WEST VIRGINIA CODE CHAPTER 54 ARTICLE 2

WV Legislature

§54-2-1. Jurisdiction.

In any case in which property may lawfully be taken for a public use, application may be made by petition to the circuit court or the judge thereof in vacation, of the county in which the estate is situated, to appoint commissioners to ascertain a just compensation to the owners of the estate proposed to be taken. If a tract lies partly in one county and partly in another, the application in relation thereto may be made in either county.

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§54-2-2. Pleadings; verification; parties.

The pleadings shall be in writing and shall be verified. The petition shall describe with reasonable certainty the property proposed to be taken, and may embrace one or more parcels of land where the ownership is the same. If an estate less than a fee is proposed to be taken, the petition shall describe with reasonable certainty the particular estate less than the fee which it is proposed to take, the name of the owner or owners thereof, the manner and extent of their respective interests. If there are any liens upon or conflicting claims to such real estate, the petition shall state the nature and amount of such liens and claims and the names and places of residence of the persons who hold the same, so far as known to the petitioner. Where there are persons interested in the property proposed to be taken whose names are unknown to the applicant, or it is not known to the applicant whether there are any other persons interested in the property proposed to be taken, or there be any contingent or executory interest or estate in such property which is liable to vest in or to open and let in persons not in being, such fact shall be stated in the petition and such persons, if any, shall be made parties defendant to such petition by the general description of parties unknown. The joinder of any person having only a contingent or executory interest in the property proposed to be taken shall not be necessary when the person not joined is virtually represented by any other party or parties defendant; and where such virtual representation exists no order or decree made thereunder shall be deemed erroneous or void because of such nonjoinder. The petition shall also state the use to which the estate sought to be taken is intended to be appropriated.

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§54-2-2a. Additional requirement for condemnation proceeding for right-of-way for certain high voltage transmission line.

In addition to the requirements set forth in section two of this article, a public utility, person or corporation required under section eleven-a, article two, chapter twenty-four of this code to obtain a certificate of public convenience and necessity for the construction and location of a high voltage transmission line, shall file a certified or attested copy of such certificate with its petition to condemn real or personal property for the construction of such high voltage transmission line. Failure to file such certified or attested copy of such certificate shall result in dismissal of the petition.

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§54-2-3. Notice; riparian owner affected by taking of water.

Of such application ten days' notice shall be served on the owners, claimants and persons holding liens, whose interests the applicant seeks to condemn, and the notice may be given either before the petition is presented or afterwards. But where the owners of the real estate proposed to be taken or the persons holding such liens or conflicting claims, or any of them, are nonresidents of the state or their whereabouts is unknown, or they are unknown to the applicant, or there be any persons made parties defendant by the general description of parties unknown as provided in section two of this article, the notice as to them, instead of being thus served, may be given by advertisement containing (by reference to a plat filed for the purpose in the office of the clerk of the circuit court or otherwise) a specific description of the property in which they are interested that is proposed to be taken, and stating the purpose to which it is intended to be appropriated, and the time and place at which a hearing will be asked upon the application, which advertisement shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

Where water is to be taken as authorized in section ten, article one of this chapter, notice to riparian owners having lands below the point at which the water is proposed to be taken, and likely to be affected thereby, shall be given by publishing the same as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Any such riparian owner may come into court or before the judge of such court in vacation, on the return day of the notice and publication, make himself a party to the proceedings and have his rights passed upon by the commissioner and his damage, if any, ascertained, allowed and paid as in this chapter provided for the taking of lands.

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§54-2-4. Persons under disability.

(a) The court shall protect the rights of any person who is under a legal disability because he or she is a protected person, as defined in section two (a), article one, chapter forty-four-a of this code, or incarcerated, and whose ownership interest, lien or other claim to property requires them to be a party in a condemnation action brought pursuant to the provisions of this chapter.

(b) A protected person who is a party in a condemnation action may be represented by a conservator or guardian or by a limited guardian appointed by the court to represent the protected person in the condemnation action.

