

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 8.01-187, 15.2-1906, 25.1-204, 25.1-234, 25.1-244, 25.1-245.1, 25.1-307, 25.1-309, 25.1-313, 25.1-315, 25.1-318, 33.2-1020, 33.2-1022, 33.2-1023, 33.2-1025, 33.2-1026, and 33.2-1029.1 of the Code of Virginia and to repeal § 25.1-205.1 of the Code of Virginia, relating to eminent domain; condemnation proceedings.

[S 1158]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-187, 15.2-1906, 25.1-204, 25.1-234, 25.1-244, 25.1-245.1, 25.1-307, 25.1-309, 25.1-313, 25.1-315, 25.1-318, 33.2-1020, 33.2-1022, 33.2-1023, 33.2-1025, 33.2-1026, and 33.2-1029.1 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-187. Commissioners, condemnation jurors, or court to determine compensation for property taken or damaged.

Whenever it is determined in a declaratory judgment proceeding that a person's property has been taken or damaged within the meaning of Article I, Section 11 of the Constitution of Virginia and compensation has not been paid or any action taken to determine the compensation within 60 days following the entry of such judgment order or decree, the court which entered the order or decree may, upon motion of such person after reasonable notice to the adverse party, enter a further order appointing commissioners ~~or~~, condemnation jurors, *or the court* to determine ~~the~~ just compensation. The appointment of commissioners ~~or~~, condemnation jurors, *or the court to decide the issue of just compensation* and all proceedings thereafter shall be governed by the procedure prescribed for the condemning authority. Notwithstanding the provisions of § 25.1-100, the date of valuation in actions pursuant to this section shall be the date determined by the court to be the date the property was taken or damaged.

§ 15.2-1906. Condemnation of existing water or sewage disposal systems.

Condemnation of existing water or sewage disposal systems shall be governed by the provisions of Chapter 19.1 (§ 15.2-1908 et seq.) of this title so far as applicable. The provisions of § 25.1-102 shall not apply in the case of condemnation of an existing water or sewage disposal system in its entirety. The circuit court for the city or county wherein the property proposed to be condemned, or any part thereof, is located, shall have jurisdiction of the condemnation proceedings. It shall not be necessary to file with the petition for the condemnation of an existing water or sewage system, in its entirety, a minute inventory and description of the property sought to be condemned, provided the property is described therein generally and with reasonable particularity and in such manner as to disclose the intention of the petitioner that such existing water or sewage system be condemned in its entirety. The court having jurisdiction of the condemnation proceedings shall, as the occasion arises and prior to the filing of the report of the ~~commissioners appointed to determine a body determining~~ just compensation for the property sought to be condemned in its entirety, take such steps as may be necessary and proper to cause to be included in an inventory of the property sought to be condemned full descriptions of any and all such property whenever the exigencies of the case or the ends of justice will be promoted thereby. Such inventory shall be made a part of the record in the proceedings and referred to the ~~commissioners body determining just compensation~~.

§ 25.1-204. Effort to purchase required; prerequisite to effort to purchase or filing certificate.

A. A condemnor shall not institute proceedings to condemn property until a bona fide but ineffectual effort to purchase from the owner the property sought to be condemned has been made. However, such effort shall not be required if the consent cannot be obtained because one or more of the owners (i) is a person under a disability or is otherwise unable to convey legal title to such property, (ii) is unknown, or (iii) cannot with reasonable diligence be found within this Commonwealth.

B. Such bona fide effort shall include delivery of, or attempt to deliver, a written offer to acquire accompanied by a written statement to the owner that explains the factual basis for the condemnor's offer. The written statement shall include a description of the public use for which it is necessary to acquire the owner's property and shall contain a certification that the acquisition has been reviewed by the condemnor for purposes of complying with § 1-219.1. The written offer shall be made upon the state agency's letterhead and shall be signed by an authorized employee of such state agency.

