

## **Chapter 40A.**

### **Eminent Domain.**

#### Article 1.

#### General.

#### **§ 40A-1. Exclusive provisions.**

(a) Notwithstanding the provisions of any local act, it is the intent of the General Assembly that, effective August 15, 2006, the uses set out in G.S. 40A-3 are the exclusive uses for which the authority to exercise the power of eminent domain is granted to private condemnors, local public condemnors, and other public condemnors. Effective August 15, 2006, a local act granting the authority to exercise the power of eminent domain to a private condemnor, local public condemnor, or other public condemnor for a use or purpose other than those granted to it in G.S. 40A-3(a), (b), (b1), or (c) is not effective for that use or purpose. Provided that, any eminent domain action commenced before August 15, 2006, for a use or purpose granted in a local act, may be lawfully completed pursuant to the provisions of that local act. The provisions of this subsection shall not repeal any provision of a local act limiting the purposes for which the authority to exercise the power of eminent domain may be used.

(b) It is the intent of the General Assembly that the procedures provided by this Chapter shall be the exclusive condemnation procedures to be used in this State by all private condemnors and all local public condemnors. All other provisions in laws, charters, or local acts authorizing the use of other procedures by municipal or county governments or agencies or political subdivisions thereof, or by corporations, associations or other persons are hereby repealed effective January 1, 1982. Provided, that any condemnation proceeding initiated prior to January 1, 1982, may be lawfully completed pursuant to the provisions previously existing.

(c) This Chapter shall not repeal any provision of a local act limiting the purposes for which property may be condemned. Notwithstanding the language of G.S. 40A-3(b), this Chapter also shall not repeal any provision of a local act creating any substantive or procedural requirement or limitation on the authority of a local public condemnor to exercise the power of eminent domain outside of its boundaries. (1981, c. 919, s. 1; 2006-224, s. 1; 2006-259, s. 47.)

#### **§ 40A-2. Definitions.**

As used in this Chapter the following words and phrases have the meanings indicated unless the context clearly requires another meaning:

- (1) "Condemnation" means the procedure prescribed by law for exercising the power of eminent domain.
- (2) "Condemnor" means those listed in G.S. 40A-3.
- (3) "Eminent domain" means the power to divest right, title or interest from the owner of property and vest it in the possessor of the power against the will of the owner upon the payment of just compensation for the right, title or interest divested.
- (4) "Judge" means a resident judge of the superior court in the district where the cause is pending, or special judge residing in said district, or a judge of the superior court assigned to hold the courts of said district or an emergency or special judge holding court in the county where the cause is pending.
- (5) "Owner" includes the plural when appropriate and means any person having an interest or estate in the property.

- (6) "Person" includes the plural when appropriate and means a natural person, and any legal entity capable of owning or having interest in property.
- (7) "Property" means any right, title, or interest in land, including leases and options to buy or sell. "Property" also includes rights of access, rights-of-way, easements, water rights, air rights, and any other privilege or appurtenance in or to the possession, use, and enjoyment of land. (1981, c. 919, s. 1.)

**§ 40A-3. By whom right may be exercised.**

(a) Private Condemnors. – For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

- (1) Corporations, bodies politic or persons have the power of eminent domain for the construction of railroads, power generating facilities, substations, switching stations, microwave towers, roads, alleys, access railroads, turnpikes, street railroads, plank roads, tramroads, canals, telegraphs, telephones, electric power lines, electric lights, public water supplies, public sewerage systems, flumes, bridges, and pipelines or mains for the transportation of petroleum products, coal, gas, limestone or minerals. Land condemned for any liquid pipelines shall:
  - a. Not be less than 50 feet nor more than 100 feet in width; and
  - b. Comply with the provisions of G.S. 62-190(b).
 The width of land condemned for any natural gas pipelines shall not be more than 100 feet.
- (2) School committees or boards of trustees or of directors of any corporation holding title to real estate upon which any private educational institution is situated, have the power of eminent domain in order to obtain a pure and adequate water supply for such institution.
- (3) Franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commission, have the power of eminent domain for the purpose of constructing and operating union bus stations: Provided, that this subdivision shall not apply to any city or town having a population of less than 60,000.
- (4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial siding.
- (5) A condemnation in fee simple by a State-owned railroad company for the purposes specified in subdivision (4) of this subsection and as provided under G.S. 124-12(2).

The width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width.

No rights granted or acquired under this subsection shall in any way destroy or abridge the rights of the State to regulate or control any railroad company or to regulate foreign corporations doing business in this State. Whenever it is necessary for any railroad company doing business in this State to cross the street or streets in a town or city in order to carry out the orders of the Utilities Commission, to construct an industrial siding, the power is hereby conferred upon such railroad company to occupy such street or streets of any such town or city within the State. Provided, license so to do be first obtained from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

No such condemnor shall be allowed to have condemned to its use, without the consent of the owner, his burial ground, usual dwelling house and yard, kitchen and garden, unless condemnation of such property is expressly authorized by statute.

The power of eminent domain shall be exercised by private condemnors under the procedures of Article 2 of this Chapter.

(b) Local Public Condemnors – Standard Provision. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property, either inside or outside its boundaries, for the following purposes.

- (1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.
- (2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.
- (3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.
- (4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.
- (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.
- (6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.
- (7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.
- (8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3B, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.
- (9) Opening, widening, extending, or improving public wharves.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this Chapter.

(b1) Local Public Condemnors – Modified Provision for Certain Localities. – For the public use or benefit, the governing body of each municipality or county shall possess the power of eminent domain and may acquire by purchase, gift or condemnation any property or interest therein, either inside or outside its boundaries, for the following purposes.

- (1) Opening, widening, extending, or improving roads, streets, alleys, and sidewalks. The authority contained in this subsection is in addition to the authority to acquire rights-of-way for streets, sidewalks and highways under Article 9 of Chapter 136. The provisions of this subdivision (1) shall not apply to counties.
- (2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311 for cities, or G.S. 153A-274 for counties.
- (3) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.
- (4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works, or sewer and septic tank lines and systems.
- (5) Establishing, enlarging, or improving hospital facilities, cemeteries, or library facilities.
- (6) Constructing, enlarging, or improving city halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency.
- (7) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156.
- (8) Acquiring designated historic properties, designated as such before October 1, 1989, or acquiring a designated landmark designated as such on or after October 1, 1989, for which an application has been made for a certificate of appropriateness for demolition, in pursuance of the purposes of G.S. 160A-399.3, Chapter 160A, Article 19, Part 3, effective until October 1, 1989, or G.S. 160A-400.14, whichever is appropriate.
- (9) Opening, widening, extending, or improving public wharves.
- (10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.
- (11) Establishing access for the public to public trust beaches and appurtenant parking areas.

The board of education of any municipality or county or a combined board may exercise the power of eminent domain under this Chapter for purposes authorized by Chapter 115C of the General Statutes.

The power of eminent domain shall be exercised by local public condemnors under the procedures of Article 3 of this chapter.

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island. This subsection, excluding subdivision (11) of this subsection, applies to the Town of Duck.

(c) Other Public Condemnors. – For the public use or benefit, the following political entities shall possess the power of eminent domain and may acquire property by purchase, gift, or condemnation for the stated purposes.

