of title; conflicting claims. (A) Each condemnor shall receive proof of title to property acquired together with proof of liens or encumbrances thereon, prior to trial.

(B) Where a condemnor disputes a condemnee's title or a right to all or a portion of an award or a prospective award by reason of conflicting claims of title, or if there is uncertainty as to how such payment should be apportioned, the court, upon motion of any party, shall interplead anyone claiming or imputed to have such a conflicting claim or interest. A party so interpleaded shall be served with the order of interpleader in a manner ordered by the court. In the case of acquisitions under the jurisdiction of the court of claims, a party so served and not otherwise barred from filing a claim shall, within one hundred twenty days from the date of service, file a claim independently of the claim to which he has been a party. If the party interpleaded fails to file a claim independently of the claim to which he has been made a party, he may not thereafter file such an independent claim.

(C) The court shall determine the compensation due the condemnees as well as the respective interests and rights of all parties to the award and the apportionment thereof. The court shall have jurisdiction to determine all questions relating to title and priority of interests incident to the acquisition.

§ 506. Note of issue; statement of readiness. In all acquisitions under subdivision (B) of section five hundred one, the condemnor after expiration of the period of time provided pursuant to subdivision (B) of section five hundred two, shall serve and file a note of issue in accordance with the applicable provisions of the civil practice law and rules of the court.

§ 507. Answer; affirmative defenses. In all acquisitions under subdivision (A) of section five hundred one the condemnor shall not be required to interpose an answer or plead affirmative defenses.

§ 508. Filing of appraisals; reports of other expert witnesses. In all proceedings hereunder, the respective judicial departments and the court of claims, shall adopt rules governing the time for filing and exchange of the written appraisal reports; provided, however, that in a claim for damages arising from the acquisition of real property under subdivision (A) of section five hundred one of this chapter, the time within which the condemnor must file its appraisal shall be computed from the date on

which the attorney general shall have been served in the manner provided for in section eleven of the court of claims act. Each judicial department and the court of claims also shall adopt rules requiring at a reasonable time prior to trial, the filing of supplemental reports, rebuttal memoranda and all other reports of expected expert witnesses, intended to be relied upon at the trial, other than the valuation experts.

§ **509. Pretrial conferences.** Upon the call of the trial calendar the justice or judge presiding may prepare a pretrial conference calendar of proceedings. A pretrial conference may be held in each such proceeding. Each judicial department and the court of claims shall adopt rules governing the conduct of pretrials.

§ **510. View.** (A) The trial court shall view the property in all claims, unless waived by stipulation of the parties. The parties to the suit or claim, may attend the viewing by the court at a time scheduled by the court.

(B) When the property or improvements acquired are to be removed, razed or obliterated prior to trial, any party may make a request to the presiding judge of the court of claims or an administrative justice of the supreme court of the judicial department in which the property is located, that a trial judge or justice be assigned to view the subject premises prior to removal or demolition. When practicable the judge or justice viewing property shall be assigned to the trial.

§ **511. Joint or consolidated trials.** (A) In proceedings under subdivision (A) of section five hundred one, two or more acquisition claims arising from the same project may, at the discretion of the court, be heard and determined by the court in one trial or proceeding. When some, but not all claims arising from a single project have been filed, and the court shall determine that a joint or consolidated trial is desirable, the court, upon motion of any party, may order that any condemnee who has not yet done so, file a claim in accordance with the provisions of this act within one hundred twenty days after service of a copy of the order. If a condemnee fails to file a claim within the one hundred twenty day period, his claim shall thereafter be tried upon the proof presented. Nothing in this section shall extend the period for filing a claim as provided within section five hundred three of this law.

(B) In proceedings under subdivision (B) of section five hundred one the court may conduct all trials relating to a project as a single proceeding in one or more parts, or may consolidate and order that a joint trial be had of the claims of any parties filing separate notices of appearance as the orderly administration of justice shall require.

§ **512. Decision of the court.** The court, after hearing the testimony and weighing the evidence, shall determine the compensation due the condemnees for damages as the result of the acquisition. The court's decision shall be in compliance with section **four thousand two hundred thirteen of the civil practice law and rules.**

§ **513. Judgment.** The decision of the court shall direct preparation and entry of an appropriate judgment.

§ **514. Interest; suspension.** (A) Subject to the provisions of this

chapter, a condemnee shall be entitled to lawful interest from the date of acquisition to the date of payment. If it is determined that the condemnor has in fact acquired the property prior to or without the filing of an acquisition map as provided in section four hundred two of this law, a condemnee shall be entitled to lawful interest from the date of such acquisition. Where the condemnor has made an advance payment or has deposited all or any part of the compensation owing to a condemnee in an interest bearing account, or in the eminent domain account established pursuant to section ninety-seven-dd of the state finance law, the condemnor's obligation to pay interest on the amount so paid or deposited shall terminate as of the date of such payment or deposit.

(B) In all acquisitions under subdivision (A) of section five hundred one, unless a condemnee files and serves his claim against the condemnor for damages arising from the acquisition of his property, within six months after accrual of such claim, or within six months after personal service of the notice of acquisition upon the condemnee, whichever is later, interest shall be suspended; interest so suspended shall thereafter again commence to accrue upon the date of the filing of such claim.

(C) If an appeal is taken by the condemnor or the condemnee, the condemnor shall pay such portion of the award of the court from which appeal has not been taken upon proof of a condemnee's entitlement thereto.

(D) Where an appeal has been taken by either a condemnee or the condemnor or by both from all or part of an award of the court, the condemnor may deposit in a special interest bearing account all or any part of the amount directed to be paid in the award other than any advance payment already made including the amount required to be paid pursuant to subdivision (C) hereof. Interest on the amount deposited shall not be allowed from the expiration of twenty days after notification in writing by the condemnor to the condemnee or his attorney, that the condemnor is ready and willing to pay said amount upon proof of entitlement thereto, such as vouchers and instruments. Any such deposit or payment shall be without prejudice to the rights of the condemnor or the condemnee on such appeal.

