

## **CHAPTER 32-15 EMINENT DOMAIN**

### **32-15-01. Eminent domain defined - How exercised - Condemnor defined - Exceptions.**

1. Eminent domain is the right to take private property for public use.
2. Private property may not be taken or damaged for public use without just compensation first having been made to or paid into court for the owner. When private property is taken by a person, no benefit to accrue from the proposed improvement may be allowed in ascertaining the compensation to be made therefor. Private property may not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business. A determination of the compensation must be made by a jury, unless a jury is waived. The right of eminent domain may be exercised in the manner provided in this chapter.
3. Notwithstanding any other provision of law, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health.
4. For the purpose of this chapter, "condemnor" means a person empowered to take property under the power of eminent domain.

### **32-15-02. Purposes for which exercised.**

Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.
2. Public buildings and grounds for the use of the state and all other public uses authorized by the legislative assembly of the state.
3. Public buildings and grounds for the use of any county, city, park district, or school district; canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county or city, or for draining any county or city; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other uses for the benefit of any county, city, or park district, or the inhabitants thereof, which may be authorized by the legislative assembly, but the mode of apportioning and collecting the costs of such improvement shall be such as may be provided in the statutes by which the same may be authorized.
4. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, railroads and street railways, electric light plants and power transmission lines and canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, and irrigating, draining, and reclaiming lands.
5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, outlets, natural or otherwise, for the flow, deposit, or conduct of the tailings or refuse from mines and mill dams.
6. Byroads leading from highways to residences and farms.
7. Telegraph and telephone lines.
8. Sewage disposal of any city, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or of any college or university.
9. Cemeteries and public parks.
10. Oil, gas, coal, and carbon dioxide pipelines and works and plants for supplying or conducting gas, oil, coal, carbon dioxide, heat, refrigeration, or power for the use of any county, city, or the inhabitants thereof, together with lands, buildings, and all other improvements in or upon which to erect, install, place, maintain, use, or operate pumps, stations, tanks, and other machinery or apparatus, and buildings, works, and plants for the purpose of generating, refining, regulating, compressing, transmitting, or distributing the same, or necessary for the proper development and control of such

gas, oil, coal, carbon dioxide, heat, refrigeration, or power, either at the time of the taking of said property or for the future proper development and control thereof.

11. Lands sought to be acquired by the state or any duly authorized and designated state official or board, which lands necessarily must be flooded in widening or raising the waters of any body or stream of navigable or public water in the state of North Dakota.

### **32-15-03. What estate subject to be taken.**

The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, for an outlet for a flow or a place for the deposit of debris or tailings of a mine, or for the construction of parking lots and facilities for motor vehicles.
2. An easement, when taken for highway purposes or for any other use except, upon a proper allegation of the need therefor, the court shall have the power to order that a fee simple be taken for such other use.
3. The right of entry upon and occupation of lands and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for a public use.

However, the provisions of this section shall not authorize the state or any political subdivision thereof to obtain any rights or interest in or to the oil, gas, or fluid minerals on or underlying any estate or right in lands subject to be taken for a public use.

### **32-15-03.1. Declaration of legislative intent.**

Repealed by omission from this code.

### **32-15-03.2. Termination of estates greater than an easement.**

No transfer to the state of North Dakota or any of its political subdivisions of property for highway purposes shall be deemed to include any interest greater than an easement, and where any greater estate shall have been so transferred, the same is hereby reconveyed to the owner from which such land was originally taken, or to the heirs, executors, administrators, or assigns of such owner. Such reconveyance shall be subject to any existing contracts or agreements covering such property, and all rights and benefits thereof shall accrue to the grantee.

### **32-15-04. What property may be taken.**

The private property which may be taken under this chapter includes:

1. All real property belonging to any person.
2. Lands belonging to this state or to any county, city, or park district, not appropriated to some public use.
3. Property appropriated to public use, but such property shall not be taken unless for a more necessary public use than that to which it has been appropriated already, and use by a public corporation shall be deemed a more necessary public use than use for the same purpose by a private corporation or limited liability company, and whenever a right of way shall have been taken and the person, firm, corporation, or limited liability company taking such right of way shall fail or neglect for five years to use the same for the purpose to which it had been appropriated, the attempt by another person, firm, corporation, or limited liability company to appropriate such right of way shall be considered a more necessary public use.
4. Franchises for toll roads, toll bridges, ferries, and all other franchises, but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use.
5. Any system of waterworks, electric light and power plant, wells, reservoirs, pipelines, machinery, franchises, and all other property of any character whatsoever comprising a waterworks system or an electric light and power system.

