

TITLE 7
SPECIAL PROCEEDINGS

CHAPTER 7
EMINENT DOMAIN

7-701. USES FOR WHICH AUTHORIZED. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislature.

2. Public buildings and grounds for the use of any county, incorporated city or school district; canals, aqueducts, flumes, ditches or pipes for conducting water for use on state property or for the use of the inhabitants of any county or incorporated city, or for draining state property for any county or incorporated city, raising the banks of streams, removing obstructions therefrom and widening, deepening or straightening their channels, roads, streets, alleys, and all other public uses for the benefit of the state or of any county, incorporated city or the inhabitants thereof.

3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, steam, electric and horse railroads, reservoirs, canals, ditches, flumes, aqueducts and pipes, for public transportation supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for storing and floating logs and lumber on streams not navigable.

4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines.

5. Byroads, leading from highways to residences and farms.

6. Telephones, telegraph and telephone lines.

7. Sewerage of any incorporated city.

8. Cemeteries for the burial of the dead, and enlarging and adding to the same and the grounds thereof.

9. Pipe lines for the transmission, delivery, furnishing or distribution of natural or manufactured gas for light, heat or power, or for the transportation of crude petroleum or petroleum products; also for tanks, reservoirs, storage, terminal and pumping facilities, telephone, telegraph and power lines necessarily incident to such pipe lines.

10. Snow fences or barriers for the protection of highways from drifting snow.

11. Electric distribution and transmission lines for the delivery, furnishing, distribution, and transmission of electric current for power, lighting, heating or other purposes; and structures, facilities and equipment for the production, generation, and manufacture of electric current for power, lighting, heating or other purposes.

[(7-701) C.C.P. 1881, sec. 851; R.S., sec. 5210; am. 1903, p. 203, sec. 1; reen. R.C., & C.L., sec. 5210; C.S., sec. 7404; am. 1923, ch. 98, sec. 2, p. 122; am. 1931, ch. 39, sec. 1, p. 74; I.C.A., sec. 13-701; am. 1933, ch. 211, sec. 1, p. 443; am. 1951, ch. 58, sec. 1, p. 85; am. 1974, ch. 136, sec. 1, p. 1340.]

7-701A. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES, URBAN RENEWAL OR ECONOMIC DEVELOPMENT PURPOSES. (1) This section limits and restricts the use of eminent domain under the laws of this state or local ordinance by the state of Idaho, its instrumentalities, political subdivisions, public agencies, or bodies corporate and politic of the state to condemn any interest in property in order to convey the condemned interest to a private interest or person as provided in this section.

(2) Eminent domain shall not be used to acquire private property:

(a) For any alleged public use that is merely a pretext for the transfer of the condemned property or any interest in that property to a private party; or

(b) For the purpose of promoting or effectuating economic development; provided however, that nothing in this subsection shall affect the exercise of eminent domain:

(i) Pursuant to [chapter 15, title 70](#), Idaho Code, and [title 42](#), Idaho Code; or

(ii) Pursuant to chapter 19, 20 or 29, [title 50](#), Idaho Code, except that no private property shall be taken through exercise of eminent domain within the area of operation of a housing authority or within an urban renewal area or within a deteriorated or deteriorating area or within a competitively disadvantaged border community area unless the specific property to be condemned is proven by clear and convincing evidence to be in such condition that it meets all of the following requirements:

1. The property, due to general dilapidation, compromised structural integrity, or failed mechanical systems, endangers life or endangers property by fire or by other perils that pose an actual identifiable threat to building occupants; and

2. The property contains specifically identifiable conditions that pose an actual risk to human health, transmission of disease, juvenile delinquency or criminal content; and

3. The property presents an actual risk of harm to the public health, safety, morals or general welfare; or

(iii) For those public and private uses for which eminent domain is expressly provided in the constitution of the state of Idaho; or

(c) For trails, paths, greenways or other ways for walking, running, hiking, bicycling or equestrian use, unless adjacent to a highway, road or street.

