

UNANNOTATED

CHAPTER 42A Condemnation Proceedings

ARTICLE 1 General Provisions

42A-1-1. Short title.

Sections 42A-1-1 through 42A-1-33 NMSA 1978 may be cited as the "Eminent Domain Code."

History: 1978 Comp., § 42A-1-1, enacted by Laws 1981, ch. 125, § 1.

42A-1-2. Definitions.

As used in the Eminent Domain Code, and unless the context otherwise requires:

A. "condemn" means to take or damage property under the power of eminent domain;

B. "condemnee" means a person who has or claims an interest in property that is the subject of a prospective or pending condemnation action;

C. "condemnor" means a person empowered by law to condemn;

D. "court" means a district court of this state and includes, when the context requires, any judge of that court;

E. "governmental entity" means the state or local public body;

F. "litigation expenses" includes all expenses reasonably and necessarily incurred in the condemnation proceeding including and subsequent to the filing of the petition, in preparing for trial, during trial and in any subsequent judicial proceedings including reasonable attorney's fees, appraisal fees and fees for the services of other experts where such fees were reasonably and necessarily incurred to protect the condemnee's interest in the proceeding, in preparing for trial, during trial and in any subsequent judicial proceedings;

G. "local public body" means a political subdivision of the state and its agencies, instrumentalities and institutions;

H. "person" includes a natural individual, partnership, corporation, association, other legal or fiduciary entity and a governmental entity;

I. "personal property" means any property other than real property;

J. "property" means real or personal property under the law of New Mexico;

K. "real property" means land and any improvements upon or connected with land, and includes an easement or other interest therein; and

L. "state" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.

History: 1978 Comp., § 42A-1-2, enacted by Laws 1981, ch. 125, § 2.

42A-1-3. Agreement.

At any time before or after commencement of a condemnation action, the parties may agree to and carry out a compromise or settlement as to any matter, including all or any part of the compensation or other relief.

History: 1978 Comp., § 42A-1-1, enacted by Laws 1980, ch. 20, § 3; recompiled as § 42A-1-3 by Laws 1981, ch. 125, § 1.

42A-1-4. Negotiation; other appraisals.

A. A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.

B. Unless prohibited by federal law, if the condemnor or condemnee has had prepared appraisals for the property, he shall make such appraisals available to the other party during the negotiation period.

History: 1978 Comp., § 42A-1-2, enacted by Laws 1980, ch. 20, § 4; recompiled as § 42A-1-4 by Laws 1981, ch. 125, § 2.

42A-1-5. Appraisal; offer.

A. If the parties are unable to negotiate a settlement, the condemnee may, within twenty-five days after written notice by the condemnor of its intent to file a condemnation action in district court, give written notice to the condemnor requesting an appraisal to determine the amount that would constitute just compensation for the taking of the condemnee's property and obtained from:

- (1) one appraiser appointed by the condemnor;

(2) one appraiser appointed by the condemnee; and

(3) one appraiser jointly appointed by the appraisers for the condemnor and the condemnee.

B. The condemnee and condemnor shall appoint their respective appraisers within fifteen days after notice has been given by the condemnee to the condemnor pursuant to the provisions of Subsection A of this section and the third appraiser shall be jointly appointed within fifteen days thereafter.

C. The appraisals shall be in writing and signed by the appraisers. The appraisers shall deliver copies to each party personally or by registered mail or certified mail, return receipt requested.

D. The fees and expenses of the appraisers shall be paid by the appointing parties; provided however, the condemnee and condemnor shall share equally in paying the fees and expenses of the jointly appointed appraiser.

E. After receiving a copy of the appraisals provided for pursuant to this section, the condemnor may establish an amount which it believes to be just compensation and may submit to the condemnee an offer to acquire the property for the full amount so established. If the condemnor tenders an offer pursuant to this section, the amount offered for the property shall not be less than the amount of compensation shown by the final common appraisal of the three appraisers or if all three appraisers do not agree, the offer shall not be less than the appraisal prepared by the condemnor's appraiser. The condemnee must reject or accept the offer made by the condemnor pursuant to this section within fifteen days after the offer is tendered.

History: 1978 Comp., § 42A-1-3, enacted by Laws 1980, ch. 20, § 5; recompiled as § 42A-1-5 by Laws 1981, ch. 125, § 60.

42A-1-6. Preliminary efforts to purchase.

A. Except as provided in Sections 42A-1-7 and 42A-1-27 NMSA 1978, an action to condemn property may not be maintained over timely objection by the condemnee unless the condemnor made a good faith effort to acquire the property by purchase before commencing the action.

B. An offer to purchase made in substantial compliance with Sections 42A-1-3 through 42A-1-4 NMSA 1978 is prima facie evidence of good faith under Subsection A of this section.

History: 1978 Comp., § 42A-1-4, enacted by Laws 1980, ch. 20, § 6; amended and recompiled as § 42A-1-6 NMSA 1978 by Laws 1981, ch. 125, § 3.