6. All rights of way for any and all the purposes mentioned in section 32-15-02 and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvement or structure thereon. They also shall be subject to a limited use in common with the owner thereof when necessary, but such uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.
7. All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

**32-15-05. What must appear before property taken.**

Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.
2. That the taking is necessary to such use.
3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

**32-15-06. Entry for making surveys.**

In all cases when land is required for public use, the person or corporation, or the person's or corporation's agents, in charge of such use may survey and locate the same, but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the provisions of section 32-15-21. Whoever is in charge of such public use may enter upon the land and make examinations, surveys, and maps thereof, and such entry constitutes no claim for relief in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.

**32-15-06.1. Duty to negotiate - Just compensation - Appraisals.**

1. A condemnor shall make every reasonable and diligent effort to acquire property by negotiation.
2. Before initiating negotiations for the purchase of property, the condemnor shall establish an amount which it believes to be just compensation therefor and promptly shall submit to the owner an offer to acquire the property for the full amount so established. The amount shall not be less than the condemnor's approved appraisal or written statement and summary of just compensation for the property.
3. In establishing the amount believed to be just compensation, the condemnor shall disregard any decrease or increase in the fair market value of the property caused by the project for which the property is to be acquired or by the reasonable likelihood that the property will be acquired for that project, other than a decrease due to physical deterioration within the reasonable control of the owner.
4. The condemnor shall provide the owner of the property with a written appraisal, if one has been prepared, or if one has not been prepared, with a written statement and summary, showing the basis for the amount it established as just compensation for the property. If appropriate, the compensation for the property to be acquired and for the damages to remaining property shall be separately stated.

**32-15-06.2. Disclosures.**

The condemnor, upon request, shall provide the property owner or the owner's representative with the names of at least ten neighboring property owners to whom offers are being made, or a list of all offerees if fewer than ten owners are affected. A current and relevant map showing all neighboring property affected by a project shall also be provided to the property owner. Upon request by an owner or the owner's representative, the condemnor shall provide the names of any other property owners within that county and adjacent counties whose property may be taken for the project. The owner or the owner's representative shall have the right, upon request, to examine any maps in the possession of the condemnor showing property

affected by the project. The owner or the owner's representative may obtain copies of such maps by tendering to the condemnor the reasonable and necessary costs of preparing copies.

**32-15-07. Proceedings by civil action.**

Repealed by omission from this code.

**32-15-08. Form of summons - When served.**

Repealed by omission from this code.

**32-15-09. Service by publication.**

Repealed by omission from this code.

**32-15-10. Copy of summons served through mails.**

Repealed by omission from this code.

**32-15-11. Service complete, when.**

Repealed by omission from this code.

**32-15-12. When note of issue filed.**

Repealed by omission from this code.

**32-15-13. Jury may be demanded.**

Whenever in an action brought under the provisions of this chapter an issue is formed whereby it appears that the attendance of a jury will be necessary to assess the damages in such action, the plaintiff therein may apply to the judge of the district court where the same is pending for an order requiring a jury to be summoned to assess the damages in such action. Thereupon the judge shall issue an order to the clerk of said court requiring a jury to be summoned, and in such order shall specify the number of jurors to be drawn, the place where they are to appear, and the time when they shall come, which shall be not less than eight days nor more than thirty days from the date thereof.

**32-15-14. When sheriff's fees to be advanced by plaintiff - Surety for jury fees.**

Repealed by S.L. 1981, ch. 354, § 1.

**32-15-15. Note of issue, filing.**

Repealed by omission from this code.

**32-15-16. Special term of court to hear issue.**

The court shall sit at a special term to hear the case according to law and the practice of the court, and shall have the same power to complete the jury as is now provided by law, and the pay of such jurors, and the penalty for failure or refusal to appear, shall be the same as in other cases.

**32-15-17. Issues tried at any term of court.**

The trial of any action under this chapter may be had at any general, special, or adjourned term of district court, held or called in the county in which such action may be pending, and such action may be tried at any such term. If issue is not joined prior to the commencement of any regular, special, or adjourned term, the plaintiff nevertheless may require said cause to be tried on such day thereof as the court may order, but plaintiff shall serve upon the opposite party, or parties, a seven days' notice of trial, specifying the date of trial, as fixed by order of the court.