(c) An incarcerated person who is a party in a condemnation action and who has an attorney or committee shall be represented by the attorney or committee. An incarcerated person who is a party in a condemnation action who does not have an attorney or committee shall be represented by an attorney appointed by the court.

(d) The court shall appoint a guardian ad litem to defend the interests of an unknown owner or owners of property subject to condemnation.

(e) Notwithstanding any other provisions of this code to the contrary, the provisions of this chapter regarding the procedure in condemnation actions shall be followed.

(f) The court may direct payment of a limited guardian, attorney or guardian ad litem appointed in an amount to be fixed by the court or judge, to be taxed as costs and paid by the applicant.

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§54-2-4a. Lis pendens notice; effect.

At the time of the filing of an eminent domain petition, the applicant may file a notice of the pendency of such proceeding as provided in section two, article eleven, chapter fifty-five of this code, containing the information therein required so far as the provisions therein are applicable. From the time of such filing every purchaser or encumbrancer whose conveyance or encumbrance is not then recorded or docketed shall be deemed a subsequent purchaser or encumbrancer and shall be bound by the proceeding to the same extent and in the same manner as if he were a party therein.

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§54-2-5. Commissioners; qualifications.

When it shall appear to the court, or the judge thereof in vacation, that proper notice has been given and that the case is one in which the applicant has lawful right to take property for the purposes stated in the petition, upon making just compensation, five disinterested freeholders shall be appointed commissioners to ascertain what will be a just compensation and any damages to the persons entitled thereto, for the property, or interest or right therein, proposed to be taken.

The following persons shall be deemed interested and shall not be appointed as commissioners: Any person who is personally interested in the property, or interest or right therein, proposed to be taken or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest, or who is the owner of, or interested in, any real estate over or through which the work of internal improvement will pass. No person shall be deemed interested or incompetent to act as commissioner by reason of his being an inhabitant of the county, district, or municipal corporation, on behalf of which application is made, or holding property therein.

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§54-2-6. How commissioners appointed.

The appointment shall be made as follows: Thirteen disinterested freeholders shall be nominated by the court, or the judge thereof in vacation, of whom the applicant may strike off four from the list, and the defendant or defendants may also strike off four, and after eight names are stricken from the list the remaining five shall be the commissioners. But where there is no appearance for the defense, or the right to strike off any one or more names is waived on the part of either the applicant or defendant, or from any cause the full number shall not be stricken off by the parties, the name or additional names, as the case may be, to be stricken from the list in order to reduce the number to five, shall be ascertained by lot under direction of the court or the judge thereof in vacation. The court, or judge thereof in vacation, may for good cause remove any commissioner and fill any vacancy.

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§54-2-7. Oath of commissioners.

Before entering upon the discharge of his duties, each commissioner shall take an oath, before some person authorized by law to administer it, that he will honestly, faithfully, and impartially ascertain to the best of his skill and judgment what will be a just compensation to the persons entitled thereto for the property, or interest or right therein, proposed to be taken, including, where applicable, any damages to the extent provided by section nine of this article. The oath shall be certified by the person administering it, and shall be filed, with the papers of the proceeding, in the office of the clerk of the court.

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§54-2-7a. Information for commissioners.

Before entering upon the discharge of his duties, each commissioner shall be informed generally, in writing or otherwise, by the court, or the judge thereof in vacation, as to the duties and responsibilities of a condemnation commissioner and as to the law applicable to the deliberations of condemnation commissioners.

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§54-2-7b. Supervision of hearings; appointment, powers, duties and compensation of court commissioner; subpoena of witnesses, etc.

The court may, and upon motion of any party shall, preside over and supervise all hearings held by the condemnation commission or appoint for such purpose one of its own commissioners, or a special commissioner, to be known as a court commissioner, who shall preside over and supervise all hearings held by the condemnation commission. The person presiding, or the clerk of the court, may sign and issue subpoenas for witnesses, including subpoenas duces tecum, and may swear any witness that the evidence which he will give relating to the matter to be reported by the condemnation commission shall be the truth, the whole truth, and nothing but the truth. The person presiding shall rule on all questions of evidence, instruct the condemnation commissioners as to the law, and otherwise exercise all the functions of a judge in the trial of a civil action to the extent necessary for the determination of any issues before the condemnation commission. In the event a court commissioner is appointed to preside over and supervise all of the hearings to be held by a condemnation commission such court commissioner shall be allowed for his services a reasonable sum to be fixed by the court, such sum to be taxed in the bill of costs against the moving party.