(3) Any board of commissioners for an urban renewal agency whose members are comprised entirely of officials elected pursuant to section [50-2006](#)(b) (3) and (5), Idaho Code, may exercise the right of eminent domain. However, if a board of commissioners for an urban renewal agency includes one (1) or more commissioners who are appointed to the board of commissioners, that board may act only in an advisory capacity to the local governing body with regard to eminent domain decisions, and any final decision on the use of eminent domain shall be made by the local governing body that created the urban renewal agency.

(4) This section shall not affect the authority of a governmental entity to condemn a leasehold estate on property owned by the governmental entity.

(5) The rationale for condemnation by the governmental entity proposing to condemn property shall be freely reviewable in the course of judicial proceedings involving exercise of the power of eminent domain.

[7-701A, added 2006, ch. 96, sec. 1, p. 270; am. 2015, ch. 122, sec. 1, p. 310; am. 2021, ch. 87, sec. 1, p. 291.]

7-702. ESTATES SUBJECT TO TAKING. The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine.

2. An easement, when taken for any other use.

3. The right of entry upon, and occupation of, lands, and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for some public use.

[(7-702) C.C.P. 1881, sec. 852; R.S., R.C., & C.L., sec. 5211; C.S., sec. 7405; I.C.A., sec. 13-702.]

7-703. PRIVATE PROPERTY SUBJECT TO TAKING. The private property which may be taken under this chapter includes:

1. All real property belonging to any person.

2. Lands belonging to the government of the United States, to this state, or to any county, incorporated city, or city and county, village or town, not appropriated to some public use.

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated.

4. Franchises for toll roads, toll bridges and ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads or other more necessary public use.

5. All rights of way for any and all the purposes mentioned in section [7-701](#), and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed or intersected by any other right of way or improvements or structures thereon. They shall also be subject to a limited use, in common with the owners thereof, when necessary, but such uses, crossings, intersections and connections shall be made in the manner most compatible with the greatest public benefit and least private injury.

6. All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

[(7-703) C.C.P. 1881, sec. 853; R.S. & R.C., sec. 5212; am. 1911, ch. 75, sec. 1, p. 229; reen. C.L., sec. 5212; C.S., sec. 7406; I.C.A., sec. 13-703.]

7-704. FACTS PREREQUISITE TO TAKING. Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.

2. That the taking is necessary to such use.

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

4. In addition, for an electrical transmission line with a capacity in excess of two hundred thirty (230) KV (kilovolts), to be constructed over private real property actively devoted to agriculture, that a public meeting shall have been held following ten (10) days' notice, as provided by section [60-109](#), Idaho Code, being published in a newspaper of general circulation in each county or counties in which the transmission line is proposed to be located with the last publication of the legal notice having occurred prior to the public meeting at which testimony from interested persons regarding the transmission line location is received.

[(7-704) C.C.P. 1881, sec. 854; R.S., R.C., & C.L., sec. 5213; C.S., sec. 7407; I.C.A., sec. 13-704; am. 1983, ch. 115, sec. 1, p. 247.]

7-704A. ACQUISITION OF OMITTED LANDS -- ESCROW OF FUNDS. (1) The state of Idaho, or any of its political subdivisions, in exercising [exercising] its powers of eminent domain, shall acquire and pay full value for all lands classified as omitted lands under federal legislation as though the state of Idaho or any political subdivision thereof were receiving fee simple title.

(2) The state of Idaho or any political subdivision thereof shall be entitled to escrow the funds for the acquisition of the omitted lands until a letter of acquiescence or other documentation is received from the federal government, at which time all of the funds shall be remitted to the landholder.

[7-704A, added 1982, ch. 125, sec. 1, p. 362.]

7-705. SURVEY AND LOCATION OF LAND. In all cases where land is required for public use the state or its agents in charge of such use may survey and locate the same, but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this chapter. The state or its agents in charge of such public use, may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause for action in favor of the owners of the land, except for injuries resulting from negligence, wantonness or malice.

[(7-705) C.C.P. 1881, sec. 855; R.S., R.C., & C.L., sec. 5214; C.S., sec. 7408; I.C.A., sec. 13-705.]

7-706. JURISDICTION IN DISTRICT COURT -- COMMENCEMENT OF PROCEEDINGS. All proceedings under this chapter must be brought in the district court for the county in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

[(7-706) C.C.P. 1881, sec. 856; R.S., R.C., & C.L., sec. 5215; C.S., sec. 7409; I.C.A., sec. 13-706.]

