

Section 7.6

EMINENT DOMAIN

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Section 7.6

EMINENT DOMAIN

PURPOSE

This section provides guidance for preparing and conducting eminent domain actions and guides the attorney/client relationship that must exist between attorneys representing the Florida Department of Transportation (Department) in eminent domain actions and Right of Way Managers as clients.

AUTHORITY

Section 20.23(3)(a), Florida Statutes
Section 334.048(3), Florida Statutes

SCOPE

Central and District Offices of Right of Way and the Office of the General Counsel will use this document.

REFERENCES

Chapter 73, Florida Statutes
Chapter 74, Florida Statutes
Section 337.27, Florida Statutes
Section 479.15(3), Florida Statutes
Section 6.1, Appraisal and Appraisal Review
Section 7.2, Negotiation Process
Section 7.4, Fees and Costs
Section 7.13, Internal Revenue Service Reporting Requirements
Section 7.15, Land Title
Section 9.2, General Relocation Requirements

DEFINITIONS

Inverse Condemnation: A cause of action initiated by a property owner against the Department alleging a taking of property in order to recover full compensation for the property claimed to have been taken when no condemnation action was initiated by the Department.

Legal Settlement: An agreement to pay an amount of just and full compensation (land, improvements and severance damages) or for business damages, exclusive of fees and costs, after an order of taking deposit.

7.6.1 Limitations on Condemnation

7.6.1.1 Parcels owned by federal and state agencies cannot be acquired by condemnation unless the affected agency consents to and cooperates in the condemnation.

7.6.1.2 The District Secretary must approve condemnation of parcels owned by local governmental agencies prior to filing a condemnation action. The District Right of Way Manager should notify the Director, Office of Right of Way, prior to pursuing condemnation against a local government.

7.6.1.3 The District Right of Way Manager should discuss parcels owned by railroad or utility companies with the Office of the General Counsel and District Rail or Utility Offices before placing such parcels in suit.

7.6.1.4 The District Right of Way Manager shall discuss parcels involved in ongoing foreclosure or bankruptcy litigation with the Office of the General Counsel before placing such parcels in suit.

7.6.2 Information Necessary to Prepare a Lawsuit

The following information is needed to prepare an eminent domain lawsuit:

- (A) Copies of the legal descriptions for the parcels being acquired;
- (B) Certified copies of the approved right of way maps depicting the parcel(s) being acquired;
- (C) The names and addresses of all persons holding an interest in the parcel and improvements being acquired, including but not limited to, property owners, tenants, owners of easements, lien holders, owners of outdoor advertising signs, and holders of outdoor advertising sign permits;
- (D) Copies of completed ***Form No. 575-030-02, Representative Authorization***;
- (E) A complete description of the steps taken to locate persons named in the suit for which addresses cannot be found;
- (F) A chronological summary of all offers, counteroffers, and negotiation contacts;
- (G) A corporate status report from the Secretary of State, Division of Corporations, for affected business entities required to register with the Secretary of State;

- (H) Copies of **Form No. 575-030-27, Request for Taxpayer Identification Number**, with the property owner's tax information or documentation that taxpayer information has been requested but not received, or that taxpayer information is not necessary;
- (I) Copies of all appraisals and **Review Appraiser Statements** for each parcel;
- (J) Copies of all title searches and title search updates. Title searches shall be updated prior to suit filing or within ten (10) days after suit is filed. Updates prepared after suit is filed must cover the time period up to the recording of the Lis Pendens. Title search updates must comply with **Section 7.15, Land Title**;
- (K) Copies of any unrecorded title documents affecting the parcels that were obtained during negotiations, such as conveyances, easements, leases, trust agreements, etc.;
- (L) Copies of the eminent domain parcel resolutions and recorded project resolution;
- (M) Where the acquisition includes the common elements of a condominium, notices sent to condominium unit owners and the responses received from any unit owners who objected to the condominium association representing them;
- (N) Copies of **Form No. 575-030-31, Notice to Owner** or **Form 575-030-32, Notice to Owner (Spanish Version)** as appropriate;
- (O) Copies of **Form No. 575-030-33, Notice to Business Owner** or **Form 575-030-34, Notice to Business Owner (Spanish Version)** as appropriate;
- (P) Documentation that a physical inspection of the property was performed prior to the parcel being placed in suit verifying that no one is in physical possession of the property other than those persons previously identified; and
- (Q) Copies of **Form No. 575-030-18, Public Disclosure Notice**, for entities required to provide public disclosure and a copy of the executed **Public Disclosure Affidavit**. If the **Public Disclosure Affidavit** has not been obtained, a statement to this effect must be included in the suit package.

