

Chapter 8.20
EMINENT DOMAIN BY CORPORATIONS

Sections	
8.20.005	Condemnation final actions—Notice requirements.
8.20.010	Petition for appropriation—Contents.
8.20.020	Notice—Contents—Service—Publication.
8.20.060	Adjournment of proceedings—Further notice.
8.20.070	Adjudication of public use or private way of necessity.
8.20.080	Trial, how conducted.
8.20.090	Judgment—Decree of appropriation—Recording.
8.20.100	Payment of damages—Effect—Appellate review.
8.20.110	Claimants, payment of—Conflicting claims.
8.20.120	Appellate review.
8.20.130	Prosecution of work pending appeal—Bond.
8.20.140	Appropriation of railway right-of-way through canyon, pass, or defile.
8.20.150	Prior entry with consent—Condemnation avoids ouster.
8.20.160	Three-year occupancy—Condemnation avoids ouster.
8.20.170	Suit for compensation by owner equivalent to condemnation.
8.20.180	Appointment of guardian ad litem for minors, alleged incapacitated persons—Protection of interests.

NOTES:

Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.

Corporations, certain types: RCW 81.36.010.

Corporations conveying water: RCW 90.16.100.

Easements over public lands: Chapter 79.36 RCW.

Electric light and power companies: RCW 80.32.060 through 80.32.080.

Eminent domain affecting corporations other than municipal: State Constitution Art. 12 § 10.

Gas and oil pipelines: RCW 81.88.020.

Grade crossing eliminations, appropriation for: RCW 81.53.180.

Mining companies: RCW 78.04.010.

Railroad companies, appropriation by: RCW 81.36.010.

Railroads, rights of way: RCW 81.52.040, 81.53.180.

State university—Rights-of-way to railroads: RCW 28B.20.330.

Street and electric railroads: RCW 81.64.040.

Telecommunications companies: RCW 80.36.010, State Constitution Art. 12 § 19.

Underground natural gas storage: RCW 80.40.030, 80.40.040.

Water power companies: RCW 90.16.030.

8.20.005 Condemnation final actions—Notice requirements.

Proceedings under this chapter are subject to the notice requirements of RCW 8.25.290. Compliance with RCW 8.25.290 is required before an action can be filed under this chapter. [2007 c 68 § 6.]

8.20.010 Petition for appropriation—Contents.

Any corporation authorized by law to appropriate land, real estate, premises or other property for right-of-way or any other corporate purposes, may present to the superior court of the county in which any land, real estate, premises or other property sought to be appropriated shall be situated, or to the judge of such superior court in any county where he has jurisdiction or is holding court, a petition in which the land, real estate, premises or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records, the object for

which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by such corporation, to such owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such lands, real estate, premises or other property, or in case a jury be waived as in other civil cases in courts of record in the manner prescribed by law, then that the compensation to be made, as aforesaid, be ascertained and determined by the court, or judge thereof. [1890 p 294 § 1. Prior: 1888 p 58 § 1; RRS § 921.]

8.20.020 Notice—Contents—Service—Publication.

A notice, stating briefly the objects of the petition, and containing a description of the land, real estate, premises or property sought to be appropriated, and stating the time and place, when and where the same will be presented to the court, or the judge thereof, shall be served on each and every person named therein as owner, encumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the state; or, in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or, in case of a foreign corporation, at its principal place of business in this state, with some person of more than sixteen years of age. In case of domestic corporations, such service shall be made upon the president, secretary or other director or trustee of such corporation. In case of persons under the age of eighteen years, on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such person; in case of idiots, lunatics or distracted persons, on their guardian, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated is state, school or county land, the notice shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated is situated. In all cases where the owner or person claiming an interest in such real or other property, is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of the agent or attorney of the corporation shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown, or cannot be ascertained by such deponent, service may be made by publication thereof in any newspaper published in the county where such lands are situated once a week for two successive weeks; and in case no newspaper is published in said county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated. And such publication shall be deemed service upon each of such nonresident person or persons whose residence is unknown. Such notice shall be signed by the president, manager, secretary or attorney of the corporation; and in case the proceedings provided for in

RCW 8.20.010 through 8.20.140 are instituted by the owner or any other person or party interested in the land, real estate, or other property sought to be appropriated, then such notice shall be signed by such owner, person or party interested, or his, her or its attorney. Such notice may be served by any competent person eighteen years of age or over. Due proof of the service of such notice by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such superior court before or at the time of the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served, but all persons or parties having been served with notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all other cases not otherwise provided for, service of notices, orders and other papers in the proceedings authorized by RCW 8.20.010 through 8.20.140 may be made as the superior court or the judge thereof may direct. [1971 ex.s. c 292 § 9; 1890 p 295 § 2; RRS § 922. Prior: 1888 p 58 § 2. Formerly RCW 8.20.020, 8.20.030, 8.20.040, 8.20.050.]

