

Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 340

AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 32-21-2-3, AS AMENDED BY P.L.14-2019, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) Except as provided in subsection (c), a conveyance, a mortgage, or an instrument of writing to be recorded must be:

- (1) acknowledged by the grantor; ~~or~~ **and**
- (2) proved before a:
 - (A) judge;
 - (B) clerk of a court of record;
 - (C) county auditor;
 - (D) county recorder;
 - (E) notary public;
 - (F) mayor of a city in Indiana or any other state;
 - (G) commissioner appointed in a state other than Indiana by the governor of Indiana;
 - (H) minister, charge d'affaires, or consul of the United States in any foreign country;
 - (I) clerk of the city county council for a consolidated city, city clerk for a second class city, or clerk-treasurer for a third class city;
 - (J) clerk-treasurer for a town; or
 - (K) person authorized under IC 2-3-4-1.



(b) In addition to the requirements under subsection (a), a conveyance may not be recorded after June 30, 2007, unless it meets the requirements of this subsection. The conveyance must include a statement containing substantially the following information:

"The mailing address to which statements should be mailed under IC 6-1.1-22-8.1 is [insert proper mailing address]. The mailing address of the grantee is [insert proper mailing address]."

The mailing address for the grantee must be a street address or a rural route address. A conveyance complies with this subsection if it contains the address or addresses required by this subsection at the end of the conveyance and immediately preceding or following the statements required by IC 36-2-11-15.

(c) This section does not apply to the Indiana department of transportation.

SECTION 2. IC 32-24-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 6. (a) Upon the filing of a complaint under this chapter, the circuit court clerk shall issue a notice requiring the defendants to appear before the court on the day to be fixed by the plaintiff by indorsement on the complaint at the time of filing the complaint, and to show cause, if any, why the property sought to be condemned should not be acquired. **The notice must also provide notice to defendants of their right to object under section 8 of this chapter not later than thirty (30) days from the date the notice is served. The notice must include, either as an attachment or as part of the language of the notice, the full text of section 8 of this chapter.** The notice shall be substantially in the following form:

In the _____ Court of Indiana.
To the Sheriff of _____ County, Indiana:

You are hereby commanded to notify _____, defendants, to appear before the _____ Court of _____ County, Indiana on the ____ day of _____, 20____, at _____ o'clock, __ M. ~~to show cause, if any, they have why the to~~ **object to the condemnation of property sought to be acquired in the complaint of _____. should not be acquired. If defendants object to the acquisition of the property, defendants must file objections with the court under IC 32-24-1-8 not later than thirty (30) days after the date this notice is served. The court may extend the period for filing objections by an additional thirty (30) days upon written motion of the defendants.**

Witness my hand and the seal of the court affixed at _____, Indiana, this ____ day of _____, 20____.
Clerk of _____ Court.



(b) The notice shall be served in the same manner as a summons is served in civil actions. Upon a showing by affidavit that any defendant is a nonresident of Indiana or that the defendant's name or residence is unknown, publication and proof of the notice may be made as provided in section 7 of this chapter.

SECTION 3. IC 32-24-1-8, AS AMENDED BY P.L.146-2017, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. (a) A defendant may object to the proceedings:

- (1) because the court does not have jurisdiction either of the subject matter or of the person;
- (2) because the plaintiff does not have the right to exercise the power of eminent domain for the use sought; or
- (3) for any other reason disclosed in the complaint or set up in the objections.

(b) Objections under subsection (a) must be:

- (1) in writing;
- (2) separately stated and numbered; and
- (3) filed not later than thirty (30) days after the date the notice required in section 6 of this chapter is served on the defendant. However, the court may extend the period for filing objections by not more than thirty (30) days upon written motion of the defendant.

(c) The court may not allow pleadings in the cause other than the complaint, any objections, and the written exceptions provided for in section 11 of this chapter. However, the court may permit amendments to the pleadings.

