

**IC 32-24**

**ARTICLE 24. EMINENT DOMAIN**

**IC 32-24-1**

**Chapter 1. General Procedures**

**IC 32-24-1-1**

**"Condemnor" defined**

Sec. 1. As used in section 5 of this chapter, "condemnor" means any person authorized by Indiana law to exercise the power of eminent domain.

*As added by P.L.2-2002, SEC.9.*

**IC 32-24-1-2**

**"Owner" defined**

Sec. 2. As used in section 5 of this chapter, "owner" means the persons listed on the tax assessment rolls as being responsible for the payment of real estate taxes imposed on the property and the persons in whose name title to real estate is shown in the records of the recorder of the county in which the real estate is located.

*As added by P.L.2-2002, SEC.9.*

**IC 32-24-1-3**

**Entry on land; purchase before instituting proceedings; surveys by public utilities or pipeline companies**

Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) Except as provided in subsection (g), before proceeding to condemn, the person:

- (1) may enter upon any land to examine and survey the property sought to be acquired; and
- (2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) The effort to purchase under subsection (b)(2) must include the following:

- (1) Establishing a proposed purchase price for the property.
- (2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.
- (3) Conducting good faith negotiations with the owner of the property.

(d) If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and

approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

(e) The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

(f) If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired.

(g) This subsection applies to a public utility (as defined in IC 32-24-1-5.9(a)) or a pipeline company (as defined in IC 8-1-22.6-7). If a public utility or a pipeline company seeks to acquire land or an interest in land under this article, the public utility or pipeline company may not enter upon the land to examine or survey the property sought to be acquired unless either of the following occur:

(1) The public utility or the pipeline company sends notice by certified mail to the affected landowner (as defined in IC 8-1-22.6-2) of the public utility's or the pipeline company's intention to enter upon the landowner's property for survey purposes. The notice required by this subdivision must be mailed not later than fourteen (14) days before the date of the public utility's or the pipeline company's proposed examination or survey.

(2) The public utility or the pipeline company receives the landowner's signed consent to enter the property to perform the proposed examination or survey.

An affected landowner may bring an action to enforce this subsection in the circuit court of the county in which the landowner's property is located. A prevailing landowner is entitled to the landowner's actual damages as a result of the public utility's or the pipeline company's violation. In addition, the court may award a prevailing landowner reasonable costs of the action and attorney's fees.

*As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.5; P.L.110-2007, SEC.2.*

#### **IC 32-24-1-4**

##### **Complaint**

Sec. 4. (a) If the person seeking to acquire the property does not agree with the owner of an interest in the property or with the guardian of an owner concerning the damages sustained by the owner, the person seeking to acquire the property may file a complaint for that purpose with the clerk of the circuit court of the county where the property is located.

(b) The complaint must state the following:

(1) The name of the person seeking to acquire the property. This person shall be named as the plaintiff.

(2) The names of all owners, claimants to, and holders of liens on the property, if known, or a statement that they are unknown. These owners, claimants, and holders of liens shall be named as defendants.

(3) The use the plaintiff intends to make of the property or right sought to be acquired.

(4) If a right-of-way is sought, the location, general route, width, and the beginning and end points of the right-of-way.

(5) A specific description of each piece of property sought to be acquired and whether the property includes the whole or only part of the entire parcel or tract. If property is sought to be acquired by the state or by a county for a public highway or by a municipal corporation for a public use and the acquisition confers benefits on any other property of the owner, a specific description of each piece of property to which the plaintiff alleges the benefits will accrue. Plats of property alleged to be affected may accompany the descriptions.

(6) That the plaintiff has been unable to agree for the purchase of the property with the owner, owners, or guardians, as the case may be, or that the owner is mentally incompetent or less than eighteen (18) years of age and has no legally appointed guardian, or is a nonresident of Indiana.

(c) All parcels lying in the county and required for the same public use, whether owned by the same parties or not, may be included in the same or separate proceedings at the option of the plaintiff. However, the court may consolidate or separate the proceedings to suit the convenience of parties and the ends of justice. The filing of the complaint and a lis pendens notice in any eminent domain action under this article constitutes notice of proceedings to all subsequent purchasers and persons taking encumbrances of the property, who are bound by the notice.

