

CONDEMNATION

Section 1. PURPOSE

- A. This policy is to establish a procedure the Bedford Regional Water Authority (“Authority”) intends to follow in order to exercise its statutory right of eminent domain properly pursuant to Virginia Code § 15.2-5114(6).
- B. The Authority may use the general condemnation provisions of § 25.1-200 *et seq.* or the Certificate provisions of § 25.1-300 *et seq.* If the Authority has not agreed on the amount of compensation with the affected property owner or owners (“Owner”), the Authority must initiate condemnation proceedings under §25.1-200 *et seq.* within sixty (60) days of project completion. VA. CODE § 25.1-313. The Authority’s advantage in using the Code’s Certificate provisions is that the Authority may begin work prior to agreeing on compensation.

Section 2. REQUIREMENTS

- A. A list of requirements the Authority must satisfy is as follows:
 1. Conduct a title examination of the property in order to determine each Owner’s identity and the nature and extent of each Owner’s interest in the property. *See* VA. CODE § 25.1-204(D).
 2. Get a property appraisal that satisfies Certificate of Take requirements and make a bona fide but ineffectual effort to acquire the property from Owner by purchase prior to instituting condemnation proceedings. *See* VA. CODE §§ 25.1-204(A), 25.1-303, and 25.1-417. *See* below for the appraisal requirements:
 - a. Virginia Code § 25.1-417(A)(2) describes the manner in which an appraisal must be conducted and requires that “[r]eal property shall be appraised before the initiation of negotiations.” The Owner must be given an opportunity to accompany the appraiser during the inspection of the property. The Authority’s offer to the Owner shall not be less than the Authority’s approved appraisal of the fair market value of the property. VA. CODE § 25.1-417(A)(3).
 - b. However, the Authority does not need to obtain an appraisal if the official responsible for the acquisition determines that the value of the property being acquired is less than \$25,000, based on assessment records or other objective evidence. Whenever the value of the property is determined to be between \$10,000 and \$25,000, the Authority must disclose to the Owner that the offer is based on assessment records or other objective evidence and not on an appraisal and that the Owner may request that an appraisal be prepared and used as the basis for establishing just compensation. Va. Code § 25.1-417(A)(2).
 3. Have an easement drawing or plat made to show the dimensions of the property to be taken and the work to be done. *See* VA. CODE § 25.1-206(2)(d).
 4. Make a bona fide effort to purchase the property before instituting condemnation proceedings or issuing a Certificate. This must include a written statement to the Owner explaining the factual basis for the offer, a description of the public use that provides the basis for the Authority’s acquisition, and a certification that the Authority has reviewed the acquisition for purpose of complying with Virginia Code § 1-219.1. *See* VA. CODE § 25.1-204(B). The written statement also must contain a complete copy of the appraisal, if obtained, Va. Code §

CONDEMNATION

- 25.1-204(C), and a copy of the title examination report VA. CODE § 25.1-204(D). *See also* Va. Code §§ 25.1-303 and 25.1-417.
- a. If the taking results in any Owner's displacement, the Authority must make fair and reasonable relocation payments pursuant to Virginia Code § 25.1-406 *et seq.* Payments include reasonable moving expenses for the Owner and the Owner's family, business, farm operation, or other personal property; losses of tangible personal property as a result of moving or discontinuing a business or farm operation (not to exceed an amount equal to the reasonable expenses of relocating such property); expenses in searching for a replacement business or farm; and expenses necessarily incurred in reestablishing a displaced farm, nonprofit organization, or small business at its new location (not to exceed \$25,000).
5. If it becomes clear that the Authority and the Owner will not be able to agree on compensation for the easement, the Authority must publish a notice and hold a public hearing before it can adopt a resolution of condemnation. Best practice also indicates that the Authority should send all Owners of the property a copy of the notice of the public hearing by certified mail. The Authority also should mail a copy of the notice of the public hearing to any tenants of the property and/or post a copy of the notice of the public hearing in a conspicuous place on the property.
 6. In order to proceed with the condemnation, the Authority and the Owner must disagree on compensation or other purchase terms. The Authority must adopt a resolution approving the proposed public use and directing the acquisition of property for public use by condemnation or other means. The resolution must state the use to which the property shall be put and the necessity therefor. *See* VA. CODE § 15.2-1903.
 - a. After the Authority has adopted the resolution, the Authority has two (2) options available:
 - i. It may institute standard condemnation proceedings pursuant to § 25.1-200 *et seq.*, or
 - ii. It may exercise Certificate power pursuant to § 25.1-300 *et seq.* The Authority uses the Certificate power when it is necessary for the Authority to gain immediate access to the property to proceed with the project.
 7. Jurisdiction for either standard condemnation proceedings or Certificate proceedings is in the circuit court of the county or city wherein such property or the greater portion thereof is situated. Condemnation proceedings are conducted as actions at law.

Section 3. CERTIFICATE OF TAKE PROCEDURE

- A. The procedure the Authority must follow in order to proceed by means of a Certificate is set forth below:
 1. Before entering into, or taking possession of land, the Authority must either:
 - a. Pay into the circuit court a sum of money estimated to be the fair market value of the property being taken and the damage being done to the property, based on an appraisal if one is required by Virginia Code § 25.1-417. If the Authority makes a payment into court, it must also record a certificate of take. *See* VA. CODE §§ 25.1-305, -307; or
 - b. Issue a certificate of deposit for the fair market value of the property being taken and the damage being done to the property, based on an appraisal if one is required by Virginia Code § 25.1-417.

CONDEMNATION

In either event, the Authority must give notice to the Owner or tenant of the property by registered mail that such a certificate will be filed. *See* VA. CODE § 25.1-306. The certificate (whether a certificate of take or a certificate of deposit) must set forth the description of the property being taken or damaged and the Owner, if known, of the property. *See* VA. CODE § 25.1-307(A).