- (1) A sanitary district board established under the provisions of Part 2 of Article 2 of Chapter 130A for the purposes stated in that Part.
- (2) The board of commissioners of a mosquito control district established under the provisions of Part 2 of Article 12 of Chapter 130A for the purposes stated in that Part.
- (3) A hospital authority established under the provisions of Part B of Article 2 of Chapter 131E for the purposes stated in that Part, provided, however, that the provisions of G.S. 131E-24(c) shall continue to apply.
- (4) A watershed improvement district established under the provisions of Article 2 of Chapter 139 for the purposes stated in that Article, provided, however, that the provisions of G.S. 139-38 shall continue to apply.
- (5) A housing authority established under the provisions of Article 1 of Chapter 157 for the purposes of that Article, provided, however, that the provisions of G.S. 157-11 shall continue to apply.
- (6) A corporation as defined in G.S. 157-50 for the purposes of Article 3 of Chapter 157, provided, however, the provisions of G.S. 157-50 shall continue to apply.
- (7) A commission established under the provisions of Article 22 of Chapter 160A for the purposes of that Article.
- (8) An authority created under the provisions of Article 1 of Chapter 162A for the purposes of that Article.
- (9) A district established under the provisions of Article 4 of Chapter 162A for the purposes of that Article.
- (10) A district established under the provisions of Article 5 of Chapter 162A for purposes of that Article.
- (11) The board of trustees of a community college established under the provisions of Article 2 of Chapter 115D for the purposes of that Article.
- (12) A district established under the provisions of Article 6 of Chapter 162A for the purposes of that Article.
- (13) A regional public transportation authority established under Article 26 of Chapter 160A of the General Statutes for the purposes of that Article.

The power of eminent domain shall be exercised by a public condemnor listed in this subsection under the procedures of Article 3 of this Chapter. (1852, c. 92, s. 1; R.C., c. 61, s. 9; 1874-5, c. 83; Code, s. 1698; Rev., s. 2575; 1907, cc. 39, 458, 783; 1911, c. 62, ss. 25, 26, 27; 1917, cc. 51, 132; C.S., s. 1706; 1923, c. 205; Ex. Sess. 1924, c. 118; 1937, c. 108, s. 1; 1939, c.

228, s. 4; 1941, c. 254; 1947, c. 806; 1951, c. 1002, ss. 1, 2; 1953, c. 1211; 1957, c. 65, s. 11; c. 1045, s. 1; 1961, c. 247; 1973, c. 507, s. 5; c. 1262, s. 86; 1977, c. 771, s. 4; 1981, c. 919, s. 1; 1983, c. 378, s. 2; 1983 (Reg. Sess., 1984), c. 1084; 1985, c. 689, s. 10; c. 696, s. 2; 1987, c. 2, s. 1; c. 564, s. 13; c. 783, s. 6; 1989, c. 706, s. 3; c. 740, s. 1.1; 2000-146, s. 8; 2001-36, ss. 1, 3; 2001-478, s. 2; 2001-487, s. 58; 2002-172, s. 4.1; 2003-282, s. 1; 2003-416, s. 2; 2004-203, s. 32(a), (b); 2006-224, s. 2; 2006-259, s. 47; 2014-86, s. 1; 2017-211, s. 7.)

**§ 40A-4. No prior purchase offer necessary.**

The power to acquire property by condemnation shall not depend on any prior effort to acquire the same property by gift or purchase, nor shall the power to negotiate for the gift or purchase of property be impaired by initiation of condemnation proceedings. A potential condemnor who seeks to acquire property by gift or purchase shall give the owner written notice of the provisions of G.S. 40A-6. (1981, c. 919, s. 1; 1997-270, s. 4.)

**§ 40A-5. Condemnation of property owned by other condemnors.**

(a) A condemnor listed in G.S. 40A-3(a), (b) or (c) shall not possess the power of eminent domain with respect to property owned by the State of North Carolina or a State-owned railroad as defined in G.S. 124-11 unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Secretary of Administration if the Council of State delegates this authority to the Secretary. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property.

(b) Unless otherwise provided by statute a condemnor listed in G.S. 40A-3(a), (b) or (c) may condemn the property of a private condemnor if such property is not in actual public use or not necessary to the operation of the business of the owner. Unless otherwise provided by statute a condemnor listed in G.S. 40A-3(b) or (c) may condemn the property of a condemnor listed in G.S. 40A-3(b) or (c) if the property proposed to be taken is not being used or held for future use for any governmental or proprietary purpose. (1981, c. 919, s. 1; 2000-146, s. 9.)

**§ 40A-6. Reimbursement of owner for taxes paid on condemned property.**

(a) An owner whose property is totally taken in fee simple by a condemnor exercising the power of eminent domain, under this Chapter or any other statute, shall be entitled to reimbursement from the condemnor of the pro rata portion of real property taxes paid by the owner that are allocable to a period subsequent to vesting of title in the condemnor, or the effective date of possession of the real property, whichever is earlier.

(b) An owner who meets the following conditions is entitled to reimbursement from the condemnor for all deferred taxes paid by the owner pursuant to G.S. 105-277.4(c) as a result of the condemnation:

- (1) The owner is a natural person whose property is taken in fee simple by a condemnor exercising the power of eminent domain under this Chapter or any other statute.
- (2) The owner also owns agricultural land, horticultural land, or forestland that is contiguous to the condemned property and that is in active production.

The definitions in G.S. 105-277.2 apply in this subsection. (1975, c. 439, s. 1; 1981, c. 919, s. 1; 1997-270, s. 1.)

**§ 40A-7. Acquisition of whole parcel or building.**

(a) When the proposed project requires condemnation of only a portion of a parcel of land leaving a remainder of such shape, size or condition that it is of little value, a condemnor may acquire the entire parcel by purchase or condemnation. If the remainder is to be condemned the petition filed under the provisions of G.S. 40A-20 or the complaint filed under the provisions of G.S. 40A-41 shall include:

- (1) A determination by the condemnor that a partial taking of the land would substantially destroy the economic value or utility of the remainder; or
- (2) A determination by the condemnor that an economy in the expenditure of public funds will be promoted by taking the entire parcel; or
- (3) A determination by the condemnor that the interest of the public will be best served by acquiring the entire parcel.

(b) Residues acquired under this section may be sold or disposed of in any manner provided for the disposition of property, or may be exchanged for other property needed by the condemnor.

(c) When the proposed project requires condemnation of a portion of a building or other structure, the condemnor may acquire the entire building or structure by purchase or condemnation, together with the right to enter upon the surrounding land for the purpose of removing the building or structure. If the entire building is to be condemned the petition filed under the provisions of G.S. 40A-20, or the complaint filed under the provisions of G.S. 40A-41 shall include a determination by the condemnor either:

- (1) That an economy in the expenditure of public funds will be promoted by acquiring the entire building or structure; or
- (2) That it is not feasible to cut off a portion of the building or structure without destroying the whole; or
- (3) That the convenience, safety, or improvement of the project will be promoted by acquiring the entire building or structure. Nothing in this subsection shall be deemed to compel the condemnor to condemn the underlying fee of the portion of any building or structure that lies outside the project. (1981, c. 919, s. 1.)

**§ 40A-8. Costs.**

(a) In any action under the provisions of Article 2 or Article 3 of this Chapter, the court in its discretion may award to the owner a sum to reimburse the owner for charges he has paid for appraisers, engineers and plats, provided such appraisers or engineers testify as witnesses, and such plats are received into evidence as exhibits by order of the court.

(b) If a condemnor institutes a proceeding to acquire by condemnation any property and (i) if the final judgment in a resulting action is that the condemnor is not authorized to condemn the property, or (ii) if the condemnor abandons the action, the court with jurisdiction over the action shall after making appropriate findings of fact award each owner of the property sought to be condemned a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for: his reasonable costs; disbursements; expenses (including reasonable attorney, appraisal, and engineering fees); and, any loss suffered by the owner because he was unable to transfer title to the property from the date of the filing of the complaint under G.S. 40A-41.

