

## Condemnation Procedures

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## Condemnation Procedures

**Reference Number:** MTAS-1268

There are a variety of condemnation procedures that have been established for municipalities and counties,<sup>[1]</sup> but those used most commonly are the traditional “jury of view” procedure, (T.C.A. §§ 29-16-101 *et seq.*) and the supplementary procedure. T.C.A. §§ 29-17-901 *et seq.* These statutory provisions normally permit the condemner to select the procedure of its choice from the available options.<sup>[2]</sup> This manual will discuss only the traditional “jury of view” procedure and the supplementary procedure, since the same principles generally are applicable to the other procedural schemes available to counties and municipalities.

T.C.A. § 6-54-122 establishes special procedures to be followed by a municipality in taking unincorporated property in any county in which the municipality was not located before May 1, 1995. The municipality must notify the county in writing, and the county must approve the taking. The county's disapproval may not be arbitrary or capricious and may be reviewed by statutory writ of certiorari. These provisions do not apply to takings necessary to provide utility service, certain takings by metropolitan governments, or takings relative to airports or projects sponsored jointly by a municipality and a county.

The condemner seeking to acquire an interest under the power of eminent domain must first file a lawsuit to accomplish this objective. In the lawsuit, the court will be presented with two issues: (1) whether the condemner has the right to take the property,<sup>[3]</sup> and (2) the amount of just compensation to which the property owner is entitled.<sup>[4]</sup>

Under the “jury of view” and the supplementary procedures, the condemnation action must be filed in the circuit court in which the property is located. T.C.A. §§ 29-16-104; 29-17-902. Thus, the circuit court has exclusive jurisdiction over eminent domain proceedings.<sup>[5]</sup> Once condemnation proceedings have been filed in the circuit court, the court may resolve matters that are incidental to the condemnation case, such as contract<sup>[6]</sup> or boundary<sup>[7]</sup> disputes involving the condemned property. The only exception to this rule involves cases that were properly brought in chancery court to obtain injunctions or other equitable relief.<sup>[8]</sup> The chancery court has been found to have jurisdiction to award appropriate relief under the eminent domain statutes in cases that were initially brought to obtain injunctive relief,<sup>[9]</sup> to void a contract,<sup>[10]</sup> or to reform a deed.<sup>[11]</sup>

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### Notes:

[1] For example, special procedures have been provided for the acquisition of property for certain municipal projects (§ 7-31-107 *et seq.*), for municipal housing authorities (§ 29-17-501 *et seq.*), for the opening, changing or closing of county roads (§ 54-10-201 *et seq.*) and for municipal or county schools (§ 49-6-2001 *et seq.*).

[2] *Williams v. McMinn County*, 209 Tenn. 236, 352 S.W. 2d 430 (1961); *Ragland v. Davidson County Board of Education*, 203 Tenn. 317, 312 S.W.2d 855 (1958); *City of Knoxville v. Heth*, 186 Tenn. 321, 210 S.W.2d 326 (1948); *Town of Cookeville v. Farley*, 171 Tenn. 260, 102 S.W.2d 56 (1937); *Derryberry v. Beck*, 153 Tenn. 220, 280 S.W. 1014 (1925); *City of Chattanooga v. State*, 151 Tenn. 691, 272 S.W. 432 (1924); *Department of Highways and Public Works v. Gamble*, 18 Tenn. App. 95, 73 S.W.2d 175 (1934). But see *Baker v. Nashville Housing Authority*, 219 Tenn. 201, 408 S.W.2d 651 (1966) (municipal housing authority may not utilize “bulldozer/quick take” procedure).

[3] See section The Right to Take.

[4] See section Just Compensation.

[5] *Cox v. State*, 217 Tenn. 644, 399 S.W.2d 776 (1965); *Hombra v. Smith*, 159 Tenn. 308, 17 S.W.2d 921 (1929); *Scruggs v. Town of Sweetwater*, 29 Tenn. App. 357, 196 S.W.2d 717 (1946).

[6] *E.R. & R.I. Dixon v. Louisville & Nashville Railroad Co.*, 115 Tenn. 362, 89 S.W. 322 (1905).

[7] *City of Maryville v. Waters*, 207 Tenn. 213, 338 S.W.2d. 608 (1907).