42A-1-7. Purchase efforts waived or excused.

A condemnor's failure or inability to make reasonable and diligent efforts to acquire property by negotiation, make appraisals available pursuant to Subsection B of Section 42A-1-4 NMSA 1978 or appoint appraisers upon the request of the condemnee pursuant to Subsection A of Section 42A-1-5 NMSA 1978 does not bar the maintenance of a condemnation action in the manner authorized by law, notwithstanding timely objection, if :

A. compliance is waived by written agreement between the condemnee and the condemnor;

B. one or more of the condemnees of the property are unknown, cannot with reasonable diligence be contacted, are incapable of contracting and have no legal representative or own an interest which cannot be conveyed under the circumstances;

C. due to conditions not caused by or under the control of the condemnor, there is a compelling need on the part of the condemnor to avoid the delay in commencing the action which compliance would require;

D. the condemnee fails to provide any appraisals required pursuant to Subsection B of Section 42A-1-4 NMSA 1978; or

E. the appraisers provided for pursuant to Section 42A-1-5 NMSA 1978 fail to submit the appraisals to the parties within thirty days from the date that the jointly appointed appraiser was appointed.

History: 1978 Comp., § 42A-1-5, enacted by Laws 1980, ch. 20, § 7; amended and recompiled as § 42A-1-7 by Laws 1981, ch. 125, § 4.

42A-1-8. Entry for suitability studies.

A condemnor and its agents and employees may enter upon real property and make surveys, examinations, photographs, tests, soundings, borings and samplings, or engage in other activities for the purpose of appraising the property or determining whether it is suitable and within the power of the condemnor to take for public use, if the condemnor secures:

A. the written consent of the owner and, if applicable, any other person known to be in actual physical occupancy of the property to enter upon the property and undertake such activities; or

B. an order for entry from the court.

History: 1978 Comp., § 42A-1-6, enacted by Laws 1980, ch. 20, § 8; recompiled as § 42A-1-8 by Laws 1981, ch. 125, § 60.

42A-1-9. Court order permitting entry for suitability studies.

A. If the condemnor is unable to secure the written consent of the condemnee pursuant to Section 42A-1-8 NMSA 1978 and, if applicable, any other person known to be in actual physical occupancy of the property, he may apply to the court in the county where the property to be entered is located for an order permitting entry.

B. After notice by the condemnor to the condemnee and, if applicable, any other person known to be in actual physical occupancy of the property and unless good cause to the contrary is shown, the court shall make its order permitting and describing the purpose of the entry and setting forth a description of the property and the nature and scope of activities the court determines are reasonably necessary to accomplish the purposes of the proposed taking and authorized to be made upon the property. The order may include terms and conditions with respect to the time, place and manner of entry and authorized activities upon the property which will facilitate the purpose of the entry and minimize damage, hardship and burden, and may require a deposit pursuant to Section 42A-1-10 NMSA 1978.

C. The condemnor shall have delivered any order issued by the court to the condemnee, if known and, if applicable, any other person known to be in actual occupancy of the property personally or by registered mail or certified mail, return receipt requested.

History: 1978 Comp., § 42A-1-7, enacted by 1980, ch. 20, § 9; amended and recompiled as § 42A-1-9 by Laws 1981, ch. 125, § 5.

42A-1-10. Deposit of probable compensation.

A. An order permitting entry under Section 42A-1-9 NMSA 1978 shall include a determination by the court of the probable amount that will fairly compensate the condemnee and any other person in actual physical occupancy of the property for damages, if any, for physical injury to the property and for substantial interference with possession or use of the property found likely to be caused by the entry and activities authorized by the order, and may require the condemnor to deposit with the court before entry that amount or a surety bond in that amount from a surety acceptable to the court.

B. If a deposit is required, such funds shall be deposited in an interest-bearing account at an institution acceptable to the court. Interest on such deposit shall accrue for the benefit of the condemnor.

C. Any amount deposited shall be retained on deposit until released by the court.

D. Surety bonds shall remain in effect until the surety is released by the court.

History: 1978 Comp., § 42A-1-8, enacted by Laws 1980, ch. 20, § 10; amended and recompiled as § 42A-1-10 by Laws 1981, ch. 125, § 6.

42A-1-11. Modification of court order permitting suitability studies.

A. After notice and hearing, the court may modify an order made under Section 42A-1-9 NMSA 1978.

B. If a deposit or surety bond is required or the amount required to be deposited or the amount of the surety bond is increased by an order of modification, the court shall specify the time within which the required amount must be deposited or the surety bond increased, and shall direct that any further entry or specified activities or studies under the order as modified be stayed until the required deposit or increase in the surety bond has been made.

History: 1978 Comp., § 42A-1-9, enacted by Laws 1980, ch. 20, § 11; amended and recompiled as § 42A-1-11 by Laws 1981, ch. 125, § 7.