(c) If an action is brought against a condemnor under the provisions of G.S. 40A-20 or 40A-51 seeking compensation for the taking of any interest in property by the condemnor and judgment is for the owner the court shall award to the owner as a part of the judgment after appropriate finding of fact a sum that, in the opinion of the court based upon its finding of fact, will reimburse the owner as set out in subsection (b). (1981, c. 919, s. 1.)

**§ 40A-9. Removal of structures on condemned land; lien.**

At the request of the owner the condemnor shall allow the owner of property acquired by condemnation to remove any timber, building, permanent improvement, or fixture wholly or partially located on or affixed to the property unless such removal would be inconsistent with the purpose for which condemnation is made, and shall specify a reasonable time within which it may be removed. If the report of the commissioners deducted the value of any such property to be removed from the award of compensation and allowed the cost of removal as an element of damages and the owner fails to remove it within the time allowed, the condemnor may remove it and the cost of the removal and storage of the property shall be chargeable against the owner and a lien upon any remainder of the property not acquired by the condemnor to be recovered or foreclosed in the manner provided by law for recovery of debt or foreclosure of mortgages. (1981, c. 919, s. 1.)

**§ 40A-10. Sale or other disposition of land condemned.**

When any property condemned by the condemnor is no longer needed for the purpose for which it was condemned, it may be used for any other public purpose or may be sold or disposed of in the manner prescribed by law for the sale and disposition of surplus property. (1981, c. 919, s. 1.)

**§ 40A-11. Right of entry prior to condemnation.**

Any condemnor without having filed a petition or complaint, depositing any sum or taking any other action provided for in this Chapter, is authorized to enter upon any lands, but not structures, to make surveys, borings, examinations, and appraisals as may be necessary or expedient in carrying out and performing its rights or duties under this Chapter. The condemnor shall give 30 days' notice in writing to the owner at his last known address and the party in possession of the land of the intended entry authorized by this section.

Entry under this section shall not be deemed a trespass or taking within the meaning of this Chapter, however, the condemnor shall make reimbursement for any damage resulting from such activities, and the owner is entitled to bring an action to recover for the damage. If the owner recovers damages of twenty-five percent (25%) over the amount offered by the condemnor for reimbursement for its activities the court, in its discretion, may award reasonable attorney fees to the owner. (1981, c. 919, s. 1.)

**§ 40A-12. Additional rules.**

Where the procedure for conducting an action under this Chapter is not expressly provided for in this Chapter or by the statutes governing civil procedure, or where the civil procedure statutes are inapplicable, the judge before whom such proceeding may be pending shall have the power to make all the necessary orders and rules of procedure necessary to carry into effect the object and intent of this Chapter. The practice in each case shall conform as near as may be to the practice in other civil actions. (1981, c. 919, s. 1.)



**§ 40A-13. Costs and appeal.**

In addition to any reimbursement provided for in G.S. 40A-8 the condemnor shall pay all court costs taxed by the court. Either party shall have a right of appeal to the appellate division for errors of law committed in any proceedings provided for in this Chapter in the same manner as in any other civil actions and it shall not be necessary that an appeal bond be posted. (1981, c. 919, s. 1.)

**§§ 40A-14 through 40A-18. Reserved for future codification purposes.**

Article 2.

Condemnation Proceedings by Private Condemnors.

**§ 40A-19. Proceedings by private condemnors.**

Any private condemnor enumerated in G.S. 40A-3(a), possessing by law the right of eminent domain in this State shall have the right to acquire property required for the purposes of its incorporation or for the purposes specified in this Chapter in the manner and by the special proceedings herein prescribed. (1871-2, c. 138, s. 13; Code, ss. 1943, 2009; 1885, c. 168; 1893, c. 63; 1899, c. 64; 1901, cc. 6, 41, s. 2; 1903, c. 159, s. 16; c. 562; Rev., s. 2579; C.S., s. 1715; 1951, c. 59, s. 1; 1981, c. 919, s. 1.)

**§ 40A-20. Petition filed; contents.**

For the purpose of acquiring property a condemnor listed in G.S. 40A-3(a), or the owner of the property sought to be condemned, may present a petition to the clerk of the superior court of any county in which the real estate described in the petition is situated, praying for the appointment of commissioners of appraisal. The petition shall be signed and verified. If filed by the condemnor, it must contain a description of the property which the condemnor seeks to acquire; and it must state that the condemnor is duly incorporated, and that it is its intention in good faith to conduct and carry on the public business authorized by its charter, stating in detail the nature of its public business, and the specific use of the property; and that the property described in the petition is required for the purpose of conducting the proposed business. The petition, if filed by the condemnor, must also contain a statement as to whether the owner will be permitted to remove all or a specified portion of any buildings, structures, permanent improvements, or fixtures situated on or affixed to the land. The petition, whether filed by the condemnor or the owner, must also state the names and places of residence of all other owners, so far as the same can by reasonable diligence be ascertained, or those who claim to be owners of the property. If any such persons are infants, their ages, as near as may be known, must be stated; and if any such persons are incompetents, inebriates or are unknown, that fact must be stated, together with any other allegations and statements of liens or encumbrances on the property which the condemnor or the owner may see fit to make.

Nothing in this section shall in any manner affect an owner's common-law right to bring an action in tort for damage to his property. (1871-2, c. 138, s. 14; Code, s. 1944; 1893, c. 396; Rev., s. 2580; 1907, c. 783, s. 3; C.S., s. 1716; 1981, c. 919, s. 1.)

**§ 40A-21. Notice of proceedings.**

Notice of all proceedings brought hereunder shall be filed with the clerk of superior court of each county in which any part of the land is located in the form and manner provided by G.S. 1-116, and the clerk shall index and cross-index this notice as required by G.S. 1-117. In the record of lis pendens and in the judgment docket required by G.S. 7A-109 the clerk shall always index the name of the condemnor as the plaintiff and the name of the property owner as the defendant irrespective of whether the condemning party is the plaintiff or defendant. The filing of such notice shall be constructive notice of the proceeding to any person who subsequently acquires any interest in or lien upon said property, and the condemnor shall take all property condemned under this Article free of the claims of any such person. (1969, c. 864; 1981, c. 919, s. 1.)

**§ 40A-22. Service.**

A summons as in other cases of special proceedings, together with a copy of the petition, must be served on all persons whose estates or interests are to be affected by the proceedings, at least 10 days prior to the hearing of the same by the court. (1871-2, c. 138, s. 14; Code, s. 1944; Rev., s. 2581; C.S., s. 1717; 1981, c. 919, s. 1.)

**§ 40A-23. Service where parties unknown.**

If the person on whom service of summons and petition is to be made is unknown, or his residence is unknown and cannot by reasonable diligence be ascertained, then service may be made by publishing a notice, stating the time and place within which such person must appear and plead, the object thereof, with a description of the land to be affected by the proceedings, in accordance with the provisions of G.S. 1A-1, Rule 4(j)(9)c. In such cases the State Treasurer shall be served as custodian of the Escheat Fund and may become a party to the action. (Code, s. 1944, subsec. 5; Rev., s. 2582; C.S., s. 1718; 1971, c. 1093, s. 18; 1981, c. 919, s. 1.)

**§ 40A-24. Orders served as in special proceedings in absence of other provisions.**

In all cases not herein otherwise provided for, service of orders, notices, and other papers in the special proceedings authorized by this Chapter may be made as in other special proceedings. (Code, s. 1944, subsec. 7; Rev., s. 2583; C.S., s. 1719; 1981, c. 919, s. 1.)