Article 6 - SPECIAL PROCEDURE FOR CLAIMS UNDER TWENTY-FIVE THOUSAND DOLLARS

601 - Applicability.

602 - Conduct of hearing.

603 - Court decision.

604 - Appeals.

§ 601. Applicability. (A) When the total compensation demanded by all condemnees having an interest in a particular property being acquired is twenty-five thousand dollars or less, exclusive of interest, a condemnee may, within the time prescribed by section five hundred three of this law, file a claim with the clerk of the court having jurisdiction over the acquisition, and a copy of said claim upon the chief legal officer of the condemnor, or upon such other official designated by the condemnor to receive such service. This claim shall include a request to the court to proceed in accordance with this article and describe briefly the property to which the request relates and set forth the amount of compensation demanded by the condemnee including a concise statement of the basis therefor.

(B) The court shall view the property, and shall upon reasonable notice to the condemnor and the condemnee, meet at a hearing with the parties or representatives present and proceed in an informal manner to hear proof concerning the amount of compensation due the condemnee.

§ 602. Conduct of hearing. At the hearing, a stenographic record shall be made and the respective parties shall present to the court evidence to support their positions. The parties need not be represented by an attorney nor present expert witnesses, nor shall the rules of evidence apply. The courts shall adopt rules governing the conduct of hearings under this article.

§ 603. Court decision. The court shall file its decision with the clerk of the court. The decision shall direct the clerk of the court to enter the decision together with an appropriate entry for lawful interest as the final judgment. The clerk shall serve a copy of the judgment with notice of entry on the condemnee and the condemnor.

§ 604. Appeals. Any party to an action pursuant to this article may appeal on the sole ground that substantial justice has not been accomplished between the parties according to the rules and principles of substantive law.

Article 7 - MISCELLANEOUS PROVISIONS

701 - Additional allowance.

702 - Incidental expenses.

703 - Application of CPLR.

704 - Severability.

705 - Applicability with respect to inconsistent laws.

706 - Pending actions and proceedings.

707 - Rules and regulations.

708 - Acquisition of other than real property.

709 - Effective date.

§ 701. **Additional allowance.** In instances where the order or award is substantially in excess of the amount of the condemnor's proof and where deemed necessary by the court for the condemnee to achieve just and adequate compensation, the court, upon application, notice and an opportunity for hearing, may in its discretion, award to the condemnee an additional amount, separately computed and stated, for actual and necessary costs, disbursements and expenses, including reasonable attorney, appraiser and engineer fees actually incurred by such condemnee. The application shall include affidavits of the condemnee and all parties that have incurred expenses on the condemnee's behalf, setting forth inter alia the amount of the expenses incurred.

§ 702. **Incidental expenses.** (A) The condemnor shall reimburse a condemnee an amount separately computed and stated, representing the following incidental expenses:

(1) any recording fees, transfer taxes and other similar expenses in connection with the acquisition of the property by the condemnor or in connection with the transfer of the property to the condemnor; and

(2) any penalty incurred by the condemnee for prepayment of any preexisting recorded mortgage entered into in good faith, encumbering such property; and

(3) the pro rata portion of the real property taxes, water rents, sewer rents, special ad valorem taxes and other charges paid or payable to a taxing entity which are allocable to a period subsequent to the date of vesting title or the effective date of possession of such property in the condemnor, whichever is earlier.

(B) In the event that the procedure to acquire such property is abandoned by the condemnor, or a court of competent jurisdiction determines that the condemnor was not legally authorized to acquire the property, or a portion of such property, the condemnor shall be obligated to reimburse the condemnee, an amount, separately computed and stated, for actual and necessary costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, and other damages actually incurred by such condemnee because of the acquisition procedure.

(C) In the event that a court of competent jurisdiction determines that the condemnor did in fact take property after the condemnor denied that there was any taking of property and made no offer to settle the claim, the condemnor shall be obligated to reimburse a condemnee an amount, separately computed and stated, for actual and necessary costs, disbursements and expenses, including reasonable attorney, appraiser and engineer fees incurred in establishing the de facto taking.

§ 703. **Application of CPLR.** The civil practice law and rules shall apply to practice and procedure in proceedings under this law except where other procedure is specifically provided by this law or rules governing or adopted by the appropriate court.

§ 704. **Severability.** If any clause, sentence, paragraph, subdivision, section, or other part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment, decree or order shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or other part thereof, directly involved in the controversy in which such judgment, or order shall have been rendered, and to this end the provisions of each section of this chapter are hereby declared to be severable.

§705. **Applicability** with respect to inconsistent laws. Notwithstanding any inconsistent provisions of law, general or special, the provisions of this law shall be controlling and on and after the effective date of this law, any interest in real property subject to acquisition shall be acquired pursuant to the provisions of this law.

§ 706. **Pending actions and proceedings.** No action or proceeding pending at the time when this chapter takes effect, shall be affected by any provision of this chapter, and the same may be prosecuted as if this chapter had not been enacted.

§707. **Rules and regulations.** Where not expressly provided, each condemnor in order to effectuate the object, intent and provisions contained herein, shall have the authority to establish and may from time to time, amend rules and regulations consistent with the provisions

of this law.

§ 708. Acquisition of other than real property. Whenever any condemnor is authorized to acquire for a public use, title to property other than real property, the acquisition of such property shall be in the manner and procedure prescribed for the acquisition of real property under this chapter.

§ 709. Effective date. This chapter shall take effect July first, nineteen hundred seventy-eight.