42A-1-12. Recovery of damages, costs and expenses.

A. A condemnor is liable to the condemnee and, if applicable, to the person in actual physical occupancy of the property for physical injury to and for substantial interference with possession or use of property caused by its entry and activities upon the property made pursuant to Section 42A-1-8 NMSA 1978. This liability may be enforced in a civil action against the condemnor or by application to the court in the circumstances provided by Subsection C of this section.

B. In an action or other proceeding for recovery of damages under this section, the prevailing claimant shall be allowed his reasonable costs. In addition, the court shall award the claimant his litigation expenses incurred in any proceeding under Section 42A-1-9 or 42A-1-11 NMSA 1978 if it finds liability pursuant to Subsection A of this section and that the condemnor:

(1) entered the property unlawfully; or

(2) failed without just cause to substantially comply with or wrongfully exceeded or abused the authority of an order made under Section 42A-1-9 or 42A-1-11 NMSA 1978.

C. If funds are on deposit or a surety bond has been required under Section 42A-1-10 or 42A-1-11 NMSA 1978, the condemnee or other person claiming damages under Subsection A of this section may apply to the court for an award of the amount he is entitled to recover. The court shall determine the amount and award it to the person entitled thereto and direct that the payment be made out of the money on deposit or pursuant to the provisions of the bond. If the amount on deposit or the amount of the surety bond is insufficient to pay the full amount, the court shall enter judgment against the condemnor for the unpaid portion.

History: 1978 Comp., § 42A-1-10, enacted by Laws 1980, ch. 20, § 12; amended and recompiled as § 42A-1-12 by Laws 1981, ch. 125, § 8.

42A-1-13. Entries exempt.

The provisions of Sections 42A-1-8 through 42A-1-12 NMSA 1978 apply only to entries for suitability studies made outside of the exterior boundaries of any municipality.

History: 1978 Comp., § 42A-1-11, enacted by Laws 1980, ch. 20, § 13; amended and recompiled as § 42A-1-13 by Laws 1981, ch. 125, § 9.

42A-1-14. Notice.

If notice of a hearing or any other matter pursuant to Sections 42A-1-3 through 42A-1-12 NMSA 1978 is required, except for specific notice requirements as otherwise provided, notice shall be given:

A. by mailing a copy thereof at least ten days before the time set for the hearing or determination of other matters by certified, registered or ordinary first class mail addressed to the person being notified;

B. by service of a copy thereof at least ten days before the time set for the hearing or determination of other matters upon the person being notified in the manner provided by the Rules of Civil Procedure for the District Courts for service of summons and complaint; or

C. if the address or name of any person is not known and cannot be ascertained by reasonable diligence, by publishing a copy thereof at least once a week for two consecutive weeks, in a newspaper of general circulation in the county in which the hearing is to be held, the last publication of which is to be at least five days before the time set for the hearing.

History: 1978 Comp., § 42A-1-12, enacted by Laws 1980, ch. 20, § 14; amended and recompiled as § 42A-1-14 by Laws 1981, ch. 125, § 10.

42A-1-15. Rules of civil procedure.

Unless specifically provided to the contrary in the Eminent Domain Code, or unless inconsistent with its provisions, the Rules of Civil Procedure for the District Courts govern matters pursuant to that act.

History: 1978 Comp., § 42A-1-13, enacted by Laws 1980, ch. 20, § 15; amended and recompiled as § 42A-1-15 by Laws 1981, ch. 125, § 11.

42A-1-16. Application.

A. The provisions of Sections 42A-1-3 through 42A-1-16 NMSA 1978 apply to all condemnation actions brought pursuant to the laws of New Mexico including those actions brought pursuant to Sections 42-2-1 through 42-2-24 NMSA 1978.

B. The provisions of Sections 42A-1-3 through 42A-1-12 NMSA 1978 shall not affect the right of possession and occupancy provided for in Sections 42A-1-22 and 42-2-6 NMSA 1978.

History: 1978 Comp., § 42A-1-14, enacted by Laws 1980, ch. 20, § 16; amended and recompiled as § 42A-1-16 by Laws 1981, ch. 125, § 12.

42A-1-17. Petition; parties.

A. Unless otherwise specifically provided by law, if property is sought to be appropriated for public use by a person authorized to acquire property pursuant to the laws of New Mexico, and the condemnor and the condemnee cannot agree to the transfer of the property or interest in question the condemnor may file a petition with the court of the county where the property or any part thereof lies; provided however, the petition shall not include any property which is not contiguous to property to be condemned in the county of the court's jurisdiction.