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§54-2-8. Powers of commissioners; hearings; view of property.

Any three of the commissioners may act in the absence of the others, and any one of them may sign and issue subpoenas for witnesses in like manner as a justice, and with like effect; and may swear any witness who appears before them, that the evidence which he will give relating to the matters to be reported upon by the said commissioners shall be the truth, the whole truth, and nothing but the truth. They may adjourn their sessions from time to time as shall be necessary; and any person interested may attend in person or by attorney, produce and examine witnesses, read depositions duly taken, and other proper evidence, and be heard, if he requests it, in support of his rights, according to the usages and rules of law.

A view of the property to be taken shall not be required unless a demand therefor is made by a party in interest. In the event a court commissioner is appointed to preside over and supervise all of the hearings to be held by a condemnation commission pursuant to the provisions of section seven-b of this article such court commissioner shall go with the commissioners and shall control the proceedings.

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§54-2-9. Report of commissioners.

The commissioners, after viewing the property, if a view is demanded, and hearing any proper evidence which is offered shall ascertain what will be a just compensation to the person entitled thereto for so much thereof as is proposed to be taken, or for the interest therein, if less than a fee, and for damage to the residue of the tract beyond all benefits to be derived, in respect to such residue, from the work to be constructed, or the purpose to which the land to be taken is to be appropriated, including, when less than the fee is taken, the actual damage, if any, done, or that may be done, to the fee by such construction, and make report to the following effect: We, the commissioners, appointed by the circuit court of ..... county, (or by the judge thereof in vacation, as the case may be) by an order made on the ..... day of ..... on the application of ..... respectfully report, that having first been duly sworn, we have viewed the real estate owned by ....., mentioned in the said application, and are of opinion that ..... dollars will be a just compensation for so much of the said real estate as is proposed to be taken by the said applicant, that is to say: (here describe the part to be taken, and the interest therein, if less than a fee, so as to identify the same with reasonable certainty, which description may be supplemented by reference to a plat annexed to the report, or in any manner that would be sufficient in a conveyance) as well as for damages to the residue of the said real estate beyond all benefits which will be derived in respect to such residue from the work to be constructed (or from the purposes to which the part to be taken by said applicant is to be appropriated).

Given under our hands this ..... day of .....

But if the property is proposed to be taken by a company incorporated for construction of a railroad, no damages shall be ascertained for the construction of any farm crossing, fences, or cattle guards, or for keeping the same in repair. The report shall be signed by at least three of the commissioners, and forthwith returned to the clerk's office of the court, to be filed with the papers of the case.

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§54-2-9a. Separate findings of compensation and damages.

If the report of the commissioners includes any sum for damages, in addition to the sum for just compensation for the property, or interest or right therein, proposed to be taken, the commissioners shall, if the owner or owners of the property request the same, state in their report what sum has been fixed as damages.

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§54-2-10. Proceedings on report; trial by jury.

Within ten days after the report required by the provisions of section nine of this article is returned and filed, either party may file exceptions thereto, and demand that the question of the compensation, and any damages to be paid, be ascertained by a jury, in which case a jury of twelve freeholders shall be selected and impaneled for the purpose, as juries are selected in civil actions. But no person shall sit on such jury who would not be eligible to serve as a condemnation commissioner in the proceeding. The cause shall be tried as other causes in such court, except that any person who served as a condemnation commissioner in the proceeding shall not be examined as a witness in regard to just compensation or any damages. The jury, ascertaining the damages or compensation to which the owner of the property, or interest or right therein, proposed to be taken is entitled, shall be governed by sections nine and nine-a of this article except that a view of the property proposed to be taken shall not be required: Provided, That in the event a demand therefor is made by a party in interest, the jury shall be taken to view the property, and in such case, the judge presiding at the trial shall go with the jury and shall control the proceedings: Provided, however, That the value of any leasehold on the property proposed to be taken, that must be paid by the owner thereof to his tenant or tenants, shall be admissible in evidence in any hearing before the condemnation commissioners or in the trial by jury.