**§ 40A-25. Answer to petition; hearing; commissioners appointed.**

On presenting such petition to the clerk of superior court, with proof of service of a copy thereof, and of the summons, all or any of the persons whose estates or interests are to be affected by the proceedings may answer such petition and show cause against granting the prayer of the same. The clerk shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer of the petition, shall make an order for the appointment of three commissioners and shall fix the time and place for the first meeting of the commissioners. Each commissioner shall be a resident of the county wherein the property being condemned lies who has no right, title, or interest in or to the property condemned, is not related within the third degree to the owner or to the spouse of the owner, is not an officer, employee or agent of the condemnor, and is disinterested in the rights of the parties in every way. (1871-2, c. 138, s. 15; Code, s. 1945; Rev., s. 2584; C.S., s. 1720; 1981, c. 919, s. 1.)

**§ 40A-26. Powers and duties of commissioners.**

The commissioners, before entering upon the discharge of their duties, shall take and subscribe an oath that they will fairly and impartially appraise the property in the petition. Any one of them may issue subpoenas, administer oaths to witnesses, and any two of them may adjourn the proceedings before them from time to time, in their discretion. Whenever they meet, except by the appointment of the clerk or pursuant to adjournment, they shall cause 10 days' notice of such meeting to be given to the parties who are affected by their proceedings, or their attorney or agent. They shall view the premises described in the petition, hear the proofs and allegations of the parties, and reduce the testimony, if any is taken by them, to writing. After the testimony is closed in each case, and without any unnecessary delay, and before proceeding to the examination of any other claim, a majority of the commissioners being present and acting, shall ascertain and determine the compensation which ought justly to be made by the condemnor to the owners of the property appraised by them. The commissioners shall determine the compensation to be awarded in accordance with the principles established by Article 4 of this Chapter. They shall report the same to the clerk within 10 days. (1871-2, c. 138, ss. 16-18; Code, s. 1946; 1891, c. 160; Rev., s. 2585; C.S., s. 1721; 1981, c. 919, s. 1.)

**§ 40A-27. Form of commissioners' report.**

When the commissioners shall have assessed the compensation, they shall forthwith make and subscribe a written report of their proceedings, in substance as follows:

To the Clerk of the Superior Court of \_\_\_\_ :

We, \_\_\_\_, commissioners appointed by the court to assess the damages that have been and will be sustained by \_\_\_\_, the owner of certain property lying in the county of \_\_\_\_, which \_\_\_\_ the condemnor proposes to condemn for its use, do hereby certify that we met on \_\_\_\_ (or the day to which we were regularly adjourned), and, having first been duly sworn, we visited the premises of the owner, and after taking into full consideration the quality and quantity of the property aforesaid, and all other inconveniences likely to result to the owner, we have estimated and do assess the compensation aforesaid at the sum of \$ \_\_\_\_ .

Given under our hands, the \_\_\_\_ day of \_\_\_\_, A.D. \_\_\_\_ . (R.C., c. 61, s. 17; 1874-5, c. 83; Code, s. 1700; Rev., s. 2586; C.S., s. 1722; 1981, c. 919, s. 1; 1999-456, s. 59.)

**§ 40A-28. Exceptions to report; hearing; when title vests; appeal; restitution.**

(a) Upon the filing of the report, the clerk shall forthwith mail copies to the parties. Within 20 days after the filing of the report any party to the proceedings may file exceptions thereto. The clerk, after notice to the parties, shall hear any exceptions so filed and may thereafter direct a new appraisal, modify or confirm the report, or make such other orders as the clerk may deem right and proper.

(b) If no exceptions are filed to the report, and if the clerk's final judgment rendered upon the petition and proceedings shall be in favor of the condemnor, and upon the deposit by the condemnor of the sum adjudged, together with all costs allowed, into the office of the clerk of superior court, then, in that event, all owners who have been made parties to the proceedings shall be divested of the property or interest therein to the extent set forth in the proceedings. A copy of the judgment, certified under the seal of the court, shall be registered in the county or counties where the land is situated, and the original judgment, or a certified copy thereof, or a certified copy of the registered judgment, may be given in evidence in all actions and proceedings as deeds for property are now allowed in evidence.

(c) Any party to the proceedings may file exceptions to the clerk's final determination on any exceptions to the report and may appeal to the judge of superior court having jurisdiction. Notice of appeal shall be filed within 10 days of the clerk's final determination. Upon appeal the clerk shall transfer the proceedings to the civil issue docket of the superior court. A judge in session shall hear and determine all matters in controversy and, subject to G.S. 40A-29 regarding trial by jury, shall determine any issues of compensation to be awarded in accordance with the provisions of Article 4 of this Chapter.

(d) Notwithstanding the filing of exceptions by any party to any orders or final determination of the clerk or the filing of a notice of appeal to the superior court, the condemnor may, at the time of the filing of the report of commissioners, deposit with the clerk of superior court in the proceedings the sum appraised by the commissioners and, in that event, the condemnor may enter, take possession of, and hold said property in the manner and to the extent sought to be acquired by the proceedings until final judgment is rendered on any appeal.

(e) If, on appeal, the judge shall refuse to condemn the property, then the money deposited with the clerk of court in the proceedings, or so much thereof as shall be adjudged, shall be refunded to the condemnor and the condemnor shall have no right to the property and shall surrender possession of the same, on demand, to the owner. The judge shall have full power and authority to make such orders, judgments and decrees as may be necessary to carry into effect the final judgment rendered in such proceedings, including compensation in accordance with the provisions of G.S. 40A-8.

(f) If the amount adjudged to be paid the owner of any property condemned under this Article shall not be paid within 60 days after final judgment in the proceedings, the right under the judgment to take the property shall ipso facto cease and determine, but the claimant under the judgment shall still remain liable for all amounts adjudged against said claimant except the compensation awarded for the taking of the property.

(g) The provisions of this section shall not preclude any injunctive relief otherwise available to the owner or the condemnor. (Code, s. 1946; 1893, c. 148; Rev., s. 2587; 1915, c. 207; C.S., s. 1723; 1951, c. 59, s. 2; 1955, c. 29, s. 1; 1969, c. 44, s. 47; 1971, c. 528, s. 37; 1981, c. 919, s. 1.)

#### **§ 40A-29. Provision for jury trial on appeal.**

In any proceedings under this Article by a condemnor to acquire property, any party to the proceedings shall be entitled on appeal to superior court to have the amount of compensation determined by a jury unless trial by jury has been waived by all parties. A jury shall determine the compensation to be awarded in accordance with the provisions of Article 4 of this Chapter. (1893, c. 148; Rev., s. 2588; C.S., s. 1724; 1957, c. 582; 1971, c. 528, s. 38; 1981, c. 919, s. 1.)

#### **§ 40A-30. Title of infants, incompetents, inebriates, and trustees without power of sale, acquired.**

In case any property required by a condemnor shall be vested in any trustee not authorized to sell, release and convey the same, or in any infant, incompetent, or inebriate, the superior court shall have power, by a special proceeding, on petition, to authorize and empower such trustee or the general guardian or committee of such infant, incompetent or inebriate, to sell and convey the same to such condemnor, on such terms as may be just. In case any infant, incompetent or inebriate has no general guardian or committee, the court may appoint a special guardian or committee for the purpose of making a sale, release or conveyance, and may require security

from the general or special guardian or committee as the court may deem proper. Before any conveyance or release authorized by this section shall be executed, the terms on which it is to be executed shall be reported to the court on oath. If the court is satisfied that the terms are just to the owner of the property, the court shall confirm the report and direct the proper conveyance or release to be executed, which shall have the same effect as if executed by an owner of the property having legal power to sell and convey the same. (1871-2, c. 138, s. 28; Code, s. 1956; Rev., s. 2590; C.S., s. 1726; 1981, c. 919, s. 1.)