B. The petition prescribed in Subsection A of this section shall include but not be limited to the following:

(1) a designation as plaintiff each person on whose behalf the property is sought to be taken;

(2) a statement by the petitioner of its authority to bring the action;

(3) a general description of the public purpose for which the property is being condemned;

(4) a statement that the action is brought pursuant to and in compliance with the provisions of the Eminent Domain Code;

(5) an accurate surveyed description of the property to be condemned describing the property by metes and bounds or center line description tied at regular intervals to statutory corners or other monumented points incorporated in the petition with or without reference to maps or plats attached to the petition; the property of each condemnee to be condemned shall be described separately, and each tract under separate ownership shall be consecutively numbered for ease in identification; provided that interests of several owners in the same property may be described and numbered together;

(6) the interest to be taken;

(7) an allegation that the petitioner has been unable to agree with one or more of the defendants having an interest in a particular tract as to just compensation;

(8) a statement of the amount offered as compensation for each tract affected;

(9) a map, plat or plan included or attached to the petition showing the improvement to be constructed and indicating the property of the condemnee to be condemned; and

(10) unless an appraisal was prepared pursuant to Section 42A-1-5 NMSA 1978, a request for the appointment of three commissioners to assess the damages which the condemnees may severally sustain in consequence of the proposed taking.

C. The petition may also include a prayer requesting that the court grant the condemnor the right of immediate possession as provided in Section 42A-1-22 NMSA 1978, and that the court hold a hearing concerning this matter within thirty days from the date of the filing of the petition.

D. The petition shall name as defendants, and shall list their addresses, if known, all the parties who own or occupy the property or have any interest therein as may be ascertained by a search of the county records, and if any such parties are known to the petitioner to be minors or persons of unsound mind or suffering under any other legal disability, when no legal representative, custodian or guardian appears in their behalf, the court shall on motion appoint a guardian ad litem to protect the interest of those under any legal disability. The following additional parties shall be named as defendants:

(1) if the record owner of the property sought to be condemned is deceased and there has been no recorded legal disposition of the property, the deceased and his known heirs shall be named as defendants, and, if the heirs are unknown to the petitioner, they shall be named and designated as defendants under the style of "the unknown heirs of, deceased";

(2) if the estate of any such deceased person is in the process of being administered in any court of the state, the personal representative of such deceased person shall also be named as a defendant;

(3) if the property sought to be condemned is held in trust and the petitioner has knowledge of the trust, the trustee shall be named; and

(4) where the name of the party holding title or any interest therein cannot be determined, such parties shall be designated as "unknown owners or claimants of the property involved."

History: 1978 Comp., § 42A-1-17, enacted by Laws 1981, ch. 125, § 13.

42A-1-18. Notice of condemnation.

A. Upon filing a petition in condemnation in the district court, the clerk shall issue and give notice of condemnation which shall contain:

- (1) a copy of the petition and the appraisal, if one was prepared pursuant to Section 42A-1-5 NMSA 1978;
- (2) the title of the action;
- (3) the name or designation of the court and county in which the action is brought as well as the cause number;
- (4) a direction that the condemnee appear and answer to the petition within thirty days after service of notice, and a statement that unless the condemnee appears and answers, the petitioner will apply to the court for the relief demanded in the petition;
- (5) the name and address of the petitioner's attorney shall appear on every notice; and
- (6) a general statement of the nature of the action and a general description of the property involved in the action.

B. If the condemnor in his petition requests an order for immediate possession, notice of such request shall be incorporated in the notice provided for pursuant to Subsection A of this section.

C. If an appraisal has been prepared pursuant to Section 42A-1-5 NMSA 1978, the condemnor shall file a copy of it at the time the petition is filed and shall deposit with the clerk of the court the amount determined by the appraisers pursuant to Section 42A-1-5 NMSA 1978. The deposit shall be managed pursuant to the provisions of Subsections E through G of Section 42A-1-19 NMSA 1978.

History: 1978 Comp., § 42A-1-18, enacted by Laws 1981, ch. 125, § 14.

42A-1-19. Appointment of commissioners; assessment of damages; payment.

A. If appraisers have not been appointed pursuant to Section 42A-1-5 NMSA 1978 and if the court is satisfied that proper notice of the petition has been given, it shall appoint up to three disinterested commissioners who are residents of the county in which the property or a part thereof is situated and who are familiar with the property values in the area of the proposed taking. The commissioners shall assess the damages which the condemnees may severally sustain by reason of the proposed taking and make a report to the clerk of the court within thirty days, unless extended by the court for good cause shown, setting forth the amount of the damages. The clerk of

the court shall file the report prepared by the commissioners. Should more than one condemnee be included in the petition, the commissioners shall state the damages allowed each condemnee separately, together with a specific description of the property for which such damages are assessed.

B. Any number of condemnees may be joined in one petition, and the damages to each tract of land shall be separately assessed by the commissioners.

C. The condemnor shall pay to the clerk the amount assessed pursuant to Subsection A of this section.

D. Upon the failure by the condemnor to pay the assessment, the court may, upon motion and notice by the party entitled to damages, enforce payment by execution.

E. By motion before entry of judgment, the condemnee may apply to the court to withdraw an amount not to exceed sixty-six and two-thirds percent of the amount deposited pursuant to Subsection C of this section. The condemnee shall specify in his motion the property for which the deposit was made and the amount requested to be withdrawn.