If no exceptions be filed to such report, and neither party demand a trial by jury as aforesaid, the court, or the judge thereof in vacation, unless good cause be shown against it, or it be defective or erroneous on its face, shall confirm such report, and order it to be recorded in the proper order book of the court.

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§54-2-11. Setting aside report; recommittal; new commissioners.

If good cause be shown against the report, or if it be defective or erroneous on its face, the court or judge thereof in vacation, as may seem to be proper, may set it aside or recommit it to the same commissioners for further report; or other commissioners may be appointed in the manner hereinbefore provided, with or without further notice, as the court or judge may order. If the commissioners report their disagreement, or fail to report in reasonable time, other commissioners may in like manner be appointed. And so again, from time to time, as often as may be necessary.

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§54-2-11a. Waiver of findings by commissioners.

If at any time prior to the appointment of condemnation commissioners, or in the event condemnation commissioners have been appointed, if at any time prior to the making of a report by the condemnation commissioners pursuant to the provisions of section nine of this article, all of the parties who have appeared in the proceeding agree to waive the findings of the condemnation commissioners and file a stipulation to this effect with the clerk of the court, the question of the compensation and any damages to be paid shall be ascertained by a jury in the manner provided by section ten of this article and a hearing before the condemnation commissioners shall not be necessary. Any such stipulation shall be filed with the papers of this proceeding.

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§54-2-12. Vesting of title in applicant.

Except as otherwise provided in this article, at any time within three months after the report, or the verdict of a jury, if there be one, has been confirmed and ordered to be recorded, the sum so ascertained with ten percent interest thereon from the date of the filing of the petition until payment, may be paid by the applicant into court; upon such payment, title to the property, or interest or right therein, so paid for shall be absolutely vested in the applicant in fee simple or to the extent described in the petition: Provided, That in the case of a public road title to the right- of-way only shall absolutely vest in the applicant.

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§54-2-13. Entry on land on payment of compensation.

After such report has once been made, whether it be set aside, recommitted, or new commissioners appointed, or not, or whether a trial by jury be demanded and had or not, the applicant upon paying into court the sum ascertained by such report, with ten percent interest thereon from the date of the filing of the petition until payment, may, notwithstanding the pendency of further proceedings, enter upon, take and use for the purposes specified in the application, that part of the land and property in respect to which such payment is made, and where such payment has been made and possession taken, or where payment has been made without taking such possession in a pending case, it shall have the same effect as if such payment were made or possession taken, or both, in a case hereafter commenced; and no order shall be made or any injunction awarded by any court or judge to stay it in so doing, unless it be manifest that the applicant is insolvent or that it or its officers, agents or servants, are transcending their authority, or that such interposition is necessary to prevent injury which cannot be adequately compensated in damages: Provided, That if the applicant be other than a corporate body politic, before entering upon or taking possession of such property, it shall enter into bond before the court, or judge thereof in vacation, in a penalty prescribed by the judge, with securities approved by him conditioned for the payment to the owner of any additional sums which may be awarded against it in subsequent proceedings as additional compensation and damages for the property so taken.

And where, under authority of section ten, article one of this chapter, wood, earth, gravel, shale, stone, water or other material are sought to be taken, impounded or consumed, the applicant, after such report has been made, whether it be set aside, recommitted or new commissioners appointed, or not, or whether a trial by jury be demanded and had, or not, may, upon payment into court as aforesaid of the sum ascertained by the report of such commissioners, notwithstanding the pendency of further proceedings, take, impound or consume such wood, earth, gravel, shale, stone, water or other material; and all the foregoing provisions of this section as to injunction and bond shall be applicable to such case.

