

public corporation, political subdivision or any instrumentality or any agency thereof.

(4) "Private condemner" means a private corporation that has the power to exercise the right of eminent domain.

(5) "Property" means real or personal property or any interest therein of any kind or nature that is subject to condemnation.

(6) "Public condemner" means condemner other than private condemner. [1971 c.741 §4; 1983 c.327 §10; 2003 c.14 §18]

35.220 Precondemnation entry on real property. (1) Subject to the requirements of this section, a condemner may enter upon, examine, survey, conduct tests upon and take samples from any real property that is subject to condemnation by the condemner. A condemner may not enter upon any land under the provisions of this section without first attempting to provide actual notice to the owner or occupant of the property. If the condemner has not provided actual notice, written notice must be posted in a conspicuous place where the notice is most likely to be seen. The posted notice must give the condemner's name, address and telephone number and the purpose of the entry. A condemner may conduct tests upon or take samples from real property only with the consent of the owner or pursuant to an order entered under subsection (2) of this section. All testing and sampling must be done in conformity with applicable laws and regulations. Testing and sampling results shall be provided to the owner upon request.

(2) If the owner of property objects to examination or survey of the property under this section, or does not consent to the terms and conditions for testing or sampling of the property, the condemner may file a petition with the court seeking an order providing for entry upon the property and allowing such examination, survey, testing or sampling as may be requested by the condemner. The court may enter an order establishing reasonable terms and conditions for entry and for any examination, survey, testing or sampling of the property requested by the condemner. Reasonable compensation for damage or interference under subsection (3) of this section may be established in the proceeding either before or after entry is made upon the property by the condemner.

(3) An owner is entitled to reasonable compensation for:

(a) Any physical damage caused to the property by the entry upon or examination, survey, testing or sampling of the property, including any damage attributable to the diffusion of hazardous substances found on the property; and

(b) Any substantial interference with the property's possession or use caused by the entry upon or examination, survey, testing or sampling of the property.

(4) If a condemner is required to pay compensation to an owner in a proceeding under subsection (2) of this section, and the condemner thereafter seeks condemnation of the same property, the owner is not entitled to any payment of compensation in the condemnation action that would result in the owner receiving a second recovery for the same damage or interference.

(5) Nothing in this section affects any liability under any other provision of law that a condemner may have to an owner or occupant of property by reason of entry upon or examination, survey, testing or sampling of property. [2003 c.477 §2]

35.225 [1971 c.741 §5; repealed by 1979 c.284 §199]

35.235 Agreement for compensation; status of resolution or ordinance of public condemner; status of action of private condemner; agreement effort not prerequisite. (1) Subject to ORS 758.015 and 836.050, whenever in the judgment of the condemner it is necessary to acquire property for a purpose for which the condemner is authorized by law to acquire property, the condemner shall, after first declaring by resolution or ordinance such necessity and the purpose for which it is required, attempt to agree with the owner with respect to the compensation to be paid therefor, and the damages, if any, for the taking thereof.

(2) The resolution or ordinance of a public condemner is presumptive evidence of the public necessity of the proposed use, that the property is necessary therefor and that the proposed use, improvement or project is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

(3) The commencement of an action to condemn property by a private condemner creates a disputable presumption of the necessity of the proposed use, that the property is necessary therefor and that the proposed use, improvement or project is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

(4) The question of the validity of the disputable presumptions created in subsection (3) of this section, if raised, shall be determined by the court in a summary proceeding prior to trial.

(5) It is not a prerequisite to the exercise of the right of eminent domain by the condemner to attempt first to agree with an owner or to allege or prove any effort to agree with such owner as to reasonable