F. A condemnee who withdraws funds pursuant to Subsection E of this section waives all objections and defenses to the condemnation action, except for any claim to greater compensation.

G. The court shall direct that the funds deposited pursuant to Subsection C of this section and not withdrawn pursuant to the provisions of Subsection E of this section be invested by the clerk of the court in federal securities or in federally insured interest-bearing accounts in financial institutions located within the judicial district. All income from such investment shall accrue to the benefit of the condemnee. No funds in excess of the applicable dollar insurance maximum shall be deposited in any institution. The type of investment and maturity date of the deposit or securities shall be approved by the condemnee. If there is more than one condemnee and they are unable to agree on the type of investment or maturity date, the court shall invest the deposit in the type of such investment which earns the highest interest rate, provided such deposit or investment shall mature in not more than one hundred eighty-five days.

History: 1978 Comp., § 42A-1-19, enacted by Laws 1981, ch. 125, § 15.

42A-1-20. Report; notice of filing; exceptions.

A. Upon the filing of the report of the commissioners prepared pursuant to Section 42A-1-19 NMSA 1978, the clerk of the court shall notify the attorneys of record for all of the parties to such proceeding who have entered appearances or, if not represented by attorney, all parties who have entered appearances at their respective post-office addresses of record, of the filing of the report.

B. Failure to give notice as provided in this section or failure to receive the notice shall not operate to extend the time for filing the exceptions to the report of the commissioners.

C. The report of the commissioners may be reviewed by the court in which the proceedings are had on written exceptions filed in the clerk's office by either or any party within thirty days after the time of the filing of the report in the clerk's office. The court shall either confirm the report or order a second appraisal either by the commissioners already appointed or by three other qualified commissioners to be appointed for that purpose.

History: 1978 Comp., § 42A-1-20, enacted by Laws 1981, ch. 125, § 16.

42A-1-21. Trial.

A. Within twenty days after the filing of the petition if an appraisal has been prepared pursuant to Section 42A-1-5 NMSA 1978 or after the final confirmation of the report of the commissioners, a party may demand trial of any issues remaining in the cause. The cause shall be tried de novo, and unless waived, the parties shall be entitled to a trial by jury.

B. If no issues other than compensation are raised, the court shall render a final judgment awarding the property to the condemnor contingent upon payment of the awarded compensation to the condemnee. In all other cases, the court shall render final judgment upon decision of all contested questions of law and fact.

History: 1978 Comp., § 42A-1-21, enacted by Laws 1981, ch. 125, § 17.

42A-1-22. Order of immediate possession prior to judgment.

A. At the time of filing the petition, the condemnor may apply to the court for an order for immediate possession of the property proposed to be taken.

B. Upon filing the petition, the court shall set a time for hearing within thirty days of the filing, and notice shall be given as provided in Section 42A-1-18 NMSA 1978.

C. At the hearing, the court shall make an order authorizing the condemnor to take immediate possession of the property if it finds that the use for which the property sought to be condemned is a public use and that immediate possession is necessary.

D. If the order is granted pursuant to Subsection C of this section and no offer was made pursuant to Section 42A-1-5 NMSA 1978, the court shall require the condemnor to deposit with the court an amount established by it. Money from the deposit may be invested and disbursed as provided in Subsections E through G of Section 42A-1-19 NMSA 1978. Upon final confirmation of the report of the commissioners, the deposit made pursuant to this subsection shall be adjusted to reflect that report. The

adjustment, however, shall not require the condemnee to refund any amount withdrawn pursuant to Subsection E of Section 42A-1-19 NMSA 1978, but any amount withdrawn shall be credited against the total amount awarded pursuant to Section 42A-1-24 NMSA 1978.

E. The order for immediate possession shall describe the property to which the condemnor is authorized to take possession. The description may be by reference to the petition. The order shall also state the date at which the condemnor is authorized to take possession of the property.

History: 1978 Comp., § 42A-1-22, enacted by Laws 1981, ch. 125, § 18.

42A-1-23. Possession; no effect on other rights.

By taking possession pursuant to the provisions of Section 42A-1-22 NMSA 1978, the condemnor does not waive the right to appeal from the judgment, the right to abandon or the right to request a new trial.

History: 1978 Comp., § 42A-1-23, enacted by Laws 1981, ch. 125, § 19.

42A-1-24. Determination of compensation and damages; interest.

A. For the purposes of assessing compensation and damages, the right thereto shall be deemed to have accrued as of the date the petition is filed, and actual value on that date shall be the measure of compensation for all property taken, and also the basis of damages for property not taken but injuriously affected in cases where such damages are legally recoverable; the amount of the award shall be determined from the evidence and not be limited to any amount alleged in the petition or set forth in the answer.

