

## **RULE 4:73. Condemnation; Appeals From Assessments**

### **4:73-1. Complaint**

An action in condemnation shall be brought in the Superior Court in a summary manner pursuant to R. 4:67. The complaint shall include a statement showing the amount of compensation offered by the condemnor and a reasonable disclosure of the manner in which the amount has been calculated. Unless the court for good cause orders otherwise, reasonable disclosure by the condemnor shall include furnishing the condemnee with the map and a description of land to be acquired and identity of improvements to be acquired, if any; a statement of the full fair market value including a description of the appraisal valuation method or methods relied upon as well as a breakdown of the appraised value allocated to the land to be acquired, and improvements to be acquired, if any; and data concerning comparable sales or leases relied upon in determining the amount of compensation offered which shall include names of seller and purchaser or landlord and tenant, location of property by block, lot, street, street number, and municipality, date of sale or date and duration of lease, the consideration for the sale or amount of rent, and book and page number of the recording of the deed; and any unusual factors known to the condemnor which may affect value.

Note: Source-R.R. 4:92-1. Amended July 14, 1972 to be effective September 5, 1972; amended November 1, 1985 to be effective January 2, 1986.

### **4:73-2. Parties; Trial of Dispute as to Title**

- **(a) Parties.** The record owner, the occupant, if any, such other persons appearing of record to have any interest in the property and such persons claiming an interest therein as are known to the plaintiff shall be made parties.
- **(b) Dispute as to Title.** If the title to the land or other property to be taken is in dispute, the dispute shall be tried either before or after the determination of damages as the court may direct.

Note: Source-R.R. 4:92-2. Amended July 14, 1972 to be effective September 5, 1972.

### **4:73-3. Service of Process**

- **(a) By Whom Served.** The order to show cause issuing pursuant to R. 4:67 may be served by any person 18 or more years of age.
- **(b) Non-resident or Unknown Parties.** If a defendant resides outside this State or if the plaintiff does not know defendant's residence address, notice shall be given to defendant by publication once in a newspaper published or of general circulation in the county or counties in which the land or property to be taken is located and by mailing to defendant's last known address a copy of the notice at least 10 days before the return date of the order to show cause. If the name of a defendant is unknown the published notice shall be addressed to "Unknown Owner" or "Unknown Claimant".
- **(c) Service of Declaration of Taking.** Service of a declaration of taking shall be made with or after the service of process.

Note: Source-R.R. 4:92-3(a) (b) (c). Paragraph (c) adopted July 14, 1972 to be effective September 5, 1972; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended June 28, 1996 to be effective September 1, 1996.

### **4:73-4. Report of Commissioners; Service**

Upon the appointment of the commissioners, the presiding commissioner shall fix a hearing date and shall cause the commissioner's report to be filed within 4 months next following their appointment, unless the court shall extend the time. If the report is not filed within the time so limited and no proper reason appears, the court may discharge the commissioners or any of them and appoint a substitute commissioner or commissioners. The commissioners upon filing their report shall serve a copy upon the plaintiff, upon each person in possession of the property and upon each party having an interest therein who appeared before them.

**Note:** Source-R.R. 4:92-4. Amended July 14, 1972 to be effective September 5, 1972.

#### **4:73-5. Fees and Costs**

On the motion of any party, including the commissioners, the court may, in its discretion, on proper showing, allow such fees, expenses and costs of the commissioners as it deems adequate, to be paid by plaintiff.

**Note:** Source-R.R. 4:92-5.

#### **4:73-6. Appeal From Report of Commissioners**

- **(a) Notice of Appeal; Service, Contents; Docket Number.** An appeal from the report of the commissioners shall be taken by an appellant by filing a notice of appeal with the deputy clerk of the Superior Court in the county of venue within 20 days after the date of service upon him or her, by mail or otherwise, of a copy of the report; but the court for good cause shown may extend the time for a period not exceeding 30 days. The notice of appeal shall be served only on persons in possession and parties appearing before the commissioners who have an interest in the property. The appellant in the notice of appeal may demand trial by jury, or any other party may make such a demand within 10 days after service of the notice of appeal. The notice of appeal shall also include notice of an application for an order fixing the date of trial. Unless the court otherwise orders, if the original action involves a taking or takings from a tract of land under single ownership, the appeal shall be docketed under the number assigned to the original action and shall continue in that action.
- **(b) Severance.** Except as provided in paragraph (a), the appeal concerning takings from each separate tract shall be severed from the action for purpose of trial and shall be docketed as a separate action cross-indexed to the original action. All appeals relating to the same tract shall be docketed under the number assigned to the original notice of appeal as to that tract.

**Note:** Source-R.R. 4:92-6(a) (b) (c); paragraph (a) caption and text amended and paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (a) amended July 13, 1994 to be effective September 1, 1994.