C. If the condemnor obtains an appraisal of the property pursuant to the provisions of § 25.1-417, such written statement shall include a complete copy of the appraisal of the property upon which such offer is based. If the condemnor obtains more than one appraisal, such written statement shall include a copy of all appraisals obtained prior to making an offer to acquire or initiating negotiations for the real property.

D. Notwithstanding any provision of law to the contrary, a condemnor, prior to making an offer to acquire

a fee simple permanent interest in property by purchase or filing a certificate of take or certificate of deposit pursuant to Chapter 3 (§ 25.1-300 et seq.) or § 33.2-1019, shall (i) conduct or cause to be conducted an examination of title to the property in order to ascertain the identity of each owner of such property and to determine the nature and extent of such owner's interests in the property, which examination of title shall be for at least 60 years *and shall be documented in a report showing all matters that affect the current ownership, existing liens, encumbrances, and other matters affecting title as of the date of the title report*; (ii) provide to such owner or owners a copy of the title report ~~showing the examination of title~~; and (iii) provide to such owner or owners a copy of all recorded instruments ~~within the 60-year title history of such property, including all deeds of trust, releases, liens, deeds, or other instruments~~ identified in the title report.

E. A state agency's acquisition of real property in connection with any programs or projects pursuant to this title or Title 33.2 shall be conducted in accordance with the following provisions:

1. Before making an offer to acquire or initiating any related negotiations for real property, the state agency shall establish an amount which it believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the state agency's approved appraisal of the fair market value of such property, if such an appraisal is required, or the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The state agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation, and, if an appraisal is required or obtained, such written statement and summary shall include a complete copy of all appraisals of the real property to be acquired that the state agency obtained prior to making an offer to acquire or initiating negotiations for the real property. The state agency shall provide its written statement of the amount it established as just compensation on its letterhead, which shall be signed by an authorized employee of such state agency. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

2. No owner shall be required to surrender possession of real property before the state agency pays the agreed purchase price, or deposits with the state court in accordance with applicable law, for the benefit of the owner, (i) an amount not less than the state agency's approved appraisal of the fair market value of such property, if such an appraisal is required, or the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater, or (ii) the amount of the award of compensation in the condemnation proceeding for such property.

F. Nothing in this section shall make evidence of tax assessments admissible as proof of value in an eminent domain proceeding.

§ 25.1-234. Participation by certain tenants in proceedings to determine just compensation.

A. Any tenant under a lease with a term of 12 months or longer may participate in the proceedings to determine just compensation to the same extent as his landlord or the owner, if, not less than 10 days prior to the date for the trial of the issue of just compensation, such tenant shall file his petition for intervention, in the manner provided in ~~§ 25.1-224~~ 25.1-218. Such petition for intervention shall include (i) a verified copy of the lease under which he is in possession and (ii) an affidavit by the tenant or his duly authorized agent or attorney, stating:

1. That he claims an interest in the award; and
2. That he desires to offer admissible evidence concerning the value of the property being taken or damaged.

B. For the purposes of this section, the term of a tenant's lease shall include any renewals or extensions for which the tenant has an enforceable written option. The term "tenant" shall include the assignee of the original tenant, as well as any sublessee of the entire demised premises of the owner for the full unexpired term of the sublessor.

C. Nothing in this section shall be construed, however, as authorizing such tenant to offer any evidence in the proceedings to determine just compensation concerning the value of his leasehold interest in the property involved therein or as authorizing the body determining just compensation to make any such determination in formulating its report.

D. As used in this section, "proceedings to determine just compensation" means proceedings described in §§ 25.1-231, 25.1-232, and 25.1-233.

§ 25.1-244. Interest on award; entry of judgment for award and interest.