**§ 40A-31. Rights of claimants of fund determined.**

If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the property taken, the clerk or the judge on appeal may direct the money to be paid into the court by the condemnor, and may determine who is entitled to the same and direct to whom the same shall be paid, and may order a reference to ascertain the facts on which such determination and order are to be made. (1871-2, c. 138, s. 19; Code, s. 1947; Rev., s. 2591; C.S., s. 1727; 1981, c. 919, s. 1.)

**§ 40A-32. Attorney for unknown parties appointed; pleadings amended; new commissioners appointed.**

(a) The clerk or the judge on appeal shall appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent, and shall make an allowance to said attorney for his services which shall be taxed in the bill of costs. In such cases the State Treasurer as custodian of the Escheat Fund shall be notified of the appointment of such an attorney.

(b) The clerk or the judge on appeal shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this Chapter as may be necessary, or to cause new parties to be added, and to direct such further notices to be given to any party in interest as it deems proper; and also to appoint other commissioners in place of any who shall die, refuse or neglect to serve or be incapable of serving. (1871-2, c. 138, s. 20; Code, s. 1948; Rev., s. 2592; C.S., s. 1728; 1981, c. 919, s. 1.)

**§ 40A-33. Change of ownership pending proceedings.**

When any proceedings under this Article shall have been commenced, no change of ownership by voluntary conveyance or transfer of the property shall in any manner affect such proceedings, but the same may be carried on and perfected as if no such conveyance or transfer had been made or attempted to be made. (1871-2, c. 138, s. 22; Code, s. 1950; Rev., s. 2594; C.S., s. 1730; 1981, c. 919, s. 1.)

**§ 40A-34. Defective title; how cured.**

If at any time after an attempt to acquire title under this Article has commenced it shall be found that the title thereby attempted to be acquired is defective, the condemnor may commence new proceedings to acquire or perfect such title in the same manner as if no previous attempt had been commenced. At any stage in the new proceedings the court may authorize the condemnor, if in possession, to continue in possession, and if not in possession, to take possession and use the property during the pendency and until the final conclusion of the new proceedings. If the condemnor pays into court a sum determined by the court to be adequate

compensation for the property, the court, in its discretion, may stay all actions or proceedings against the condemnor for its possession. In every such case the party interested in the property may conduct the proceedings to a conclusion if the condemnor delays or omits to prosecute the same. (1871-2, c. 138, s. 23; Code, s. 1951; Rev., s. 2595; C.S., s. 1731; 1981, c. 919, s. 1.)

**§§ 40A-35 through 40A-39. Reserved for future codification purposes.**

Article 3.

Condemnation by Public Condemnors.

**§ 40A-40. Notice of action.**

(a) Not less than 30 days prior to the filing of a complaint under the provisions of G.S. 40A-41, a public condemnor listed in G.S. 40A-3(b) or (c) shall provide notice to each owner (whose name and address can be ascertained by reasonable diligence) of its intent to institute an action to condemn property. (The notice shall be sent to each owner by certified mail, return receipt requested. The providing of notice shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. Notice by publication is not required. Notice to an owner whose name and/or address cannot be ascertained by reasonable diligence is not required in any manner.)

The notice shall contain a general description of the property to be taken and of the amount estimated by the condemnor to be just compensation for the property to be condemned. The notice shall also state the purpose for which the property is being condemned and the date condemnor intends to file the complaint.

(b) In the case of a condemnation action to be commenced pursuant to G.S. 40A-42(a), the notice required by subsection (a) of this section shall substantially comply with the following requirements:

- (1) The notice shall be printed in at least 12 point bold legible type.
- (2) The words "Notice of condemnation" or similar words shall conspicuously appear on the notice.
- (3) The notice shall include the information required by subsection (a) of this section.
- (4) The notice shall contain a plain language summary of the owner's rights, including:
  - a. The right to commence an action for injunctive relief.
  - b. The right to answer the complaint after it has been filed.
- (5) The notice shall include a statement advising the owner to consult with an attorney regarding the owner's rights.

An owner is entitled to no relief because of any defect or inaccuracy in the notice unless the owner was actually prejudiced by the defect or inaccuracy, and the owner is otherwise entitled to relief under Rules 55(d) or 60(b) of the North Carolina Rules of Civil Procedure or other applicable law. (1981, c. 919, s. 1; 1981 (Reg. Sess., 1982), c. 1243, s. 3; 1999-410, s. 1.)

**§ 40A-41. Institution of action and deposit.**

A public condemnor listed in G.S. 40A-3(b) or (c) shall institute a civil action to condemn property by filing in the superior court of any county in which the land is located a complaint containing a declaration of taking declaring that property therein is thereby taken for the use of the condemnor.

The complaint shall contain or have attached thereto the following:

- (1) A statement of the authority under which and the public use for which the property is taken;
- (2) A description of the entire tract or tracts of land affected by the taking sufficient for the identification thereof;
- (3) A statement of the property taken and a description of the area taken sufficient for the identification thereof;
- (4) The names and addresses of those persons who the condemnor is informed and believes may be or, claim to be, owners of the property so far as the same can by reasonable diligence be ascertained, and if any such persons are infants, incompetents, inebriates or under any other disability, or their whereabouts or names unknown, it must be so stated;
- (5) A statement of the sum of money estimated by the condemnor to be just compensation for the taking; and
- (6) A statement as to whether the owner will be permitted to remove all or a specified portion of any timber, buildings, structures, permanent improvements, or fixtures situated on or affixed to the property.
- (7) A statement as to such liens or other encumbrances as the condemnor is informed and believes are encumbrances upon the property and can by reasonable diligence be ascertained.
- (8) A prayer that there be a determination of just compensation in accordance with the provisions of this Article.

The filing of the complaint shall be accompanied by the deposit to the use of the owner of the sum of money estimated by the condemnor to be just compensation for the taking. Upon the filing of the complaint and the deposit of said sum, summons shall be issued to each owner of the property. The summons, together with a copy of the complaint and notice of the deposit shall be served upon the person named therein in the manner provided for the service of process under the provisions of G.S. 1A-1, Rule 4. The condemnor may amend the complaint and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in G.S. 40A-44 of this Chapter. (1935, c. 470, ss. 4, 5; 1947, c. 781; 1971, c. 382, s. 1; 1981, c. 919, s. 1.)

**§ 40A-42. Vesting of title and right of possession; injunction not precluded.**

- (a) (1) Standard Provision. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(1), (8), (9), (10),

(12), or (13) title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.

- (2) Modified Provision for Certain Localities. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b1)(1), (4), (7), (10), or (11), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A-3(c)(8), (9), (10), (12), or (13) title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41.

This subdivision applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

(b) When a local public condemnor is acquiring property by condemnation for purposes other than for the purposes listed in subsection (a) above, title to the property taken and the right to possession shall vest in the condemnor pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor:

- (1) Upon the filing of an answer by the owner who requests only that there be a determination of just compensation and who does not challenge the authority of the condemnor to condemn the property; or
- (2) Upon the failure of the owner to file an answer within the 120-day time period established by G.S. 40A-46; or
- (3) Upon the disbursement of the deposit in accordance with the provisions of G.S. 40A-44.

(c) If the property is owned by a private condemnor, the vesting of title in the condemnor and the right to immediate possession of the property shall not become effective until the superior court has rendered final judgment (after any appeals) that the property is not in actual public use or is not necessary to the operation of the business of the owner, as set forth in G.S. 40A-5(b).

(d) If the answer raises any issues other than the issue of compensation, the issues so raised shall be determined under the provisions of G.S. 40A-47.



(e) The judge shall enter such orders in the cause as may be required to place the condemnor in possession.