NOTES:

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Publication of

legal notices: Chapter 65.16 RCW.

notice in eminent domain proceedings: RCW 4.28.120.

Service of process where state land is involved: RCW 8.28.010.

8.20.060 Adjudgment of proceedings—Further notice.

The court or judge may, upon application of the petitioner or of any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected. [1890 p 297 § 3; RRS § 924. Prior: 1888 p 60 § 3.]

8.20.070 Adjudication of public use or private way of necessity.

At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises, or other property described in said petition, have been duly served with said notice as above prescribed, and shall be further satisfied by competent proof that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, or is for a private use for a private way of necessity, and that the public interest requires the prosecution of such enterprise, or the private use is for a private way of necessity, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the purposes of such enterprise, the court or judge thereof may make an order, to be recorded in the minutes of said court, directing that a jury be summoned, or called, in the manner provided by law, to ascertain the compensation which shall be made for the land, real estate, premises or other property sought to be appropriated, un-

less a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. [1927 c 88 § 1; 1897 c 46 § 1; 1890 p 297 § 4; RRS § 925. Prior: 1888 p 60 § 4.]

NOTES:

Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36, 4.44 RCW.

Private ways of necessity: Chapter 8.24 RCW.

8.20.080 Trial, how conducted.

A judge of the superior court shall preside at the trial which shall be held at such time as the court or the judge thereof may direct, at the courthouse in the county where the land, real estate, premises or other property sought to be appropriated is situated, and the jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, or to any county, by reason of the appropriation and use of such land, real estate, premises or other property by such corporation as aforesaid for any and all corporate purposes, and shall ascertain, determine and award the amount of damages to be paid to said owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the purpose of such enterprise, irrespective of any benefit from any improvement proposed by such corporation. Upon the trial, witnesses may be examined in behalf of either party to the proceedings as in civil actions; and a witness served with a subpoena in such proceedings shall be punished for failure to appear at such trial, or for perjury, as upon a trial of a civil action. Upon the verdict of the jury, judgment shall be entered for the amount of the damages awarded to such owner or owners respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property. In case a jury is waived as in civil cases in courts of record in the manner prescribed by law, the compensation to be paid for the property sought to be appropriated shall be ascertained and determined by the court or the judge thereof, and the proceedings shall be the same as in trials of an issue of fact by the court. [1890 p 297 § 5; RRS § 926.]

NOTES:

Witnesses in civil actions

compelling attendance: Chapter 5.56 RCW.

examination: Title 5 RCW.

8.20.090 Judgment—Decree of appropriation—Recording.

At the time of rendering judgment for damages, whether upon default or trial, if the damages awarded be then paid, or upon their payment, if not paid at the time of rendering such judgment, the court or judge thereof shall also enter a judgment or decree of appropriation of the land, real estate, premises, right-of-way or other property sought to be appropriated, thereby vesting the legal title to the same in the corporation seeking to appropriate such land, real estate, premises, right-of-way or other property for corporate purposes. Whenever said judgment or decree of appropriation shall affect lands, real estate or other premises, a certified copy of such judgment or decree of appropriation may be filed for record in the office of the auditor of the

county where the said land, real estate or other premises are situated, and shall be recorded by said auditor like a deed of real estate and with like effect. If the title to said land, real estate, premises or other property attempted to be acquired is found to be defective from any cause, the corporation may again institute

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proceedings to acquire the same, as in RCW 8.20.010 through 8.20.140 provided. [1891 c 46 § 1; 1890 p 298 § 6; RRS § 927.]

NOTES:

Rules of court: CR 54, 58.

Recording of deeds of real estate: Title 65 RCW.

8.20.100 Payment of damages—Effect—Appellate review.

Upon the entry of judgment upon the verdict of the jury or the decision of the court or judge thereof, awarding damages as hereinbefore prescribed, the petitioner, or any officer of, or other person duly appointed by said corporation, may make payment of the damages assessed to the parties entitled to the same, and of the costs of the proceedings, by depositing the same with the clerk of said superior court, to be paid out under the direction of the court or judge thereof; and upon making such payment into the court of the damages assessed and allowed, and of the costs, to any land, real estate, premises or other property mentioned in said petition, such corporation shall be released and discharged from any and all further liability therefor, unless upon appellate review the owner or other person or party interested shall recover a greater amount of damages; and in that case only for the amount in excess of the sum paid into said court, and the costs of appellate review: PROVIDED, That in case of review by the supreme court or the court of appeals of the state by any party to the proceedings, the money so paid into the superior court by such corporation as aforesaid, shall remain in the custody of said court until the final determination of the proceedings by the said supreme court or the court of appeals. [1988 c 202 § 13; 1971 c 81 § 42; 1890 p 299 § 7; RRS § 929.]

