

Exception and Appeal

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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,

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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. ^[45] 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. ^[46] 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, ^[47] 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. ^[48] The remedies of exception and appeal are cumulative and successive. ^[49] A party may file an appeal regardless of whether exceptions have been filed. ^[50] 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 ^[51] 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. ^[52] 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.

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 [1] 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).

Links:

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

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