(f) The provisions of this section shall not preclude or otherwise affect any remedy of injunction available to the owner or the condemnor. (1981, c. 919, s. 1; 1989 (Reg. Sess., 1990), c. 871, s. 1; 1998-212, s. 9.10; 2001-36, ss. 2, 3; 2001-239, s. 1; 2001-478, s. 2; 2003-282, s. 2; 2004-203, s. 33; 2009-85, s. 1; 2014-86, s. 2.)

#### **§ 40A-43. Memorandum of action.**

The condemnor, at the time of the filing of the complaint containing the declaration of taking and deposit of estimated compensation, shall record a memorandum of action with the register of deeds in all counties in which the land involved is located and said memorandum shall be recorded among the land records of said county. Upon the amending of any complaint affecting the property taken, the condemnor shall record a supplemental memorandum of action. The memorandum of action shall contain:

- (1) The names of those persons who the condemnor is informed and believes to be or claim to be owners of the property and who are parties to said action;
- (2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof;
- (3) A statement of the property taken for public use;
- (4) The date of institution of said action, the county in which said action is pending, and such other reference thereto as may be necessary for the identification of said action. (1981, c. 919, s. 1.)

#### **§ 40A-44. Disbursement of deposit.**

Where there is no dispute as to title the person named in the complaint may apply to the court for disbursement of the money deposited in the court, or any part thereof, as full compensation, or as a credit against just compensation without prejudice to further proceedings in the cause to determine just compensation. Upon such application, the judge shall order that the money deposited be paid forthwith to the person entitled thereto in accordance with the application. Subject to the provisions of G.S. 40A-68 the judge shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable.

No notice to the condemnor of the hearing upon the application for disbursement of deposit shall be necessary. (1981, c. 919, s. 1.)

#### **§ 40A-45. Answer, reply and plat.**

(a) Any person whose property has been taken by the condemnor by the filing of a complaint containing a declaration of taking, may within the time set forth in G.S. 40A-46 file an answer to the complaint. No answer shall be filed to the declaration of taking and notice of deposit. Said answer shall contain the following:

- (1) Such admissions or denials of the allegations of the complaint as are appropriate;
- (2) The names and addresses of the persons filing said answer, together with a statement as to their interest in the property taken;
- (3) Such affirmative defenses or matters as are pertinent to the action; and
- (4) A request that there be a determination of just compensation.

(b) A copy of the answer shall be served on the condemnor provided that failure to serve the answer shall not deprive the answer of its validity. The affirmative allegations of said answer shall be deemed denied. The condemnor may, however, file a reply within 30 days from receipt of a copy of this answer.

(c) The condemnor, within 90 days from the receipt of the answer shall file in the cause a plat of the property taken and such additional area as may be necessary to properly determine the compensation, and a copy thereof shall be mailed to the parties or their attorney; provided, however, the condemnor shall not be required to file a map or plat in less than six months from the date of the filing of the complaint. (1981, c. 919, s. 1.)

**§ 40A-46. Time for filing answer; failure to answer.**

Any person named in and served with a complaint containing a declaration of taking shall have 120 days from the date of service thereof to file answer. Failure to answer within said time shall constitute an admission that the amount deposited is just compensation and shall be a waiver of any further proceeding to determine just compensation; in such event the judge shall enter final judgment in the amount deposited and order disbursement of the money deposited to the owner. Provided, however, at any time prior to the entry of the final judgment the judge may, for good cause shown and after notice to the condemnor extend the time for filing answer for 30 days. (1981, c. 919, s. 1.)

**§ 40A-47. Determination of issues other than damages.**

The judge, upon motion and 10 days' notice by either the condemnor or the owner, shall, either in or out of session, hear and determine any and all issues raised by the pleadings other than the issue of compensation, including, but not limited to, the condemnor's authority to take, questions of necessary and proper parties, title to the land, interest taken, and area taken. (1981, c. 919, s. 1.)

**§ 40A-48. Appointment of commissioners.**

(a) A request to the clerk for the appointment of commissioners to determine compensation for the taking may be made in the answer of the owner, or may be made by motion of either the owner or the condemnor within 60 days after the filing of the answer. After the determination of other issues as provided by G.S. 40A-47, the clerk shall appoint three competent, disinterested persons residing in the county to serve as commissioners. The commissioners shall be sworn and shall go upon the land to appraise the compensation for the property taken and report their findings to the court within a time certain. Each commissioner shall be a person who has no right, title, or interest in or to the property being condemned, is not related within the third degree to the owner or to the spouse of the owner, is not an officer, employee, or agent of the condemnor, and is disinterested in the rights of the parties in every way.

(b) The commissioners shall have the power to inspect the property, hold hearings, swear witnesses, and take evidence as they may, in their discretion, deem necessary, and shall file with the court a report of their determination of the damages sustained.

(c) The report of commissioners shall be in writing and in a form substantially as follows:

TO THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

We, \_\_\_\_\_ and \_\_\_\_\_ Commissioners appointed by the Court to assess the compensation to be awarded to \_\_\_\_\_, the owner of property interest in certain land lying in \_\_\_\_\_ County, North Carolina, which has been taken by the \_\_\_\_\_ (condemnor), for public purposes, do hereby certify that we convened, and, having first been duly sworn, visited the premises, and took such evidence as was presented to us, and after taking into full consideration the quality and quantity of the land and all other facts which reasonably affect its fair market value at the time of the taking, we have determined the fair market value of the property taken to be the sum of \$\_\_\_\_\_ and the compensation for the damage to the remainder of the land of the owner by reason of the taking to be the sum of \$\_\_\_\_\_ (if applicable). GIVEN under our hands, this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

(d) A copy of the report shall at the time of filing be mailed certified or registered mail by the clerk to each of the parties or to their counsel of record. Within 30 days after the mailing of the report, either the condemnor or the owner, may except thereto and demand a trial de novo by a jury as to the issue of compensation. Upon the receipt of such demand the action shall be placed on the civil issue docket of the superior court for trial de novo by a jury as to the issue of compensation, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of compensation in the superior court, nor shall evidence of the deposit by the condemnor into the court be competent upon the trial of the issue of compensation. If no exception to the report of commissioners is filed within the time prescribed, final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners plus interest computed in accordance with G.S. 40A-53 of this Chapter, awards to the property owners just compensation. In the event that the judge is of the opinion and, in his discretion, determines that the award does not provide just compensation, he shall set aside the award and order the case placed on the civil issue docket for determination of the issue of compensation by a jury. (1981, c. 919, s. 1; 1999-456, s. 59.)

**§ 40A-49. No request for commissioners.**

After the determination of other issues as provided by G.S. 40A-47, if no request has been made for the appointment of commissioners within the time permitted by G.S. 40A-48(a), the cause shall be transferred to the civil issue docket for trial as to the issue of just compensation. (1981, c. 919, s. 1.)

**§ 40A-50. Parties, orders; continuances.**

The judge shall appoint an attorney to appear for and protect the rights of any party or parties in interest who are unknown, or whose residence is unknown and who has not appeared in the proceeding by an attorney or agent. The State Treasurer as custodian of the Escheat Fund shall be notified of the appointment of such an attorney. The judge shall appoint guardians ad litem for such parties as are infants, incompetents, or other parties who may be under a disability, and without general guardian, and the judge shall have the authority to make such additional parties as are necessary to the complete determination of the proceeding.

Upon his own motion, or upon motion of any of the parties the judge may, in his discretion, continue the cause until the project is completed or until such earlier time as, in the opinion of

the judge, the effect of condemnation upon said property may be determined. The motion may be heard at a hearing pursuant to G.S. 40A-47 or upon the coming on of the cause for trial, and shall be granted upon a proper showing that the effect of condemnation upon the subject property cannot presently be determined. (1981, c. 919, s. 1.)