7-707. COMPLAINT. The complaint must contain:

1. The name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of the plaintiff.

4. If a right-of-way be sought, the complaint must show the location, general route and termini, and must be accompanied with maps thereof.

5. A description of each piece of land sought to be taken, and whether the same includes the whole, or only a part, of an entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

6. An order of condemnation, or resolution, or other official and binding document entered by the plaintiff which sets forth and clearly identifies all property rights to be acquired including rights to and from the public way, and permanent and temporary easements known or reasonably identifiable to the condemning authority.

7. In all cases where the owner of the lands sought to be taken resides in the county in which said lands are situated, a statement that the plaintiff has sought, in good faith, to purchase the lands so sought to be taken, or settle with the owner for the damages which might result to his property from the taking thereof, and was unable to make any reasonable bargain therefor, or settlement of such damages; but in all other cases these facts need not be alleged in the complaint, or proved.

[(7-707) C.C.P. 1881, sec. 857; R.S., sec. 5216; am. 1907, p. 322, sec. 1; reen. R.C. & C.L., sec. 5216; C.S., sec. 7410; I.C.A., sec. 13-707; am. 2006, ch. 450, sec. 1, p. 1339.]

7-708. SUMMONS. The clerk must issue a summons, which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, and a reference to the complaint for descriptions of the respective parcels, and a notice to the defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars it must be in the form of a summons in civil actions, and must be served in like manner.

[(7-708) C.C.P. 1881, sec. 858; R.S., R.C., & C.L., sec. 5217; C.S., sec. 7411; I.C.A., sec. 13-708.]

7-709. PERSONS ENTITLED TO DEFEND. All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend, each in respect to his own property or interest, or that claimed by him, in like manner as if named in the complaint.

[(7-709) C.C.P. 1881, sec. 859; R.S., R.C., & C.L., sec. 5218; C.S., sec. 7412; I.C.A., sec. 13-709.]

7-710. POWERS OF COURT. The court shall have power:

1. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of section [7-703](#).

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor.

3. To determine the respective rights of different parties seeking condemnation of the same property.

[(7-710) C.C.P. 1881, sec. 860; R.S., R.C., & C.L., sec. 5219; C.S., sec. 7413; I.C.A., sec. 13-710.]

7-711. ASSESSMENT OF DAMAGES. The court, jury or referee must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed. For purposes of ascertaining the value of the property, the minimum amount for damages shall be the greater of the assessed value for property tax purposes unless the court, jury or referee finds the property has been altered substantially, or the plaintiff's highest prelitigation appraisal.

2. If the property sought to be condemned constitutes only a part of a larger parcel: (a) the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff; and (b) the damages to any business qualifying under this subsection having more than five (5) years' standing which the taking of a portion of the property and the construction of the improvement in the manner proposed by the plaintiff may reasonably cause. The business must be owned by the party whose lands are being condemned or be located upon adjoining lands owned or held by such party. Business damages under this subsection shall not be awarded if the loss can reasonably be prevented by a relocation of the business or by taking steps that a reasonably prudent person would take, or for damages caused by temporary business interruption due to construction; and provided further that compensation for business damages shall not be duplicated in the compensation otherwise awarded to the property owner for damages pursuant to subsections (1) and (2) (a) of this section [7-711](#), Idaho Code.

(i) If the business owner intends to claim business damages under this subsection, the owner, as defendant, must submit a written business damage claim to the plaintiff within ninety (90) days after service of the summons and complaint for condemnation. The plaintiff's initial offer letter or accompanying information must expressly inform the defendant of its rights under this subsection, and must further inform the defendant of its right to consult with an attorney.

(ii) The defendant's written claim must be sent to the plaintiff by certified mail, return receipt requested. Absent a showing of a good faith justification for the failure to submit a business damage claim within ninety (90) days, or an agreed extension by the parties, the court shall strike the defendant's claim for business damages in any condemnation proceeding.

