

section, if the prior owner of the real property has not waived the right of repurchase and the condemner finds that it will be unable to use all or a portion of the real property for such purpose within the specified period and requires a reasonable extension of such period for the completion of its project on the real property.

(2) Upon a finding under subsection (1) of this section, a condemner shall notify the prior owner or designated beneficiary of the requested change in period. The condemner shall negotiate with the prior owner or beneficiary on the requested change.

(a) Notification under this subsection shall consist of mailing a letter by certified mail to the last address of the prior owner or the designated beneficiary of the owner as shown in the agreement or judgment whereby the real property was acquired or the address subsequently supplied by such owner or beneficiary. If no response has been received by the condemner within 60 days after receipt of notice by the owner or designated beneficiary, all the rights of the owner or designated beneficiary under ORS 35.385 to 35.415 shall be considered waived.

(b) If the condemner cannot locate the prior owner or the designated beneficiary of the owner at the last-known address of the owner or the designated beneficiary, notice may be effected by publication. The publication shall be made in a newspaper published in the county where the property is located, or if no newspaper is published in the county, then in a newspaper designated as being most likely to give notice to the prior owner or the beneficiary of the prior owner. The newspaper utilized shall meet the requirements of ORS 193.020. The notice shall contain the name of the public project, a general description of the location of the property, the change in purpose or extension of time desired by the condemner and a time within which the owner or the beneficiary of the owner must respond to the notice. The notice shall be published not less than once each week for four weeks. The publication of notice may be directed to one or more owners or beneficiaries affected by the same project. If no response is received by the condemner within 10 days after the date of the last publication of notice, all rights of the prior owner or designated beneficiary shall be considered waived.

(3) If, after negotiation, the prior owner or beneficiary and the condemner agree on the proposed change in period, the period as changed shall, for the purposes of ORS 35.385 to 35.415, be considered the period as specified in the agreement or judgment under ORS 35.385. In the case of real property acquired by a condemner by judgment under

ORS 35.325, the condemner shall notify the court by which the judgment was given of the agreed upon change in period and the court shall modify such judgment accordingly.

(4) If the prior owner or beneficiary and the condemner cannot, after negotiation, agree on the proposed change in period, the condemner may:

(a) In the case of real property acquired by an agreement under ORS 35.235 (1), petition the circuit court for the county within which such real property is situated for a hearing to determine whether the proposed change in period is reasonable and necessary in the public interest; or

(b) In the case of real property acquired by a judgment given under ORS 35.325, petition the court by which such judgment was given for a hearing to determine whether it is reasonable and necessary in the public interest to modify such judgment to permit the proposed change in period. The condemner in its petition may include as parties and serve all or any owners and designated beneficiaries whose property is affected by the same project.

(5) If, after a hearing under subsection (4) of this section, the court finds that the proposed change in period is reasonable and necessary in the public interest, the court shall grant such change. For the purposes of ORS 35.385 to 35.415, a period as changed by the court shall be considered the period specified in the agreement or judgment described in ORS 35.385. For the purposes of this subsection, the resolution or ordinance of the condemner is presumptive evidence that the change in period proposed by the condemner is reasonable and necessary in the public interest.

(6) If, after a hearing under subsection (4) of this section, the court finds that the proposed change in period is unreasonable or not necessary in the public interest, the court shall deny the requested change. In such case, the terms of the original agreement or judgment shall control for the purpose of the exercise of the right of repurchase under ORS 35.385 to 35.415. [1973 c.720 §4]

35.400 Designation of person to exercise right of repurchase; effect of failure to designate; offer to repurchase; acceptance; notice; determination of price. (1) At the time of entering into an agreement pursuant to ORS 35.385 (1) for the acquisition of real property by a condemner or prior to the time of giving judgment for the acquisition of real property by a condemner under ORS 35.325, the owner of the real property to be acquired may, if such owner has not waived the right of repurchase under ORS