#### **4:73-7. Jury; View of Property**

If a jury is demanded, the appeal shall be tried by a jury drawn from the general panel. The court may permit the jury to view the land and property to be taken depending on the circumstances of the case.

**Note:** Source — R.R. 4:92-7. Amended July 7, 1971 effective September 13, 1971; amended July 19, 2012 to be effective September 4, 2012.

#### **4:73-8. Costs on Appeal**

Costs of the appeal shall be taxed against the plaintiff-condemnor in all cases except those in which the appeal is brought by the defendant-condemnee and the judgment is for the same or a lesser sum than that awarded by the commissioners.

Note: Source-R.R. 4:92-8.

#### **4:73-9. Payment Into Court; Disputes as to Allocation; Withdrawal; Review**

- **(a) Payment Into Court.** A plaintiff authorized by statute to pay the award into court shall do so on order of the court entered without notice unless the statute requires notice.
- **(b) Disputes as to Allocation.** If allocation of the proceeds of an award or judgment is in dispute, the same shall be tried only after the award has been paid into court or a judgment upon appeal from an award has been entered. The matter may be initiated by any party by a petition in the cause and shall proceed as a summary action under R. 4:67.
- **(c) Withdrawal.** Any party may apply for withdrawal of money paid into court by motion on notice to all other parties, including the Director of the Division of Taxation if the plaintiff is the Commissioner of Transportation. If any party disputes such withdrawal, the moving party shall proceed under paragraph (b) of this rule.
- **(d) Review.** All orders for withdrawal shall be processed in accordance with R. 4:57-2.

Note: Source-R.R. 4:92-10, 4:92-11. Paragraph (a) amended and (b) (c) and (d) adopted July 14, 1972 to be effective September 5, 1972. Paragraphs (a) and (d) amended November 27, 1974 to be effective April 1, 1975; paragraph (d) amended July 16, 1981 to be effective September 14, 1981.

#### **4:73-10. Appeals From Assessments for Improvements and Awards of Damages**

Appeals from an assessment for improvements and an award for damages incidental to improvements and appeals from an award of damages for taking property useful or necessary for the making of an improvement, shall be taken by filing a notice of appeal in the Superior Court. The matter shall be brought on by instituting a summary action and all such appeals as to the same improvements shall be consolidated. The action shall be tried with a jury if demanded as provided by R. 4:73-7. Applications under any statute for confirmation of an assessment or award not appealed from shall be brought on by instituting a summary action.

Note: Source-R.R. 4:92-12.

#### **4:73-11. Pretrial Discovery, Exchange of Experts' Reports, Comparable Sales and Leases; Expert Testimony**

- **(a) Pretrial Discovery.** Rules of court relating to depositions, interrogatories, discovery and inspection of documents and property, except as provided in paragraph (b) of this rule, shall not be applicable to the trial of condemnation proceedings to fix the amount of the award before the commissioners or to appeals from such awards except by leave of court. The court, however, may on motion and for good cause shown order a party to produce for deposition pursuant to R. 4:14 an expert witness the party intends to call at trial who has not testified at the hearing before the commissioners. The party taking the deposition shall pay the expert a reasonable fee, to be determined by the court if the parties cannot agree on the amount.
- **(b) Exchange of Experts' Reports; Comparable Sales and Leases.** Prior to the hearing before the commissioners, the parties shall exchange the names, addresses, and written appraisal reports of any person who will be called to testify as a valuation expert and a list of comparable sales and leases intended to be established by proof which list

shall set forth as to each comparable sale and lease the following information: names of seller and purchaser or landlord and tenant; location of property by block, lot, street, street number and municipality; date of sale or date and duration of lease; the consideration for the sale or amount of rent; and book and page number of the recording of the deed. This information shall be furnished at least 15 days prior to the hearing before the commissioners. On appeal to the Law Division, the parties shall exchange the name, address and written report of any expert, including but not limited to appraisers, who will be called to testify at least 40 days prior to trial or, if the case is pre-tried, at the time of service of pre-trial memoranda, whichever is earlier. Any party intending to offer rebuttal testimony shall furnish the name, address and written report of the rebuttal expert within 20 days after service upon that party of the report or deposition being rebutted. The parties shall provide a listing of each comparable sale or lease that will be utilized by any witness to establish or rebut market value. The list shall contain the same sale or lease information that is required to be furnished prior to the commission hearing. Unless the parties consent or the court otherwise orders, no party shall be permitted to offer testimony of any expert witness whose name and report has not been provided or of any comparable sale or lease for which the aforementioned information has not been timely exchanged.

**Note: Source-R.R. 4:92-13. Paragraph (a) amended and paragraphs (b) and (c) adopted July 14, 1972 to be effective September 5, 1972; paragraph (c) amended July 21, 1980 to be effective September 8, 1980; caption and paragraph (b) amended and paragraph (c) deleted July 15, 1982 to be effective September 13, 1982; caption, paragraph (a) and paragraph (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 13, 1994 to be effective September 1, 1994.**