[8] *H.J.L., L.P. v. Nashville & Eastern R.R. Corp.*, 1999 WL 499 744 (Tenn. App. 1999); *Knox County v. Moncier*, 224 Tenn. 361, 455 S.W.2d. 153 (1970); *Evans v. Wheeler*, 209 Tenn. 40, 348 S.W.2d 500

(1961); *Chambers v. Chattanooga Union Railway Co.*, 130 Tenn. 459, 171 S.W. 84 (1914); *McLain v. State*, 59 Tenn. App. 529, 442 S.W.2d 637 (1968).

[9] *Knox County v. Moncier*, *supra*; *Evans v. Wheeler*, *supra*.

[10] *Chambers v. Chattanooga Union Railroad Co.*, *supra*.

[11] *McLain v. State*, *supra*.

## Jury of View Procedure

**Reference Number:** MTAS-1269

The jury of view procedure requires the condemner to initiate the condemnation action by filing a petition for condemnation in the circuit court and giving the property owner 30 days notice of the proceedings. T.C.A. §§ 29-16-104 and 105; 29-17-104. The circuit court then appoints a jury of view to examine the property to be condemned and determine the amount of just compensation to which the property owner is entitled. T.C.A. §§ 29-16-108 thru 113. The jury of view will then file its report with the court. The report may be confirmed or it may be excepted to and/or appealed by one or both parties that have objections to the report. T.C.A. § 29-16-115 thru 118.

If the report is confirmed, an order will be entered conveying the property to the condemner upon payment to the property owner of the amount of just compensation set by the jury of view. T.C.A. § 29-16-116. If an exception is filed, the court may, upon a showing of good cause, appoint a new jury of view. T.C.A. § 29-16-117. If an appeal is filed to the report, the circuit court conducts a trial de novo before a petit jury. T.C.A. § 29-16-118.

## Petition for Condemnation

**Reference Number:** MTAS-1270

### ***Petition for Condemnation (Jury of View Procedure)***

The petition for condemnation must be filed in the county in which the property is located. T.C.A. § 29-16-104. The petition must name as defendants all parties having any interest in any way in the property being acquired. T.C.A. § 29-16-106. All parties must be named as defendants for the condemnation proceedings to bind the parties, with the exception of unborn remaindermen, who are bound if all living parties in interest are parties. T.C.A. § 29-16-106.<sup>[12]</sup> Thus, to obtain clear title to the property, the condemner should name as defendants the spouse of the property owner,<sup>[13]</sup> any person owning a life estate or reversionary or remainder interest in the property,<sup>[14]</sup> any lessee of the property,<sup>[15]</sup> any holder of a recorded mortgage,<sup>[16]</sup> and any holder of any other interest in the property, including a purchase contract of which the condemner is aware.<sup>[17]</sup> The name and residence addresses of all defendants, if known, should be listed in the petition, and if the name or address is unknown, that fact should be stated in the petition. T.C.A. § 29-16-104.

The body of the petition for condemnation should set forth the statute, private act, or charter provision giving the condemner the general power to acquire property by eminent domain and should cite the jury of view statutes as the specific statutory procedure being used by the condemner to acquire the property in question.<sup>[18]</sup> The petition should also identify the specific ordinance or resolution of the county or municipal legislative body authorizing the acquisition of the property under the power of eminent domain.

The nature of the project for which the property is being acquired should be described. T.C.A. § 29-16-104. The petition should recite that the project is for a public use, is in the public interest, and that the acquisition of the property is necessary to complete the project.<sup>[19]</sup> The particular interest in the property, either a fee interest or an easement, should be identified. T.C.A. § 29-16-104. An accurate legal description of the property should be included, along with a corresponding map or plat attached as an exhibit if available. T.C.A. § 29-16-104.<sup>[20]</sup> Also, any known encumbrances upon the property should be specified. Finally, the petition should contain a prayer that a copy of the petition be served on the defendants and a suitable portion of the land or the rights of the defendants be awarded to the condemner. T.C.A. § 29-16-104.