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§54-2-14. Entry by state or its political subdivisions.

If the applicant be the State of West Virginia, or any political subdivision thereof, on filing its petition as authorized in this article, and if the court or judge is satisfied that the purpose for which the land or property is sought to be condemned is a public use for which private property may be appropriated on compensating the owner, the court or judge shall, at the request of the applicant, make an order permitting the applicant at once to enter upon, take possession, appropriate and use the land sought to be condemned for the purposes stated in the petition. The revenues applicable to the payment of any damages or compensation to which the owner is entitled, and which shall be awarded or assessed in his favor, shall be deemed sufficient security and to have been pledged for such payment, and no bond or further security shall be required of the applicant.

If the applicant shall enter upon or take possession of property under the authority of this section, and shall do any work thereon and injure such land or property, it shall not be entitled, without the consent of the defendant, to abandon the proceedings for the condemnation thereof, but such proceedings shall proceed to final award or judgment, and the applicant shall pay to the owner of the land the amount of compensation and damages as finally determined in such proceedings, with interest at ten percent from the date of the filing of the petition.

Before entry, taking possession, appropriation, or use, the applicant shall pay into court such sum as it shall estimate to be the fair value of the property, or estate, right, or interest therein, sought to be condemned, including, where applicable, the damages, if any, to the residue beyond the benefits, if any, to such residue, by reason of the taking.

When, after payment into court as provided under the authority of this section, the amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there be one, exceeds the amount which has been paid into court, the excess amount, together with interest thereon at ten percent from the date of the filing of the petition to the date of payment of the excess amount into court, may, at any time within three months after the report or verdict of a jury, as the case may be, has been confirmed and ordered to be recorded, be paid into court by the applicant for the persons entitled thereto.

If the amount which has been paid into court pursuant to this section exceeds the amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there be one, the excess shall be repaid to the applicant out of such fund in court, or, if the amount remaining in the fund be insufficient, then the persons to whom the fund, or any part thereof, has been paid, shall reimburse the applicant, on a pro rata basis, but without interest.

If the amount allowed by the report of the condemnation commissioners, or the verdict of the jury, if there be one, does not exceed the sum paid into court and it shall appear that the latter amount was tendered by the applicant to the defendant prior to the institution of the proceeding, the defendant shall pay the costs of the proceeding in the trial court unless the

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refusal to accept the tender was based on some ground other than that of insufficiency of compensation and any damages.

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§54-2-14a. Alternative method for condemnation by state or its political subdivision.

Prior to any report by condemnation commissioners, or verdict of a jury, if the applicant be the State of West Virginia or any political subdivision thereof, and be otherwise authorized by law to make payment as required in this section, on filing its petition as authorized in this article, and if the court or judge is satisfied that the purpose for which the property or interest or right therein, is sought to be condemned is a public use for which private property may be appropriated on compensating the owner, the applicant may thereupon acquire title to, and enter upon, take possession of, appropriate and use the property, or interest or right therein, sought to be condemned for the purposes stated in the petition by following the method provided in this section.

Before entry, taking possession, appropriation, or use, the applicant shall pay into court such sum as it shall estimate to be the fair value of the property, or estate, right, or interest therein, sought to be condemned, including, where applicable, the damages, if any, to the residue beyond the benefits, if any, to such residue, by reason of the taking. The court or judge may, at the request of any party to the proceeding, require the clerk of the court to give an additional bond, adequate to protect such deposit with the clerk; and if such bond is required, the applicant shall pay the necessary premiums.

Upon such payment into court, the title to the property, or interest or right therein, sought to be condemned, shall be vested in the applicant, and the court or judge shall, at the request of the applicant, make an order permitting the applicant at once to enter upon, take possession, appropriate and use the property, or interest or right therein, sought to be condemned for the purposes stated in the petition, but the owners of such property, or interest or right therein, at the time of such payment, including lienors and conflicting claimants, shall have such title, interest, or right in the money paid into court as they had in the property, or interest or right therein, sought to be condemned, and all liens by deed of trust, judgment or otherwise, upon such property, or interest or right therein, shall be transferred to such fund in court, subject to the provisions of this section. The title in the applicant shall be defeasible until the compensation and any damages are determined in the condemnation proceedings and the applicant has paid any excess amount into court.