7.6.3 Litigation

7.6.3.1 The District Right of Way Manager shall provide litigation support to the assigned attorney.

7.6.3.2 The assigned attorney shall ensure that court reporters are under contract prior to providing services or incurring costs.

7.6.3.3 The District Right of Way Manager or designee must sign any motion for continuance prior to filing with the court.

7.6.3.4 The assigned attorney shall notify the District Right of Way Manager and all necessary witnesses at least ten (10) business days prior to the date for order of taking, trial, mediation, or hearing for attorney's fees and costs.

7.6.3.5 The assigned attorney shall communicate evidentiary issues that may affect the Department's position regarding preparation and submittal of right of way information to the District Right of Way Manager in time to allow for amended appraisals or other litigation preparation.

7.6.3.6 Written approval must be obtained for any changes impacting the design or construction of the project from the District official authorized to make such commitments prior to agreeing to a legal settlement that commits the Department to such changes.

7.6.3.7 The Department may as part of a legal settlement acquire an entire property where only a portion is needed for construction of the project pursuant to **Section 7.2, Negotiation Process**.

7.6.3.8 Changes as described in **Sections 7.6.3.6** and **7.6.3.7** may require modifications to the Department's right of way maps or construction plans. The assigned attorney shall provide a written notification to affected offices at the time a legal settlement is approved that commits the Department to a change.

7.6.3.9 For each outdoor advertising sign acquired, the District shall send a copy of the order of taking, the certificate of deposit, a completed **Form No. 575-070-12, Outdoor Advertising Permit Cancellation Certification**, and the permit tags, if available, to the Office of Outdoor Advertising Control. The District shall provide these items within 30 days after the order of taking deposit or within 30 days after the last day of any extended possession.

7.6.4 Appraisals

7.6.4.1 The District Right of Way Manager shall ensure that a current approved appraisal is available for order of taking hearings.

7.6.4.2 After obtaining the order of taking, the District Right of Way Manager shall ensure that the appraisal report is updated, reviewed, and approved as of the date of deposit.

7.6.4.3 There may be situations during the course of litigation when a new appraisal report is required. The assigned attorney may request that a new or revised appraisal report be

prepared using **Form No. 225-065-01, Request for Eminent Domain Expert Witness**. In addition to the information required in **Section 7.6.5**, the request shall provide the date the report will be needed, any special instructions or corrections to comply with applicable law, and a recommendation to retain a specific appraiser, if necessary.

7.6.4.4 Appraisals prepared in accordance with an expert witness contract must be reviewed and approved as required by **Section 6.1, Appraisal and Appraisal Review**, before being used in court proceedings.

7.6.5 Expert Witness Services

7.6.5.1 The assigned attorney is responsible for determining the need for expert witness services. The attorney shall request the District Right of Way Manager's approval for expert witness services or to supplement existing expert witness contracts using **Form No. 225-065-01, Request for Eminent Domain Expert Witness**.

7.6.5.2 After approval by the District Right of Way Manager, the assigned attorney shall prepare **Form No. 225-065-02, Expert Witness Contract, Form No. 225-065-03, Supplemental Agreement for Expert Witness and Outside Counsel or Form No. 225-065-04, Expert Witness Contract-Lump Sum**, as appropriate. The attorney shall ensure that expert witness contracts or supplements are executed by the District Right of Way Manager or designee prior to services being rendered.

