

Your Rights Under Expropriation

As it pertains to
Manitoba Government Departments,
Corporations, etc.

NOTICE

This booklet is for your guidance and general information only.
The Expropriation Act (Manitoba), Chapter E 190 of the Continuing Consolidation
of the Statutes of Manitoba should be consulted at all times
for the strict interpretation and application of the law.

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The Expropriation Act

Introduction

Under Manitoba's *The Expropriation Act* (the Act), the determination of due compensation is based on the market value of the land as of a specified date, plus appropriate amounts of damages, where applicable. The date for valuation is the date the Declaration of Expropriation was signed – the first step in the expropriation process.

Government policy is to ensure that all property owners¹ involved are treated fairly with regard to compensation for their land.

Steps In An Expropriation

On projects involving roads, drains, pipelines, etc. where there are several landowners affected, a property appraiser from Crown Lands and Property Agency (CLPA) and a Government engineer will meet with the landowners to review the project. A final engineering plan will then be developed to form the basis for the legal survey plan, which shall form part of the Declaration of Expropriation. At this time there is no discussion regarding compensation.

The following steps do not apply if the landowner consents to the purchase and a mutual agreement as to compensation is reached.

¹ In *The Expropriation Act* the term "owner" is used and defined to mean anyone with an interest in land. This includes the registered owner, a lessee, a mortgagee and a person or company with a right to use the land in accordance with an easement, etc. The term owner is similarly used in this pamphlet.

1. Declaration of Expropriation

On projects where expropriation is necessary a Declaration of Expropriation is signed on behalf of the Expropriating Authority.

Forthwith, upon a Declaration of Expropriation being signed, a Notice of Intended Expropriation stating an application for a Confirming Order is pending must be filed in the appropriate Land Titles Office.

The Declaration of Expropriation and a draft Confirming Order are then submitted to the Confirming Authority, the Minister charged with the administration of the project for which the land is required. Proceedings may then be taken in accordance with Schedule A² of the Act. If the project is deemed of an urgent nature then it must be put into effect without delay for the overall benefit of the public, it is not unusual for the Lieutenant Governor in Council to pass an Order-in-Council to waive a Public Inquiry into the expropriation. The Order-in-Council authorizes the Confirming Authority to make its Order confirming the Declaration of Expropriation without a Public Inquiry.

Expropriation Process when Public Inquiry may be convened

If the provisions of Schedule A of the Act are not waived by Order-in-Council, the following will occur within 30 days of the signing of the Declaration of Expropriation.

The **Expropriating Authority** shall:

- serve a Notice of the Intended Expropriation on all owners;
- publish a Notice of the Intended Expropriation in a newspaper having general circulation in the locality in which the land is situated and
- submit the Declaration of Expropriation to the Confirming Authority.

Notice of Objection and Timeframe

Within 30 days of the service or publication of a Notice of Intended Expropriation, an owner may serve a Notice of Objection on the Minister of Justice and the Confirming Authority stating his/her name and address, the nature of his/her interest in the land, the nature of the objection, and the grounds upon which the objection is based.

Note: Objections must pertain only to the design of the project and not to the compensation involved.

² Schedule A of the Act refers to the steps to be taken when a Public Inquiry may be convened.

After the expiration of the 30 day period in which to object to the Intended Expropriation, the Confirming Authority shall:

- If it has been served with a Notice of Objection, request the Minister of Justice to appoint an impartial Inquiry Officer.
- If it has not been served with a Notice of Objection, confirm the Declaration of Expropriation.

Duties of Inquiry Officer

Within 30 days of appointment, the Inquiry Officer will:

- hold a public hearing into whether the expropriation is fair and reasonably necessary;
- submit a written report to the Confirming Authority setting forth his/her determination of the facts, etc. and
- after delivery of the report to the Confirming Authority, send a copy of the report to the expropriating authority and to each party to the inquiry.

Note 1: *The Inquiry Officer may not consider any matter or question relating to:*

- due compensation that would be payable if the expropriation is continued or
- the nature or objective of the expropriating authority to complete the project for which the land is intended to be expropriated.

Note 2: An owner who serves a notice of objection is entitled to be reimbursed for legal costs, **reasonably incurred**, in preparing and serving the objection, and in attending and participating in the public inquiry.

2. Confirmation/Refusal of Declaration of Expropriation by Confirming Authority

Unless, the Court grants an extension of time within which the Inquiry Officer is required to make a report, the Confirming Authority must make a decision to confirm or refuse a Declaration of Expropriation within 120 days from the date the Confirming Authority received the Declaration, or it will be conclusively deemed to have refused the Expropriation. If confirmed, the expropriating authority must forthwith serve the decision of the Confirming Authority on all owners and publish a decision to expropriate in a newspaper having general circulation in the area in which the land is situated.

The Inquiry Officer's report and recommendations are not binding on the Confirming Authority. However, if the Confirming Authority proceeds with an Order that is not in accordance with the opinion of the Inquiry Officer, the authority must state its reasons for doing so.

If confirmed, the Expropriating Authority must forthwith serve the decision of the Confirming Authority on all owners and publish the decision to expropriate in a newspaper having general circulation in the area in which the land is situated.

Any person aggrieved by an expropriation may apply to the Court to have the expropriation quashed within six weeks after the date on which the order confirming the Declaration of Expropriation is published. The Court will have to be persuaded that the procedures taken were not in compliance with the Act and that the aggrieved party's position has thereby been prejudiced.