(iii) The business damage claim must include an explanation of the nature, extent, and monetary amount of such claimed damages and must be prepared by the owner, a certified public accountant, or a business damage expert familiar with the nature of the operations of the defendant's business. The defendant shall also provide the plaintiff with copies of the defendant's business records that substantiate the good faith offer to settle the business damage claim. The business damage claim must be clearly segregated from the claim for property damages pursuant to subsections (1) and (2) (a) of this section [7-711](#), Idaho Code.

(iv) As used in this subsection, the term "business records" includes, but is not limited to, copies of federal and state income tax returns, state sales tax returns, balance sheets, and profit and loss statements for the five (5) years preceding which are attributable to the business operation on the property to be acquired, and other records relied upon by the business owner that substantiate the business damage claim.

(v) The plaintiff's good faith in failing to offer compensation for business damages shall not be contested at a possession hearing held pursuant to section [7-721](#), Idaho Code, if the defendant has not given notice of its intent to claim business damages prior to the date of filing of the motion that initiates the proceeding under that section.

3. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be specially and directly benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed, under subsection 2. of this section, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

4. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

5. As far as practicable, compensation must be assessed for each source of damages separately.

6. If the property sought to be condemned is private real property actively devoted to agriculture, the damages which will accrue because of the costs, if any, of farming around electrical transmission line structure(s) for a transmission line with a capacity in excess of two hundred thirty (230) kilovolts. If the property sought to be condemned has been the subject of a previous condemnation proceeding or proceedings for electrical transmission line structure(s) and at the time of condemnation the field holds other electrical transmission line structure(s), such evidence of costs referred to above may also include the cumulative effects, if any, of conducting farming operations around other electrical transmission line structure(s) in the same field, whether such structure(s) are of the condemner or not.

[(7-711) C.C.P. 1881, sec. 861; R.S., R.C., & C.L., sec. 5220; C.S., sec. 7414; I.C.A., sec. 13-711; am. 1983, ch. 115, sec. 2, p. 247; am. 1998, ch. 427, sec. 1, p. 1345; am. 2000, ch. 346, sec. 1, p. 1170; am. 2006, ch. 452, sec. 1, p. 1343.]

7-711A. ADVICE OF RIGHTS FORM -- RIGHTS WHEN CONDEMNING AUTHORITY ACQUIRES PROPERTY. Whenever a state or local unit of government or a public utility is beginning negotiations to acquire a parcel of real property in fee simple, the condemning authority shall provide the owner of the property a form containing a summary of the rights of an owner of property to be acquired under this chapter. If the condemning authority does not supply the owner of the real property with this form, there will be a presumption that any sale or contract entered into between the condemning authority and the owner was not voluntary and the condemning authority may be held responsible for such relief, if any, as the court may determine to be appropriate considering all of the facts and circumstances. The form shall contain substantially the following:

(1) The (name of entity allowed to use eminent domain proceedings pursuant to [chapter 7, title 7](#), Idaho Code) has the power under the constitution and the laws of the state of Idaho and the United States to take private property for public use. This power is generally referred to as the power of "eminent domain" or condemnation. The power can only be exercised when:

- (a) The property is needed for a public use authorized by Idaho law;
- (b) The taking of the property is necessary to such use;
- (c) The taking must be located in the manner which will be most compatible with the greatest public good and the least private injury.

(2) The condemning authority must negotiate with the property owner in good faith to purchase the property sought to be taken and/or to settle with the owner for any other damages which might result to the remainder of the owner's property.

(3) The owner of private property to be acquired by the condemning authority is entitled to be paid for any diminution in the value of the owner's remaining property which is caused by the taking and the use of the property taken proposed by the condemning authority. This compensation, called "severance damages," is generally measured by comparing the value of the property before the taking and the value of the property after the taking. Damages are assessed according to Idaho Code.

(4) The value of the property to be taken is to be determined based upon the highest and best use of the property.

(5) If the negotiations to purchase the property and settle damages are unsuccessful, the property owner is entitled to assessment of damages from a court, jury or referee as provided by Idaho law.

(6) The owner has the right to consult with an appraiser of the owner's choosing at any time during the acquisition process at the owner's cost and expense.

(7) The condemning authority shall deliver to the owner, upon request, a copy of all appraisal reports concerning the owner's property prepared by the condemning authority. Once a complaint for condemnation is filed, the Idaho rules of civil procedure control the disclosure of appraisals.

