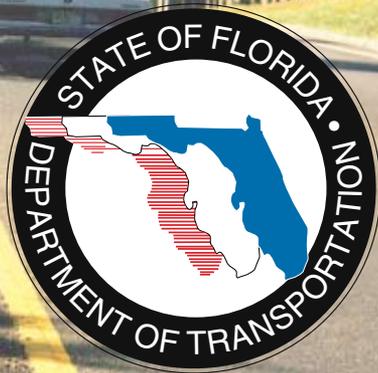


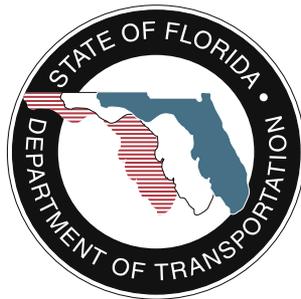
# THE REAL ESTATE ACQUISITION PROCESS



Effective October 1, 2007



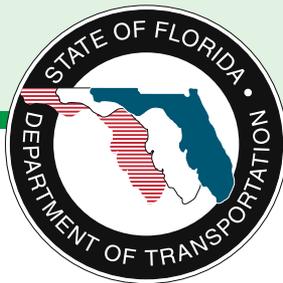
# THE REAL ESTATE ACQUISITION PROCESS



Published by the Florida Department of Transportation Office of Right of Way  
<http://www.dot.state.fl.us/rightofway/>  
Effective October 1, 2007

## **MISSION STATEMENT**

**The department will provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity and preserves the quality of our environment and communities.**



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# ACQUISITION OF REAL PROPERTY

## Introduction

**A**s the owner of property needed for a transportation project, you are a key participant in improving Florida's vital transportation network. The Florida Department of Transportation (FDOT), Office of Right of Way, has prepared this brochure to describe the procedures the department must follow by law in purchasing your property. It also explains your rights and options during the acquisition process. If you have questions after reading this brochure, please ask us. We want to answer your questions. It is our sincere desire to work with you in reaching a mutually acceptable agreement for the purchase of your property.



Prior to or at the time we make a written offer to you for the purchase of your property, you will receive a letter notifying you of the rights guaranteed to you by law. The letter will explain the nature of the project for which your property is needed, describe the portion of your property needed for the project and provide you the project and parcel designation we will use to identify the portion of your property being acquired. The letter will also include the location, address and phone number of the

department's office where you can obtain additional information about the project. If you request copies of our appraisal of your property, right of way maps or construction plans, we will provide them within 15 business days of our receipt of your request. If our right of way maps and construction plans are not complete at the time of your request, we will provide them to the extent they are prepared.

The department will reimburse you for certain fees and costs you incur during the acquisition process, primarily for the services of an attorney and/or appraiser. However, the law places certain limitations on this reimbursement. We recommend that you allow us to make our offer to you and more fully explain the reimbursement process.

## Appraisal of Real Property

You will be contacted by an appraiser or real estate specialist working for the department who will appraise or otherwise estimate the value

of your property. The appraiser or real estate specialist must inspect your property as part of the valuation process. You are encouraged to be present during the inspection and provide any information you believe affects the value of your property.

You may obtain your own appraisal of the portion of your property being acquired. The department will consider your appraisal in determining the amount we believe provides you full compensation. When we acquire your property, we will reimburse your cost for one real estate appraisal provided the cost of the appraisal does not exceed the usual and customary rate charged for appraisal services in the community where your property is located. In order for the department to pay an appraisal fee, you must provide us a copy of your appraisal and submit an invoice showing the services performed by date, the hourly rate and the amount of the fee. Please be sure that your appraiser is aware of the department's requirements for payment of fees.



If we cannot agree on the amount of the fee to be paid by the department you have the right to file an action in the Circuit Court and have the court decide the amount to be paid.

## **Negotiation for Purchase of Real Property**

You will receive a written offer to purchase your property. The offer will be no less than the appraised value. If only a portion of your property is being acquired, the offer will also include an amount necessary to compensate you for any loss in value to your remaining property resulting from the partial acquisition. We will negotiate with you to try and reach a mutually acceptable agreement for the purchase of your property.



You may wish to be represented by an attorney or other agent during negotiations. If you choose to be represented, we will ask you to provide us written authorization, signed by both you and your representative. Once we have received your written authorization, we will conduct negotiations with your representative. However, the initial written offer must be delivered directly to you. Your authorized representative may be present when we deliver the initial offer, if you wish.

If you choose to be represented by an attorney, the department will pay a reasonable fee for his/her services provided the attorney is licensed to practice law in Florida. If we reach an agreement with you for the purchase of your property, we will pay your attorney to review and analyze the details of the acquisition and to assist you in negotiations. The amount for attorney fees will either be based on a schedule contained in Florida Statutes, which is explained later in this brochure in the section entitled **Eminent Domain**, or if we both agree, based on a reasonable number of hours and hourly rate. If we pay based on hourly rate, the amount may not be more than you would be expected to pay if the department were not responsible for the fees. If we cannot agree to a purchase price, attorney fees will be paid as described later under **Eminent Domain**. Please note, the department does not pay for the services of representatives who are not attorneys licensed to practice in Florida.



If we reach an agreement as to the amount of compensation, you will be asked to sign a purchase agreement agreeing to the terms of the sale. By law, the department must wait 30 days after signing the purchase agreement before finalizing the agreement by granting final agency acceptance. When final agency acceptance is granted the department will contact you to schedule a real estate closing as described in this brochure under **Real Estate Closing**.

You do not have to accept our offer of compensation for your property. You may make a counteroffer in the amount you feel is appropriate and we will consider your counteroffer in the negotiations. If we cannot reach an agreement as to the amount of compensation for your property the department may, as a last resort, seek to acquire your property through the courts. This is known as condemnation and is explained more thoroughly in the section entitled **Eminent Domain**. By law you must be given at least 30 days from the date you receive our offer to respond before we can begin the condemnation process. Please understand that if the department must pursue condemnation, payment of fees and costs will be delayed until the conclusion of the litigation.