B. Whenever just compensation shall be ascertained and awarded in such proceeding and established by judgment, the judgment shall include as a part of the just compensation awarded interest at the rate of ten percent a year upon the unpaid portion of the compensation awarded from the date the petition is filed to the date of payment or the date when the proceedings are finally abandoned. The judgment shall not include interest upon the amount represented by funds deposited by the condemnor pursuant to the provisions of Sections 42A-1-19 and 42A-1-22 NMSA 1978.

C. The court shall have the power to direct the payment of delinquent taxes, special assessments and rental or other charges owed out of the amount determined to be just compensation and to make orders as the court deems necessary with respect to encumbrances, liens, rents, insurance and other just and equitable charges.

D. The judgment shall credit against the total amount awarded to the condemnee any payments or deposits paid over to him made before the date of entry of judgment by the condemnor as compensation for the property taken, including any funds which

the condemnee withdrew from the amount deposited by the condemnor pursuant to the provisions of Section 42A-1-19 or 42A-1-22 NMSA 1978.

E. If the amount to be credited against the award under Subsection D of this section exceeds the total amount awarded, the court shall require that the condemnee pay the excess to the condemnor.

F. The price paid for similar property by one other than the condemnor may be considered on the question of the value of the property condemned or damaged if there is a finding that there have been no material changes in conditions between the date of the prior sale and the date of taking, that the prior sale was made in a free and open market and that the property is sufficiently similar in the relevant market with respect to situation, usability, improvements and other characteristics.

History: 1978 Comp., § 42A-1-24, enacted by Laws 1981, ch. 125, § 20; 2001, ch. 10, § 1; 2001, ch. 320, § 1.

42A-1-25. Litigation expenses.

A. The court shall award the condemnee his litigation expenses whenever:

- (1) the condemnor has abandoned the condemnation proceeding;
- (2) the condemnation proceeding has been dismissed for any reason except when a bona fide settlement has been reached; or
- (3) there is a final determination that the condemnor does not have a right to take the property sought to be acquired in the condemnation proceeding.

B. Before awarding litigation expenses pursuant to this section, the court shall review the reasonableness of such expenses and fees.

History: 1978 Comp., § 42A-1-25, enacted by Laws 1981, ch. 125, § 21.

42A-1-26. Measure of damage to remainder in partial condemnation.

In any condemnation proceeding in which there is a partial taking of property, the measure of compensation and damages resulting from the taking shall be the difference between the fair market value of the entire property immediately before the taking and the fair market value of the property remaining immediately after the taking. In determining such difference, all elements which would enhance or diminish the fair market value before and after the taking shall be considered even though some of the damages sustained by the remaining property, in themselves, might otherwise be deemed noncompensable. Further, in determining such values or differences therein, elements which would enhance or benefit any property not taken shall only be

considered for the purpose of offsetting any damages or diminution of value to the property not taken.

History: 1978 Comp., § 42A-1-26, enacted by Laws 1981, ch. 125, § 22.

42A-1-27. Proof of payment; recording judgment.

A. After the condemnor has made payment in full to the clerk of the district court in accordance with the judgment in the condemnation action, the clerk shall certify upon the judgment that payment has been made.

B. A copy of the judgment showing payment shall be recorded in the office of the county clerk of the county in which the property is located, and thereupon the title or interest in the property affected shall vest in the condemnor.

C. If the condemnor is a governmental entity, a copy of the judgment shall be filed with the county assessor who shall remove such property from the tax rolls.

History: 1978 Comp., § 42A-1-27, enacted by Laws 1981, ch. 125, § 23.

42A-1-28. Imperfect titles.

If the title attempted to be acquired is found to be defective from any cause, the condemnor may institute proceedings to acquire the property as provided in the Eminent Domain Code.

History: 1978 Comp., § 42A-1-28, enacted by Laws 1981, ch. 125, § 24.

42A-1-29. Property taken or damaged without compensation or condemnation proceedings; right of action by condemnee.

A. A person authorized to exercise the right of eminent domain who has taken or damaged or who may take or damage any property for public use without making just compensation or without instituting and prosecuting to final judgment in a court of competent jurisdiction any proceeding for condemnation is liable to the condemnee, or any subsequent grantee thereof, for the value thereof or the damage thereto at the time the property is or was taken or damaged, with ten percent per year interest, to the date such just compensation is made, in an action to be brought under and governed by the Rules of Civil Procedure for the District Courts of this state. Actions under this section shall be brought in the county where the land or any portion thereof is located.

B. Notwithstanding the provisions of Subsection A of this section or any other provision of law regarding compensation for damage in the situation described in that subsection:

(1) if the person authorized had taken or been granted for public use, pursuant to a final judgment, an order of immediate possession or private agreement, any property;

(2) the property subsequently taken or damaged was contiguous to the property taken or granted; and

(3) the person takes or damages property contiguous to property previously taken or granted from the condemnee or grantor without making just compensation or without instituting and prosecuting to final judgment in a court of competent jurisdiction any proceeding for condemnation; the condemnee or grantor shall receive compensation for the land taken or damaged at the greater of fair market value or a unit rate of five times that of the compensation or consideration he received for the land taken; provided that if the width of the property taken or damaged is not equal to the width originally taken or damaged, compensation required pursuant to this subsection shall be increased or reduced ratably in accordance with the relationship of the respective widths.