NOTES:

Severability—1988 c 202: See note following RCW 2.24.050.

8.20.110 Claimants, payment of—Conflicting claims.

Any person, corporation, state or county, claiming to be entitled to any money paid into court, as provided in RCW 8.20.010 through 8.20.140 may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he or it shall be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate, premises or other property specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced and the conflicting claims to such land, real estate, premises or other property be determined according to law. [1890 p 299 § 8; RRS § 930. Prior: 1888 p 61 § 8.]

8.20.120 Appellate review.

Either party may seek appellate review of the judgment for damages entered in the superior court within thirty days after the entry of judgment as aforesaid and such review shall bring before the supreme court or the court of appeals the propriety

and justness of the amount of damages in respect to the parties to the review: PROVIDED, HOWEVER, That no bond shall be required of any person interested in the property sought to be appropriated by such corporation, but in case the corporation appropriating such land, real estate, premises or other property is appellant, it shall give a bond like that prescribed in RCW 8.20.130, to be executed, filed and approved in the same manner: AND PROVIDED FURTHER, That if the owner of the land, real estate, premises or other property accepts the sum awarded by the jury, the court or the judge thereof, he shall be deemed thereby to have waived conclusively appellate review, and final judgment by default may be rendered in the superior court as in other cases. [1988 c 202 § 14; 1971 c 81 § 43; 1890 p 300 § 9; RRS § 931. Prior: 1888 p 61 § 9.]

NOTES:

Severability—1988 c 202: See note following RCW 2.24.050.

8.20.130 Prosecution of work pending appeal—Bond.

The construction of any railway surface tramway, elevated cable tramway, or canal, or the prosecution of any works or improvements by any corporation as aforesaid shall not be hindered, delayed or prevented by the prosecution of the appeal of any party to the proceedings: PROVIDED, The corporation aforesaid shall execute and file with the clerk of the court in which the appeal is pending a bond to be approved by said clerk, with sufficient sureties, conditioned that the persons executing the same shall pay whatever amount may be required by the judgment of the court therein, and abide any rule or order of the court in relation to the matter in controversy. [1897 c 46 § 2; 1890 p 300 § 10; RRS § 932. Prior: 1888 p 62 § 10.]

8.20.140 Appropriation of railway right-of-way through canyon, pass, or defile.

Any railroad company whose right-of-way passes through any canyon, pass or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass or defile for the purpose of its road in common with the road first located or the crossing of other railroads at grade, and any railroad company authorized by law to appropriate land, real estate, premises or other property for right-of-way or any other corporate purpose may present a petition, in the manner and form hereinbefore provided, for the appropriation of a right-of-way through any canyon, pass or defile for the purpose of its road where right-of-way has already been located, condemned or occupied by some other railroad company through such canyon, pass or defile for the purpose of its road, and thereupon, like proceedings shall be had upon such petition as herein provided in other cases; and at the time of rendering judgment for damages, whether upon default or trial, the court or judge thereof shall enter a judgment or decree authorizing said railroad company to occupy and use said right-of-way, roadbed and track, if necessary, in common with the railroad company or companies already occupying or owning the same, and defining the terms and conditions upon which the same shall be so occupied and used in common. [1890 p 301 § 12; RRS § 933.]

8.20.150 Prior entry with consent—Condemnation avoids ouster.

No corporation authorized by law to condemn property for public use, which has heretofore entered or shall hereafter enter upon property for a public use with the consent of the record owner or the person or corporation in possession, shall be ousted from such possession or prevented from continuing the putting of such property to public use if before entry of judgment of ouster it shall institute proceedings in condemnation to acquire such property for public use, and shall thereafter prosecute the same in good faith and pay any compensation which may be awarded therein. [1927 c 219 § 1; RRS § 921-1.]

NOTES:

Severability—1927 c 219: "If any section, provision or clause in this act be adjudged invalid the remainder of the act shall nevertheless remain valid." [1927 c 219 § 4.] This applies to RCW 8.20.150 through 8.20.170.

8.20.160 Three-year occupancy—Condemnation avoids ouster.

No corporation which shall have been or shall be in possession of property put to public use for three or more years, and while continuing to put such property to public use shall be ousted therefrom or prevented from continuing such use if prior to the entry of any judgment of ouster it shall institute condemnation proceedings to acquire such property for public use, and shall thereafter prosecute the same in good faith and pay any compensation awarded therein. [1927 c 219 § 2; RRS § 921-2.]