3. Registration of Declaration of Expropriation and Confirming Order

If the Confirming Authority's decision is to confirm the Declaration of Expropriation, the Confirming Order and the Declaration of Expropriation must be registered at the appropriate Land Titles Office within 14 days of the signing of the Confirming Order. With this registration, the expropriation becomes final.

4. Service of Expropriation Documents

Notice of Expropriation

Within 60 days of the registration of a Confirming Order and Declaration of Expropriation, the expropriating authority must serve every owner with a Notice of Expropriation.

5. Offer of Compensation

Within 120 days of the registration of the Declaration of Expropriation, and before serving a Notice of Possession, the expropriating authority must serve an Offer of Compensation to every landowner.

The Expropriation Act refers to the compensation payable to expropriated owners as “due compensation”. Due compensation shall include the market value of the land, meaning the amount of money that the land and all manner of interests in the land might reasonably be expected to realize, if sold in the open market by a willing seller to a willing buyer, as of the date of the Declaration of Expropriation was signed.

Where appropriate, due compensation may also include:

- reasonable costs, expenses and losses arising out of or incidental to the owner’s disturbance;
- damages for injurious affection and
- value to the owner of any special economic advantage arising out of or incidental to the actual occupation of the land, to the extent that no other provision is made therefor in due compensation.

Note: An owner can accept an immediate advance payment of the compensation offered as market value for the land without prejudice to the rights of the owner to receive due compensation that is subsequently agreed upon or determined under the provisions of *The Expropriation Act*.

6. Notice of Possession

In order to take possession of expropriated land, the expropriating authority must serve a Notice of Possession in accordance with the Act. Whenever possible a Notice of Possession will give at least 30 days advance notice. However, this may be varied, if the land is not occupied.

Except pursuant to an agreement with the expropriating authority or in accordance with a Notice of Possession, expropriated land cannot be vacated unless seven (7) days notice is given to the expropriating authority.

For as long as an owner remains in actual possession of expropriated land, the owner is liable for all realty taxes and damage costs in accordance with the provisions of the Act.

Adjudication of Compensation Payable

If CLPA and the landowner are unable to agree upon the due compensation payable, the landowner must request a hearing presided over by the Land Value Appraisal Commission (LVAC). The application must be made no later than two years after the Authority enters into possession of the land.

If the LVAC is requested to determine the due compensation payable, it may hold a public hearing in the district in which the land is located. LVAC hearings are similar to court hearings but more informal. The LVAC cannot determine the compensation for goods and chattels. This matter must be settled privately between the owner and, CLPA on behalf of the expropriating Authority.

Decisions of the LVAC are binding on both parties, subject to the right of appeal to The Court of Appeal, within 40 days after the date the LVAC issues its certificate to the compensation payable. If an owner fails to appeal within that time frame, the owner is deemed to have accepted the Certification of the LVAC, and any claim to further compensation is barred.

If an owner fails to make application for a hearing before the LVAC within two years from the date, the owner will be deemed to have accepted the Compensation set out in the Offer of Compensation and payment will be made to the entitled owner.

Legal, Appraisal and Other Expert Assistance

An owner is entitled to be assisted by a lawyer, a land appraiser, and other consultants concerning the preparation and presentation of claims for due compensation. If the due compensation payable is settled by agreement or by an acceptable certification of the LVAC, the owner will usually receive reimbursement for such fees and costs that are reasonably incurred, in the preparation and presentation of the claim.

If the amount certified as compensation payable by the LVAC is appealed to The Court of Appeal, reimbursement of such fees and costs, including those incurred in connection with an LVAC hearing, are in the discretion of The Court of Appeal.

Note: An appeal to The Court of Appeal may only be made on questions of law or fact or mixed law and fact and The Court of Appeal may:

- refer any matter back to the LVAC for determination or
- make any determination that the LVAC has the power to make.

Appeals

The Court of Queen's Bench

- The Court will have to be persuaded that the procedures taken were not in compliance with the Act and that the aggrieved party's position has thereby been prejudiced.

The Court of Appeal

- Matters relating to determination of due compensation certified by the LVAC may be appealed to The Court of Appeal on questions of law or fact or mixed law and fact and The Court of Appeal may:
 - refer any matter back to the LVAC for determination; or
 - make any determination that the LVAC has the power to make.

The Supreme Court of Canada

- A further appeal may be made to The Supreme Court of Canada, but only with the permission of that court.

Further Information

You will be furnished at the outset of negotiations with the name and telephone number of a contact person with the expropriating Authority.

The following is a list of associated parties that may be of assistance to you:

- Crown Lands and Property Agency
Manitoba Infrastructure
308 – 25 Tupper Street North
Portage la Prairie, Manitoba R1N 3K1
Tel: 1-204-239-3510

- The Secretary of the Land Value Appraisal Commission
1144 – 363 Broadway
Winnipeg, Manitoba R3G 3N9
Tel: 1-204-945-5455
(For information specific to due compensation under the Act)

- Statutory Publications
Manitoba Archives Building
200 Vaughan Street
Winnipeg, Manitoba R3C 1T5
Email: queensprinter@gov.mb.ca
Toll Free (MB only): 1-800-321-1203
Website: http://web2.gov.mb.ca/laws/statutes/index_ccsm.php
(For copies of *The Expropriation Act*, C.C.S.M Chapter E190 and *The Land Acquisition Act*, C.C.S.M. Chapter L40)