*As added by P.L.2-2002, SEC.9. Amended by P.L.81-2004, SEC.26.*

**IC 32-24-1-5**

**Offer of purchase; notice; service; forms; restoration of utility or transportation services**

Sec. 5. (a) As a condition precedent to filing a complaint in condemnation, and except for an action brought under IC 8-1-13-19 (repealed), a condemnor may enter upon the property as provided in this chapter and must, at least thirty (30) days before filing a complaint, make an offer to purchase the property in the form prescribed in subsection (c). The offer must be served personally or by certified mail upon:

- (1) the owner of the property sought to be acquired; or
- (2) the owner's designated representative.

(b) If the offer cannot be served personally or by certified mail, or if the owner or the owner's designated representative cannot be found, notice of the offer shall be given by publication in a newspaper of general circulation in the county in which the property is located or in the county where the owner was last known to reside. The notice must be in the following form:

NOTICE

TO: \_\_\_\_\_, \_\_\_\_\_ (owner(s)),  
\_\_\_\_\_, \_\_\_\_\_ (condemnor) needs your property  
for a \_\_\_\_\_  
(description of project), and will need to acquire the following from

you:

\_\_\_\_\_ (general description of the property to be acquired). We have made you a formal offer for this property that is now on file in the Clerk's Office in the \_\_\_\_\_ County Court House. Please pick up the offer. If you do not respond to this notice or accept the offer by \_\_\_\_\_ (a date 30 days from 1st date of publication) 20\_\_\_\_, we shall file a suit to condemn the property.

\_\_\_\_\_ Condemnor

The condemnor must file the offer with the clerk of the circuit court with a supporting affidavit that diligent search has been made and that the owner cannot be found. The notice shall be published twice as follows:

- (1) One (1) notice immediately.
- (2) A subsequent publication at least seven (7) days and not more than twenty-one (21) days after the publication under subdivision (1).

(c) The offer to purchase must be in the following form:

UNIFORM PROPERTY OR EASEMENT  
ACQUISITION OFFER

\_\_\_\_\_ (condemnor) is authorized by Indiana law to obtain your property or an easement across your property for certain public purposes. \_\_\_\_\_ (condemnor) needs (your property) (an easement across your property) for a \_\_\_\_\_ (brief description of the project) and needs to take \_\_\_\_\_ (legal description of the property or easement to be taken; the legal description may be made on a separate sheet and attached to this document if additional space is required)

It is our opinion that the fair market value of the (property) (easement) we want to acquire from you is \$ \_\_\_\_\_, and, therefore, \_\_\_\_\_ (condemnor) offers you \$ \_\_\_\_\_ for the above described (property) (easement). You have thirty (30) days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the easement, and provided there are no difficulties in clearing liens or other problems with title to land. Possession will be required thirty (30) days after you have received your payment in full.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, \_\_\_\_\_ (condemnor) is required to make a good faith effort to purchase (your property) (an easement across your property).
2. You do not have to accept this offer and \_\_\_\_\_ (condemnor) is not required to agree to your demands.
3. However, if you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), \_\_\_\_\_ (condemnor) has the right to file suit

to condemn and acquire the (property) (easement) in the county in which the property is located.

4. You have the right to seek advice of an attorney, real estate appraiser, or any other person of your choice on this matter.

5. You may object to the public purpose and necessity of this project.

6. If \_\_\_\_\_ (condemnor) files a suit to condemn and acquire (your property) (an easement) and the court grants its request to condemn, the court will then appoint three appraisers who will make an independent appraisal of the (property) (easement) to be acquired.

7. If we both agree with the court appraisers' report, then the matter is settled. However, if either of us disagrees with the appraisers' report to the court, either of us has the right to ask for a trial to decide what should be paid to you for the (property) (easement) condemned.

8. If the court appraisers' report is not accepted by either of us, then \_\_\_\_\_ (condemnor) has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, \_\_\_\_\_ (condemnor) is legally entitled to immediate possession of the (property) (easement). You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of your case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.