**Notes:**

- [12] *Sanford v. Louisville & Nashville Railroad Co.*, 225 Tenn. 350, 469 S.W.2d 363 (1971).
- [13] *Brady v. Correll*, 20 Tenn. App. 224, 97 S.W.2d 448 (1936).
- [14] *Colcough v. Nashville and Northwestern Railroad Co.*, 39 Tenn. 171 (1858).
- [15] *Union Railway Co. v. Hunton*, 114 Tenn. 609, 88 S.W. 182 (1905); *Lamar Advertising of Tennessee, Inc. v. Metropolitan Development and Housing Authority*, 803 S.W.2d 686 (Tenn. Ct. App. 1990); *City of Morristown v. Sauls*, 61 Tenn. App. 666, 457 S.W.2d 601 (1969).
- [16] *State v. Holland*, 51 Tenn. App. 344, 367 S.W.2d 791 (1962).
- [17] *Cheatham v. Carter County, Tennessee*, 363 F.2d 582 (6th Cir. 1966).
- [18] *Middle Tennessee Electric Membership Corp. v. Batey*, Docket No. 89-233-II (Tenn. Ct. App. M.S. January 31, 1990).
- [19] *Noell v. Tennessee Eastern Power Co.*, 130 Tenn. 245, 169 S.W. 1169 (1914); Griffith and Stokes, *Eminent Domain in Tennessee*, p. 22 (Rev. Ed. July 1979).
- [20] *State ex rel. Shaw v. Shofner*, 573 S.W.2d 169 (Tenn. Ct. App. 1978).

## Deposit and Appraisal

Reference Number: MTAS-1271

### ***Deposit and Appraisal (Jury of View Procedure)***

The condemner using the jury of view procedure must deposit with the clerk of the court at the time the petition is filed the amount determined by its appraisal as the amount the property owner is entitled to for the property being acquired. T.C.A. § 29-17-801. The appraisal must value the property considering its highest and best use, its use at the time of the taking, and any other uses to which the property is legally adaptable at the time of the taking. The appraiser must be a Member of the Appraisal Institute (MAI) or an otherwise licensed and qualified appraiser. T.C.A. § 29-17-1004. The statute requires interest to be paid only on the amount of an award exceeding the deposit at the rate of two percentage points (2%) greater than the prime loan rate established, as of the date of the taking, by the federal reserve system of the United States. T.C.A. § 29-17-913. Thus, the statute provides the condemner with a mechanism to avoid the payment of interest on the amount deposited. <sup>[21]</sup>

The condemner should make a good faith estimate of the damages and expenses the property owner will likely incur when it determines the amount to deposit. <sup>[22]</sup> The amount of the deposit should be specified in the condemnation petition. The amount of the deposit is not relevant to the trial, <sup>[23]</sup> and the condemner can offer proof that the property is of lesser value. <sup>[24]</sup>

**Notes:**

- [21] *Clinton Livestock Auction Co. v. City of Knoxville*, 52 Tenn. App. 614, 376 S.W.2d 743 (1963).
- [22] *State ex rel. Smith v. Overstreet*, 533 S.W.2d 283 (1976).
- [23] *Smith County v. Eatherly*, 820 S.W.2d 366 (Tenn. Ct. App. 1991).
- [24] *Kennedy v. City of Chattanooga*, 56 Tenn. App. 198, 405 S.W.2d 653 (1966); *Clinton Livestock Auction Co. v. City of Knoxville*, supra.

## Notice

Reference Number: MTAS-1272

### ***Notice (Jury of View Procedure)***

Notice of the filing of the condemnation petition must be given to each respondent at least 30 days before the taking of any additional steps. T.C.A. § 29-17-104. If the defendant's name or address is unknown, or if he or she is not a resident of the state, notice should be given as for suits in chancery court. T.C.A. § 29-17-104. <sup>[25]</sup> Although notice by publication is also authorized for non-residents of the

state, the due process clause of the Fourteenth Amendment to the United States Constitution requires more than notice by publication when the name and address of a non-resident defendant are known or very easily ascertainable. <sup>[26]</sup> The notice should advise the defendant of the filing of the petition and the date scheduled for presenting the petition to the court for issuance of the writ of inquiry. <sup>[27]</sup>

The notice of the filing of the petition is in lieu of the summons that is normally issued in civil actions. <sup>[28]</sup> The manner of service of the notice is not specified in the applicable statutes; however, Rule 71 of the Tennessee Rules of Civil Procedure provides that those rules will be applicable to the extent they are not in conflict with or do not contradict or contravene the provisions of the applicable statutes. Therefore, service of the notice, accompanied by a copy of the petition for condemnation, can be accomplished in any manner authorized by Rule 4 of the Tennessee Rules of Civil Procedure. A return of the notice, like a return of a summons, should be completed in compliance with Rule 4.03 of the Tennessee Rules of Civil Procedure.

If the right to take has not been challenged within 30 days after the giving of notice, the condemner may take possession of the property. If the right to take is challenged, the court must promptly determine as a matter of law whether there is a right to take. If the court determines there is a right to take, it must issue a writ of possessions if necessary. T.C.A. § 29-17-104.

