

## Supplementary Procedure

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Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## 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.

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**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>

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**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).

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**Links:**

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

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