(d) If an objection is sustained, the plaintiff may amend the complaint or may appeal from the decision in the manner that appeals are taken from final judgments in civil actions. All the parties shall take notice and are bound by the judgment in an appeal.

(e) If the objections are overruled, the court shall appoint appraisers as provided for in this chapter. Any defendant may appeal the interlocutory order overruling the objections and appointing appraisers in the manner that appeals are taken from final judgments in civil actions.

(f) All the parties shall take notice of and be bound by the judgment in the appeal.

(g) The transcript must be filed in the office of the clerk of the supreme court not later than thirty (30) days after the notice of the defendant's appeal is filed. The appeal does not stay proceedings in the cause.

(h) This subsection does not apply to a condemnation action



brought by a public utility (as defined in section 5.9(a) of this chapter) or by a pipeline company. Notwithstanding section 14 of this chapter, if an objection:

(1) is sustained, and no appeal is filed; or

(2) is sustained in the judgment in the appeal;

the court shall award the defendant the reasonable costs and attorney's fees incurred for the objection, in an amount not to exceed twenty-five thousand dollars (\$25,000).

SECTION 4. IC 32-24-2-6, AS AMENDED BY P.L.172-2009, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 6. (a) This chapter applies if the works board of a municipality wants to acquire property for the use of the municipality or to open, change, lay out, or vacate a street, an alley, or a public place in the municipality, including a proposed street or alley crossings of railways or other rights-of-way. However, this chapter does not apply if a municipality wants to acquire the property of a public utility (as defined in IC 8-1-2-1).

(b) The works board must adopt a resolution that the municipality wants to acquire the property. The resolution must describe the property that may be injuriously or beneficially affected. The board shall have notice of the resolution:

(1) published in a newspaper of general circulation published in the municipality once each week for two (2) consecutive weeks; and

(2) mailed to the owner of each piece of property affected by the proposed acquisition.

The notice must name a date, at least ~~ten (10)~~ **thirty (30)** days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceeding.

(c) The works board shall consider the remonstrances, if any, and then take final action, confirming, modifying, or rescinding its original resolution. ~~This action is conclusive as to all persons.~~

SECTION 5. IC 32-24-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. (a) Upon the completion of the list, the works board shall award the damages sustained and assess the benefits accruing to each piece of property on the list.

(b) When the assessments or awards are completed, the works board shall have a written notice served upon the owner of each piece of property, showing the amount of the assessment or award, by:

(1) if the owner is a resident of the municipality, leaving a copy of the notice at the owner's last usual place of residence in the



municipality or by delivering a copy to the owner personally **and mailing a copy of the notice to the owner's address of record;**
or

(2) if the owner is not a resident of the municipality, by sending the notice to the owner's address of record by certified mail.

(c) ~~If the owner is a nonresident,~~ or If the owner's residence is unknown, the municipality shall notify the owner by publication in a daily newspaper of general circulation in the municipality once each week for three (3) successive weeks.

(d) The notices must also name a day, at least ~~ten (10)~~ **thirty (30)** days after service of notice or after the last publication, on which the works board will receive or hear remonstrances from ~~persons~~ **owners** with regard to:

- (1) the amount of their respective awards or assessments; and**
- (2) objections to the municipality's right to exercise the power of eminent domain for the use sought.**

(e) Persons not included in the list of the assessments or awards and claiming to be entitled to them are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the works board.

(f) The notice required by this section must provide the full text of subsection (d) to provide notice to the property owners of their right to object to the condemnation and be in substantially the same form as the notice required under IC 32-24-1-6(a).

SECTION 6. IC 32-24-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 10. (a) A person notified or considered to be notified under this chapter may appear before the works board on the day fixed for hearing remonstrances to awards and assessments **and the municipality's right to exercise the power of eminent domain for the use sought** and remonstrate in writing against them.

