

award of the arbitrator. Within 20 days after the filing of the decision and award of the arbitrator under ORS 36.425, any party may file a motion with the court for the vacation, modification or correction of the award. The court may vacate an award only if there is a basis to vacate the award described in ORS 36.705 (1)(a) to (d). The court may modify or correct an award only for the grounds given in ORS 36.710. Except as provided in this subsection, no party may appeal from the decision and award of an arbitrator if the owner elects binding arbitration in lieu of trial.

(c) If the total amount of compensation claimed exceeds \$20,000 but is less than \$50,000, the owner may elect to have compensation determined by nonbinding arbitration under the applicable provisions of ORS 36.400 to 36.425.

(7) If a trial is held or arbitration conducted for the fixing of the amount of compensation to be awarded to the defendant owner or party having an interest in the property being condemned, the court or arbitrator shall award the defendant costs and disbursements including reasonable attorney fees and reasonable expenses as defined in ORS 35.335 (2) in the following cases, and no other:

(a) If the amount of just compensation assessed by the verdict in the trial exceeds the highest written offer in settlement submitted by condemner before the filing of the action to those defendants appearing in the action pursuant to subsection (1) of this section; or

(b) If the court finds that the first written offer made by condemner to defendant in settlement before the filing of the action did not constitute a good faith offer of an amount reasonably believed by condemner to be just compensation.

(8) If any appraisal provided to a party under this section relies on a written report, opinion or estimate of a person who is not an appraiser, a copy of the written report, opinion or estimate must be provided with the appraisal. If any appraisal provided under this section relies on an unwritten report, opinion or estimate of a person who is not an appraiser, the party providing the appraisal must also provide the name and address of the person who provided the unwritten report, opinion or estimate.

(9) Costs and disbursements other than reasonable attorney fees and expenses as defined in ORS 35.335 (2) shall be awarded to condemner in all cases other than those in which defendant is entitled to costs and disbursements under subsection (7) of this section. [1973 c.617 §2 (enacted in lieu of 35.345); 1997

c.797 §1; 2003 c.476 §1; 2003 c.598 §33; 2005 c.274 §5; 2005 c.433 §1; 2007 c.1 §4; 2009 c.530 §1]

35.348 Immediate possession of property. Notwithstanding ORS 35.346, if a condemner determines that an emergency that poses a threat to persons or property exists and that immediate possession of the property is necessary, the condemner may immediately file a condemnation action after making the written offer required under ORS 35.346 (1) accompanied by the appraisal or explanation required by ORS 35.346 (2). [1997 c.797 §3; 2003 c.476 §3; 2009 c.530 §2]

35.350 Immediate possession of property by public body. This chapter does not affect the ability of a public body, as defined in ORS 174.109, to take immediate possession of property in an emergency that poses a threat to persons or property. [2005 c.565 §2]

35.352 Notice of immediate possession of property by public condemner; objection. (1) At any time after a condemnation action is commenced, a public condemner may serve notice that the public condemner will take immediate possession of the property that is the subject of the action. The notice must be served in the manner provided by ORCP 9 on all defendants in the action.

(2) If notice is served under this section, a defendant in a condemnation action may object to immediate possession of property by a public condemner by filing a written objection with the court within 10 days after notice is served on the defendant under this section and serving a copy of the objection on the public condemner in the manner provided by ORCP 9. The objection must request that the court schedule a hearing on the objection at the earliest possible time. The only issues that a court may consider upon objection are:

(a) Whether the condemnation is legal; and

(b) Subject to the presumption established by ORS 35.235 (2), whether the public condemner has acted in bad faith, engaged in fraud or engaged in an abuse of discretion under a delegation of authority.

(3) If notice is served under this section and an objection is not filed with the court within the time allowed under subsection (2) of this section, the public condemner may at any time thereafter file with the court a form of order confirming the public condemner's possession of the property as of the date specified in the notice. The form of order must be accompanied by an affidavit attesting to service of the notice as required by subsection (1) of this section, and a statement that an objection was not filed within 10 days after notice was served on the de-