A. If the petitioner has exercised pendente lite the right to enter into and take possession of the land or

other property, in the manner provided by this chapter, upon the payment into court of the sum ascertained in the report of just compensation as provided in § 25.1-238, the owner thereof shall receive interest upon the difference between (i) the amount of just compensation as finally determined and awarded to such owner and (ii) the amount, if any, that such owner received or was entitled to receive from the fund so paid into court. Such interest shall be paid for the period from the time of such entry by the petitioner until the time the fund paid into court on account of the final award of just compensation to such owner is available for distribution. Interest accruing prior to July 1, 1970, shall be paid at the rate of five percent annually; interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six percent annually; interest accruing thereafter and prior to July 1, 2003, shall be paid at the rate of eight percent annually; and interest accruing thereafter shall be paid at not less than the judgment rate of interest as set forth in § 8.01-382, *compounded daily*. No interest shall be payable upon any amount that was withheld from such owner on account of questions involving his right, title, interest or estate in the land or other property taken or damaged.

B. If the petitioner has exercised the right pendente lite to enter into and take possession of the land or other property to be taken or damaged as provided in § 25.1-224, the owner thereof shall receive, in addition to the amount that he is entitled to receive under subsection A, interest at ~~the general account's primary liquidity portfolio~~ *not less than the judgment rate annually of interest as set forth in § 8.01-382, compounded daily* upon the difference between (i) the amount of the award of just compensation as finally determined and (ii) the amount previously paid into court as required under § 25.1-224. Such interest shall be paid for the period from the time of such entry until payment into court of the sum ascertained in the report of just compensation as provided in § 25.1-237.

C. No interest shall be allowed during the time any distribution of the fund paid into court was delayed in the trial court or upon appeal, or thereafter, occasioned by any exceptions made by such owner that are not sustained in whole or in part.

D. If the petitioner fails to pay into court any sum necessary for paying the total award that has been confirmed finally or the interest to which the owner is entitled under this section for a period of 30 days after the time for noting an appeal, the court shall enter judgment therefor against the petitioner, unless the proceedings have been dismissed in accordance with the provisions of Article 8 (§ 25.1-248 et seq.) of this chapter.

E. Interest allowable under the provisions of this section shall be reduced to the extent the fund has accrued interest during the pendency of the suit in the account required by § 25.1-224.

§ 25.1-245.1. Costs.

A. Except as otherwise provided in this chapter, all costs of the proceeding in the trial court that are fixed by statute shall be taxed against the condemnor.

B. The court shall order the condemnor to pay to the owner reasonable costs and fees, not to exceed \$7,500, unless the court approves a higher amount, for a survey for the owner.

C. If an owner whose property is taken by condemnation under this title or under Title 33.2 is awarded at trial, as compensation for the taking of or damage to his real property, an amount that is 25 percent or more greater than the amount of the condemnor's initial written offer made pursuant to § 25.1-204, the court may order the condemnor to pay to the owner those (i) reasonable costs, other than attorney fees, and (ii) reasonable fees and travel costs, including reasonable appraisal and engineering fees incurred by the owner, for up to three experts or as many experts as are called by the condemnor, whichever is greater, who testified at trial.

D. All costs on appeal shall be assessed and assessable in the manner provided by law and the Rules of Court as in other civil cases.

E. The requirements of this section shall not apply to those condemnation actions initiated by a public service company, public service corporation, railroad pursuant to the delegation of the power of eminent domain granted in Title 56, or government utility corporation, as defined by § 1-219.1, ~~involving easements adjudged at~~ *in which no property is taken in fee simple and just compensation is determined to be less than \$10,000.*

F. This section is to be liberally construed to effect its purpose of ensuring that owners receive the full measure of just compensation to which they are constitutionally entitled, without that amount being reduced by the costs of asserting their constitutional right to just compensation.

§ 25.1-307. Content of certificates; recordation of certificates.