(b) After the remonstrances have been received, the works board shall either sustain or modify the awards or assessments in the case of remonstrances that have been filed **that are based on the amount of the awards or assessments.** The works board shall sustain the award or assessment in the case of an award or assessment against which a remonstrance has not been filed.

(c) If a person remonstrates in writing an objection to the municipality's right to exercise the power of eminent domain for the use sought, the works board shall consider the remonstrance and confirm, modify, or rescind its original resolution.



~~(e)~~ **(d)** A person remonstrating in writing who is aggrieved by the decision of the works board may, not later than ~~twenty (20)~~ **thirty (30)** days after the decision is made, take an appeal to a court that has jurisdiction in the county in which the municipality is located. The appeal affects only the assessment or award of the person appealing.

SECTION 7. IC 32-24-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 11. (a) The appeal may be taken by filing an original complaint in the court against the municipality within the time required by section ~~10(e)~~ **10(d)** of this chapter, setting forth the action of the works board with respect to the assessment and stating the facts relied upon as showing an error on the part of the board. The court shall rehear the matter of the assessment de novo and confirm, reduce, or increase the assessment. If the court reduces the amount of benefit assessed or increases the amount of damages awarded, the plaintiff may recover costs. If the court confirms the amount of the assessment, the plaintiff may not recover costs. ~~The judgment of the court is conclusive, and an appeal may not be taken from the court's judgment.~~

(b) If upon appeal the benefits assessed or damages awarded by the works board are reduced or increased, the municipality may, upon the payment of costs, discontinue the proceedings. It may also, through the works board, make and adopt an additional assessment against all the property originally assessed in the proceeding, or that part that is benefitted, in the manner provided for the original assessment. However, such an assessment against any one (1) piece of property may not exceed ten percent (10%) of the original assessment against it.

(c) If the municipality decides to discontinue the proceedings upon payment of costs and if assessments for benefits have already been paid, the amounts paid shall be paid back to the person or persons paying them.

(d) The parties may appeal a court's judgment under this section in the manner that appeals are taken from final judgments in civil actions. All of the parties shall take notice of and be bound by the judgment of the appeal.

SECTION 8. IC 32-24-4.5-11, AS ADDED BY P.L.163-2006, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 11. (a) This section applies to a parcel of real property located in a project area:

- (1) that is located in only one (1) county;
- (2) that is at least ten (10) acres in size; and
- (3) in which a condemnor or its agents has acquired clear title to at least ninety percent (90%) of the parcels in the project area.



(b) As used in this section, "project area" means an area designated by a condemnor and the legislative body for the condemnor for economic development.

(c) Notwithstanding sections 7 and 8 of this chapter, a condemnor may acquire a parcel of real property by the exercise of eminent domain under this section only if all of the following conditions are met:

- (1) The parcel of real property is not occupied by the owner of the parcel as a residence.
- (2) The legislative body for the condemnor adopts a resolution by a ~~two-thirds (2/3)~~ **three-fourths (3/4)** vote that authorizes the condemnor to exercise eminent domain over a particular parcel of real property.

(d) A condemnor that acquires a parcel of real property through the exercise of eminent domain under this section shall compensate the owner of the parcel as follows:

- (1) Payment to the owner equal to one hundred twenty five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1.
- (2) Payment of any other damages as determined under IC 32-24-1 and any loss incurred in a trade or business that is attributable to the exercise of eminent domain.
- (3) Payment of the owner's relocation costs, if any.

(e) The condemnor may not acquire a parcel of real property through the exercise of eminent domain under this section if the owner of the parcel demonstrates by clear and convincing evidence that:

- (1) the location of the parcel is essential to the viability of the owner's commercial activity and **the payment of damages and relocation costs cannot adequately compensate the owner of the parcel; or**
- (2) ~~the payment of damages and relocation costs cannot adequately compensate the owner of the parcel.~~ **the parcel is not necessary for the economic development project for which it is sought.**

(f) The court shall award the payment of reasonable attorney's fees to the owner of a parcel in accordance with this chapter.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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