

compromise must be served on the defendant not later than 10 days before the trial of the action. The offer of compromise must identify the amount offered as just compensation for the property and as compensable damages to remaining property of the defendant. The offer of compromise must also indicate whether the offer includes any amount for costs and disbursements, attorney fees and expenses and, if so, the amounts included for costs and disbursements, attorney fees and expenses. If the defendant accepts the amount offered as just compensation for the property and as compensable damages to remaining property of the defendant, the defendant shall file with the court an acceptance signed by the defendant or the defendant's attorney. The acceptance must be filed not more than three days after the time the offer was served on the defendant. A copy of the offer must be attached to the acceptance.

(2) If an offer of compromise under this section does not specifically include amounts for costs and disbursements, attorney fees and expenses, upon acceptance of the offer the court shall give judgment to the defendant for the amount offered as just compensation for the property and as compensable damages to remaining property of the defendant and, in addition, for costs and disbursements, attorney fees and expenses that are determined by the court to have been incurred before service of the offer on the defendant.

(3) If an offer of compromise under this section specifically includes amounts for costs and disbursements, attorney fees and expenses, the defendant may accept all amounts offered, or may accept only that portion of the offer identified as just compensation for the property and as compensable damages to remaining property of the defendant. If the defendant accepts only that portion of the offer identified as just compensation for the property and as compensable damages to remaining property of the defendant, the defendant is entitled to an award for costs and disbursements, attorney fees and expenses incurred by the defendant before service of the offer on the defendant. The court shall determine the amount of costs and disbursements, attorney fees and expenses to be awarded to the defendant after acceptance of the offer is filed under subsection (1) of this section.

(4) If an offer of compromise is not accepted within the time allowed under subsection (1) of this section, the offer is withdrawn and may not be given in evidence at trial. If the defendant fails to obtain a judgment more favorable than the offer:

(a) The defendant may not recover prevailing party fees or costs and disbursements,

attorney fees and expenses that were incurred on and after service of the offer;

(b) Unless the parties agree otherwise, the court shall give judgment to the defendant for costs and disbursements, attorney fees and expenses that were incurred by the defendant before service of the offer; and

(c) The court shall give judgment to the condemner for the condemner's costs and disbursements, other than prevailing party fees, incurred by the condemner on and after service of the offer.

(5) For the purpose of determining whether the defendant has failed to obtain a judgment more favorable than an offer of compromise that specifically includes amounts for costs and disbursements, attorney fees and expenses, the court shall first determine the amount of costs and disbursements, attorney fees and expenses incurred by the defendant before service of the offer on the defendant. The court shall add that amount to the amounts awarded under the judgment as just compensation for the property and as compensable damages to remaining property of the defendant. If the sum of those amounts is equal to or less than the total amount specified in the offer of compromise, the defendant has not obtained a judgment more favorable than the offer of compromise.

(6) For the purposes of this section, "expenses" has the meaning given that term in ORS 35.335. [2009 c.530 §5]

35.305 Conduct of trial; defendant's option; jury argument; neither side has burden of proof of just compensation.

(1) Evidence shall be received and the trial conducted in the order and manner prescribed for a civil action in the circuit court, except that the defendant shall have the option of proceeding first or last in the presentation of evidence, if notice of such election is filed with the court and served on the condemner at least seven days prior to the date set for trial. If no notice of election is filed, the condemner shall proceed first in the presentation of evidence. Unless the case is submitted by both sides to the jury without argument, the party who presents evidence first shall also open and close the argument to the jury.

(2) Condemner and defendant may offer evidence of just compensation, but neither party shall have the burden of proof of just compensation. [1971 c.741 §14; 1979 c.284 §76]

35.315 View of property by order of court. If motion is made by either party before the formation of the jury, the court shall order a view of the property in question. Upon the return of the jury, the evidence of