

(b) Specify that the right of repurchase of the real property has been waived by the owner and, in such case, not specify a period within which the real property must be used by the condemner for a public purpose.

(2) If real property is acquired by a condemner under this chapter by judgment given in a condemnation action under ORS 35.325, the court shall:

(a) Specify in the judgment a reasonable period within which the real property must be used by the condemner for a public purpose or specify a 10-year period, and provide that the right of repurchase may be exercised with respect to the real property as provided in ORS 35.385 to 35.415; or

(b) Specify that the right of repurchase of the real property has been waived by the owner and, in such case, not specify a period within which the real property must be used by the condemner for a public purpose.

(3) For the purposes of subsection (2)(a) of this section, the resolution or ordinance of the condemner is presumptive evidence that the period of time that is proposed by the condemner is a reasonable period in which the real property must be used by the condemner for a public purpose; provided, however, that if the resolution or ordinance specifies a 10-year period or less, neither the owner nor a designated beneficiary of the owner can contest the reasonableness of the period specified.

(4) If real property is acquired by a condemner by agreement with the owner as described in subsection (1) of this section, and the agreement does not contain one of the provisions required by subsection (1)(a) or (b) of this section, the owner may repurchase the property, or any portion of the property, in the manner provided by ORS 35.385 to 35.415 if:

(a) Ten years have expired since the date of the transfer of the property; and

(b) The condemner has not used the property for a public purpose.

(5) Subsection (4) of this section does not apply to real property acquired by a condemner for the purpose of constructing, improving or maintaining a transportation facility or system. [1973 c.720 §2; 2011 c.426 §1]

**Note:** Section 2, chapter 426, Oregon Laws 2011, provides:

**Sec. 2.** The amendments to ORS 35.385 by section 1 of this 2011 Act apply only to agreements for acquisition by a condemner as described in ORS 35.385 (1) that are entered into on or after the effective date of this 2011 Act [June 17, 2011]. [2011 c.426 §2]

**35.390 Effect of failure of condemner to use property as required; price of repurchase; form of offer of repurchase.** (1) If a condemner fails to use the real property

or any portion thereof acquired under this chapter within the time specified in an agreement entered into under ORS 35.385 (1) or with the terms of a judgment given under ORS 35.325 and 35.385 (2), whichever applies, and the prior owner of the real property has not waived the right to repurchase the real property, the condemner shall offer such property or any portion thereof, that has not been used for a public purpose within the specified period, to the prior owner or the beneficiary of the prior owner designated as provided in ORS 35.400. The condemner shall, at its expense, insure the title to any property or portion thereof conveyed or vested in the owner or beneficiary under any provision of ORS 35.385 to 35.415, free and clear of any and all encumbrances except those subject to which the condemner originally took such property.

(2) The prior owner or beneficiary described in subsection (1) of this section may repurchase from the condemner the real property that is subject to the right of repurchase for a price equal to the sum of the compensation and damages paid by the condemner for the real property plus interest at the rate of seven percent per year from the date of the conveyance of the real property by the prior owner to the condemner.

(3) If only a portion of the real property acquired by a condemner is subject to the right of repurchase under ORS 35.385 to 35.415, the prior owner or beneficiary may acquire such portion for a price equal to the sum of:

(a) The fair cash market value of the portion subject to the right of repurchase, as of the date of the commencement of any action subject to ORS 35.385;

(b) The damages for diminution in value of the remainder, if any, of the former owner's property not so acquired, as of the date of the commencement of any action subject to ORS 35.385; and

(c) Interest at the rate of seven percent per year from the date of the conveyance of the real property by the prior owner to the condemner.

(4) The offer to repurchase only a portion of real property as provided in subsection (1) of this section and ORS 35.400 (3), shall be in writing and shall include the price for repurchase as determined by the condemner, including an itemization of the components thereof, pursuant to subsection (3) of this section. [1973 c.720 §3; 2003 c.14 §19]

**35.395 Change in period of use; notice; effect of failure to agree on change; review by court.** (1) The period specified in an agreement or judgment as provided in ORS 35.385 may be changed as provided in this