**Notes:**

[25] The due process clause of the Fourteenth Amendment to the United States Constitution does not permit service by publication where the defendant's name is known or is very easily ascertainable. *Love v. First National Bank of Clarksville*, 646 S.W.2d 163 (Tenn. Ct. App. 1982).

[26] *Baggett v. Baggett*, 541 S.W.2d 407 (Tenn. 1976).

[27] *Griffith and Stokes, supra*, at p. 23.

[28] *Johnson v. Roane County*, 212 Tenn. 433, 370 S.W.2d 496 (1963).

## Writ of Inquiry

**Reference Number:** MTAS-1273

### ***Writ of Inquiry (Jury of View Procedure)***

At the time the petition is presented to the court for the issuance of the writ of inquiry, which cannot occur until 30 days after the defendant has been given notice of the filing of the petition, the condemner should submit a motion to sustain the condemner's right to take the property under the power of eminent domain. This motion asks the court to issue the writ of inquiry and fix a time and place for the inquest. Any challenge to the condemner's right to take must be asserted at this stage of the proceedings. <sup>[29]</sup>

If no challenge to the condemner's right to take is made, the court will sustain the condemnation proceedings and order the issuance of the writ of inquiry of damages. T.C.A. § 29-16-202. This order should recite that:

- The petition for condemnation has been properly filed and notice given to the defendants;
- The condemner has the right to acquire the property as disclosed in the order;
- The clerk should issue a writ of inquiry to appear on a fixed date and place and that no further notice will be given;
- Upon selection of the jury of view the jury will proceed to the property, examine it, and hear testimony of witnesses, but no argument of counsel, and will set apart by metes and bounds the property to be condemned and assess the damages as required by law; and
- That the jury of view will reduce its report to writing and deliver it to the sheriff, who will return it to the court. <sup>[30]</sup>

If the defendant challenges the condemner's right to take, the court must first resolve this challenge before it may order issuance of the writ of inquiry. T.C.A. § 29-16-202. <sup>[31]</sup> If the court finds that the condemner has the right to take the property, it will sustain the condemnation proceedings and order

issuance of the writ of inquiry of damages. T.C.A. § 29-16-202. The order directing the issuance of the writ of inquiry is not a final order and, therefore, is not appealable. <sup>[32]</sup>

The writ of inquiry is issued by the clerk and directed to the sheriff, commanding him to summon a panel of jurors to appear on a fixed date and place. T.C.A. § 29-16-202. <sup>[33]</sup> The sheriff thereafter summons a panel from 12 to 15 potential jurors from which the jury of view will be selected. The sheriff should return the writ to the clerk of court, specifying the names of the persons on whom the writ of inquiry was served. <sup>[34]</sup>

**Notes:**

[29] *Wilkerson, The Institution and Prosecution of Condemnation Proceedings*, 26 Tenn. L. Rev. 325 (1959); Griffith and Stokes, *supra*, at p. 23.

[30] *Wilkerson, supra*, at p. 328.

[31] The right to take is considered in detail in *The Right to Take* [1].

[32] *Tennessee Central Railroad Co. v. Campbell*, 109 Tenn. 655, 73 S.W. 112 (1903); *Camp v. Coal Creek & Winter's Gap Railroad Co.*, 79 Tenn. 705 (1883).

[33] As an alternative, the parties may agree on the persons who will serve on the jury of view, or the judge will select the jurors and the names of these jurors will be specified in the order directing the writ of inquiry. T.C.A. § 29-16-109. The sheriff will thereafter serve the writ of inquiry on the agreed-upon jurors.

[34] *Wilkerson, supra*, at p. 328.

## Selection of the Jury of View

**Reference Number:** MTAS-1274

The jury of view will consist of five persons, unless the parties agree to a different number. T.C.A. § 29-16-108. The jurors must possess the same qualifications as jurors in other civil cases, with the additional qualification that no members of the jury of view may have an interest in a similar case. T.C.A. § 29-16-109. The jurors may be challenged for cause or peremptorily as in any other civil case. T.C.A. § 29-16-108. In the instance where the name of the juror is selected by the court and the juror is unable to attend, the sheriff will select a replacement. T.C.A. § 29-16-110.