C. Any amounts paid under Subsection B of this section shall be deemed just compensation.

History: 1978 Comp., § 42A-1-29, enacted by Laws 1981, ch. 125, § 25; 1983, ch. 131, § 1.

42A-1-30. Adverse possession; statute of limitation.

The defendant to an action brought pursuant to Section 42A-1-29 NMSA 1978 may plead adverse possession as defined by Section 37-1-22 NMSA 1978 or acquisition by prescription as a defense to the action, but no other statute of limitation shall be applicable or pleaded as a defense thereto except as provided in Section 42A-1-31 NMSA 1978.

History: 1978 Comp., § 42A-1-30, enacted by Laws 1981, ch. 125, § 26.

42A-1-31. Property taken or damaged by state agencies or political subdivisions; statutes of limitations.

A. No action or proceeding shall be commenced against any state agency or political subdivision by any person claiming an interest in property acquired or held by a state agency or political subdivision unless such action is brought within three years from the date such person was first entitled to reclaim his interest in the property, or if the right to reclaim such property has occurred prior to the effective date of this section, within three years from the date such person was first entitled to reclaim his interest in the property or within six months after the effective date of this section, whichever date occurs later. For the purpose of this subsection, the date a person is entitled to reclaim

his interest in the property is the date of abandonment of the use for which the property was taken.

B. No action or proceeding shall be commenced pursuant to Section 42-1-23 NMSA 1978 [repealed] against any state agency or political subdivision by any person unless such action or proceeding is brought within three years from the date of the taking or damaging.

C. Nothing in this section shall be construed as reviving any cause of action, extending any time limit or statute of limitations or creating any right of action.

History: 1953 Comp., § 22-9-68, enacted by Laws 1974, ch. 59, § 1; 1980, ch. 20, § 2; 1978 Comp., § 42-1-40; recompiled as § 42A-1-31 by Laws 1981, ch. 125, § 60.

42A-1-32. Costs; compensation of commissioners.

A. Except as expressly provided by law, the costs of the proceedings to condemn property shall be paid by the party seeking the condemnation, including the costs of the final report of the commissioners if applicable.

B. If applicable, the court shall allow the commissioners reasonable compensation for their services. Such compensation shall be taxed as costs in the proceedings.

History: 1978 Comp., § 42A-1-32, enacted by Laws 1981, ch. 125, § 27.

42A-1-33. Easement; abandonment.

Except as specifically provided by law, when an easement has been taken by eminent domain for public use and the public use is subsequently abandoned, the easement is extinguished and the possession of the property reverts to the owner or his successor in interest of the fee free from any rights in the condemnor.

History: 1978 Comp., § 42A-1-33, enacted by Laws 1981, ch. 125, § 28.

42A-1-34. Sign removal by local governments; compensation.

No municipal, county or local zoning authority or any other political subdivision of the state shall remove or cause to be removed any lawfully erected and maintained advertising structure without paying just compensation. As used in this act [this section], "advertising structure" means and includes any outdoor sign, display, figure, painting, poster, billboard or similar thing designed, intended or used to advertise or inform the public of goods or services sold either on or off the premises where the advertising structure is located.

History: Laws 1981, ch. 284, § 1.

ARTICLE 2

Public Utilities

42A-2-1. Railroad, telephone or telegraph company.

Any foreign or domestic railroad, telephone or telegraph company which is duly qualified and doing business in New Mexico shall have the power of eminent domain for acquiring property for public use for the purpose of constructing lines, microwave systems and structures and other communication or transportation structures and other facilities necessary for the operation for [of] such transportation or communication system for such entity according to the procedure for condemnation as provided in the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1978 Comp., § 42A-2-1, enacted by Laws 1981, ch. 125, § 29.

42A-2-2. Telephone and telegraph companies; limitations and regulations.

No telephone or telegraph company shall, by virtue of its eminent domain power, be authorized to enter or appropriate any dwelling, barn, store, warehouse or similar building erected for any commercial, agricultural or manufacturing purposes, or to erect poles so near such structure as to materially inconvenience the condemnee in their use or to damage such structure.

History: 1978 Comp., § 42A-2-2, enacted by Laws 1981, ch. 125, § 30.

42A-2-3. Property of public utilities.

A. If the property to be condemned is held by any public utility corporation, the right to condemn such property by a railroad, telephone or telegraph company is limited to such use as shall not materially interfere with the uses to which by law the public utility corporation holding the property is authorized to use it.

B. Where no agreement can be made between the parties, the method of assessing the damages to private persons as provided pursuant to the provisions of the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978] shall be used.