9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than this offer. You may employ, at your cost, appraisers and attorneys to represent you at this time or at any time during the course of the proceeding described in this notice. (The condemnor may insert here any other information pertinent to this offer or required by circumstances or law).

10. If you have any questions concerning this matter you may contact us at:

\_\_\_\_\_

(full name, mailing and street address, and phone of the condemnor)

This offer was made to the owner(s):

\_\_\_\_\_ of \_\_\_\_\_,

\_\_\_\_\_ of \_\_\_\_\_,

\_\_\_\_\_ of \_\_\_\_\_,

\_\_\_\_\_ of \_\_\_\_\_,

on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,

BY:

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name and title)

Agent of: \_\_\_\_\_

(condemnor)

If you decide to accept the offer of \$ \_\_\_\_\_ made by \_\_\_\_\_ (condemnor) sign your name below and mail this form to the address indicated above. An additional copy of this offer has been provided for your file.

**ACCEPTANCE OF OFFER**

I (We), \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, owner(s) of the above described property or interest in property, hereby accept the offer of \$ \_\_\_\_\_ made by \_\_\_\_\_ (condemnor) on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTARY'S CERTIFICATE**

STATE OF \_\_\_\_\_ )

)SS:

COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored.

*As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.6.*

**IC 32-24-1-5.5**

**Time limit for filing a complaint**

Sec. 5.5. (a) Except as provided in sections 5.8 and 5.9 of this chapter, this section applies to every person that may exercise the power of eminent domain.

(b) If:

- (1) a person that may exercise the power of eminent domain

submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than two (2) years after the date the person submitted the written acquisition offer to the owner.

(c) If a person that may exercise the power of eminent domain fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least three (3) years after the date the two (2) year period described in subsection (b) expires.

*As added by P.L.163-2006, SEC.7.*

### **IC 32-24-1-5.8**

#### **Time limit for filing a complaint; Indiana department of transportation projects**

Sec. 5.8. (a) This section applies only to:

(1) the Indiana department of transportation when the department seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a:

(A) state highway; or

(B) toll road project or toll bridge; and

(2) any other person that may exercise the power of eminent domain when the person seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a feeder road for an Indiana department of transportation project described in subdivision (1) if the construction, reconstruction, improvement, maintenance, or repair of the feeder road begins not later than five (5) years from the conclusion of the project.

(b) If:

(1) the Indiana department of transportation or other person described in subsection (a)(2) submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the department or other person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than three (3) years after the date the department or other person submitted the written acquisition offer to the owner.

(c) If the Indiana department of transportation or other person fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the department or other person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same or a substantially similar project for at least three (3) years after the date the three (3) year period described

in subsection (b) expires.

(d) A court shall expedite the hearing of an action initiated under subsection (b). A party to the action is entitled to an expedited appeal of the court's final determination, under rules to be adopted by the supreme court.

*As added by P.L.163-2006, SEC.8. Amended by P.L.11-2014, SEC.1.*

### **IC 32-24-1-5.9**

#### **Time limit for filing a complaint; public utilities and pipeline companies**

Sec. 5.9. (a) As used in this section, "public utility" means a public utility, municipally owned utility, cooperatively owned utility, joint agency created under IC 8-1-2.2, municipal sanitation department operating under IC 36-9-23, sanitary district operating under IC 36-9-25, or an agency operating as a stormwater utility.

(b) This section applies only to a public utility or pipeline company.

(c) If:

(1) a public utility or pipeline company submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer in writing;

the public utility or pipeline company, to acquire the parcel by the exercise of eminent domain, must file a complaint under this article not more than six (6) years after the date on which the public utility or pipeline company submitted the written acquisition offer to the owner.

(d) If a public utility or pipeline company fails to meet the requirements set forth in subsection (c) concerning a parcel of real estate, the public utility or pipeline company may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least two (2) years after the date on which the six (6) year period described in subsection (c) expires.

*As added by P.L.163-2006, SEC.9.*

### **IC 32-24-1-6**

#### **Notice to appear in court; form**

Sec. 6. (a) Upon the filing of a complaint under this chapter, the circuit court clerk shall issue a notice requiring the defendants to appear before the court on the day to be fixed by the plaintiff by indorsement on the complaint at the time of filing the complaint, and to show cause, if any, why the property sought to be condemned should not be acquired. The notice shall be substantially in the following form:

In the \_\_\_\_\_ Court of Indiana.