A. A certificate shall set forth the description of the property *and rights* being taken or damaged, and the owner or owners, if known, of such property. *A certificate through which easement rights are acquired shall describe the rights and purposes for which the easement is being acquired.*

B. *The certificate shall include a plat, drawing, or plan, in sufficient detail to disclose fairly the nature of such work or improvements, including specifications, elevations, and grade changes, if any, so as to enable the owner of such property to be reasonably informed of the nature, extent, and effect of such taking. The certificate shall specify the size of the fee or easement area being taken and, if multiple overlapping easements are taken, the sizes of the overlapping and non-overlapping areas. The certificate shall also state the public use project for which the property is being taken.*

C. If a temporary construction easement is being acquired, the certificate shall set forth the calendar date on which it shall expire if that date is known to the condemnor. If the condemnor certifies that such date is not known, at such time the condemnor ascertains the date, the condemnor shall file certification of the information as provided by subsection ~~B~~ D and shall simultaneously provide the landowner or the landowner's counsel, if any, a copy of such certification.

~~B~~ D. The authorized condemnor shall record a certificate of take or a certificate of deposit in the clerk's office of the court where deeds are recorded. The clerk shall record the certificate in the deed book and index it in the names of both (i) the person or persons who owned the land before the recordation of the certificate and (ii) the authorized condemnor.

§ 25.1-309. Property situated in two or more localities.

If the property affected by the certificate is situated in two or more localities, the clerk of the court wherein the certificate is recorded shall certify a copy of such certificate to the clerk of the court of the locality in which any portion of the property lies. The clerk shall record the same in the deed book and index it in the manner prescribed in subsection ~~B~~ D of § 25.1-307.

§ 25.1-313. Institution of condemnation proceedings.

The authorized condemnor shall institute condemnation proceedings with respect to property described in a certificate within ~~180~~ 100 days of the recordation of the certificate if (i) the authorized condemnor and the owner or owners of property taken or damaged by the authorized condemnor are unable to agree as to the compensation, if any, attributable to such taking or damage or (ii) such agreement cannot be obtained because the owners or one or more of them are under a disability, are unknown, or cannot with reasonable diligence be found within the Commonwealth. However, this section shall not require the institution of condemnation proceedings if they have been instituted prior to the recordation of such certificate. *The authorized condemnor and the property owner may mutually agree to delay the institution of condemnation proceedings by written agreement between the parties or counsel for the parties.*

§ 25.1-315. Awards in greater amounts than deposit; interest.

A. If the amount of an award in a condemnation proceeding is greater than that deposited with the court or represented by a certificate of deposit, the excess amount, together with interest accrued on such excess amount, shall be paid into court for the person or persons entitled thereto. The clerk shall deposit such funds to the credit of the court in an account of a type that bears interest.

B. Interest, *compounded daily*, shall accrue on the excess amount at not less than the judgment rate of interest as set forth in § 8.01-382, computed from the date of such deposit to the date of payment into court and be paid into court for the person or persons entitled thereto. However, any interest that accrued before July 1, 1970, shall be paid at the rate of five percent, and interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six percent, and any interest accruing thereafter and prior to July 1, 1994, shall be paid at the rate of eight percent.

§ 25.1-318. Petition by owner for determination of just compensation.

A. The owner of property that an authorized condemnor has entered and taken possession of, or taken defeasible title of, pursuant to the provisions of this chapter may petition the circuit court of the locality in which the greater portion of the property lies for the appointment of commissioners or the empanelment of a jury to determine just compensation for the property taken and damages done, if any, to such property, as provided in Chapter 2 (§ 25.1-200 et seq.) if (i) the owner and the authorized condemnor have not reached an agreement as to compensation and damages, if any, and (ii) the authorized condemnor:

1. Has not completed the construction of the contemplated improvements upon the property after a reasonable time for such construction has elapsed; or

2. Has not instituted condemnation proceedings within:

a. Sixty days after completion of the construction of the contemplated improvements upon the property;

b. One hundred ~~eighty~~ days after the authorized condemnor has entered upon and taken possession of the property, regardless of whether the construction of the contemplated improvements has been completed; or

c. One hundred ~~eighty~~ days after the recordation of a certificate.