## View and Report

**Reference Number:** MTAS-1275

### ***View and Report (Jury of View Procedure)***

If the date has not been set by the court, the sheriff must give the parties three days' notice of the time and place of the inquiry. T.C.A. § 29-16-111. <sup>[35]</sup> On the date and time specified, the jury will be selected (if the names of the jurors are not specified by the court or the parties) and sworn to fairly and impartially, without favor or affectation, and will lay off by metes and bounds the property required for the proposed improvement to assess the damages to the landowner. T.C.A. § 29-16-112.

The jury may then receive brief instructions from the court on its duties, which are to go onto the property, to examine it, to hear testimony of witnesses but no arguments of counsel, to assess the damages, and to prepare a report in writing and deliver it to the sheriff. <sup>[36]</sup> The jury of view will then be placed in the charge of the sheriff and will proceed to examine the property. T.C.A. § 29-16-113. The parties and their counsel may accompany the jury of view to the property and put on evidence as to its value, but counsel are not permitted to make arguments to the jury of view. T.C.A. § 29-16-113. <sup>[37]</sup> After the investigation of the property and the testimony have been completed, the jury of view must identify by metes and bounds the property required for the proposed project and must assess damages to the landowner according to the principles discussed in chapter four. T.C.A. § 29-16-113. The decision of the jury of view may be a majority instead of a unanimous decision. T.C.A. § 29-16-115. <sup>[38]</sup> The decision should be reduced to writing, and the report must include a legal description of the property and the amount of the award and be signed by a majority of the jurors. <sup>[39]</sup>

The report should be delivered to the sheriff who returns the report to the court. T.C.A. § 29-16-115. If the parties do not object to the report, it is confirmed by the court upon motion by the condemner.<sup>[40]</sup> The court then enters an order confirming the report. T.C.A. § 29-16-116. This order should incorporate the report of the jury of view, should order that the property be divested from defendants and vested in the condemner, and further order that the condemner pay the defendants the amount specified in the report.<sup>[41]</sup> The order should also specifically provide for the issuance of a writ of possession to put the condemner in possession, if necessary.<sup>[42]</sup>

If there is no dispute as to the proper distribution of the funds to defendants, the order should specify this distribution; otherwise, the court must retain jurisdiction to permit the defendants to present proof on their respective interests and the proper disposition of the award.<sup>[43]</sup> This order should also adjudge the costs of the case (normally against condemner) and provide for payment of the members of the jury of view.<sup>[44]</sup> The maximum amount of this payment is specified at T.C.A. § 29-16-125.

**Notes:**

[35] Although the statute does not require notice to be given to parties or agents who are not residents of the county, such notice would be required by the Fourteenth Amendment to the United States Constitution. *Bryant v. Edwards*, 707 S.W.2d 868 (Tenn. 1986).

[36] *Wilkerson, supra*, at p. 328.

[37] As an alternative, the presentation of testimony may occur at a different location after the jury of view has had an opportunity to inspect the property.

[38] *Mississippi Railway Co. v. McDonald*, 59 Tenn. 54 (1873).

[39] The attorney for condemners normally prepares the report leaving a blank for the jury of view to fill in the amount of the award. *Wilkerson, supra*, at p. 329.

[40] *Wilkerson, supra*, at p. 330.

[41] *Wilkerson, supra*, at p. 330.

[42] *Wilkerson, supra*, at p. 330.

[43] *Wilkerson, supra*, at p. 330.

[44] *Wilkerson, supra*, at p. 330.

## Exception and Appeal

Reference Number: MTAS-1276

### **Exceptions and Appeals (Jury of View Procedure)**

Either party may file exceptions to the report of the jury of view, and for good cause shown, the court may set aside the report of the jury of view and issue a new writ of inquiry for a new jury of view. T.C.A. § 29-16-117. Exceptions to the report of the jury of view should be directed toward some irregularity in the proceedings, misconduct of the jury of view, or where the report is founded on erroneous principles.

<sup>[45]</sup> The court considers the exceptions based on the proof in the record; therefore, an exception on the grounds of inadequacy of the damages would normally be insufficient.<sup>[46]</sup> Although no time period is specified for filing exceptions, the appeal from the report of the jury of view must follow the disposition of the exceptions,<sup>[47]</sup> and such an appeal must be filed within 45 days of the confirmation of the report of the jury of view. T.C.A. § 29-16-118. It is therefore conceivable that a court would find that exceptions must be filed and disposed of prior to the expiration of the 45-day period.