(8) The owner has the right to consult with an attorney at any time during the acquisition process. In cases in which the condemning authority condemns property and the owner is able to establish that just compensation exceeds the last amount timely offered by the condemning authority by ten percent (10%) or more, the condemning authority may be required to pay the owner's reasonable costs and attorney's fees. The court will make the determination whether costs and fees will be awarded.

(9) The form contemplated by this section shall be deemed delivered by United States certified mail, postage prepaid, addressed to the person or persons shown in the official records of the county assessor as the owner of the property or if hand delivered to such person who acknowledges receipt of the form in writing on the form. A second copy will be attached to the appraisal at the time it is delivered to the owner.

(10) If a condemning authority desires to acquire property pursuant to this chapter, the condemning authority or any of its agents or employees shall not give the owner any timing deadline as to when the owner must respond to the initial offer which is less than thirty (30) days. A violation of the provisions of this subsection shall render any action pursuant to this chapter null and void.

(11) Nothing in this section changes the assessment of damages set forth in section [7-711](#), Idaho Code.

[7-711A, added 2000, ch. 354, sec. 1, p. 1188; am. 2014, ch. 268, sec. 1, p. 671.]

7-712. DAMAGES -- DATE OF ACCRUAL. For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value, at that date, shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed, as provided in the last section. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages. The compensation and damages awarded shall draw lawful interest from the date of the summons.

[(7-712) C.C.P. 1881, sec. 862; R.S., R.C., & C.L., sec. 5221; C.S., sec. 7415; I.C.A., sec. 13-712; am. 1957, ch. 127, sec. 1, p. 215.]

7-713. CURING DEFECTIVE TITLE. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same as in this chapter prescribed.

[(7-713) C.C.P. 1881, sec. 863; R.S., R.C., & C.L., sec. 5222; C.S., sec. 7416; I.C.A., sec. 13-713.]

7-714. PAYMENT OF DAMAGES. The plaintiff must, within thirty (30) days after final judgment, pay the sum of money assessed, but may, at the time of or before payment, elect to build the fences and cattle guards, and, if he so elect, shall execute to the defendant a bond, with sureties to be approved by the court, in double the assessed cost of the same, to build such fences and cattle guards within eight (8) months from the time the railroad is built on the land taken, and, if such bond is given, need not pay the cost of such fences and cattle guards. In an action on such bond the plaintiff may recover reasonable attorney's fees.

[(7-714) C.C.P. 1881, sec. 864; R.S., R.C., & C.L., sec. 5223; C.S., sec. 7417; I.C.A., sec. 13-714.]

7-715. PAYMENT OF DAMAGES -- FAILURE TO MAKE PAYMENT. Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court, upon a showing to that effect, must set aside and annul the entire proceedings, and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

[(7-715) C.C.P. 1881, sec. 865; R.S., R.C., & C.L., sec. 5224; C.S., sec. 7418; I.C.A., sec. 13-715.]

7-716. FINAL ORDER OF CONDEMNATION. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two (2) sections, the court must make final order of condemnation, which must describe the property condemned and the purposes of such condemnation. A copy of the order must be filed in the office of the recorder of the county,

and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

[(7-716) C.C.P. 1881, sec. 866; R.S., R.C., & C.L., sec. 5225; C.S., sec. 7419; I.C.A., sec. 13-716.]

7-717. POSSESSION BY PLAINTIFF -- PAYMENT OF DAMAGES -- APPOINTMENT OF COMMISSIONERS. At any time after trial and judgment entered, or pending an appeal from the judgment to the Supreme Court, whenever the plaintiffs shall have paid into the court for the defendant the full amount of the judgment, and such further sum as shall be required by the court as a fund to pay any further damages and costs that may be recovered in said proceedings, as well as all damages that may be sustained by the defendant, if for any cause the property shall not be finally taken for public use, the district court in which the proceeding was tried may, upon notice of not less than ten (10) days, authorize the plaintiff, if already in possession, to continue therein, and if not, to take possession of and use the property during the conclusion of the litigation, and may, if necessary, stay all actions and proceedings against the plaintiff on account thereof.