B. A copy of such petition shall be served upon the authorized condemnor at least 10 days before it is filed in the court. The authorized condemnor shall file an answer thereto within five days after the filing of the petition. If the court finds that the conditions prerequisite for such appointment as provided in subsection A are satisfied, the court shall appoint commissioners or empanel a jury, as requested in the owner's petition, to ascertain the amount of compensation to be paid for the property taken and damages done, if any. The proceedings shall thereafter be governed by the procedure prescribed by Chapter 2 (§ 25.1-200 et seq.) insofar as the same may be applicable, except that the owner shall have the burden of proceeding with the evidence as to just compensation. The authorized condemnor shall reimburse the owner for his fees and costs ~~charged by a lienholder~~, including filing fees and attorney fees, incurred in filing the owner's petition.

§ 33.2-1020. Payment of certificates of deposit; recordation of certain certificates; notice to owner.

A. A certificate of deposit shall be deemed and held for the purpose of this article to be payment into the custody of such court. Payment against any certificate of deposit so issued and countersigned, when ordered by the court named therein, shall be paid by the State Treasurer on warrants of the Comptroller, issued on

vouchers signed by the Commissioner of Highways.

B. A duplicate of each certificate of deposit so issued and countersigned shall be kept as a record in the office of the Commissioner of Highways and a copy thereof shall be filed with the State Treasurer.

C. The Commissioner of Highways shall ~~give notice~~, between 30 and 45 days prior to the date on which any certificate will be filed or recorded pursuant to this chapter, *give notice* to the owner or tenant, if known, of the freehold by certified or registered mail that such certificate will be filed or recorded *with respect to such person's property. Such notice shall contain the following language, as appropriate:*

1. *"Within 30 to 45 days of the date of this notice, a certificate of take shall be recorded in the land records of the circuit court"; or*

2. *"Within 30 to 45 days of the date of this notice, a certificate of deposit shall be recorded in the land records of the circuit court."*

Such notice shall also state that upon recordation of the certificate, the defeasible title to the property shall transfer to the Commissioner of Highways and that the owner has the right to petition the court for distribution of the funds represented by the certificate, subject to any preexisting liens or other encumbrances upon the property. Additionally, within four business days of the filing or recording of a certificate, the Commissioner of Highways shall give notice of such filing or recording to the owner or tenant, if known, of the freehold by providing a copy of such certificate by certified or registered mail.

§ 33.2-1022. Certificates to describe land and list owner.

A. The certificate shall set forth the description of the land or interest therein being taken or damaged and, if known, the owner of such property. *A certificate through which easement rights are acquired shall describe the rights and purposes for which the easement is being acquired.*

B. *The certificate shall include a plat, drawing, or plan, in sufficient detail to disclose fairly the nature of such work or improvements, including specifications, elevations, and grade changes, if any, so as to enable the owner of such property to be reasonably informed of the nature, extent, and effect of such taking. The certificate shall specify the size of the fee or easement area being taken and, if multiple overlapping easements are taken, the sizes of the overlapping and non-overlapping areas. The certificate shall also state the public use project for which the property is being taken.*

C. If a temporary construction easement is being acquired, the certificate shall set forth the calendar date on which it shall expire, if such date is known ~~or can be reasonably estimated, or, if certified to the Commissioner of Highways. If the Commissioner of Highways certifies~~ that such date is not known, at such time the date is ascertained, the Commissioner of Highways shall file certification of the information as provided by subsection ~~B D~~ of § 25.1-307 and shall simultaneously provide the landowner or the landowner's counsel, if any, a copy of such certification.

D. *The Commissioner of Highways shall record a certificate of take or a certificate of deposit in the clerk's office of the court where deeds are recorded. The clerk shall record such certificate in the deed book and index it in the names of both (i) the person who owned the land before the recordation of the certificate and (ii) the Commissioner of Highways.*

§ 33.2-1023. Proceedings for distribution of funds; effect of acceptance of payments; evidence as to amount of deposit or certificate.