## **Real Estate Closing**

At the closing we will provide the warrant (check) for the agreed amount of compensation for your property and any damages to your remaining property, if applicable. In exchange, you will be asked to sign the appropriate documents to convey your property to the department.

The payment of fees and costs will also take place at closing. Fees and costs will not affect the agreed upon price for the real estate. Generally, fees and costs will be paid directly to you. However, if you choose, we will pay directly to your attorney and/or appraiser provided you authorize us to do this in writing.

If we reach agreement on the value of your property, but cannot agree on the amount of the fees and costs to be paid by the department, we can go forward with the closing for the real estate and defer payment of the fees and costs. Ultimately, if we cannot agree on an amount for fees and costs, you have the right to file an action in the Circuit Court and have the court decide the amount to be paid.



## Eminent Domain

The department always prefers to acquire property through negotiated settlements. However, if after negotiations we cannot agree on the price to be paid for your property, the department must consider acquisition through the courts which is called condemnation. Because it is the state's responsibility to provide transportation facilities, the state has the right to acquire private property necessary to support these facilities. The right to acquire private property through condemnation is known as the power of eminent domain.



Although the state has the right to acquire private property, it must insure the owner is fully compensated for the property. In a condemnation suit a jury may ultimately decide the amount the department must pay. However, if the department files a condemnation suit, we will continue to negotiate with you and your attorney to try to arrive at a mutually satisfactory amount to compensate you for your property. If we agree on the terms of a settlement, the condemnation suit will be concluded, and your fees and costs will be paid as described in this brochure.

If the department pursues a condemnation action, your attorney fees will be paid based on a schedule contained in Florida Statutes. Fees will be calculated as a percentage of the benefit your attorney achieves for you. The term benefit means the difference between the

amount the court awards (final judgment amount) and the amount of the last written offer made by the department before you hire an attorney. If no written offer has been made before you hire an attorney, the benefit will be calculated from the first written offer made by the department after you hire an attorney. In determining the amount of benefit for the purposes of calculating attorney fees, the court may also consider nonmonetary benefits the attorney obtains for you.

After 120 days have passed, from the time you file your answer to our lawsuit, you may make an offer to the department to settle all claims, except fees and costs. This offer is known as a defendant's offer of judgment. If the department rejects your offer of judgment and the amount the court awards (final judgment amount), exclusive of interest, is equal to or more than your offer of judgment, your attorney fees will be paid based on an amount the court determines you would ordinarily be expected to pay if the department were not responsible for payment. Please be aware that the law limits your offer of judgment to a maximum of \$100,000.

The reasonable costs you incur for services other than legal services, as a result of the condemnation, will also be paid by the department. However, payment of these costs may be limited, if after 120 days from the date you file your answer to our lawsuit the department makes an offer to settle all claims, excluding fees and costs (petitioner's offer of judgment). If you reject our offer of judgment and the amount the court awards (final judgment amount), exclusive of interest, is equal to or less than our offer of judgment, you will be responsible for all costs you incur after the date you reject our offer of judgment.

The law does not allow the department to pay interest on amounts for fees and costs.