**§ 40A-51. Remedy where no declaration of taking filed; recording memorandum of action.**

(a) If property has been taken by an act or omission of a condemnor listed in G.S. 40A-3(b) or (c) and no complaint containing a declaration of taking has been filed the owner of the property, may initiate an action to seek compensation for the taking. The action may be initiated within 24 months of the date of the taking of the affected property or the completion of the project involving the taking, whichever shall occur later. The complaint shall be filed in the superior court and shall contain the following: the names and places of residence of all persons who are, or claim to be, owners of the property, so far as the same can by reasonable diligence be ascertained; if any persons are under a legal disability, it must be so stated; a statement as to any encumbrances on the property; the particular facts which constitute the taking together with the dates that they allegedly occurred, and; a description of the property taken. Upon the filing of said complaint summons shall issue and together with a copy of the complaint be served on the condemnor. The allegations of said complaint shall be deemed denied; however, the condemnor within 60 days of service summons and complaint may file answer thereto. If the taking is admitted by the condemnor, it shall, at the time of filing the answer, deposit with the court the estimated amount of compensation for the taking. Notice of the deposit shall be given to the owner. The owner may apply for disbursement of the deposit and disbursement shall be made in accordance with the applicable provisions of G.S. 40A-44. If a taking is admitted, the condemnor shall, within 90 days of the filing of the answer to the complaint, file a map or plat of the property taken. The procedure hereinbefore set out in this Article and in Article 4 shall be followed for the purpose of determining all matters raised by the pleadings and the determination of just compensation.

(b) The owner at the time of filing of the complaint shall record a memorandum of action with the register of deeds in all counties in which the property involved is located. The memorandum is to be recorded among the land records of the county. The memorandum of action shall contain:

- (1) The names of those persons who the owner is informed and believes to be or claim to be owners of the property;
- (2) A description of the entire tract or tracts affected by the alleged taking sufficient for the identification thereof;
- (3) A statement of the property allegedly taken; and
- (4) The date on which owner alleges the taking occurred, the date on which said action was instituted, the county in which it was instituted, and such other reference thereto as may be necessary for the identification of said action.

(c) Nothing in this section shall in any manner affect an owner's common-law right to bring an action in tort for damage to his property. (1981, c. 919, s. 1.)

**§ 40A-52. Measure of compensation.**

The commissioners, jury or judge shall determine the issue of compensation in accordance with the provisions of Article 4 of this Chapter. (1981, c. 919, s. 1.)

**§ 40A-53. Interest as a part of just compensation.**

To the amount awarded as compensation by the commissioners or a jury or judge, the judge shall add interest at the rate of six percent (6%) per annum on said amount from the date of taking to the date of judgment. Interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this Article. (1981, c. 919, s. 1.)

**§ 40A-54. Final judgments.**

Final judgments entered in actions instituted under the provisions of this Article shall contain a description of the land affected, together with a description of the property acquired by the condemnor and a copy of said judgment shall be certified to the register of deeds in each county in which the land or any part thereof lies and be recorded among the land records of said county. (1981, c. 919, s. 1.)

**§ 40A-55. Payment of compensation.**

If there are adverse and conflicting claimants to the deposit made into the court by the condemnor or the additional amount determined as just compensation, on which the judgment is entered in said action, the judge may direct the full amount determined to be paid into said court by the condemnor and may retain said cause for determination of who is entitled to said moneys. The judge may by further order in the cause direct to whom the same shall be paid and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made. (1981, c. 919, s. 1.)

**§ 40A-56. Refund of deposit.**

In the event the amount of the final judgment is less than the amount deposited by the condemnor pursuant to the provisions of this Article, the condemnor shall be entitled to recover the excess of the amount of the deposit over the amount of the final judgment and court costs incident thereto. In the event there are not sufficient funds on deposit to cover said excess, the condemnor shall be entitled to a judgment for said sum against the person or persons having received said deposit. (1981, c. 919, s. 1.)

**§§ 40A-57 through 40A-61. Reserved for future codification purposes.**

Article 4.

Just Compensation.

**§ 40A-62. Application.**

The principles set down in this Article shall govern the determination of compensation to be awarded to the owner by the condemnor for the taking of his property. (1981, c. 919, s. 1.)

**§ 40A-63. In general.**

The determination of the amount of compensation shall reflect the value of the property immediately prior to the filing of the petition under G.S. 40A-20 or the complaint under G.S. 40A-41 and except as provided in the following sections shall not reflect an increase or decrease due to the condemnation. The day of the filing of a petition or complaint shall be the date of valuation of the interest taken. (1981, c. 919, s. 1.)

**§ 40A-64. Compensation for taking.**

(a) Except as provided in subsection (b), the measure of compensation for a taking of property is its fair market value.

(b) If there is a taking of less than the entire tract, the measure of compensation is the greater of either (i) the amount by which the fair market value of the entire tract immediately before the taking exceeds the fair market value of the remainder immediately after the taking; or (ii) the fair market value of the property taken.

(c) If the owner is to be allowed to remove any timber, building or other permanent improvement, or fixtures from the property, the value thereof shall not be included in the compensation award, but the cost of removal shall be considered as an element to be compensated. (1981, c. 919, s. 1; 2001-487, s. 17.)

**§ 40A-65. Effect of condemnation procedure on value.**

(a) The value of the property taken, or of the entire tract if there is a partial taking, does not include an increase or decrease in value before the date of valuation that is caused by (i) the proposed improvement or project for which the property is taken; (ii) the reasonable likelihood that the property would be acquired for that improvement or project; or (iii) the condemnation proceeding in which the property is taken.

(b) If before completion the project is expanded or changed to require the taking of additional property, the fair market value of the additional property does not include a decrease in value before the date of valuation caused by any of the factors described in subsection (a), but does include an increase in value before the date on which it became reasonably likely that the expansion or change of the project would occur, if the increase is caused by any of the factors described in subsection (a).

(c) Notwithstanding subsections (a) and (b), a decrease in value before the date of valuation which is caused by physical deterioration of the property within the reasonable control of the property owner, and by his unjustified neglect, may be considered in determining value. (1981, c. 919, s. 1.)

**§ 40A-66. Compensation to reflect project as planned.**

(a) If there is a taking of less than the entire tract, the value of the remainder on the valuation date shall reflect increases or decreases in value caused by the proposed project including any work to be performed under an agreement between the parties.

(b) The value of the remainder, as of the date of valuation, shall reflect the time the damage or benefit caused by the proposed improvement or project will be actually realized. (1981, c. 919, s. 1.)

**§ 40A-67. Entire tract.**

For the purpose of determining compensation under this Article, all contiguous tracts of land that are in the same ownership and are being used as an integrated economic unit shall be treated as if the combined tracts constitute a single tract. (1981, c. 919, s. 1.)

**§ 40A-68. Acquisition of property subject to lien.**

Notwithstanding the provisions of an agreement, if any, relating to a lien encumbering the property:

- (1) If there is a partial taking, the lienholder may share in the amount of compensation awarded only to the extent determined by the commissioners or by the jury or by the judge to be necessary to prevent an impairment of his security, and the lien shall continue upon the part of the property not taken as security for the unpaid portion of the indebtedness until it is paid; and
- (2) Neither the condemnor nor owner is liable to the lienholder for any penalty for prepayment of the debt secured by the lien, and the amount awarded by the judgment to the lienholder shall not include any penalty therefor. (1981, c. 919, s. 1.)