Upon petition to the court or judge, any person entitled thereto may be paid his pro rata share of the money paid into court, or a portion thereof, as ordered by the court or judge, but the acceptance of such payment shall not limit the amount to be allowed by the report of the condemnation commissioners, or the verdict of a jury, if there be one. Proceedings for the distribution of the money so paid into court shall be conducted as provided in section eighteen of this article to the extent that the provisions therein are applicable. No party to the condemnation proceeding shall be permitted to introduce evidence of such payment or of the amount so paid into court, or of any amount which has been accepted by any party, nor shall reference be made thereto during the course of the trial.

If the applicant shall enter upon or take possession of the property, under the authority of this section, and shall injure the property, the applicant shall not be entitled, without the

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consent of the defendant, to abandon the proceeding for the condemnation thereof, but such proceeding shall proceed to final award or judgment, and the amount of compensation and any damages as finally determined in such proceeding shall be paid in the manner provided by this section.

When, after payment into court as provided under the authority of this section, the amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there be one, exceeds the amount which has been paid into court, the excess amount, together with interest thereon at ten percent from the date of the filing of the petition to the date of payment of the excess amount into court, may, at any time within three months after the report or verdict of a jury, as the case may be, has been confirmed and ordered to be recorded, be paid into court by the applicant for the persons entitled thereto. In no other instance shall interest be allowed on payments made pursuant to the provisions of this section. If the amount which has been paid into court pursuant to this section exceeds the amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there be one, the excess shall be repaid to the applicant out of such fund in court, or, if the amount remaining in the fund be insufficient, then the persons to whom the fund, or any part thereof, has been paid, shall reimburse the applicant, on a pro rata basis, but without interest. If the applicant has the right to abandon the proceeding and does so, the amount which has been paid into court pursuant to this section shall be repaid to the applicant from such fund in court and by any persons to whom the fund, or any part thereof, has been paid, on a pro rata basis, but without interest.

If the amount allowed by the report of the condemnation commissioners, or the verdict of the jury, if there be one, does not exceed the sum paid into court and it shall appear that the latter amount was tendered by the applicant to the defendant prior to the institution of the proceeding, the defendant shall pay the costs of the proceeding in the trial court unless the refusal to accept the tender was based on some ground other than that of insufficiency of compensation and any damages.

When the report of the condemnation commissioners, or the verdict of a jury, if there be one, has been confirmed and ordered to be recorded, and the excess amount, if any, has been paid into court as provided herein, the title to the property, or interest or right therein, so paid for shall be absolutely and indefeasibly vested in the applicant in fee simple or to the extent described in the petition: Provided, That in the case of a public road title to the right-of-way only shall absolutely vest in the applicant.

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§54-2-15. Alternative procedure for condemnation by business corporation; bond.

Any business corporation, entitled to exercise the powers of eminent domain under this chapter, may file with its petition a bond for a sufficient amount with good sureties, payable to the owner of the property proposed to be taken to secure to such owner payment for such property and all damages to which he shall be entitled for the taking thereof, and if the owner being sui juris shall appear and make no objection to such bond, the applicant shall be entitled to take possession of the property sought to be condemned, for the purposes stated in the petition. But if objection be made to the form, amount of, or sureties on, such bond, or if the owner cannot be found, or is not sui juris, the court or judge shall fix a day for the hearing of any objections to such bond and of the request of the applicant to approve the same; and at any time after five days' written notice shall have been given to the owner or to his guardian or committee, if he be not sui juris, and if the owner cannot be found, or his guardian or committee, the owner not being sui juris, then, after five days' written notice posted upon the land, which notice shall state the time and place for such hearing, the court or the judge shall proceed to hear and determine the matters arising upon such objection and request, and may require evidence as to the sufficiency of the surety or sureties and as to the sufficiency of the amount of the bond, and may, in its or his discretion, require new and additional sureties and a bond for a larger amount and in a more satisfactory form, and when satisfied as to the form, amount and sufficiency of such bond and sureties, and that the purpose for which the property is to be appropriated is a public use for which private property may be taken upon compensating the owner, the court or judge shall approve the bond and make an order permitting the applicant to enter upon, take possession, appropriate and use the land or property sought to be condemned for the purposes stated in the petition. At any time during the subsequent proceedings on such petition, if it shall appear necessary so to do in order to protect the owner and assure unto him the payment of the compensation and damages to which he may be entitled, the court or judge may require the applicant to give a new and additional bond with sureties satisfactory to the court or judge.