To the Sheriff of \_\_\_\_\_ County, Indiana:

You are hereby commanded to notify \_\_\_\_\_, defendants, to appear before the \_\_\_\_\_ Court of \_\_\_\_\_ County, Indiana on the \_\_\_\_ day of \_\_\_\_\_,



20 \_\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_ M. to show cause, if any, they have why the property sought to be acquired in the complaint of \_\_\_\_\_ should not be acquired.

Witness my hand and the seal of the court affixed at \_\_\_\_\_, Indiana, this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
Clerk of \_\_\_\_\_ Court.

(b) The notice shall be served in the same manner as a summons is served in civil actions. Upon a showing by affidavit that any defendant is a nonresident of Indiana or that the defendant's name or residence is unknown, publication and proof of the notice may be made as provided in section 7 of this chapter.

*As added by P.L.2-2002, SEC.9.*

### **IC 32-24-1-7**

#### **Notice to appear in court; publication; nonresident landowners; assessment of damages**

Sec. 7. (a) The notice, upon its return, must show its:

- (1) service for ten (10) days; or
- (2) proof of publication for three (3) successive weeks in a weekly newspaper of general circulation printed and published in the English language in the county in which the property sought to be acquired is located.

The last publication of the notice must be five (5) days before the day set for the hearing.

(b) The clerk of the court in which the proceedings are pending, upon the first publication of the notice, shall send to the post office address of each nonresident owner whose property will be affected by the proceedings a copy of the notice, if the post office address of the owner or owners can be ascertained by inquiry at the office of the treasurer of the county.

(c) The court, being satisfied of the regularity of the proceedings and the right of the plaintiff to exercise the power of eminent domain for the use sought, shall appoint:

- (1) one (1) disinterested freeholder of the county; and
- (2) two (2) disinterested appraisers licensed under IC 25-34.1; who are residents of Indiana to assess the damages, or the benefits and damages, as the case may be, that the owner or owners severally may sustain, or be entitled to, by reason of the acquisition. One (1) of the appraisers appointed under subdivision (2) must reside not more than fifty (50) miles from the property.

*As added by P.L.2-2002, SEC.9. Amended by P.L.113-2006, SEC.19.*

### **IC 32-24-1-8**

#### **Objections to proceedings; appeals**

Sec. 8. (a) A defendant may object to the proceedings:

- (1) because the court does not have jurisdiction either of the subject matter or of the person;
- (2) because the plaintiff does not have the right to exercise the power of eminent domain for the use sought; or
- (3) for any other reason disclosed in the complaint or set up in

the objections.

(b) Objections under subsection (a) must be:

- (1) in writing;
- (2) separately stated and numbered; and
- (3) filed not later than thirty (30) days after the date the notice required in section 6 of this chapter is served on the defendant. However, the court may extend the period for filing objections by not more than thirty (30) days upon written motion of the defendant.

(c) The court may not allow pleadings in the cause other than the complaint, any objections, and the written exceptions provided for in section 11 of this chapter. However, the court may permit amendments to the pleadings.

(d) If an objection is sustained, the plaintiff may amend the complaint or may appeal from the decision in the manner that appeals are taken from final judgments in civil actions. All the parties shall take notice and are bound by the judgment in an appeal.

(e) If the objections are overruled, the court shall appoint appraisers as provided for in this chapter. Any defendant may appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions upon filing with the circuit court clerk a bond:

- (1) with the penalty that the court fixes;
- (2) with sufficient surety;
- (3) payable to the plaintiff; and
- (4) conditioned for the diligent prosecution of the appeal and for the payment of the judgment and costs that may be affirmed and adjudged against the appellants.

The appeal bond must be filed not later than ten (10) days after the appointment of the appraisers.

(f) All the parties shall take notice of and be bound by the judgment in the appeal.

(g) The transcript must be filed in the office of the clerk of the supreme court not later than thirty (30) days after the filing of the appeal bond. The appeal does not stay proceedings in the cause.