2. Record the certificate of take or the certificate of deposit in the clerk's office of the court where deeds are recorded. *See* VA. CODE § 25.1-307(B). Once the certificate has been recorded, the Owner's interest in the property will terminate and title to the property will be vested in the Authority. Title in the Authority, however, will be defeasible until the Authority and the Owner reach agreement on the compensation due or the compensation due is determined in condemnation proceedings. *See* VA. CODE 25.1-308.
3. Any Owner entitled to any part of the funds deposited with the court or represented by a certificate of deposit may then petition the court for distribution of all or any part of the funds. The Authority has twenty-one (21) days after service of such petition to show cause, if any, why such amount should not be distributed. If the Authority does not show such cause, the court shall enter an order directing the distribution of such amount as requested, plus any accrued interest. *See* VA. CODE § 25.1-310.
 - a. If the Authority issued a certificate of deposit, the court will send a certified copy of the order to the Authority and the Authority must deposit the funds represented by the certificate of deposit within thirty (30) days of the date of the order. Interest shall be payable from the date the certificate of deposit was filed. *See* VA. CODE § 25.1-310.
 - b. The Owner's acceptance of this payment shall not limit the amount awarded by the commissioners or jury in a condemnation proceeding if the parties cannot agree on compensation for the property taken or damaged and evidence of the amount deposited with the court or accepted by any Owner shall not be admissible in court. *See* VA. CODE § 25.1-311.
4. The Authority may petition the court to reform, alter, revise, amend, or invalidate the certificate based upon an error in the certificate or the necessity for any change in the certificate. *See* VA. CODE § 25.1-312.
5. If the Authority and the Owner cannot agree on compensation for the property taken or damaged within sixty (60) days of completion of the construction of the improvements on the property, the Authority must institute condemnation proceedings pursuant to Virginia Code § 25.1-200 *et seq.* unless it already did so before recording the certificate of take or certificate of deposit. *See* VA. CODE § 25.1-313.

Section 4. CONDEMNATION PROCEEDINGS

- A. In order to exercise its condemnation powers, the Authority must take the following actions after it has obtained a title examination and appraisal, had relevant plats prepared, made a bona fide effort to purchase the property, issued public notices, conducted a public hearing and adopted a resolution.

The Authority must file a petition naming itself as plaintiff and the property to be condemned (designated by kind, quantity, and location) and its Owner as defendants. *See* VA. CODE § 25.1-206 for the following requirements. The petition must:

CONDEMNATION

- a. be verified by affidavit of a duly authorized officer, agent, or attorney for the Authority;
- b. contain the Authority's authority for the taking, the necessity for the work or improvements to be made, and the public use(s) for which the property is to be taken;
- c. include a description of the work or improvements to be made, the estate, interest, or rights in the property to be taken, and a description of the property to be taken sufficient for its identification. A plan or plat of the land must be attached. Where only a portion of the property is to be taken or other property will or is likely to be damaged as a result of the taking, a plan, plat, or drawing in sufficient detail to disclose the nature of the work or the improvements to be made (including specifications, elevations, and grade changes, if any) must be attached;
- d. include the names and residences of the Owners whose property is to be taken or damaged, as ascertained by a title examination. Where the names of any Owners are unknown, those parties may be designated "Unknown Owners;"
- e. state that the Authority has complied with the requirement in Virginia Code § 25.1-204 that it make a bona fide effort to purchase the property and the manner of such compliance; and
- f. include a prayer asking for judgment that the property be condemned and title vested in the Authority, that just compensation be ascertained and awarded, and for such other relief as may be lawful and proper.

The Authority shall provide the clerk with one (1) copy of the petition and all exhibits thereto and such additional copies as the clerk or any defendant reasonably may need.

- B. The parties must participate in a dispute resolution orientation before the condemnation matter can proceed.
- C. The Authority's attorney will handle the remaining steps in the litigation process.

< See next page for continuation >

CONDEMNATION

Section 5. EASEMENT CONDEMNATION TIMELINE

Task	Responsible Party	Deadline
Title search	Legal Counsel	
Estimate value of take; obtain appraisal if required (owner may participate)	Authority	
Authority bona fide written offer to Property Owner(s) including factual basis for offer and description of public use, along with easement agreements for their review; report of title exam must be provided, as well as a copy of appraisal if obtained	Authority	
Continued negotiations between Authority and Property Owner	Authority	Until negotiations fail
Newspaper advertisement advertising notice of public hearing (Board Meeting)	Authority	Submitted by Authority to newspaper of general circulation in Bedford County in time for printing once a week for two consecutive weeks, the last publication being at least 5 but not more than 21 days prior to hearing
Eminent domain resolution	Authority and Legal Counsel	In time for board packet
Conduct and attend public hearing declaring the public use of the property and the necessity therefore, and duly adopt the eminent domain resolution by board action of the Authority board	Authority and Legal Counsel	Board Meeting
Final bona fide offer letter by certified mail and notice of intent to condemn, if offer is refused, along with title report, appraisal (if obtained), easement agreements and engineering diagrams attached – direct negotiations to Authority personnel in letter	Legal Counsel	After negotiations fail and eminent domain resolution has been adopted at the Board meeting
Filing of eminent domain certificates	Legal Counsel	Upon expiration of deadline in Legal Counsel bona fide letter offer
Filing of condemnation petitions and notices and supporting documents, if necessary	Legal Counsel	Within 60 days of final completion of construction

CONDEMNATION

Section 6. REVISIONS

- A. This policy was approved and adopted by the Authority's Board of Directors on April 23, 2013, effective July 1, 2013.