A. Any person or persons shown by a certificate to be entitled thereto may petition the court for the distribution of all or any part of the funds deposited with the court pursuant to subdivision A 1 of § 33.2-1019 or represented by a certificate of deposit filed pursuant to subdivision A 2 of § 33.2-1019. Any costs of filing such petition or otherwise withdrawing the funds shall be taxed against the Commissioner of Highways.

B. A copy of such petition shall be served on the Commissioner of Highways, his deputy, or any attorney authorized to accept service with a notice, returnable to the court or judge not less than 21 days after such service, to show cause, if any, why such amount should not be distributed in accordance with the prayers of the petition.

C. If the Commissioner of Highways does not, on or before the return day of the petition, show such cause, and if the record in the proceeding does not disclose any denial or dispute with respect thereto, the court shall enter an order directing the distribution of such amount in accordance with the prayers of the petition. However, in the case of a nonresident petitioner the court may require a bond before ordering the distribution.

D. If funds have been deposited with the court pursuant to subdivision A 1 of § 33.2-1019, any interest that has accrued on the funds shall be payable to the person or persons entitled to receive such funds.

E. If funds are not then on deposit with the court but are represented by a certificate of deposit filed pursuant to subdivision A 2 of § 33.2-1019, a certified copy of such order shall forthwith be sent to the Commissioner of Highways by the clerk. It shall be the duty of the Commissioner of Highways to deposit such funds with the court within 21 days of the date of such order.

F. Interest, *compounded daily*, shall be payable on funds represented by a certificate of deposit from the date of filing of the certificate of deposit until the funds are paid into court at no less than the judgment rate of interest as set forth in § 8.01-382. However, interest shall not accrue if an injunction is filed against the Department that enjoins the taking of the property described in the certificate.

G. If the Commissioner of Highways shows such cause, or if the record in the proceeding discloses any denial or dispute as to the persons entitled to such distribution or to any interest or share therein, the court shall direct such proceedings as are provided by § 25.1-240 for the distribution of awards.

H. However, the acceptance of such payment shall not limit the amount to be allowed by a commissioner in a condemnation proceeding, nor limit the rights of any party or parties to the proceeding to appeal from any decision therein; nor shall any party to such proceeding be entitled to introduce evidence of any amount deposited with the court or represented by a certificate, nor of any amount that has been accepted by any party entitled thereto pursuant to this section.

I. All funds due and owing pursuant to this section shall be payable promptly to the owner or, if the owner consents, to the owner's attorney. Nothing in this section shall be construed to alter the priority of liens or any obligation to satisfy or release any outstanding liens on the property or the funds.

§ 33.2-1025. When condemnation proceedings instituted; payment of compensation or damages; order confirming award; recording.

Within ~~180~~ 100 days after the recordation of such certificate, if the Commissioner of Highways and the owner of such lands or interest therein taken or damaged by the Commissioner of Highways are unable to agree as to the compensation or damages, if any, caused thereby, or such consent cannot be obtained due to the incapacity of the owner, or because such owner is unknown or cannot with reasonable diligence be found within the Commonwealth, the Commissioner of Highways shall institute condemnation proceedings, as provided in this article, unless said proceedings shall have been instituted prior to the recordation of such certificate. The amount of such compensation and damages, if any, awarded to the owner in such proceedings shall be paid out of the appropriations to the Department. The final order confirming the award of the Commissioner of Highways shall confirm absolute and indefeasible title to the land, or interest therein ~~sought~~, in the Commonwealth and shall be recorded in the current deed book. *The Commissioner of Highways and the property owner may mutually agree to delay the institution of condemnation proceedings by written agreement between such parties or counsel for such parties.*

§ 33.2-1026. Awards in greater or lesser amounts than deposit; interest.