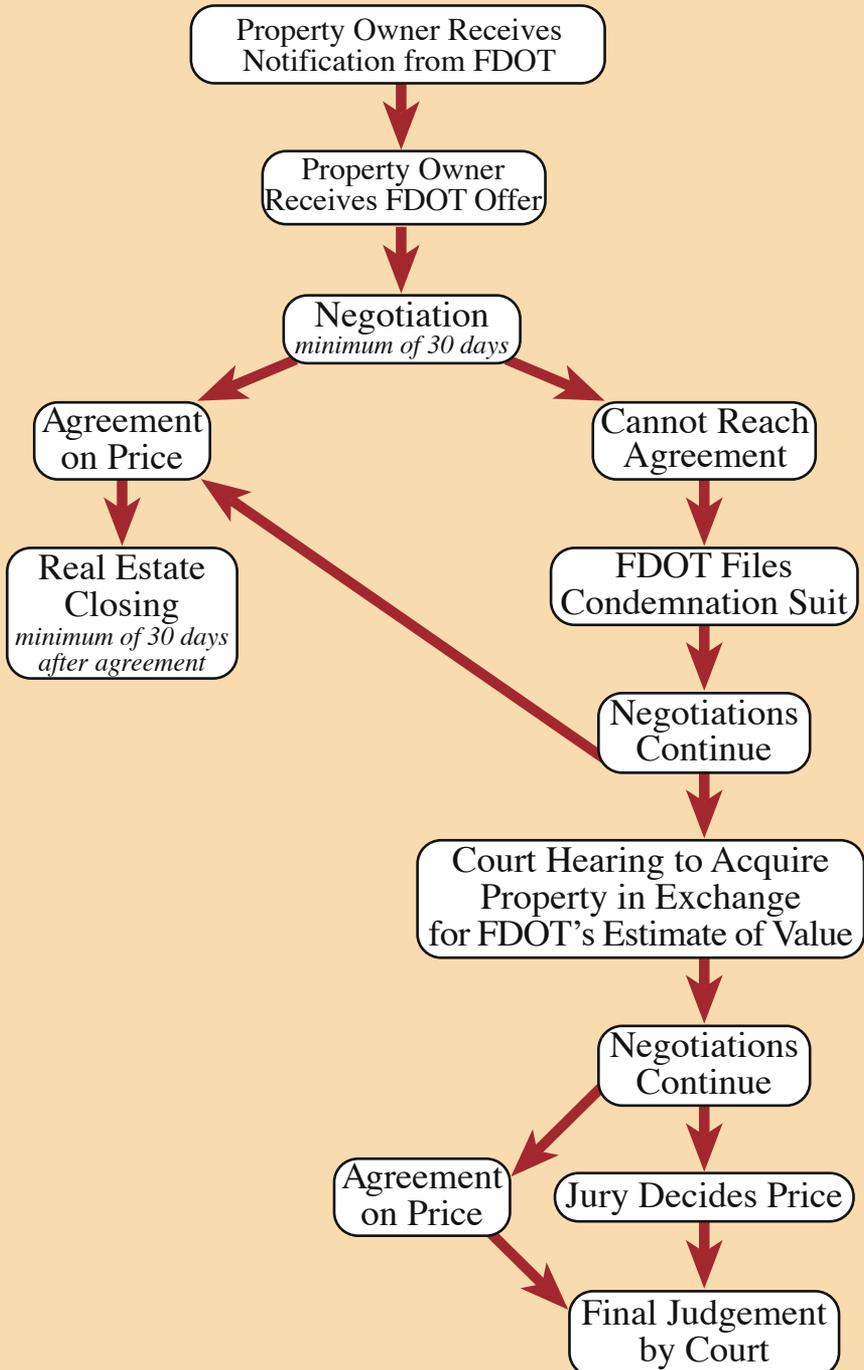
## **Conclusion**

We understand that a transportation project requiring the acquisition of private property may cause concern and result in many questions. We are very interested in hearing your concerns and answering your questions. You will have adequate time to obtain all of the information you need, to study your options and make informed decisions. Please be assured we will do everything we can to be sensitive and responsive to your needs and to insure you receive all of your rights.

The rights explained in this brochure are derived from Chapter 73, Florida Statutes. The relevant portions of Chapter 73 are provided for your information (see Appendix).

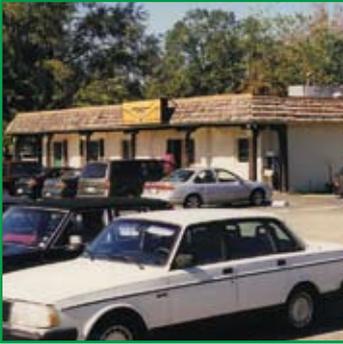
# PROPERTY ACQUISITION

## At-A-Glance



# BUSINESS DAMAGES

## Introduction to Business Damages



As the owner of a business located on property acquired for a transportation project, you may be eligible to receive compensation for damages directly caused by the acquisition. This brochure explains your rights and responsibilities and how an eligible business may file a claim for business damages. It also explains the

procedures we must follow in compensating you for eligible business damage claims. If you have questions after reading this brochure, please ask us. We want to work with you to ensure you are compensated for any legally compensable damages your business experiences.

You will receive a letter notifying you of your legal rights either at the time we make a written purchase offer to the owner of the real estate on which your business is located or shortly thereafter. The letter will explain the nature of the project, describe the portion of the property needed, and provide you the project and parcel designation we will use to identify the portion of the property that will be acquired. The letter will also provide contact information for the department's office where you can obtain additional information about the property and the project. If you request copies of right of way maps, construction plans and our appraisal on which our offer to the landowner is based, we will provide them to you within 15 business days after we receive your request. If our right of way maps and construction plans are not complete at the time of your request, we will provide them to the extent they are prepared.

We may reimburse you for certain fees and costs you incur as a result of an eligible business damage claim, such as attorney and/or accountant or business damage expert fees. Please understand the department cannot pay fees and costs if your business is not eligible for damages as described later in this brochure under the section entitled **Eligibility for Business Damages**.

## Eligibility for Business Damages

To be eligible for a business damage payment, your business must meet the following conditions:

- The business must hold a property interest in the portion of the property being acquired by the department.
- The acquisition must be a partial acquisition of the property on which your business is located. Your business will not qualify for damages if the department acquires all of the real estate on which your business is located.
- Your business must have been in operation on the site for at least five years immediately prior to the department's acquisition.
- You must be able to show that any damages you are claiming result directly from the loss of property. The effects of construction activities or other effects incidental to construction are not compensable.

## Filing a Business Damage Claim

You may claim business damages if your business is damaged by the department's acquisition and it is eligible as described in the section entitled **Eligibility for Business Damages**. If you claim damages, you must submit a good faith written offer to settle your business damage claim to the department no later than 180 days after you receive the letter described in the **Introduction to Business Damages**.

You must send your offer by certified mail to the department's Right of Way Office at the address provided in the notice described in the **Introduction to Business Damages**. If you do not submit your offer to settle your business damage claim within the specified time, your claim may not be allowed in future condemnation proceedings. If you share ownership of the business with others, you should coordinate with the other owners and provide only one business damage claim for the business.

Your offer to settle your business damage claim must include an explanation of the nature, extent and monetary amount of the damages you are claiming. The offer must be prepared by:

- You as the business owner,
- A certified public accountant or
- A business damage expert familiar with the operations of your business.

With your offer, you must also provide copies of your business records for the five years immediately preceding the date of the department's letter as described in the **Introduction to Business Damages**.



Records must be attributable to the business operation on the property being acquired and any other record(s) you relied upon in supporting your business damage claim. Business records, as defined by law, include but are not limited to federal income tax returns, federal income tax withholding statements, federal miscellaneous income tax statements, state sales tax returns, balance sheets, profit and loss statements and state corporate income tax returns. If you request in writing that your records be maintained as confidential, we will do so.

Please be aware that if you fail to provide records needed to substantiate your claim, the amount of attorney fees you are eligible to receive could be affected.

## **Department's Response to Your Business Damage Claim**

Within 120 days after we receive your offer, we will send you a written response by certified mail. We will either, accept your offer, reject your offer or make a counteroffer for settlement of your claim.

If you do not provide records as described in **Filing a Business Damage Claim** and those records are found in subsequent legal proceedings to be necessary to determine the amount of your business damages, we will provide you a written counteroffer within 90 days following our receipt of the additional records.

## **Settlement of a Business Damage Claim**

If we reach agreement on the amount of your business damages, we will schedule a business damage closing as described later in this brochure under **Business Damage Closing**.