The defendant who is entitled to the money paid into court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter, upon obtaining an order therefor from the court. It shall be the duty of the court, or the judge thereof, upon application being made by such defendant, to order and direct that the money so paid into court for him, be delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding, except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to a defendant as aforesaid shall be held to [be] an abandonment by such defendant of all defenses interposed by him, excepting his claim for greater compensation. The court may order the money to be deposited in the county treasury, and in such case it shall be the duty of the treasurer to receive all such moneys, duly receipt for, and safely keep the same, and to pay out such moneys in such manner, and at such times, as the court or judge thereof may direct, and for such duty he shall be liable to the plaintiff upon his official bond; provided further, that at any time after the commencement of proceedings in the district court, as provided for in this chapter, to condemn property, and upon ten (10) days' notice to the adverse party, the district court or the judge thereof may appoint three (3) disinterested persons, who shall be residents of the county in which the land is situated, as commissioners to assess and determine the damages that the defendant will sustain by reason of the condemnation and appropriation of the property described in the complaint, and the said commissioners shall, before entering upon the discharge of their duties, take and subscribe an oath to faithfully and impartially discharge their duties as such commissioners. Such commissioners shall, within five (5) days of their appointment, give notice in writing of the time and place where they will meet for the purpose aforesaid, which time shall not be less than five (5) days nor more than ten (10) days from the date of giving said notice, and which place shall be within five (5) miles of the premises aforesaid, unless another time or place is agreed upon by the commissioners and the parties. At the time and place mentioned in such notice they may administer oaths to witnesses, and hear the evidence offered by the parties, and, after viewing the premises, shall report in writing their proceedings and the damages which they find the defendant will sustain by reason of the con-

demnation and appropriation of said property, which report shall be signed by said commissioners, or a majority thereof, and be filed in the office of the clerk of the district court in which such action shall be pending within ten days of the date of the conclusion of the commissioners' proceedings unless additional time therefor is granted by the court or judge thereof; and at any time after payment to the defendant of the amount so assessed and found by said commissioners as damages, or in case the defendant shall refuse to receive the same, then at any time after such amount shall be deposited with the clerk of the said court to abide the result of said action, the plaintiff may enter upon, and take possession of and use, the property mentioned in the complaint and do such work thereon as may be required for the easement or title sought according to its nature, until the final conclusion of the litigation concerning the same: provided further, that at the time of making such payment to the defendant of the amount so assessed and found by said commissioners as damages, or in case the defendant shall refuse to receive the same, then at any time after such amount shall be deposited with the clerk of the said court to abide the result of said action, the plaintiff may elect to build the fences, cattle guards and other structures by said commissioners found to be necessary, and may execute to the defendant a bond as provided in Section [7-714](#).

[(7-717) C.C.P. 1881, sec. 867; R.S., sec. 5226; am. 1888-1889, p. 12; reen. R.C. & C.L., sec. 5226; C.S., sec. 7420; I.C.A., sec. 13-717; am. 1951, ch. 110, sec. 1, p. 256.]

7-718. COSTS. Costs may be allowed or not, and, if allowed, may be apportioned between the parties on the same or adverse sides in the discretion of the court.

[(7-718) C.C.P. 1881, sec. 868; R.S., R.C., & C.L., sec. 5227; C.S., sec. 7421; I.C.A., sec. 13-718.]

7-720. APPLICATION TO MUNICIPALITIES. Nothing in this code must be construed to abrogate or repeal any statute provided for the taking of property in any municipality for street purposes. Any municipality at its option may exercise the right of eminent domain under the provisions of this chapter for any of the uses and purposes mentioned in section [7-701](#), Idaho Code.

[(7-720) C.C.P. 1881, sec. 870; R.S. & R.C., sec. 5229; am. 1913, ch. 108, sec. 1, p. 429; compiled and reen. C.L., sec. 5229; C.S., sec. 7423; I.C.A., sec. 13-720; am. 2009, ch. 11, sec. 2, p. 14.]