History: 1978 Comp., § 42A-2-3, enacted by Laws 1981, ch. 125, § 31.

42A-2-4. Jurisdiction of courts; joint use.

Except as provided in Section 62-1-4 NMSA 1978, the court shall have the power to regulate and determine the place and manner of making railroad connections and crossings, or of using in common use as provided in Section 42A-2-3 NMSA 1978.

History: 1978 Comp., § 42A-2-4, enacted by Laws 1981, ch. 125, § 32.

ARTICLE 3

Public Uses

42A-3-1. State, county, municipality or school district; appropriation of property; nature of interest.

A. Property may also be condemned by the state, any county, municipality or school district for the public use of the state, county, municipality or school district for:

- (1) public buildings and grounds;
- (2) canals, aqueducts, reservoirs, tunnels, flumes, ditches, conduits for conducting or storing water for drainage, the raising of banks of streams and the removing of obstructions;
- (3) roads, streets, alleys and thoroughfares;
- (4) public parks and playgrounds;
- (5) ferries, bridges, electric railroads or other thoroughfares or passways for vehicles;
- (6) canals, ditches, flumes, aqueducts and conduits for irrigation;
- (7) electric lines;
- (8) electric utility plants, properties and facilities consistent with the authority granted in Chapter 3, Article 24 NMSA 1978;
- (9) the production of sand, gravel, caliche and rock used or needed for building, surfacing or maintaining streets, alleys, highways or other public grounds or thoroughfares; and
- (10) public airports or landing fields incident to the operation of aircraft.

B. No land shall be condemned for the production of sand, gravel, caliche or rock that is in the possession or ownership of a person, firm or corporation engaged at the time the proceeding is brought in the actual production of such material from such land sought to be condemned. Nor shall any land be condemned for municipal purposes that may be shown by the owner or lessee to have a content of precious metal sufficient to produce the mineral in paying quantities.

C. Unless the petition to condemn specifically provides for a transfer of less than the fee, all real property acquired pursuant to this section shall be acquired and held in fee simple absolute.

History: Laws 1981, ch. 125, § 33; 1997, ch. 228, § 3.

42A-3-2. Condemnation of property by state institutions.

If it is deemed necessary by the board of regents of a state educational institution enumerated in Article 12, Section 11 of the constitution of New Mexico or of [by] the governing bodies of other state institutions to condemn property for the public use of such institutions, the governing bodies may acquire in the name of the state title to the property in the manner provided in the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

History: 1978 Comp., § 42A-3-2, enacted by Laws 1981, ch. 125, § 34.

42A-3-3. Street improvements; condemnation of ditch, canal or acequia by municipality; authorization[;] protest.

A. The governing body of any municipality may, when it is for the best interest of such municipality for the improvement, extension or widening of any street, alley or avenue in such municipality to do away with any ditch, canal or acequia lying within, upon or adjacent to any such street, alley or avenue or contemplated street, alley or avenue or within, upon, under or adjacent to any area necessary for the extension, widening or improvement of such alley, street or avenue, proceed with the condemnation of such ditch, canal or acequia as provided in the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978].

B. A sufficient defense to any condemnation action as provided in Subsection A of this section shall be a written protest signed by at least fifty percent of the persons, associations or corporations having a right to take water from the ditch, canal or acequia at or below the point at which it is to be condemned and whose rights are or may be affected by the condemnation action.

C. The protest provided for pursuant to Subsection B of this section shall be presented to the court at the time fixed for the appointment of appraisers pursuant to the Eminent Domain Code. If, after a hearing, it appears that at least fifty percent of the persons having a right to take water from the ditch, canal or acequia at or below the point at which it is to be condemned, and whose rights are or may be affected by the condemnation action, have in good faith signed such protest, the condemnation petition shall be dismissed.

History: 1978 Comp., § 42A-3-3, enacted by Laws 1981, ch. 125, § 35.

ARTICLE 4

Spanish or Mexican Land Grants

42A-4-1. Spanish or Mexican land grants; parties defendant; commissioners' report.

A. If any part of a tract of land confirmed by special act of congress or by a decree of the court of private land claims as a Spanish or Mexican land grant, is sought to be condemned for any of the purposes provided for under the provisions of the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978], such condemnation proceedings may be conducted by making the unknown owners and the person to whom the grant was confirmed parties defendant, designating and describing them as they were designated and described in the act or decree of confirmation, and designating the heirs and successors of the confirmees as heirs and successors in title of the confirmees and giving the name of the grant. Proceedings shall be had as are provided for under the Eminent Domain Code. No condemnation proceedings shall be had under the provisions of this section except for the purposes authorized by law to persons authorized to exercise the right of eminent domain.

B. Subsection A of this section shall not apply to condemnation of parts of tracts of land on which a final decree in a quiet title suit has been rendered.

History: 1978 Comp., § 42A-4-1, enacted by Laws 1981, ch. 125, § 36.