In addition to the payment for business damages, the department will pay reasonable costs you incur in preparing and presenting your business damage claim. These costs include, but are not limited to, the cost for hiring a certified public accountant or business damage expert. You must provide us copies of all work produced by your experts for whom you are seeking payment. You must also provide invoices detailing the services

performed by date, hourly rate and the total fee. The department will pay based on the usual and customary rates for such services charged in the community where your business is located.

If you choose to be represented by an attorney, the department will pay a reasonable fee for your attorney to assist you in preparing and presenting your claim. If we accept your initial offer to settle your eligible business damage claim or if settlement is based on your acceptance of our initial counteroffer, the amount of fees will be based on a reasonable number of hours and hourly rate.

If settlement of business damages is not based on our acceptance of your initial offer or your acceptance of our initial counteroffer, payment of attorney fees will be based on a statutory formula described later in this brochure under the section entitled **Business Damages in Eminent Domain**. Please understand that if it becomes necessary to establish the amount of your business damages in eminent domain, payment of fees and costs will be delayed until the conclusion of the litigation.

## **Business Damage Closing**

We will provide a check for the agreed amount of your damages at the business damage closing. In return, you will be asked to sign the necessary documents indicating that your claim for business damages has been settled. The payment of fees and costs will also take place at the closing. Fees and costs will not affect the agreed upon settlement. Generally, fees and costs will be paid directly to you. However, you may provide written authorization for the department to pay your attorney and/or accountant or business damage expert directly.

If we reach agreement on the amount of your business damages, but cannot agree on the amount of the fees and costs to be paid by the department, we can go forward with the business damage closing and defer payment of the fees and costs. You have the right to file an action in the Circuit Court and have the court decide the amount to be paid if we cannot agree on an amount for fees and costs.



## **Business Damages in Eminent Domain**



If your claim for business damages is resolved in a condemnation proceeding, the reasonable costs you incur, other than attorney fees, will be paid as determined by the court.

If we accept your initial good faith offer or you accept our initial counteroffer, the amount of attorney fees will be based on the amount you would be expected to pay if the department were not responsible for the fees. Otherwise, we will pay attorney fees based on a statutory formula applied to the amount of benefit your attorney achieves for you. For the purpose of calculating attorney fees for amounts awarded for business damages, benefit is the difference between the final judgment amount and the amount of the department's initial counteroffer. For the purposes of calculating benefit, the department's counteroffer will be the initial amount we offer you in response to your claim. If we reject your initial claim and it is later determined you are entitled to business damages, the department's counteroffer will be considered to be zero. If you do not provide all of the records needed to substantiate your claim, the amount of the department's counteroffer will be the amount of our first written offer after we receive the additional records.

The law does not allow the department to pay interest on amounts for fees and costs.

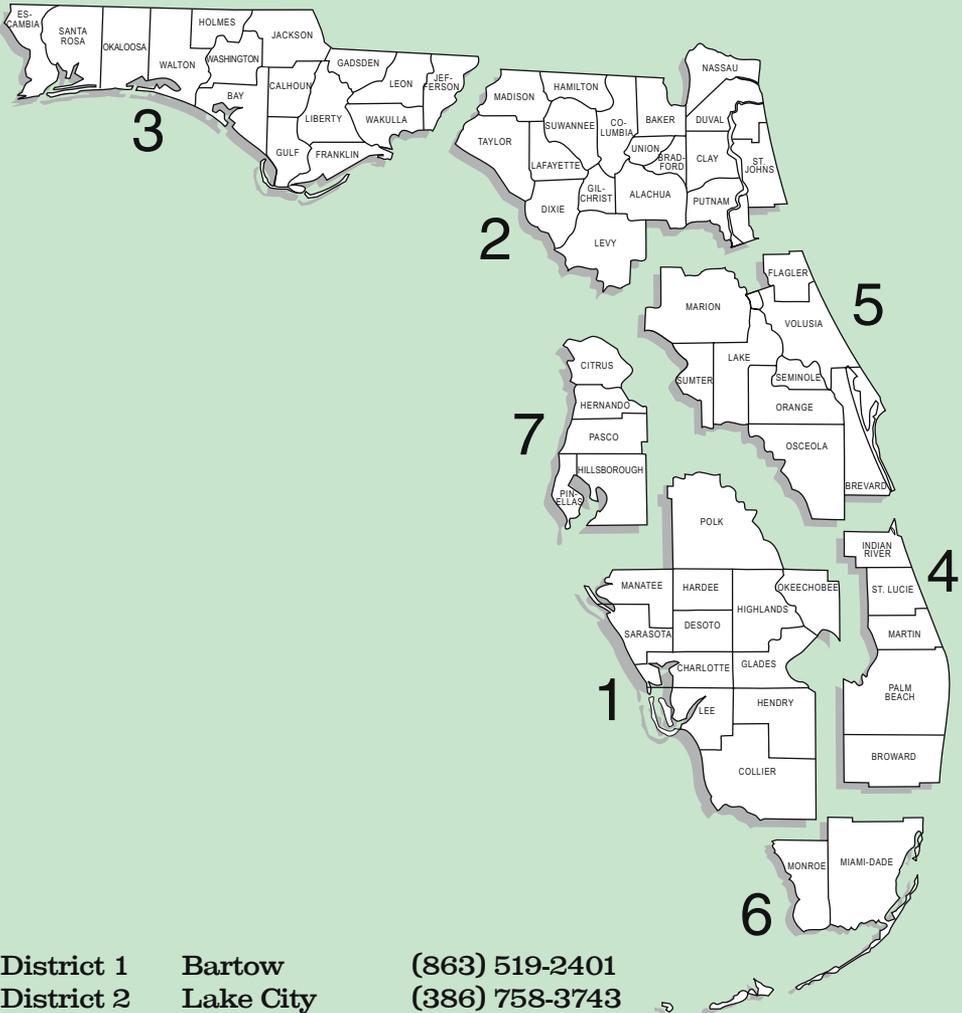
## **Conclusion**



Be assured we want to compensate you for eligible damages your business experiences as a result of our acquisition. You can help us do this by providing all of the records needed to substantiate your claim for damages and working with us to arrive at a mutually satisfactory settlement.