**32-15-18. What complaint must contain.**

The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.
2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.
3. A statement of the right of the plaintiff.
4. If a right of way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof so far as the same is involved in the action or proceeding.
5. A description of each piece of land sought to be taken and whether the same includes the whole or only a part of an entire parcel or tract.

**32-15-19. Joinder, consolidation, and separation of proceedings.**

All parcels of land lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

**32-15-20. Who may defend.**

All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint or in the damages for the taking thereof, though not named, may appear, plead, and defend, each in respect to such person's own property or interest, or that claimed by such person, in like manner as if named in the complaint.

**32-15-21. Power of court.**

1. The court shall have power:
  - a. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in subsection 6 of section 32-15-04.
  - b. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages for the property.
  - c. To determine the respective rights of different parties seeking condemnation of the same property.
2. Notwithstanding any other provision of law, if a route permit is required under chapter 49-22 or 49-22.1, the court may order the taking by eminent domain conditioned on the receipt of the route permit.

**32-15-22. Assessment of damages.**

The jury, or court, or referee, if a jury is waived, must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty and of each and every separate estate or interest therein. If it consists of different parcels, the value of each parcel and each estate and interest therein shall be separately assessed.
2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.
3. If the property, though no part thereof is taken, will be damaged by the construction of the proposed improvement, the amount of such damages.
4. If the property is taken or damaged by the state or a public corporation, separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvement proposed by the plaintiff, and if the benefit shall be equal to the damages assessed under subsections 2 and 3, the owner of the parcel shall be allowed no compensation except the value of the portion taken, but if the benefit shall be less than the damages so assessed the

former shall be deducted from the latter and the remainder shall be the only damages allowed in addition to the value of the portion taken.

5. As far as practicable, compensation must be assessed separately for property actually taken and for damages to that which is not taken.

**32-15-22.1. Eminent domain - Compensation for moving personal property.**

Repealed by S.L. 1973, ch. 407, § 17.

**32-15-23. When right to damages accrues.**

For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the taking and its actual value at that date shall be the measure of compensation for all property actually to be taken, and the basis of damages to the property not actually taken, but injuriously affected, in all cases when such damages are allowed as provided in section 32-15-22. The time of the taking shall be determined by the court.

**32-15-24. When title defective.**

If the title acquired is found to be defective from any cause, the plaintiff again may institute proceedings to acquire the same as in this chapter prescribed.

**32-15-25. When judgment paid.**

The plaintiff, within thirty days after the entry of final judgment, must pay the sum of money assessed, except where school or public land upon which no contract is outstanding is taken for public use under this chapter, the plaintiff shall pay for such land as follows: one-fifth of the sale price in cash at the time of the sale; one-fifth of the purchase price each five years thereafter on the anniversary date of the sale, with interest at the rate of not less than three percent per annum, payable annually in advance.

**32-15-26. Payment or deposit - Proceedings annulled.**

Payment may be made to the defendant entitled thereto, or the money may be deposited in court for the defendant and be distributed to those entitled thereto. If the money is not so paid or deposited, the defendant may have execution as in civil actions, unless execution is stayed by order of the court pending a motion for a new trial or on appeal, and if the money cannot be made on execution, the court upon a showing to that effect must set aside and annul the entire proceedings.

**32-15-27. Final order - Filing.**

When payments have been made as required in sections 32-15-25 and 32-15-26, the court must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation. A copy of the order must be filed in the office of the recorder of the county and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

**32-15-28. Public corporation bound by judgment.**

In the event that any property is being acquired by any public corporation through condemnation proceedings, such public corporation shall be bound by the judgment rendered therein and within six months after the entry of such a judgment shall pay into court the full amount of the judgment on account of damages. If the public corporation shall dismiss the action prior to the entry of judgment thereon, the court shall award to the defendant reasonable actual or statutory costs, or both, which shall include reasonable attorney's fees.