Any indemnity company authorized to transact business in the State of West Virginia shall be deemed a good and sufficient surety on any bond required under this section.

If the applicant shall enter upon or take possession of the property under the provisions of this section, and shall do any work thereon, or cause any injury or damage to such property, it shall not thereafter be entitled, without the consent of the defendant, to abandon the proceeding for the condemnation thereof, but the same shall proceed with reasonable dispatch to a finality and the applicant shall pay to the owner of the land the amount of the compensation and damages as finally determined in such proceedings, with interest at ten percent from the date of the filing of the petition.

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§54-2-16. Increase or decrease in award after payment into court; costs.

When, after such payment into court as is mentioned in section thirteen of this article a subsequent report is made which is confirmed and ordered to be recorded, or the verdict of a jury is found, if the sum ascertained by such subsequent report or verdict exceed what was so paid, and the applicant fail to pay the same, judgment shall be given against it for the amount of such excess, with ten percent interest thereon from the date of filing of the petition until payment, but if what was so paid exceeds the sum ascertained by such subsequent report or verdict, the excess shall be repaid to the applicant out of the fund in court, or by the persons to whom the same shall have been paid. If the sum ascertained by such subsequent report or verdict does not exceed the sum ascertained by the former report, the party on whose motion the former report was set aside, recommitted, or other commissioners appointed, or trial by jury demanded, if he be a defendant therein, shall pay the costs occasioned by such motion, unless such former report was set aside, recommitted or other commissioners appointed on some other ground than that of insufficiency of compensation.

If the applicant has stated in his application the sum of money which he is ready to pay to the owners for any parcel of land proposed to be taken, and it appear by a report confirmed and ordered to be recorded, or by a verdict of a jury, that he is entitled to take such parcel for the purpose mentioned in his application without paying any greater compensation therefor, he shall be adjudged his costs in respect to such parcel, out of the compensation to be paid therefor to the owners.

In cases not otherwise provided for, the applicant shall pay the costs of the proceedings.

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§54-2-16a. Liability for costs generally.

Except as otherwise specially provided, all costs of a condemnation proceeding in the trial court shall be paid by the applicant. In every condemnation proceeding in an appellate court, costs shall be recovered in such court by the party substantially prevailing.

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§54-2-17. Effect of judgment against applicant for excess.

When judgment is rendered against the applicant, pursuant to the preceding section, for any excess ascertained by such subsequent report or verdict, with interest, the applicant shall thereafter have no right to the possession of the land until the judgment is satisfied; but from the time of such satisfaction by the payment of the money to the person entitled thereto, or into court, or from the time of the confirmation of the subsequent report or verdict, if no additional compensation be thereby ascertained, the title to that part of the land for which such compensation has been made shall be vested as provided in section twelve of this article.

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§54-2-18. Payment to clerk; disposition of money paid into court; determination of conflicting claims; notice to condemnee.