The rights explained in this brochure are derived from Chapter 73, Florida Statutes. The relevant portions of Chapter 73 are provided for your information (see Appendix).

# Right of Way District Headquarters



<b>District 1</b>	<b>Bartow</b>	<b>(863) 519-2401</b>
<b>District 2</b>	<b>Lake City</b>	<b>(386) 758-3743</b>
<b>District 3</b>	<b>Chipley</b>	<b>(850) 638-0250</b>
<b>District 4</b>	<b>Ft. Lauderdale</b>	<b>(954) 777-4242</b>
<b>District 5</b>	<b>DeLand</b>	<b>(386) 943-5030</b>
<b>District 6</b>	<b>Miami</b>	<b>(305) 470-5150</b>
<b>District 7</b>	<b>Tampa</b>	<b>(813) 975-6022</b>
<b>Turnpike</b>	<b>Orlando</b>	<b>(407) 532-3999</b>

# Appendix

## Florida Statutes / Chapter 73 / 73.015 Presuit negotiation

### 73.015 Presuit negotiation.—

(1) Effective July 1, 2000, before an eminent domain proceeding is brought under this chapter or chapter 74, the condemning authority must attempt to negotiate in good faith with the fee owner of the parcel to be acquired, must provide the fee owner with a written offer and, if requested, a copy of the appraisal upon which the offer is based, and must attempt to reach an agreement regarding the amount of compensation to be paid for the parcel.

(a) No later than the time the initial written or oral offer of compensation for acquisition is made to the fee owner, the condemning authority must notify the fee owner of the following:

1. That all or a portion of his or her property is necessary for a project.
2. The nature of the project for which the parcel is considered necessary, and the parcel designation of the property to be acquired.
3. That, within 15 business days after receipt of a request by the fee owner, the condemning authority will provide a copy of the appraisal report upon which the offer to the fee owner is based; copies, to the extent prepared, of the right-of-way maps or other documents that depict the proposed taking; and copies, to the extent prepared, of the construction plans that depict project improvements to be constructed on the property taken and improvements to be constructed adjacent to the remaining property, including, but not limited to, plan, profile, cross-section, drainage, and pavement marking sheets, and driveway connection detail. The condemning authority shall provide any additional plan sheets within 15 days of request.
4. The fee owner's statutory rights under ss. 73.091 and 73.092, or alternatively provide copies of these provisions of law.
5. The fee owner's rights and responsibilities under paragraphs (b) and (c) and subsection (4), or alternatively provide copies of these provisions of law.

(b) The condemning authority must provide a written offer of compensation to the fee owner as to the value of the property sought to be appropriated and, where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking. The owner must be given at least 30 days after either receipt of the notice or the date the notice is returned as undeliverable by the postal authorities to respond to the offer, before the condemning authority files a condemnation proceeding for the parcel identified in the offer.

(c) The notice and written offer must be sent by certified mail, return receipt requested, to the fee owner's last known address listed on the county ad valorem tax roll. Alternatively, the notice and written offer may be personally delivered to the fee owner of the property. If there is more than one owner of a property, notice to one owner constitutes notice to all owners of the property. The return of the notice as undeliverable by the postal authorities constitutes compliance with this provision. The condemning authority is not required to give notice or a written offer to a person who acquires title to the property after the notice required by this section has been given.

(d) Notwithstanding this subsection, with respect to lands acquired under s. 259.041, the condemning authority is not required to give the fee owner the current appraisal before executing an option contract.

(2) Effective July 1, 2000, before an eminent domain proceeding is brought under this chapter or chapter 74 by the Department of Transportation or by a county, municipality, board, district, or other public body for the condemnation of right-of-way, the condemning authority must make a good faith effort to notify the business owners, including lessees, who operate a business located on the property to be acquired.

(a) The condemning authority must notify the business owner of the following:

1. That all or a portion of his or her property is necessary for a project.
2. The nature of the project for which the parcel is considered necessary, and the parcel designation of the property to be acquired.

3. That, within 15 business days after receipt of a request by the business owner, the condemning authority will provide a copy of the appraisal report upon which the offer to the fee owner is based; copies, to the extent prepared, of the right-of-way maps or other documents that depict the proposed taking; and copies, to the extent prepared, of the construction plans that depict project improvements to be constructed on the property taken and improvements to be constructed adjacent to the remaining property, including, but not limited to, plan, profile, cross-section, drainage, pavement marking sheets, and driveway connection detail. The condemning authority shall provide any additional plan sheets within 15 days of request.

4. The business owner's statutory rights under ss. 73.071, 73.091, and 73.092.

5. The business owner's rights and responsibilities under paragraphs (b) and (c) and subsection (4).

(b) The notice must be made subsequent to or concurrent with the condemning authority's making the written offer of compensation to the fee owner pursuant to subsection (1). The notice must be sent by certified mail, return receipt requested, to the address of the registered agent for the business located on the property to be acquired, or if no agent is registered, by certified mail or personal delivery to the address of the business located on the property to be acquired. Notice to one owner of a multiple ownership business constitutes notice to all business owners of that business. The return of the notice as undeliverable by the postal authorities constitutes compliance with these provisions. The condemning authority is not required to give notice to a person who acquires an interest in the business after the notice required by this section has been given. Once notice has been made to business owners under this subsection, the condemning authority may file a condemnation proceeding pursuant to chapter 73 or chapter 74 for the property identified in the notice.

(c) If the business qualifies for business damages pursuant to s. 73.071(3)(b) and the business intends to claim business damages, the business owner must, within 180 days after either receipt of the notice or the date the notice is returned as undeliverable by the postal authorities, or at a later time mutually agreed to by the condemning authority and the business owner, submit to the condemning authority a good faith written offer to settle any claims of business damage. The written offer must be sent to the condemning authority by certified mail, return receipt requested. Absent a showing of a good faith justification for the failure to submit a business damage offer within 180 days, the court must strike the business owner's claim for business damages in any condemnation proceeding. If the court finds that the business owner has made a showing of a good faith justification for the failure to timely submit a business damage offer, the court shall grant the business owner up to 180 days within which to submit a business damage offer, which the condemning authority must respond to within 120 days.