An appeal is the proper remedy if a party objects to the amount of damages awarded by the jury of view.<sup>[48]</sup> The remedies of exception and appeal are cumulative and successive.<sup>[49]</sup> A party may file an appeal regardless of whether exceptions have been filed.<sup>[50]</sup> Either party may file an appeal within 45 days of the entry of the order confirming the report of the jury of view, and upon giving security for costs obtain a trial de novo before a jury as in any civil case. T.C.A. § 29-16-118.

The condemner who obtained possession under the order confirming the report of the jury of view<sup>[51]</sup> may continue in possession upon filing of an appeal by posting a bond, payable to defendants, in



double the amount of the award of the jury of view, conditioned upon the condemner's compliance with the final judgment in the case. T.C.A. §§ 29-16-120; 29-16-122. <sup>[52]</sup> Costs on appeal must be paid by the appealing party in all cases where the petit jury affirms the award of the jury of view or is more unfavorable to the appealing party. T.C.A. § 29-17-119. In all other cases the court may award costs as in other chancery cases. T.C.A. § 29-16-119.

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**Notes:**

[45] *Officer v. East Tennessee Natural Gas Co.*, 192 Tenn. 184, 239 S.W.2d 999 (1951); *Pound v. Fowler*, 175 Tenn. 220, 133 S.W.2d 486 (1939).

[46] *Pound v. Fowler, supra*; *Overton County Railroad Co. v. Eldridge*, 118 Tenn. 79, 98 S.W. 1051 (1906).

[47] *Pound v. Fowler, supra*.

[48] *Pound v. Fowler, supra*.

[49] *Baker v. Rose*, 165 Tenn. 543, 56 S.W.2d 732 (1932).

[50] *State ex rel. v. Oliver*, 167 Tenn. 155, 67 S.W.2d 146 (1933).

[51] See The Right to Take <sup>[1]</sup> on the effect of such possession on the finality of the court's determination of the condemner's right to take the property.

[52] Counties (and arguably municipalities) are not required to post this bond to obtain possession pending appeal. *Claiborne County v. Jennings*, 199 Tenn. 161, 285 S.W.2d 132 (1955).

## Nonsuit

**Reference Number:** MTAS-1277

### ***Nonsuit (Jury of View Procedure)***

The condemner may take a voluntary nonsuit under Rule 41.01 of the Tennessee Rules of Civil Procedure in a condemnation case. <sup>[53]</sup> A nonsuit cannot be taken after the condemner has taken possession of the property following confirmation of the report of the jury of view, leaving nothing to be determined except the amount of compensation due the defendant. <sup>[54]</sup>

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**Notes:**

[53] *Montgomery County v. Nichols*, 10 S.W.3d 258 (Tenn. App. 1999); *Anderson v. Smith*, 521 S.W.2d 787 (Tenn. 1975); *Cunningham v. Memphis Railroad Terminal Co.*, 126 Tenn. 343, 149 S.W. 103 (1912); *Williams v. McMinn County, supra*.

[54] *Anderson v. Smith, supra*; *Cunningham v. Memphis Railroad Terminal Co., supra*; *Department of Highways and Public Works v. Gamble*, 18 Tenn. App. 95, 73 S.W.2d 175 (1934).

## Supplementary Procedure

**Reference Number:** MTAS-1278

The supplementary condemnation procedure set out in T.C.A. §§ 29-17-901 *et seq.*, can be used by the state of Tennessee to acquire such right-of-way, land, material, easements, and rights as are necessary, suitable, or desirable for the construction, reconstruction, maintenance, repair, drainage, or protection of any street, road, freeway, or parkway. In addition to these purposes, municipalities and counties can use the supplementary procedure for any municipal or county purpose for which condemnation is otherwise authorized by any act of the Tennessee General Assembly, unless expressly stated to the contrary. T.C.A. § 29-17-901. Levee and drainage districts in certain counties also may use the supplementary procedure. T.C.A. § 29-17-901. The supplementary procedure may not be used by housing authorities since they are not counties or municipalities. <sup>[55]</sup>

The supplementary procedure is a cumulative procedure for the exercise of eminent domain and should be construed in *pari materia* with the other eminent domain statutes. <sup>[56]</sup> This supplementary procedure was designed to protect the property owner by having the amount the condemner believes the property

owner is entitled to deposited in court, and when that money has been deposited, to give the condemner the almost immediate right of possession. <sup>[57]</sup> This purpose, however, has been largely negated by statutory amendments requiring 30 days notice of filing the condemnation petitions in all eminent domain cases.