8.20.170 Suit for compensation by owner equivalent to condemnation.

Nothing in RCW 8.20.150 through 8.20.170 shall prevent the owner of any such property suing for and recovering compensation for such property without instituting suit or proceedings to oust such corporation therefrom, and upon payment of the amount awarded such owner title to the property shall vest in such corporation as effectually as if acquired by proceedings in condemnation. [1927 c 219 § 3; RRS § 921-3.]

8.20.180 Appointment of guardian ad litem for minors, alleged incapacitated persons—Protection of interests.

See RCW 8.25.270.

Chapter 8.24**PRIVATE WAYS OF NECESSITY**

Sections

8.24.010	Condemnation authorized—Private way of necessity defined.
8.24.015	Joinder of surrounding property owners authorized.
8.24.025	Selection of route—Criteria.
8.24.030	Procedure for condemnation—Fees and costs.
8.24.040	Logging road must carry products of condemnees.
8.24.050	Appointment of guardian ad litem for minors, alleged incapacitated persons—Protection of interests.

NOTES:

Additional provisions relating to eminent domain proceedings: Chapter 8.25 RCW.

Adjudication of public use or private way of necessity: RCW 8.20.070.

8.24.010 Condemnation authorized—Private way of necessity defined.

An owner, or one entitled to the beneficial use, of land which is so situate with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity or to construct and maintain any drain, flume or ditch, on, across, over or through the land of such other, for agricultural, domestic or sanitary purposes, may condemn and take lands of such other sufficient in area for the construction and maintenance of such private way of necessity, or for the construction and maintenance of such drain, flume or ditch, as the case may be. The term "private way of necessity," as used in this chapter, shall mean and include a right of way on, across, over or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads, logging roads, flumes, canals, ditches, tunnels, tramways and other structures upon, over and through which timber, stone, minerals or other valuable materials and products may be transported and carried. [1913 c 133 § 1; RRS § 936-1. Prior: 1895 c 92 § 1. Formerly RCW 8.24.020, part.]

8.24.015 Joinder of surrounding property owners authorized.

In any proceeding for the condemnation of land for a private way of necessity, the owner of any land surrounding and contiguous to the property which land might contain a site for the private way of necessity may be joined as a party. [1988 c 129 § 1.]

8.24.025 Selection of route—Criteria.

If it is determined that an owner, or one entitled to the beneficial use of land, is entitled to a private way of necessity and it is determined that there is more than one possible route for the private way of necessity, the selection of the route shall be guided by the following priorities in the following order:

(1) Nonagricultural and nonsilvicultural land shall be used if possible.

(2) The least-productive land shall be used if it is necessary to cross agricultural land.

(3) The relative benefits and burdens of the various possible routes shall be weighed to establish an equitable balance between the benefits to the land for which the private way of necessity is sought and the burdens to the land over which the private way of necessity is to run. [1988 c 129 § 2.]

8.24.030 Procedure for condemnation—Fees and costs.

The procedure for the condemnation of land for a private way of necessity or for drains, flumes or ditches under the provisions of this chapter shall be the same as that provided for the condemnation of private property by railroad companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation by railroad companies.

In any action brought under the provisions of this chapter for the condemnation of land for a private way of necessity, reasonable attorneys' fees and expert witness costs may be allowed by the court to reimburse the condemnee. [1988 c 129 § 3; 1913 c 133 § 2; RRS § 936-2. Prior: 1895 c 92 § 2.]

NOTES:

Condemnation by corporations: Chapter 8.20 RCW.

Railroads—Corporate powers and duties: RCW 81.36.010.

Special railroad eminent domain proceedings:

appropriation of railway right-of-way through canyon, pass or defile: RCW 8.20.140.

extensions, branch lines: RCW 81.36.060.

railroad crossings: RCW 81.53.180.

spur tracks—Limit as to eminent domain: RCW 81.52.040.

state university—Rights-of-way to railroads: RCW 28B.20.330.

8.24.040 Logging road must carry products of condemnees.

That any person or corporation availing themselves of the provisions of this chapter for the purpose of acquiring a right-of-way for a logging road, as a condition precedent, contract and agree to carry and convey over such roads to either termini thereof any of the timber or other produce of the lands through which such right is acquired at any and all times, so long as said road is maintained and operated, and at reasonable prices; and a failure so to do shall terminate such right-of-way. The reasonableness of the rate shall be subject to determination by the utilities and transportation commission. [1913 c 133 § 3; RRS § 936-3. Prior: 1895 c 92 § 3.]

8.24.050 Appointment of guardian ad litem for minors, alleged incapacitated persons—Protection of interests.

See RCW 8.25.270.