1. The business damage offer must include an explanation of the nature, extent, and monetary amount of such damage and must be prepared by the owner, a certified public accountant, or a business damage expert familiar with the nature of the operations of the owner's business. The business owner shall also provide to the condemning authority copies of the owner's business records that substantiate the good faith offer to settle the business damage claim. If additional information is needed beyond data that may be obtained from business records existing at the time of the offer, the business owner and condemning authority may agree on a schedule for the submission of such information.

2. As used in this paragraph, the term "business records" includes, but is not limited to, copies of federal income tax returns, federal income tax withholding statements, federal miscellaneous income tax statements, state sales tax returns, balance sheets, profit and loss statements, and state corporate income tax returns for the 5 years preceding notification which are attributable to the business operation on the property to be acquired, and other records relied upon by the business owner that substantiate the business damage claim.

(d) Within 120 days after receipt of the good faith business damage offer and accompanying business records, the condemning authority must, by certified mail, accept or reject the business owner's offer or make a counteroffer. Failure of the condemning authority to respond to the business damage offer, or rejection thereof pursuant to this section, must be deemed to be a counteroffer of zero dollars for purposes of subsequent application of s. 73.092(1).

(3) At any time in the presuit negotiation process, the parties may agree to submit the compensation or business damage claims to nonbinding mediation. The parties shall agree upon a mediator certified under s. 44.102. In the event that there is a settlement reached as a result of mediation or other mutually acceptable dispute resolution procedure, the agreement reached shall be in writing. The written agreement provided for in this section shall incorporate by reference the right-of-way maps, construction plans, or other documents related to the taking upon which the settlement is based. In the event of a settlement, both parties shall have the same legal rights that

would have been available under law if the matter had been resolved through eminent domain proceedings in circuit court with the maps, plans, or other documents having been made a part of the record.

(4) If a settlement is reached between the condemning authority and a property or business owner prior to a lawsuit being filed, the property or business owner who settles compensation claims in lieu of condemnation shall be entitled to recover costs in the same manner as provided in s. 73.091 and attorney's fees in the same manner as provided in s. 73.092, more specifically as follows:

(a) Attorney's fees for presuit negotiations under this section regarding the amount of compensation to be paid for the land, severance damages, and improvements must be calculated in the same manner as provided in s. 73.092(1) unless the parties otherwise agree.

(b) If business damages are recovered by the business owner based on the condemning authority accepting the business owner's initial offer or the business owner accepting the condemning authority's initial counteroffer, attorney's fees must be calculated in accordance with s. 73.092(2), (3), (4), and (5) for the attorney's time incurred in presentation of the business owner's good faith offer under paragraph (2)(c). Otherwise, attorney's fees for the award of business damages must be calculated as provided in s. 73.092(1), based on the difference between the final judgment or settlement of business damages and the counteroffer to the business owner's offer by the condemning authority.

(c) Presuit costs must be presented, calculated, and awarded in the same manner as provided in s. 73.091, after submission by the business or property owner to the condemning authority of all appraisal reports, business damage reports, or other work products for which recovery is sought, and upon transfer of title of the real property by closing, upon payment of any amounts due for business damages, or upon final judgment.

(d) If the parties cannot agree on the amount of costs and attorney's fees to be paid by the condemning authority, the business or property owner may file a complaint in the circuit court in the county in which the property is located to recover attorney's fees and costs.

This shall only apply when the action is by the Department of Transportation, county, municipality, board, district, or other public body for the condemnation of a road right-of-way.

(5) Evidence of negotiations or of any written or oral statements used in mediation or negotiations between the parties under this section is inadmissible in any condemnation proceeding, except in a proceeding to determine reasonable costs and attorney's fees.

**History.**—s. 57, ch. 99-385; s. 8, ch. 2001-256.

**Florida Statutes / Chapter 73 / 73.0155 Confidentiality; business records provided to a governmental condemning authority.**

**73.0155 Confidentiality; business information provided to a governmental condemning authority.—**

(1) The following business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015 is confidential and exempt from s. 24(a), Art. I of the State Constitution and s. 119.07(1) if the owner requests in writing that the information be held exempt:

(a) Federal tax returns or tax information confidential under 26 U.S.C. s. 6103.

(b) State tax returns or tax information confidential under s. 213.053.

(c) Balance sheets, profit-and-loss statements, cash-flow statements, inventory records, or customer lists or number of customers for a business operating on the parcel to be acquired.

(d) A franchise, distributorship, or lease agreement of which the business operating on the parcel to be acquired is the subject.

(e) Materials that relate to methods of manufacture or production, potential trade secrets, patentable material, or actual trade secrets as defined in s. 688.002.

(f) Other sensitive or proprietary information related to the business operating on the parcel to be acquired, if the owner attests in writing to the governmental condemning authority that:

1. The information is being relied upon to substantiate a claim for business damages under s. 73.015;
2. The information has not otherwise been publicly disclosed;
3. The information cannot be readily obtained by the public using alternative means;
4. The information is used by the business to protect or further a business advantage over those who do not know or use the information; and
5. The disclosure of the information would injure the business in the marketplace.

(2) At the time that any information made confidential and exempt from disclosure under subsection (1) is legally available or subject to public disclosure for any reason, that information is no longer confidential and exempt and shall be made available for inspection and copying.

(3) An agency as defined in s. 119.011 may inspect and copy records or information made confidential and exempt from disclosure under subsection (1) exclusively for the transaction of official business by, or on behalf of, an agency. An agency receiving this confidential and exempt information must maintain the confidentiality of that information. Any employee or agent of the agency receiving this confidential and exempt information who willfully and knowingly violates this subsection commits a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

(4) This section does not prevent an agency from offering information made confidential and exempt from disclosure under subsection (1) as evidence in a legal proceeding and does not prevent a court from determining whether to close a portion of a court record from subsequent public disclosure after trial in order to maintain the confidentiality of that information.