7-721. POSSESSION BY PLAINTIFF PENDING TRIAL. In any proceeding under the provisions of this chapter for the acquisition of real property, the plaintiff may take possession of and use such property at any time after just compensation has been judicially determined and payment thereof made into court. Judicial determination shall be satisfied by the following requirements:

(1) At any time after an action for condemnation has been commenced under the provisions of this chapter and after the defendant has made an appearance, the plaintiff may file a motion asking that said plaintiff be placed in lawful possession of and have the use of said property and the court shall fix a date, not less than ten (10) or more than twenty (20) days after the filing of such motion, for the hearing thereon and shall require

due notice to be given to each party to the proceedings whose interest would be affected by the requested taking. Notice herein shall be given as provided in rule 5 (a) or 5 (b), as the case may be, of the Idaho rules of civil procedure.

If the defendant has not appeared, but is not in default, plaintiff may proceed as herein provided twenty (20) days after the action shall have been commenced by serving the motion and notice of the hearing in the same manner as required for service of summons.

(2) At the hearing the court shall first determine whether or not plaintiff (a) has the right of eminent domain, (b) whether or not the use to which the property is to be applied is a use authorized by law, (c) whether or not the taking is necessary to such use, and (d) whether or not plaintiff has sought, in good faith, to purchase the lands sought to be taken and the court shall enter an order thereon which shall be a final order as to these issues and an appeal may be taken therefrom; provided, however, no appeal therefrom shall stay further proceedings.

(3) If the matters in the preceding subsection are determined in favor of the plaintiff the court shall hear the issues raised by the plaintiff's motion for taking and shall receive such evidence as it may consider necessary and proper for a finding of just compensation, but the court may limit the number of witnesses presented by any party to the action, and, in its discretion, may appoint a disinterested appraiser as an agent of the court to evaluate the property to which the motion relates and to report his conclusions to the court within ten (10) days from the date of his appointment; and the court shall fix his fee which shall be paid by the plaintiff. The court shall within five (5) days after the hearing, or if it shall appoint an appraiser, within five (5) days after receiving his report, make an order of determination of just compensation.

(4) Neither the order of the court determining just compensation, nor the amount of the deposit, nor the report of the appraiser appointed by the court shall be admissible in evidence in further proceedings under this section.

(5) After the court has entered its order of determination of the amount of just compensation, the plaintiff may deposit such amount with the court and the court shall thereupon enter an order fixing a date from which the plaintiff shall be entitled to take possession of and use the property. After such deposit and order have been made the cause shall proceed to trial in the regular manner.

(6) Any party defendant may file with the court an application to withdraw his share of the amount deposited by the plaintiff. Such application may be filed at any time after the court has entered its order placing plaintiff in possession and use of the property. If there be only one (1) defendant in the action, the court shall authorize the requested withdrawal of funds, but if there shall be more than one (1) defendant the court shall fix a date for hearing on the application to withdraw funds and shall require notice to be given to each party whose interest would be affected by such withdrawal. After hearing the court shall determine the share of the funds deposited to which the defendants or any of them are lawfully entitled and shall authorize the withdrawal requested or such part thereof as shall be proper.

(7) If more than eighty percent (80%) of the amount deposited is withdrawn, the defendant or defendants making the withdrawal shall be required to make a written undertaking, executed by two (2) or more sufficient

sureties, approved by the court, to the effect that they are bound to the plaintiff for the payment to it of such sum by which the amount withdrawn shall exceed the amount of the award finally determined upon trial of the cause.

(8) Upon trial of the cause the court shall enter judgment against the plaintiff for the amount of the award, and the plaintiff shall pay to the defendant or defendants the amount, if any, by which such judgment exceeds the amount previously deposited; provided that if the award and judgment shall be less than the amount withdrawn under subsection (6) of this section, the defendant or defendants shall refund the difference to the clerk of the court and if such refund is not made within thirty (30) days the court shall enter judgment in favor of the plaintiff and against such defendant or defendants for the amount of the difference.

(9) After plaintiff has deposited with the court the amount determined by the court to be just compensation, no interest shall accrue on the amount so deposited.

[7-721, as added by 1969, ch. 234, sec. 1, p. 745; am. 1972, ch. 119, sec. 1, p. 236; am. 1975, ch. 141, sec. 1, p. 321; am. 2006, ch. 451, sec. 1, p. 1341.]