Payment of an award or judgment, or any money, under any of the provisions of this chapter may be made to the clerk of the court in which such proceeding is had, and such payment shall be deemed to be a payment into court. Within ten days after the payment of an award, judgment or money into court pursuant to the provisions of this chapter, the condemnor shall serve notice upon the parties of record except nonresidents and unknown parties whose interests the applicant seeks to condemn, or upon their counsel of record. Service of notice by registered or certified mail to the parties' last- known addresses shall be deemed sufficient. Notwithstanding any other provision of this chapter to the contrary, failure to serve such notice shall result in the accrual of interest at ten percent upon the award, judgment or money paid into court from the filing of the petition until such notice is served or until disbursement be made to the persons entitled thereto. The clerk to whom payment is so made, together with the surety on his official bond, shall be liable therefor, as for other moneys collected by him by virtue of his office.

Upon money being paid into court, pursuant to the provisions of this chapter, and the court or judge being satisfied that the persons entitled thereto are before the court or judge, it or he shall make such distribution or disposition of such money as is proper, having due regard to the interest of all persons therein, and in what proportions such money is properly payable.

If it shall appear that the petition states the persons or classes of persons, who, in the opinion of the applicant, are vested with the superior right or claim of title in the property, or interest or right therein, condemned or sought to be condemned or in the amount allowed or to be allowed by the report of the condemnation commissioners, or the verdict of a jury, if there be one, and it does not appear from the record or otherwise that there is any denial or dispute, by any person or party in interest, of such statement in the petition, the court or judge may direct that the money paid into court, after withholding therefrom any sum necessary for payment of any taxes which are a lien upon the property, interest, or right, be disbursed and distributed in accordance with the statement in the petition, among the persons entitled thereto, except that with respect to any persons appearing to be infants, incompetents, incarcerated convicts, or under any other legal disability, the court or judge shall inquire into their rights or claims, independent of any statement in the petition, and any order for disbursement or distribution shall conserve and protect the rights or claims of such persons in and to the money paid into court.

If it shall appear to the court or judge, from the record or otherwise, that there exists a controversy among claimants to the money paid into court, or to the ownership of the property, or interest or right therein, condemned or sought to be condemned, the court or judge shall enter an order setting a time for hearing the case and determining the rights and claims of all persons entitled to the money paid into court or to any interest or share therein. To aid in properly disposing of the money, the court or judge may appoint a commissioner to take evidence of the conflicting claims. The court or judge may direct publication to be made

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requiring all who are interested to appear at the time set for hearing the case to present their respective claims. Such costs shall be allowed to the prevailing persons as the court or judge shall direct. Upon a determination by the court or judge of the rights and claims of the persons entitled to the money paid into court, with or without a report of such commissioner, judgment shall be entered directing the disbursement or distribution, after withholding for taxes as provided in the next preceding paragraph, to the persons entitled thereto, provided that the rights or claims of persons under legal disability shall be protected as provided in the next preceding paragraph.

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§54-2-19. Compensation of commissioners and jurors.

Each commissioner shall receive as compensation for services in each eminent domain proceeding a reasonable amount to be fixed by an order entered of record in the proceeding, said compensation not to exceed the sum of $50 per day to be taxed as a part of the costs of the proceeding.

The jurors shall receive the same compensation fixed by law for jurors in felony cases, to be taxed as a part of the costs of the proceeding.

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§54-2-20. Recordation of certified copy of condemnation order.

When land or an estate or interest therein is taken or appropriated under the provisions of this chapter, the clerk of the court in which such proceeding is had shall, at the cost of the applicant, file and record with the clerk of the county court of each county wherein such land is, a certified copy of the order or orders of appropriation, and from the time of the filing thereof as aforesaid, the applicant shall be deemed a purchaser of the land or the estate or interest therein so taken or appropriated, with like effect as if the record owner, if made a party to such proceeding, had executed to such applicant a deed for the land or the estate or interest therein so taken or appropriated. The clerk shall record and index the same in the manner provided in section seven, article four, chapter fifty-one of this code.

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§54-2-21. Effective date of new percent interest rates.

The percent interest rate provided for in sections twelve, thirteen, fourteen, fourteen-a, fifteen, sixteen and eighteen of this article, shall be applicable only to condemnation proceedings hereafter instituted. The rate of interest previously applicable to proceedings under the above sections shall continue to be applicable to condemnation proceedings heretofore instituted.

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