*As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.10.*

### **IC 32-24-1-9**

#### **Appraisers; oath and duty**

Sec. 9. (a) Each appraiser shall take an oath that:

- (1) the appraiser has no interest in the matter; and
- (2) the appraiser will honestly and impartially make the assessment.

(b) After the appraisers are sworn as provided in subsection (a), the judge shall instruct the appraisers as to:

- (1) their duties as appraisers; and
- (2) the measure of the damages and benefits, if any, they allow.

(c) The appraisers shall determine and report all of the following:

- (1) The fair market value of each parcel of property sought to be acquired and the value of each separate estate or interest in the

property.

(2) The fair market value of all improvements pertaining to the property, if any, on the portion of the property to be acquired.

(3) The damages, if any, to the residue of the property of the owner or owners caused by taking out the part sought to be acquired.

(4) The other damages, if any, that will result to any persons from the construction of the improvements in the manner proposed by the plaintiff.

(d) If the property is sought to be acquired by the state or by a county for a public highway or a municipal corporation for a public use that confers benefits on any property of the owner, the report must also state the benefits that will accrue to each parcel of property, set opposite the description of each parcel of property whether described in the complaint or not.

(e) Except as provided in subsection (f), in estimating the damages specified in subsection (c), the appraisers may not deduct for any benefits that may result from the improvement.

(f) In the case of a condemnation by the state or by a county for a public highway or a municipal corporation for public use, the appraisers shall deduct any benefits assessed from the amount of damage allowed, if any, under subsection (c)(3) and (c)(4) and the difference, if any, plus the damages allowed under subsection (c)(1) and (c)(2) shall be the amount of the award. However, the damages awarded may not be less than the damages allowed under subsection (c)(1) and (c)(2). Upon the trial of exceptions to the award by either party, a like measure of damages must be followed.

(g) For the purpose of assessing compensation and damages, the right to compensation and damages is considered to have accrued as of the date of the service of the notice provided in section 6 of this chapter, and actual value of compensation and damages at that date shall be:

(1) the measure of compensation for all property to be actually acquired; and

(2) the basis of damages to property not actually acquired but injuriously affected;

except as to the damages stated in subsection (c)(4).

*As added by P.L.2-2002, SEC.9.*

### **IC 32-24-1-10**

#### **Payment of benefits or damages assessed**

Sec. 10. (a) If the plaintiff pays to the circuit court clerk the amount of damages assessed under section 9 of this chapter, the plaintiff may take possession of and hold the interest in the property so acquired for the uses stated in the complaint, subject to the appeal provided for in section 8 of this chapter. But the amount of the benefits or damages is subject to review as provided in section 11 of this chapter.

(b) Upon payment by the plaintiff of the amount of the award of the court appointed appraisers, the plaintiff shall file or cause to be filed with the auditor of the county in which the property is located a

certificate, certifying the amount paid to the circuit court clerk and including the description of the property being acquired. The auditor of the county shall then transfer the property being acquired to the plaintiff on the tax records of the county.

*As added by P.L.2-2002, SEC.9.*

### **IC 32-24-1-11**

#### **Notice of filing of appraisers' reports; exceptions to reports**

Sec. 11. (a) When a report of the appraisers is filed with a court under this chapter, the circuit court clerk shall send written notice of the filing of the report by certified mail to:

- (1) all known parties to the action; and
- (2) the attorneys of record of the parties.

(b) Any party to an action under this chapter aggrieved by the assessment of benefits or damages in a report of the appraisers may file written exceptions to the assessment in the office of the circuit court clerk. Exceptions to the assessment must be filed by a party:

- (1) after the report of the appraisers is filed with the court; and
- (2) not later than forty-five (45) days after the date the circuit court clerk mails the report under subsection (a).

(c) The cause shall further proceed to issue, trial, and judgment as in civil actions. The court may make orders and render findings and judgments that the court considers just. Either party may appeal a judgment as to benefits or damages as in civil actions.