7.6.5.3 The assigned attorney shall ensure that expert witness services are provided pursuant to the terms of the expert witness contract. The attorney shall approve invoices for expert witness services prior to submitting the invoice to the District Right of Way Manager for payment.

7.6.5.4 The assigned attorney shall coordinate with the District Right of Way Manager and ensure that testimony to be presented by expert witnesses complies with Department procedures and directives.

7.6.6 Offers of Judgment

7.6.6.1 Offers of judgment by the Department must be approved by the assigned client representative prior to being tendered. Offers of judgment must include all pending claims with a particular party or parties, exclusive of fees and costs, and specify what claims are being settled. Each component of the offer shall be detailed and supported on **Form No. 575-030-24, Settlement Approval**.

7.6.6.2 The assigned attorney shall analyze each offer of judgment received by the Department. The attorney shall recommend to the assigned client representative that the offer be accepted or rejected. Defendants' offers of judgment that are accepted by the assigned client representative must be justified and approved on **Form No. 575-030-24, Settlement Approval**.

7.6.7 Mediation

7.6.7.1 The individual who will serve as client representative at mediation shall be selected by the District Right of Way Manager or designee.

7.6.7.2 The client representative at court-ordered mediation shall complete **Form No. 575-030-24, Settlement Approval**, as described in **Section 7.6.9** and obtain the required concurrences and approvals prior to entry of the final judgment for the parcel.

7.6.8 Trial or Hearing

The assigned attorney shall document the results of a trial or hearing for attorney's fees or costs using **Form No. 575-030-30, Trial/Hearing Report**, within ten (10) working days after the trial or hearing.

7.6.9 Legal Settlements

7.6.9.1 For each legal settlement, **Form No. 575-030-24, Settlement Approval** shall be completed considering the criteria in **Section 7.2, Negotiation Process**. The District Right of Way Manager or designee shall ensure the written explanation fully describes how the settlement is reasonable, prudent, and in the best interest of the public and complies with the requirements of **Section 7.2** prior to approving the settlement. The District Right of Way Manager or designee shall obtain any additional approvals as may be required pursuant to **Section 7.2**. Legal settlements must be fully approved prior to entry of a final judgment.

7.6.9.2 The assigned attorney must coordinate with the District Relocation Administrator concerning any relocation benefits that may be included in or affected by the legal settlement in accordance with **Section 9.2, General Relocation Requirements**.

7.6.10 Defendant's Fees and Costs

7.6.10.1 Fees and costs shall be paid in accordance with **Section 7.4, Fees and Costs**.

7.6.10.2 If the recommended legal settlement includes attorney fees that are based on non-monetary benefits, the assigned attorney must quantify the benefits and explain the attorney fee on **Form No. 575-030-24, Settlement Approval**. Non-monetary benefits shall also be quantified in the stipulated final judgment.

7.6.11 Payment of Judgments and Orders

7.6.11.1 The assigned attorney shall provide the District Right of Way Manager certified copies or conformed copies certified by the assigned attorney of all court orders requiring payment.

7.6.11.2 Payment of court orders must be made within the time specified in the order. If no time limit is specified, payment must be made within 40 days after entry of the order except for orders of taking in which case deposit must be made within 20 days after the order is entered.

7.6.12 Closing Cases and Recovery of Excess Funds and/or Interest from the Registry of the Court

7.6.12.1 The assigned attorney shall file a final disposition with the court (***See Attachment A***) within 90 days after the last judgment or order has been completed for an eminent domain case. This pleading alerts the court that the Department does not intend to submit any further pleadings, allowing the court to close the case.

7.6.12.2 The assigned attorney must contact the Clerk of the Circuit Court and determine if there are funds remaining in the court registry prior to filing the final disposition. If there are funds remaining in the registry, the attorney must determine the ownership of the funds. If after reviewing the case files and court registry ledger or other appropriate records of the Clerk of the Circuit Court, the attorney determines that the funds belong to the Department, the attorney must take the necessary actions to withdraw the funds.