The supplementary procedure, like the jury of view procedure, requires the condemner to initiate the condemnation action by filing a petition for condemnation in the circuit court, accompanied by a deposit for the amount of damages the condemner believes the property owner is entitled to, and giving the property owner notice of the proceedings. T.C.A. §§ 29-17-902; 29-17-903. If the condemner is a municipality or county, any defendant may elect to use the jury of view procedure by filing a statement to that effect within five days of service upon the defendant. T.C.A. § 29-17-901. <sup>[58]</sup>

If the condemner's right to take is not questioned <sup>[59]</sup>, the condemner may take possession of the property 30 days after the notice has been given. T.C.A. § 29-17-903. <sup>[60]</sup> If the property owner is satisfied with the amount of the deposit, he or she may withdraw that amount from the court by filing a sworn statement stating that he or she is the owner of the property or property interests described in the petition for condemnation and that he or she accepts the deposit in full settlement for the taking of the property and all damages occasioned to the remainder thereof. T.C.A. § 29-17-904. The court will then enter an order divesting the property owner of title and vesting it in the condemner. T.C.A. § 29-17-904. If the property owner is dissatisfied with the deposit, he or she may file an exception to the amount deposited by the condemner, and a trial before a petit jury may be held on the amount of just compensation due the property owner. T.C.A. § 29-17-905.

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**Notes:**

[55] *Baker v. Nashville Housing Authority, supra.*

[56] *Catlett v. State*, 207 Tenn. 1, 336 S.W.2d 8 (1960).

[57] *Kennedy v. City of Chattanooga, supra. v. Thornton*, 57 Tenn. App. 127, 415 S.W.2d 884 (1967).

[59] If the right to take is challenged, the condemner has no right to possession until that issue is resolved. *Shelby County v. Armour*, 495 S.W.2d 816 (Tenn. Ct. App. 1975). See The Right to Take [1] for more information.

[60] In some counties, the court may require the condemner and property owners to appear on a date certain after the expiration of the 30-day period to obtain an order awarding possession to the condemner.

## Petition for Condemnation (Supplementary)

Reference Number: MTAS-1279

### ***Petition for Condemnation (Supplementary Procedure)***

Although the interests of the defendants need not be specified, the condemner may specify the interests of different defendants. <sup>[61]</sup>

If any person who is a proper party defendant is omitted from the petition for condemnation, the condemner may file amendments to add them. T.C.A. § 29-17-909.

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**Note:**

[61] *State ex rel. Moulton v. Burkhart*, 212 Tenn. 352, 370 S.W.2d 411 (1963).

## Notice (Supplementary)

Reference Number: MTAS-1280

### ***Notice (Supplementary Procedure)***

As with the jury of view procedure, notice of the filing of the condemnation proceeding must be given to all defendants. T.C.A. § 29-17-903. This notice must be given at least 30 days before any additional steps are taken in the case by the condemner. T.C.A. § 29-17-903. The constitutional limitations on

service by publication that were discussed under the jury of view procedure apply to the supplementary procedure. Service of the notice, accompanied by a copy of the petition for condemnation, can be accomplished in any manner authorized by the *Tennessee Rules of Civil Procedure*.

## Deposit and Appraisal (Supplementary)

**Reference Number:** MTAS-1281

### ***Deposit and Appraisal (Supplementary Procedure)***

The condemner must determine what it deems to be the amount due the property owner and deposit that amount when it files the petition for condemnation<sup>[62]</sup>. This deposit should be a good faith estimate of damages and expenses the defendant will likely incur as the result of the condemnation.<sup>[63]</sup> Evidence of the amount deposited is irrelevant, however, if the condemnation goes to trial on the amount of damages.<sup>[63A]</sup>

The amount deposited must be based upon an appraisal. The appraisal must value the property considering its highest and best use, its use at the time of the taking, and any other use to which the property is legally adaptable at the time of the taking. The appraiser must be an MAI or an otherwise licensed and qualified appraiser. T.C.A. § 29-17-1004.

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#### **Notes:**

[62] The specification of the amount of damages the condemner believes the property owner is entitled to is not an admission, *Kennedy v. City of Chattanooga*, *supra*, and is not relevant at trial. *Smith County v. Eatherly*, *supra*.

[63] *State ex rel. Smith v. Overstreet*, *supra*.

[63A] *Smith County v. Eatherly*, 820 S.W.2d 366 (Tenn. App. 1991).