A. If the amount of an award in a condemnation proceeding is greater than that deposited with the court or represented by a certificate of deposit, the excess amount, together with interest accrued on such excess amount, shall be paid into court for the person entitled thereto. The clerk shall deposit such funds to the credit of the court in an account of a type that bears interest.

B. Interest, *compounded daily*, shall accrue on the excess amount at not less than the judgment rate of interest as set forth in § 8.01-382, computed from the date of such deposit to the date of payment into court, and shall be paid into court for the person or persons entitled thereto. However, any (i) interest accruing after June 30, 1970, and prior to July 1, 1981, shall be paid at the rate of six percent; (ii) interest accruing after June 30, 1981, and prior to July 1, 1994, shall be paid at the rate of eight percent; and (iii) interest accruing after June 30, 1994, and prior to July 1, 2003, shall be paid at the general account composite rate, compiled by the Department of the Treasury for the month in which the award is rendered.

C. If the amount of an award in a condemnation proceeding is less than that deposited with the court or represented by a certificate of deposit, and the person or persons entitled thereto have received a distribution of the funds pursuant to § 33.2-1023, the Commissioner of Highways shall recover (i) the amount of such excess and (ii) interest on such excess at the rate of interest established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. If any person has been paid a greater sum than that to which he is entitled as determined by the award, judgment shall be entered for the Commissioner of Highways against such person for the amount of such excess and interest. However, the Commissioner of Highways shall not be entitled to recover the amount of such excess and interest in the event the Commissioner of Highways acquired, by virtue of the certificate, an entire parcel of land containing a dwelling, multiple-family dwelling, or building used for commercial purposes at the time of initiation of negotiations for the acquisition of such property.

§ 33.2-1029.1. Petition by owner for determination of just compensation.

A. The owner of property that the Commissioner of Highways has entered and taken possession of, or taken defeasible title of, pursuant to the provisions of this chapter may petition the circuit court of the locality in which the greater portion of the property lies for the appointment of commissioners or the empanelment of a jury to determine just compensation for the property taken and damage done, if any, to such property, as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 if (i) the owner and the Commissioner of Highways have not reached an agreement as to compensation and damages, if any, and (ii) the Commissioner of Highways:

1. Has not completed the construction of the contemplated improvements upon the property after a reasonable time for such construction has elapsed; or

2. Has not instituted condemnation proceedings within:

a. Sixty days after completion of the construction of the contemplated improvements upon the property;

b. One hundred ~~and eighty~~ days after the Commissioner of Highways has entered upon and taken possession of the property, regardless of whether the construction of the contemplated improvements has

367 been completed; or

368 c. One hundred ~~and eighty~~ days after the recordation of a certificate.

369 B. A copy of such petition shall be served on the Commissioner of Highways at least 10 days before it is
370 filed in the court. The Commissioner of Highways shall file an answer within five days after the filing of the
371 petition. If the courts finds that the conditions prerequisite for such appointment as provided in subsection A
372 are satisfied, the court shall appoint commissioners or empanel a jury, as requested in the owner's petition, to
373 ascertain the amount of compensation to be paid for the property taken and damages done, if any. The
374 proceedings shall thereafter be governed by the procedures prescribed in Chapter 2 (§ 25.1-200 et seq.) of
375 Title 25.1 insofar as they may be applicable, except that the owner shall have the burden of proceeding with
376 the evidence as to just compensation. The Commissioner of Highways shall reimburse the owner for his fees
377 and costs ~~charged by the lienholder~~, including filing fees and attorney fees, incurred in filing the owner's
378 petition.

379 **2. That § 25.1-205.1 of the Code of Virginia is repealed.**

380 **3. That the provisions of this act shall apply only to the taking of or damage to the property that has**
381 **occurred on or after July 1, 2025, or a condemnation proceeding that has been filed on or after July 1,**
382 **2025, as appropriate.**