(d) Forty-five (45) days after the date the circuit court clerk mails the report under subsection (a), and if the plaintiff has paid the amount of damages assessed to the circuit court clerk, any one (1) or more of the defendants may file a written request for payment of each defendant's proportionate share of the damages held by the circuit court clerk. The defendants making a request for payment must also file sufficient copies of the request for service upon the plaintiff and all other defendants not joining in the request. The defendants making the request may withdraw and receive each defendant's proportionate share of the damages upon the following terms and conditions:

- (1) Each written request must:
  - (A) be verified under oath; and
  - (B) state:
    - (i) the amount of the proportionate share of the damages to which each of the defendants joining in the request is entitled;
    - (ii) the interest of each defendant joining in the request; and
    - (iii) the highest offer made by the plaintiff to each of the defendants for each defendant's respective interests in or damages sustained in respect to the property that has been acquired by the plaintiff.
- (2) Upon the filing of a written request for withdrawal and payment of damages to any of the defendants, the circuit court clerk shall immediately issue a notice to the plaintiff and all defendants of record in the cause who have not joined in the

request for payment. The notice must contain the following:

- (A) The names of the parties.
- (B) The number of the cause.
- (C) A statement that a request for payment has been filed.
- (D) A notice to appear on a day, to be fixed by the court, and show cause, if any, why the amounts requested should not be withdrawn and paid over by the circuit court clerk to those defendants requesting the amounts to be paid.
- (E) A copy of the request for payment.

If a defendant not requesting payment is a nonresident of Indiana, or if that defendant's name or residence is unknown, publication and proof of the notice and request for payment shall be made as provided in section 4 of this chapter.

(3) After a hearing held after notice of a written request made under this section, the court shall determine and order the payment by the circuit court clerk of the proportionate shares of the damages due to the defendants requesting payment. Any of the defendants may appeal an order under this subdivision within the same time and in the same manner as provided for allowable appeals from interlocutory orders in civil actions.

(4) If exceptions to the appraisers' report have been duly filed by the plaintiff or any defendant, the circuit court clerk may not make payment to any defendant of any part of the damages deposited with the clerk by the plaintiff until the defendants requesting payment have filed with the circuit court clerk a written undertaking, with surety approved by the court, for the repayment to the plaintiff of all sums received by those defendants in excess of the amount or amounts awarded as damages to those defendants by the judgment of the court upon trial held on the exceptions to the assessment of damages by the appraisers. However, the court may waive the requirement of separate surety as to any defendant who is a resident freeholder of the county in which the cause is pending and who is owner of real property in Indiana that is liable to execution, not included in the real property appropriated by the plaintiff, and equal in value to the amount by which the damages to be withdrawn exceed the amount offered to the defendants as stated in their request or the amount determined by the court if the plaintiff has disputed the statement of the offer. A surety or written undertaking may not be required for a defendant to withdraw those amounts previously offered by the plaintiff to the defendant if the plaintiff has previously notified the court in writing of the amounts so offered. The liability of any surety does not exceed the amount by which the damages to be withdrawn exceed the amount offered to the defendants with whom the surety joins in the written undertaking. Each written undertaking filed with the circuit court clerk shall be immediately recorded by the clerk in the order book and entered in the judgment docket, and from the date of the recording and entry the written undertaking is a lien upon all the real property in the county owned by the several

obligors, and the undertaking is also a lien upon all the real property owned by the several obligors in each county of Indiana in which the plaintiff causes a certified copy of the judgment docket entry to be recorded, from the date of the recording.

(5) The withdrawal and receipt from the circuit court clerk by any defendant of that defendant's proportionate share of the damages awarded by the appraisers, as determined by the court upon the written request and hearing, does not operate and is not considered as a waiver of any exceptions duly filed by that defendant to the assessment of damages by the appraisers.

(6) In any trial of exceptions, the court or jury shall compute and allow interest at an annual rate of eight percent (8%) on the amount of a defendant's damages from the date plaintiff takes possession of the property. Interest may not be allowed on any money paid by the plaintiff to the circuit court clerk:

(A) after the money is withdrawn by the defendant; or

(B) that is equal to the amount of damages previously offered by the plaintiff to any defendant and which amount can be withdrawn by the defendant without filing a written undertaking or surety with the court for the withdrawal of that amount.