## Default (Supplementary)

**Reference Number:** MTAS-1282

### ***Default (Supplementary Procedure)***

If the property owner does not appear and accept the amount of the deposit or take exception to the amount of the deposit, the court can enter a default judgment against the property owner. The court will then hold a hearing upon the record and, in the absence of the property owner, determine the amount of just compensation to which the property owner is entitled. T.C.A. § 29-17-907.

## Acceptance (Supplementary)

**Reference Number:** MTAS-1283

### ***Acceptance (Supplementary Procedure)***

If the defendant is satisfied with the amount of the damages, he or she may file a sworn statement verifying that he or she is the owner of the property or property rights being condemned and that he or she accepts the deposit as a full settlement for the taking of the property and any incidental damages to the remainder of the property of the defendant. T.C.A. § 29-17-904. The court will thereafter enter a final judgment divesting the property owner of title and vesting title in the condemner. T.C.A. § 29-17-904. If the condemner identifies the amount of the deposit that should be allocated to the various defendants, a defendant may accept that amount in full settlement of his or her interest.<sup>[64]</sup>

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#### **Note:**

[64] *State ex rel. Moulton v. Burkhart*, *supra*.

## Exception and Trial (Supplementary)

**Reference Number:**

MTAS-1284

**Exception and Trial (Supplementary Procedure)**

If the property owner is dissatisfied with the amount deposited, he or she may file an exception or answer on or before 30 days from the date of notice of filing the petition. T.C.A. §§ 29-17-905 and 29-17-105. The answer must be filed within 30 days of service of the notice. T.C.A. § 29-17-105.

If the property owner files an exception or answer to the amount deposited by the condemner, a trial may be held before the petit jury as in other civil cases. T.C.A. §§ 29-17-905 and 29-17-105. To obtain such a jury trial, the property owner should make a demand for a jury under Rule 38.02 of the Tennessee Rules of Civil Procedure, or file a motion for a jury trial under Rule 39.02 of the Tennessee Rules of Civil Procedure. <sup>[65]</sup> The trial will be limited to determining the amount of compensation to be paid to the defendant for the property or property rights taken. When adverse claims by multiple defendants are made for compensation, the court and jury must also resolve those claims. T.C.A. § 29-17-908.

The defendant who has filed an exception is entitled to withdraw, prior to trial, the amount deposited by the condemner without prejudice to the rights of either party. T.C.A. § 29-17-906. <sup>[66]</sup> To withdraw the deposit, the defendant must make a written request to the clerk in which he or she agrees to refund the difference between the amount of the deposit and the final award if the final award is less than the amount of the deposit. T.C.A. § 29-17-906.

If the final award is less than or equal to the amount of the deposit, the defendant must pay the costs of the trial. T.C.A. § 29-17-912. Rule 54.04 of the Tennessee Rules of Civil Procedure governs the taxing of any additional costs. In other cases, the condemner is responsible for paying the costs. T.C.A. § 29-17-912.

**Note:**

[65] If the parties do not demand a jury under Rule 38.02 or file a motion for a jury trial under Rule 39.02, the court may not impanel a jury on its own motion. *Smith v. Williams*, 575 S.W.2d 503 (Tenn. Ct. App. 1978).

[66] *State ex rel. Moulton v. Burkhart*, *supra*; *West Wilson Utility District v. Ligon*, 768 S.W.2d 681 (Tenn. Ct. App. 1988).

**Nonsuit (Supplementary)**

Reference Number: MTAS-1285

**Nonsuit (Supplementary Procedure)**

As with the jury of view procedure, the condemner may take a voluntary nonsuit prior to obtaining possession of the defendant's property. <sup>[67]</sup> However, if the condemner abandons the proceedings, the court may order the condemner to pay defendants for all reasonable costs, including reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings. T.C.A. §§ 29-17-912 and 29-17-106. An abandonment occurs when the condemner voluntarily gives up the intended condemnation or declines to carry the condemnation proceedings through to a conclusion. <sup>[68]</sup>

**Note:**

[67] *Anderson v. Smith*, *supra*.

[68] *Metropolitan Government of Nashville and Davidson County v. Denson*, Docket No. 01-A-01-9005-CV-00174, 1990 WL 154646 (Tenn. Ct. App. M.S. October 17, 1990), *app. denied* (January 28, 1991).

**Links:**

[1] <http://www.mtas.tennessee.edu/reference/right-take>

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