**§ 40A-69. Property subject to life tenancy.**

If the property taken is subject to a life tenancy, the commissioners, the jury, or the judge may include in the judgment a requirement that:

- (1) The award be apportioned and distributed on the basis of the respective values of the interests of the life tenant and remainderman;
- (2) The compensation be used to purchase comparable property to be held subject to the life tenancy;
- (3) The compensation be held in trust and administered subject to the terms of the instrument that created the life tenancy; or
- (4) Any other equitable arrangement be carried out. (1981, c. 919, s. 1.)

Article 5.

Return of Condemned Property.

**§ 40A-70. Return of condemned property.**

Whenever a public condemnor listed in G.S. 40A-3(b) or (c) acquires real property by condemnation and thereafter determines that the property is not needed for the purpose for which it was condemned, and the public condemnor still owns the property, the public condemnor may reconvey the property to the original owner upon payment to the public condemnor of the full price paid to the owner when the property was taken by eminent domain, the cost of any improvements, together with interest at the legal rate to the date when the decision was made to offer the return of the property. Unless the public condemnor acquired the entire lot, block, or tract of land belonging to the original owner, the original owner must own the remainder of the original lot, block, or tract of land from which the property was acquired to purchase the property pursuant to this section. The public condemnor shall specify a date by which the property must be reconveyed and the payment made, which may not be less than 30 days after written notification to the original owner that the public condemnor has decided to offer the return of the property. (1991 (Reg. Sess., 1992), c. 980, s. 1.)

**§ 40A-71. Reserved for future codification purposes.**

**§ 40A-72. Reserved for future codification purposes.**

**§ 40A-73. Reserved for future codification purposes.**

**§ 40A-74. Reserved for future codification purposes.**

**§ 40A-75. Reserved for future codification purposes.**

**§ 40A-76. Reserved for future codification purposes.**

**§ 40A-77. Reserved for future codification purposes.**

**§ 40A-78. Reserved for future codification purposes.**

**§ 40A-79. Reserved for future codification purposes.**

#### Article 6.

#### Condemnation of Property Encumbered by a Conservation Easement.

**§ 40A-80. Applicability of Article; definition.**

(a) Applicability. –

(1) The provisions of this Article shall apply only to a condemnation action initiated by a public condemnor, which for purposes of this Article shall be any entity exercising the power of eminent domain under any authority except G.S. 40A-3(a).

(2) Except with respect to G.S. 40A-84, the provisions of this Article shall not apply to those circumstances in which: (i) the terms of the conservation easement provide an express exception for uses, purposes, and rights that may be subject to condemnation in the future, or circumstances in which the condemnation action to be taken would not extinguish, restrict, or impair the property rights of the holder of the conservation easement. "Property rights" as used herein shall include the purposes for which the easement was created; and (ii) a local public condemnor or other public condemnor under G.S. 40A-3 is constructing, enlarging, or improving electric distribution systems; gas production, storage, transmission, and distribution systems; water supply and distribution systems; wastewater collection, treatment, and disposal systems of all types; storm sewer and drainage systems; or trails associated with greenways. In condemnation actions exempt pursuant to this subdivision, a condemnor shall make reasonable efforts, after completion of the project for which the condemnation was undertaken, to return the property to the condition that the property existed in prior to condemnation to the extent practicable.

(b) Definition. – As used in this Article, the term "conservation easement" means a conservation or historic preservation easement that meets all of the following criteria, as each of the criteria are defined under 26 U.S.C. § 170(h): (i) a qualified real property interest, (ii) held by a qualified organization, and (iii) exclusively for conservation purposes. (2009-439, s. 1.)

**§ 40A-81. Additional information required in petition or complaint filed.**

Any public entity that acts to exercise the power of eminent domain on property encumbered by a conservation easement shall initiate the action as required by this Chapter or Chapter 136 of the General Statutes as applicable. The complaint filed as required by those Chapters also shall



include a statement that alleges that there is no prudent and feasible alternative to condemnation of the property encumbered by the conservation easement. (2009-439, s. 1.)

**§ 40A-82. Demonstration of no prudent and feasible alternative required in certain actions; judicial determination.**

(a) If a holder of a conservation easement contests an action to condemn property encumbered by a conservation easement on the basis that the condemnor failed to sufficiently consider alternatives to the action or that a prudent and feasible alternative exists to the action, the holder of the conservation easement may file an answer to the complaint within 30 days from the date of service of the complaint as to that issue. If the holder of the conservation easement does not assert that the condemnor failed to sufficiently consider alternatives to the action or that a prudent and feasible alternative exists to the action, the holder of the conservation easement may file an answer within 120 days from the date of service of the complaint.

(b) If the holder of a conservation easement contests an action pursuant to subsection (a) of this section, the judge shall hear and determine whether or not a prudent and feasible alternative exists to condemnation of the property. The burden of persuasion on this issue is on the condemnor if the holder of the conservation easement, after discovery, has identified at least one alternative. If no alternative identified by the holder of the conservation easement is adjudged prudent and feasible, then the condemnation action shall proceed under the provisions of Article 3 of this Chapter, or Article 9 of Chapter 136 of the General Statutes, as applicable. If the judge determines that a prudent and feasible alternative does exist to condemnation of the property, the court shall dismiss the action and award the holder of the conservation easement costs, disbursements, and expenses in accordance with G.S. 40A-8(b) or G.S. 136-119, as applicable, except that attorneys' fees may not be awarded. The procedure for this hearing shall be as set forth in G.S. 40A-47 or G.S. 136-108, as applicable.

(c) A determination as to whether a prudent or feasible alternative exists to condemnation of the property as set forth in subsection (b) of this section shall not be required for actions meeting all of the following criteria:

- (1) The Department of Transportation or the North Carolina Turnpike Authority is the condemnor.
- (2) Prior to filing the condemnation action, a review of the project for which the property is being condemned was conducted that considered the alternatives to the condemnation of the property encumbered by the conservation easement and mitigation measures to minimize the impact. The condemnor shall, in the complaint filed with the court, identify the alternatives and mitigation measures considered with regard to condemnation of the property encumbered by the conservation easement.
- (3) The review was conducted pursuant to any of the following:
  - a. The State Environmental Policy Act (SEPA), G.S. 113A-1, et seq.
  - b. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq.
  - c. 49 U.S.C. § 303. (2009-439, s. 1.)

**§ 40A-83. Vesting of title and right of possession.**

Notwithstanding the provisions of G.S. 40A-42 or G.S. 136-104, title and right to immediate possession of property subject to this Article shall not vest in a condemnor any earlier than any of the following:

- (1) The failure of the easement holder to file an answer within the 30-day time period established by G.S. 40A-82(a).
- (2) Determination by the court that no prudent or feasible alternative exists to condemnation of the property pursuant to G.S. 40A-82(b).
- (3) Filing of the complaint and deposit in actions meeting all of the requirements of G.S. 40A-82(c). (2009-439, s. 1.)

**§ 40A-84. Compensation for condemnation.**

In any action to condemn property encumbered by a conservation easement, the court shall determine just compensation pursuant to Article 4 of this Chapter or in accordance with Chapter 136 of the General Statutes, as applicable, by first determining the value of the property taken as a whole, unencumbered by the conservation easement, as well as any other, separately owned interest in the property. The court shall allocate the just compensation award between or among any holders of the conservation easement and any owners of the property as provided by the easement agreement or, if the agreement fails to address the issue, as the judge finds equitable based upon evidence to include the opinion of a real estate valuation expert with experience in the valuation of conservation easements. Any party may demand trial by jury on the issue of total just compensation for the taking. (2009-439, s. 1.)

**§ 40A-85. Appeal.**

The parties shall have a right of appeal as provided in G.S. 40A-13. (2009-439, s. 1.)