(5) Subsection (1) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and expires on October 2, 2009, unless reviewed and reenacted by the Legislature.

**History.**—s. 1, ch. 99-224; s. 1, ch. 2004-46.

## **Florida Statutes / Chapter 73 / 73.032 Offer of judgment.**

### **73.032 Offer of judgment.—**

(1) This section shall provide the exclusive offer of judgment provisions for eminent domain actions.

(2) The petitioner may serve a defendant with an offer of judgment no sooner than 120 days after the defendant has filed an answer and no later than 20 days prior to trial.

(3) A defendant may make an offer to have judgment entered against defendant for payment of compensation by petitioner only for an amount that is under \$100,000, and such offer may be served on petitioner no sooner than 120 days after the defendant has filed an answer and no later than 20 days prior to trial.

(4)(a) The offer of judgment must:

1. Be in writing;
2. Settle all pending claims with that party or parties exclusive of attorney's fees and costs;
3. State that the offer is made pursuant to this section;
4. Name the parties to whom the offer is made;
5. Briefly summarize any relevant conditions;
6. State the total amount of the offer; and
7. Include a certificate of service.

(b) The offer of judgment must be served in the same manner as other pleadings upon the parties to whom it is made, but may not be filed with the court unless it is accepted or unless filing is necessary to enforce this section.

(c) The offer of judgment shall be deemed rejected unless accepted by filing both a written acceptance and the written offer with the court within 30 days after service of the offer, or before the trial begins if less than 30 days. Upon proper filing of both the offer and acceptance, the court shall enter judgment thereon. A rejection of an offer terminates the offer.

(d) The party making the offer may withdraw the offer in a writing served on the opposing party before a written acceptance is filed with the court. Once withdrawn in this manner, an offer is void.

(e) An offer of judgment which is rejected or which is withdrawn does not preclude the making of a subsequent offer of judgment; however, any such subsequent offer of judgment shall automatically void the prior offer of judgment as if the same had never been made.

(5) If a defendant does not accept the offer of judgment made by the petitioner and the judgment obtained by the defendant, exclusive of any interest accumulated after the offer of judgment was initially made, is equal to or less than such offer, then the court shall not award any costs incurred by the defendant after the date the offer of judgment was rejected.

(6) If the petitioner rejects the offer of judgment made by defendant and the judgment obtained by defendant, exclusive of any interest accumulated after the offer of judgment was initially made, is equal to or is more than such offer, then the court shall award a reasonable attorney's fee to the defendant based on the factors set forth in s. 73.092(2) and (3).

(7) At the time an offer of judgment is made by the petitioner, the petitioner shall identify and make available to the defendant the construction plans, if any, for the project on which the offer is based.

(8) Evidence of an offer of judgment is admissible only in proceedings to enforce an accepted offer or to determine the costs to be awarded a defendant pursuant to subsection (5) or a reasonable attorney's fee pursuant to subsection (6).

**History.**—s. 53, ch. 90-136; s. 2, ch. 90-303; s. 1, ch. 94-162.

**Florida Statutes / Chapter 73 / 73.071 Jury trial; compensation; severance damages; business damages.**

**73.071 Jury trial; compensation; severance damages; business damages.--**

(1) When the action is at issue, and only upon notice and hearing to set the cause for trial, the court shall impanel a jury of 12 persons as soon as practical considering the reasonable necessities of the court and of the parties, and giving preference to the trial of eminent domain cases over other civil actions, and submit the issue of compensation to them for determination, which issue shall be tried in the same manner as other issues of fact are tried in the circuit courts.

(2) The amount of such compensation shall be determined as of the date of trial, or the date upon which title passes, whichever shall occur first.

(3) The jury shall determine solely the amount of compensation to be paid, which compensation shall include:

(a) The value of the property sought to be appropriated;

(b) Where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking, including, when the action is by the Department of Transportation, county, municipality, board, district or other public body for the condemnation of a right-of-way, and the effect of the taking of the property involved may damage or destroy an established business of more than 4 years' standing before January 1, 2005, or the effect of the taking of the property involved may damage or destroy an established business of more than 5 years' standing on or after January 1, 2005, owned by the party whose lands are being so taken, located upon adjoining lands owned or held by such party, the probable damages to such business which the denial of the use of the property so taken may reasonably cause; any person claiming the right to recover such special damages shall set forth in his or her written defenses the nature and extent of such damages; and

(c) Where the appropriation is of property upon which a mobile home, other than a travel trailer as defined in s. 320.01, is located, whether or not the owner of the mobile home is an owner or lessee

of the property involved, and the effect of the taking of the property involved requires the relocation of such mobile home, the reasonable removal or relocation expenses incurred by such mobile home owner, not to exceed the replacement value of such mobile home. The compensation paid to a mobile home owner under this paragraph shall preclude an award to a mobile home park owner for such expenses of removal or relocation. Any mobile home owner claiming the right to such removal or relocation expenses shall set forth in his or her written defenses the nature and extent of such expenses. This paragraph shall not apply to any governmental authority exercising its power of eminent domain when reasonable removal or relocation expenses must be paid to mobile home owners under other provisions of law or agency rule applicable to such exercise of power.

(4) When the action is by the Department of Transportation, county, municipality, board, district, or other public body for the condemnation of a road, canal, levee, or water control facility right-of-way, the enhancement, if any, in value of the remaining adjoining property of the defendant property owner by reason of the construction or improvement made or contemplated by the petitioner shall be offset against the damage, if any, resulting to such remaining adjoining property of the defendant property owner by reason of the construction or improvement. However, such enhancement in the value shall not be offset against the value of the property appropriated, and if such enhancement in value shall exceed the damage, if any, to the remaining adjoining property, there shall be no recovery over against such property owner for such excess.