*As added by P.L.2-2002, SEC.9. Amended by P.L.50-2012, SEC.1.*

#### **IC 32-24-1-12**

##### **Offer of settlement; acceptance; rejection**

Sec. 12. (a) Not later than forty-five (45) days before a trial involving the issue of damages, the plaintiff shall, and a defendant may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 14 of this chapter.

(d) This section does not limit or restrict the right of a defendant to payment of any amounts authorized by law in addition to damages for the property taken from the defendant.

(e) This section does not apply to an action brought under IC 8-1-13-19 (repealed).

*As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.11.*

#### **IC 32-24-1-13**

### **Highways and roads; appointment of appraisers**

Sec. 13. (a) The Indiana department of transportation or any state board, agency, or commission that succeeds the department in respect to the duties to locate, relocate, construct, reconstruct, repair, or maintain the public highways of Indiana, having the right to exercise the power of eminent domain for the public use, in its action for condemnation is not required to prove that an offer of purchase was made to the property owner in an action under this article.

(b) The court shall on the return day fixed at the time of the filing of the complaint appoint appraisers as provided by law and fix a day not later than ten (10) days after the date of the court's order for the appraisers to appear, qualify, and file their report of appraisal.

(c) If the appraisers appointed by the court fail to appear, qualify, and file their report of appraisal as ordered by the court, the court shall discharge the appraisers and appoint new appraisers in the same manner as provided in subsection (b).

*As added by P.L.2-2002, SEC.9.*

### **IC 32-24-1-14**

#### **Costs of proceedings; litigation expenses**

Sec. 14. (a) Except as provided in subsection (b), the plaintiff shall pay the costs of the proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the defendant by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the plaintiff under section 12 of this chapter, the court shall allow the defendant the defendant's litigation expenses, including reasonable attorney's fees, in an amount not to exceed the lesser of:

- (1) twenty-five thousand dollars (\$25,000); or
- (2) the fair market value of the defendant's property or easement as determined under this chapter.

*As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.12.*

### **IC 32-24-1-15**

#### **Forfeitures; failure to pay damages or take possession**

Sec. 15. (a) If the person seeking to take property under this article fails:

- (1) to pay the assessed damages and, if applicable, the attorney's fees payable under section 14 of this chapter not later than one (1) year after the appraisers' report is filed, if exceptions are not filed to the report;
- (2) to pay:

(A) the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter if exceptions are filed to the appraisers' report and the exceptions are not sustained;

or

(B) the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter and costs if exceptions

are filed to the appraisers' report and the exceptions are sustained;

not later than one (1) year after the entry of the judgment, if an appeal is not taken from the judgment;

(3) to pay the damages assessed and, if applicable, attorney's fees payable under section 14 of this chapter or the judgment rendered in the trial court not later than one (1) year after final judgment is entered in the appeal if an appeal is taken from the judgment of the trial court; or

(4) to take possession of the property and adapt the property for the purpose for which it was acquired not later than six (6) years after the payment of the award or judgment for damages, except where a fee simple interest in the property is authorized to be acquired and is acquired;

the person seeking to acquire the property forfeits all rights in the property as fully and completely as if the procedure to take the property had not begun.

(b) An action to declare a forfeiture under this section may be brought by any person having an interest in the property sought to be acquired, or the question of the forfeiture may be raised and determined by direct allegation in any subsequent proceedings, by any other person to acquire the property for a public use. In the subsequent proceedings the person seeking the previous acquisition or the person's proper representatives, successors, or assigns shall be made parties.

*As added by P.L.2-2002, SEC.9. Amended by P.L.163-2006, SEC.13.*

### **IC 32-24-1-16**

#### **Prior appropriation of land**

Sec. 16. A person having an interest in property that has been or may be acquired for a public use without the procedures of this article or any prior law followed is entitled to have the person's damages assessed under this article substantially in the manner provided in this article.

*As added by P.L.2-2002, SEC.9.*

### **IC 32-24-1-17**

#### **Conflicting laws; repeal**

Sec. 17. All laws and parts of laws in conflict with the provisions of this chapter are hereby repealed: provided, that this repeal shall not affect proceedings pending on April 15, 1905, but such proceedings may be completed as if this chapter had never been passed.

*As added by P.L.2-2002, SEC.9.*