**32-15-29. When possession taken - How money paid defendant - Acceptance - Abandonment of defenses.**

At any time after the entry of judgment, whenever the plaintiff shall have paid to the defendant, or into court for the defendant, the full amount of the judgment, the district court in

which the proceeding was tried, upon notice of not less than three days, may authorize the plaintiff to take possession of and use the property during the pendency of and until the final conclusion of the litigation and, if necessary, may stay all actions and proceedings against the plaintiff on account thereof. The defendant, who is entitled to the money paid into court for the defendant upon judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the court. The court, or a judge thereof, upon application made by such defendant, shall order and direct that the money so paid into court for the defendant be delivered to the defendant upon the defendant's filing a satisfaction of the judgment, or upon the defendant's filing a receipt therefor and an abandonment of all defenses to the action or proceeding except as to the amount of damages that the defendant may be entitled to in the event that a new trial shall be granted. A payment to a defendant as aforesaid shall be held to be an abandonment by such defendant of all defenses interposed by the defendant, except the defendant's claim for greater compensation.

**32-15-30. Payment of money into court at risk of plaintiff.**

The payment of the money into court as provided for in this chapter shall not discharge the plaintiff from liability to keep the said fund full and without diminution, but such money shall be and remain as to all accidents, defalcations, or other contingencies as between the parties to the proceedings at the risk of the plaintiff, and shall remain so until the amount of the compensation or damages finally is settled by judicial determination and until the court awards the money, or such part thereof as shall be determined upon, to the defendant, and until the defendant is authorized or required by order of court to take it. If for any reason the money at any time shall be lost, or otherwise abstracted or withdrawn, through no fault of the defendant, the court shall require the plaintiff to make and keep the sum good at all times until the litigation finally is brought to an end, and until paid over or made payable to the defendant by order of the court, as provided in section 32-15-29, and until such time or times the clerk of court shall be deemed to be the custodian of the money and shall be liable to the plaintiff upon the clerk's official bond for the same, or any part thereof, if for any reason it is lost, or otherwise abstracted or withdrawn.

**32-15-31. Deposit of money with state treasurer.**

The court may order the moneys to be deposited in the state treasury and in such case the state treasurer shall receive all such moneys, duly receipt for and safely keep the same in a special fund to be entered on the state treasurer's books as a condemnation fund for such purpose, and for such duty the state treasurer shall be liable to the plaintiff upon the state treasurer's official bond. The state treasurer shall pay out such money so deposited in such manner and at such times as the court or judge thereof by order may direct.

**32-15-32. Costs.**

The court may in its discretion award to the defendant reasonable actual or statutory costs or both, which may include interest from the time of taking except interest on the amount of a deposit which is available for withdrawal without prejudice to right of appeal, costs on appeal, and reasonable attorney's fees for all judicial proceedings. If the defendant appeals and does not prevail, the costs on appeal may be taxed against the defendant. In all cases when a new trial has been granted upon the application of the defendant and the defendant has failed upon such trial to obtain greater compensation than was allowed the defendant upon the first trial, the costs of such new trial shall be taxed against the defendant.

**32-15-33. Rules of practice.**

Except as otherwise provided in this chapter, the provisions of the North Dakota Rules of Civil Procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

**32-15-34. New trials and appeals.**

The provisions of this code relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter, but upon the payment of the damages assessed the plaintiff shall be entitled to enter into, improve, and hold possession of the property sought to be condemned as provided in section 32-15-29 and to devote the same to the public use in question, and no motion for a new trial or appeal after such payment shall retard the contemplated improvement in any manner. Any money which shall have been deposited, as provided in section 32-15-29, shall be applied to the payment of the recovery upon a new trial and the remainder, if there is any, shall be returned to the plaintiff.

**32-15-35. Eminent domain proceedings - Costs of defendant to be paid when proceedings withdrawn or dismissed by party bringing the proceedings.**

Whenever the state acting by and through its officers, departments, or agencies, or any municipality or political subdivision of this state acting by and through its officers, departments, or agencies, or any public utility, corporation, limited liability company, association, or other entity which has been granted the power of eminent domain by the state, shall commence eminent domain proceedings against any land within this state and thereafter withdraws or has such proceedings dismissed without agreement of the defendant, the state, municipality, political subdivision, public utility, corporation, limited liability company, association, or entity commencing such eminent domain proceedings shall be liable for and pay to the owner of such land all court costs, expenses, and fees, including reasonable attorney's fees as shall be determined by the court in which the proceedings were filed.