7.6.12.3 Funds not clearly identifiable as belonging to the Department must be left in the court registry. When funds are left in the court registry, the assigned attorney must document the case file as to the reasons funds remain in the registry.

7.6.13 Right of Way Management System (RWMS) Data Entry

The Office of the General Counsel is responsible for ensuring that all data regarding eminent domain litigation is entered into the RWMS data base in accordance with the ***RWMS User's Manual*** within five (5) working days after each event.

7.6.14 Taxpayer Information

7.6.14.1 The assigned attorney must verify that the Department has received the defendant's federal tax identification information pursuant to ***Section 7.13, Internal Revenue Service Reporting Requirements***, prior to entry of a final judgment for land, improvements, or damages. If the taxpayer information has not been received, the attorney shall deliver ***Form No. 575-030-27, Request for Taxpayer Identification Number***, to the property owner or the property owner's attorney and document delivery of the request in the legal file. It is recommended that the attorney include a stipulation that the defendant provide taxpayer information in the final judgment. When the attorney receives the executed final judgment, he/she shall transmit a copy of ***Form No. 575-030-27***, whether completed by the property owner or not, to the District Office of Right of Way with the final judgment when requesting payment for the order.

7.6.15 Inverse Condemnation

7.6.15.1 For inverse condemnation cases, the Director, Office of Right of Way, shall serve as the Department's client representative until conclusion of the liability trial. The Director may delegate the client representative responsibility to a member of the Selected Exempt Service in either Central Office Right of Way or the District Right of Way Office. Should a court of competent jurisdiction determine that a taking has occurred, responsibility for the valuation portion of the inverse condemnation will pass to the District Right of Way Manager in the District in which the property is located. The valuation process will be handled in accordance with the provisions of **Sections 7.2.6 through 7.2.29**.

7.6.15.2 The assigned attorney shall contact the District Right of Way Manager as early as possible after receipt of an inverse condemnation claim to coordinate litigation of the inverse condemnation case. The assigned attorney or the District Right of Way Manager shall:

- (A) Assess the merits of the case;
- (B) Identify experts and resources needed to defend the Department's position;
- (C) Identify funding;
- (D) Assign project, parcel, and Department suit number(s);
- (E) Enter data to the Right of Way Management System; and
- (F) Have affected Right of Way maps modified to include the acquired property if the court declares a taking or the Department stipulates to a taking.

TRAINING

None required.

FORMS

The following forms are available on the Infonet, Internet or Right of Way Management System (RWMS):

225-065-01, Request for Eminent Domain Expert Witness
225-065-02, Expert Witness Contract
225-065-03, Supplemental Agreement for Expert Witnesses and Outside Counsel
225-065-04, Expert Witness Contract-Lump Sum
575-030-02, Representative Authorization
575-030-18, Public Disclosure Notice

- 575-030-24, Settlement Approval
- 575-030-27, Request for Taxpayer Identification Number
- 575-030-30, Trial/Hearing Report
- 575-030-31, Notice to Owner (RWMS)
- 575-030-32, Notice to Owner, Spanish Version (RWMS)
- 575-030-33, Notice to Business Owner (RWMS)
- 575-030-34, Notice to Business Owner, Spanish Version (RWMS)
- 575-070-12, Outdoor Advertising Permit Cancellation Certification

Attachment A

IN THE CIRCUIT COURT OF THE
_____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY
FLORIDA

CIVIL ACTION _____

HONORABLE JUDGE _____

ITEM SEGMENT: _____

FDOT FILE NO.: _____

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Petitioner,

VS.

Respondents.

FINAL DISPOSITION FORM
SECTION 25.075, FLORIDA STATUTES

___ DISMISSED BEFORE HEARING

___ DISMISSED AFTER HEARING

___ DISPOSED BY DEFAULT

___ DISPOSED BY JUDGE

___ DISPOSED BY NON-JURY TRIAL

___ DISPOSED BY JURY TRIAL

___ OTHER

DATE _____

SIGNATURE OF ATTORNEY
FOR PREVAILING PARTY
