

value, when such owner is at the time concealed within the state or, after reasonable effort by condemner, cannot be found within the state. [1971 c.741 §6; 1973 c.579 §1]

35.245 Commencement of action; jurisdiction; parties. (1) If the condemner is unable to agree with or locate the owner of the property under ORS 35.235, then an action to condemn property may be commenced in the circuit court of the county in which the property proposed to be condemned, or the greater portion thereof, is located.

(2) An action may be commenced against the person in whose name the record title appears. There may be included as defendants any lessee or other person in possession and all other persons having or claiming an interest in the property. [1971 c.741 §7]

35.255 Content of complaint. The complaint shall describe the property sought to be condemned and shall allege the true value of the property sought and the damage, if any, resulting from the appropriation thereof. [1971 c.741 §8; 1979 c.284 §75]

35.265 Advance deposit by public condemner requiring immediate possession; effect on interest otherwise allowable. (1) When a public condemner commences an action for the condemnation of property and immediate possession of the property is considered necessary by the public condemner, a fund shall be created in the amount estimated to be the just compensation for the property and placed in the hands of the treasurer of the public condemner for deposit with the clerk of the court wherein the action was commenced, for the use of the defendants in the action.

(2) When the public condemner is a state agency and immediate possession of property is considered necessary by the agency, the agency shall certify to such facts and authorize an advancement out of funds available to the agency of the amount estimated by the agency to be just compensation for the property. Upon such certification and authorization, a warrant shall be drawn in favor of the clerk of the court in the amount authorized.

(3) Upon the deposit in court by the public condemner of the estimated amount of just compensation as provided by subsections (1) and (2) of this section, no interest shall be allowed thereon in the judgment. [1971 c.741 §10; 2003 c.576 §236]

35.275 Advance occupancy by private condemner; hearing; deposit or bond; effect of size of bond or deposit on amount of just compensation. (1) At any time after an action is commenced to acquire any property, a private condemner may apply to the court for an order to occupy the property to

be condemned and to make use of the property for the purposes for which it is being appropriated.

(2) At the hearing on the motion, the court shall determine the reasons for requiring a speedy occupation. The court shall grant the motion if, giving consideration to the public interest involved, it finds that the interests of the owners will be adequately protected. The court may make such provisions or orders as necessary, so that the advance taking or an advance payment, as provided by subsection (3) of this section, will not be prejudicial to either party.

(3)(a) If an order to occupy the property is granted, it may also require the private condemner to deposit with the court either such sum as the court finds reasonable on account of just compensation to be awarded or to deposit a surety bond in an amount and with such surety as the court may approve. The surety bond shall be conditioned to the effect that the private condemner shall pay to the owners of the property just compensation for the property taken or restitution, if any, and costs, disbursements and reasonable attorney fees as finally determined.

(b) After an order to occupy is entered, if it appears necessary in order to protect the interests of the owners of the property, the court at any time may require the private condemner to deposit with the court an additional bond or sum on account of just compensation to be awarded.

(c) Evidence as to the finding of the court regarding the amount of such bond or deposit shall not be admissible at the trial of just compensation. [1971 c.741 §11]

35.285 Distribution of deposits; effect of withdrawal on appeal. (1) The court may distribute all or any part of the funds deposited by a condemner to the persons entitled thereto for or on account of the just compensation to be awarded in the action, upon such terms and conditions as may appear just and reasonable.

(2) Any persons entitled to withdraw any or all of the deposit, as provided by subsection (1) of this section, may do so at any time without waiving rights of appeal provided by ORS 35.355. [1971 c.741 §12]

35.295 Defendant's answer. The defendant in answer may set forth any legal defense the defendant may have to the condemnation. The defendant shall also allege the true value of the property and the damage, if any, resulting from the appropriation thereof. [1971 c.741 §13]

35.300 Offer of compromise. (1) After the filing of a condemnation action, a condemner may serve an offer of compromise on the defendant in the action. An offer of