

## Exception and Trial (Supplementary)

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

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

Sincerely,

The University of Tennessee  
Municipal Technical Advisory Service  
1610 University Avenue  
Knoxville, TN 37921-6741  
865-974-0411 phone  
865-974-0423 fax  
[www.mtas.tennessee.edu](http://www.mtas.tennessee.edu)

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## 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).

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**Source URL (retrieved on 09/23/2019 - 4:17pm):** <http://www.mtas.tennessee.edu/reference/exception-and-trial-supplementary>