(5) Any increase or decrease in the value of any property to be acquired which occurs after the scope of the project for which the property is being acquired is known in the market, and which is solely a result of the knowledge of the project location, shall not be considered in arriving at the value of the property acquired. For the purpose of this section, the scope of the project for which the property is being acquired shall be presumed to be known in the market on or after the condemnor executes a resolution which depicts the location of the project.

(6) The jury shall view the subject property upon demand by any party or by order of the court.

(7) If the jury cannot agree on a verdict the court shall discharge them, impanel a new jury, and proceed with the trial.

**History.**—s. 1, ch. 65-369; ss. 23, 35, ch. 69-106; s. 1, ch. 70-283; s. 1, ch. 77-51; s. 19, ch. 79-400; s. 36, ch. 85-180; s. 361, ch. 95-147; ss. 58, 59, ch. 99-385; ss. 56, 57, ch. 2002-20.

## **Florida Statutes / Chapter 73 / 73.091 Costs of the proceedings.**

### **73.091 Costs of the proceedings.—**

(1) The petitioner shall pay attorney's fees as provided in s. 73.092 as well as all reasonable costs incurred in the defense of the proceedings in the circuit court, including, but not limited to, reasonable appraisal fees and, when business damages are compensable, a reasonable accountant's fee, to be assessed by that court. No prejudgment interest shall be paid on costs or attorney's fees.

(2) At least 30 days prior to a hearing to assess costs under this section, the condemnee's attorney shall submit to the condemning authority for each expert witness complete time records and a detailed statement of services rendered by date, nature of services performed, time spent performing such services, and costs incurred, and a copy of any fee agreement which may exist between the expert and the condemnee or the condemnee's attorney.

(3) In assessing costs, the court shall consider all factors relevant to the reasonableness of the costs, including, but not limited to, the fees paid to similar experts retained in the case by the condemning authority or other parties and the reasonable costs of similar services by similarly qualified persons.

(4) In assessing costs to be paid by the petitioner, the court shall be guided by the amount the defendant would ordinarily have been expected to pay for the services rendered if the petitioner were not responsible for the costs.

(5) The court shall make specific findings that justify each sum awarded as an expert witness fee.

**History.**—s. 1, ch. 65-369; s. 2, ch. 87-148; s. 52, ch. 90-136; s. 1, ch. 90-303; s. 2, ch. 94-162; s. 60, ch. 99-385.

## **Florida Statutes / Chapter 73 / 73.092 Attorney's fees.**

### **73.092 Attorney's fees.—**

(1) Except as otherwise provided in this section and s. 73.015, the court, in eminent domain proceedings, shall award attorney's fees based solely on the benefits achieved for the client.

(a) As used in this section, the term “benefits” means the difference, exclusive of interest, between the final judgment or settlement and the last written offer made by the condemning authority before the defendant hires an attorney. If no written offer is made by the condemning authority before the defendant hires an attorney, benefits must be measured from the first written offer after the attorney is hired.

1. In determining attorney’s fees, if business records as defined in s. 73.015(2)(c)2. and kept by the owner in the ordinary course of business were provided to the condemning authority to substantiate the business damage offer in s. 73.015(2)(c), benefits for amounts awarded for business damages must be based on the difference between the final judgment or settlement and the written counteroffer made by the condemning authority provided in s. 73.015(2)(d).

2. In determining attorney’s fees, if existing business records as defined in s. 73.015(2)(c)2. and kept by the owner in the ordinary course of business were not provided to the condemning authority to substantiate the business damage offer in s. 73.015(2)(c) and those records which were not provided are later deemed material to the determination of business damages, benefits for amounts awarded for business damages must be based upon the difference between the final judgment or settlement and the first written counteroffer made by the condemning authority within 90 days from the condemning authority’s receipt of the business records previously not provided.

(b) The court may also consider nonmonetary benefits obtained for the client through the efforts of the attorney, to the extent such nonmonetary benefits are specifically identified by the court and can, within a reasonable degree of certainty, be quantified.

(c) Attorney’s fees based on benefits achieved shall be awarded in accordance with the following schedule:

1. Thirty-three percent of any benefit up to \$250,000; plus
2. Twenty-five percent of any portion of the benefit between \$250,000 and \$1 million; plus
3. Twenty percent of any portion of the benefit exceeding \$1 million.

(2) In assessing attorney’s fees incurred in defeating an order of taking, or for apportionment, or other supplemental proceedings, when not otherwise provided for, the court shall consider:

- (a) The novelty, difficulty, and importance of the questions involved.
- (b) The skill employed by the attorney in conducting the cause.
- (c) The amount of money involved.
- (d) The responsibility incurred and fulfilled by the attorney.

(e) The attorney’s time and labor reasonably required adequately to represent the client in relation to the benefits resulting to the client.

(f) The fee, or rate of fee, customarily charged for legal services of a comparable or similar nature.

(g) Any attorney’s fee award made under subsection (1).

(3) In determining the amount of attorney’s fees to be paid by the petitioner under subsection (2), the court shall be guided by the fees the defendant would ordinarily be expected to pay for these services if the petitioner were not responsible for the payment of those fees.

(4) At least 30 days prior to a hearing to assess attorney’s fees under subsection (2), the condemnee’s attorney shall submit to the condemning authority and to the court complete time records and a detailed statement of services rendered by date, nature of services performed, time spent performing such services, and costs incurred.

(5) The defendant shall provide to the court a copy of any fee agreement that may exist between the defendant and his or her attorney, and the court must reduce the amount of attorney’s fees to be paid by the defendant by the amount of any attorney’s fees awarded by the court.

**History.**—s. 1, ch. 76-158; s. 37, ch. 85-180; s. 3, ch. 87-148; s. 54, ch. 90-136; s. 3, ch. 90-303; s. 3, ch. 94-162; s. 1370, ch. 95-147; s. 61, ch. 99-385.

# NOTES

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