

ROW Eminent Domain Manual



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Manual Notice 2024-2

From: Kyle Madsen, Right of Way Division Director

Manual: ROW Eminent Domain Manual

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Purpose

The primary purpose of this revision is to update the *ROW Eminent Domain Manual* to align with Texas Property Code, Section 21.0113.

Changes

In **Chapter 2**, updated *Section 1 - Offer Letters* and made minor updates throughout chapter.

In **Appendix A**, removed a reference to obsolete form *ROW-E-Med, Notice of Pre-mediation and Mediation Settings*.

Disclaimer

Some hyperlinks will not work when a PDF version of this manual is downloaded and used offline.

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Archives

Past manual notices are available in a [pdf archive](#).

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Chapter 1 — Legal Aspects of Eminent Domain

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[Section 1 — Overview](#)

Section 1 — Overview

Provisions of the Texas Constitution

Section 17, Article I, Texas Constitution, provides that “No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money...” Judicial decisions have defined “adequate compensation” to be based on “market value”, as a general rule. In simple terms, the State shall not acquire private property without paying fair compensation to the landowner.

The property owner, however, may not accept the appraiser's opinion of market value as just compensation. If agreement between the acquiring agency and the property owner cannot be reached through negotiation, eminent domain (ED) proceedings must be initiated to acquire the property interest.

State Statutory Provisions

The authority for the State to enter into ED proceedings to acquire a property interest is described in the *Transportation Code*. This authority is granted to the State whether the property interest is located inside or outside the limits of an incorporated city, town or village; and whether the city, town or village are incorporated under general or special laws, including Home Rule Cities. The appropriate procedure for these proceedings is in *Property Code, Chapter 21 “Eminent Domain”*.

Federal Laws and Regulations

Projects receiving federal aid are required to comply with the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, and its subsequent amendments. The regulations related to these laws are set out on *49 CFR, Part 24*.

These laws and regulations set out minimum standards for a basic model of real property acquisition, and generally speaking, require the following:

- ◆ Every reasonable effort to acquire the real property expeditiously by negotiation;
- ◆ Notice to the landowner must be provided in writing of the Agency's interest in acquiring the real property and the basic protections afforded;
- ◆ Appraisal of the real property by the acquiring entity and invitation to landowner to attend appraisal inspection;
- ◆ Offer to landowner of just compensation not less than an approved appraisal of the fair market value;

- ◆ Provision of a summary statement which explains the offer, and describes property to be acquired;
- ◆ No coercive action may be taken to induce agreement on price to be paid; and
- ◆ No intentional use of the power of inverse condemnation to avoid a formal condemnation proceeding.

Chapter 2 — State Acquisition by Eminent Domain

Contents:

[Section 1 — Offer Letters](#)

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Section 1 — Offer Letters

Procedure

If acquisition by eminent domain (ED) becomes necessary, condemnation proceedings must be started by the acquiring agency. Chapter 21 of the Texas Property Code sets forth certain requirements relating to offers made by condemning authorities. These requirements must be met in order to ensure that the Texas Department of Transportation (TxDOT) has the authority to proceed to condemnation.

Strict Procedural Compliance Required

Courts have strictly construed any procedural failure or ambiguity against the condemning authority and in favor of the property owner. Failure to strictly comply with all statutory procedural requirements for negotiations and eminent domain may result in an abatement or even dismissal of the condemnation proceeding.

Initial Offer

Section 21.0111 of the Property Code requires that TxDOT disclose to the landowner, by certified mail return receipt requested (CMRRR) at the time an initial offer is made, all appraisals produced or acquired by TxDOT relating to the owner's property and prepared within 10 years preceding the offer. For that reason, send the appraisal(s) and initial offer letter to the landowner by CMRRR.

Section 21.0113 also requires that the initial offer include a copy of the proposed deed, easement or other conveyance instrument for the property or property interest sought to be acquired, including the property description and any applicable special clauses (e.g., easement preamble, bisection clauses or access addenda). This section also requires specific formatting for the text in the initial offer letter. Always use the most up to date, applicable [initial offer letter form](#). The landowner is entitled to at least 30 days to review the initial offer after its delivery before TxDOT can send a final offer. See 43 TAC 21.10(h) establishing a presumed date of delivery (5 days after mailing) when no evidence is available that the initial offer was delivered to the owner or the date of its delivery.

The [Landowner's Bill of Rights](#), as described in and required by Section 21.0112 of the Property Code, should be included with the initial offer letter. A copy of the most current *Landowner's Bill of Rights* can be obtained from the Texas Attorney General website or the TxDOT website. It is available in both English and Spanish.

Final Offer

After (1) the landowner has had at least 30 days to review the initial offer and it is determined that the property interest needed cannot be acquired through negotiation (including administrative settlement), or (2) if there are title problems or environmental concerns that cannot be resolved, send to the owner, by regular U.S. mail and CMRRR, form [ROW-N-FOL Final Offer Letter](#) or other form of final offer appropriate to the specific to the nature of the acquisition, such as form [ROW-N-FOLE Final Offer Letter \(Easement\)](#).

In the caption of the final offer letter, describe the property being acquired in such a way that it can easily be identified by the owner.

Pursuant to Section 21.0113 of the Property Code, the final offer must be at least equal to the amount of the written appraisal obtained and approved by TxDOT. An additional copy of the appraisal, upon which the final offer letter is based, should be included with the final offer.

The final offer letter should clearly state that the offer is conditioned upon the owner conveying clear title to the State. Section 21.0113 also requires that the final offer include a copy of the proposed deed, easement or other conveyance instrument for the property or property interest sought to be acquired, including any applicable special clauses (e.g., easement preamble, bisection clauses or access addenda). If the property owner is an individual (and not a corporate entity), the final offer letter should include the spouse, even if not identified on the title commitment since Texas law favors community property.

The final offer letter establishes a definite date when the offer expires. Section 21.0113 (b)(7) requires that the landowner is given at least 14 days to respond to the final offer letter before eminent domain proceedings can be filed. The letter is signed by the Right of Way (ROW) manager/supervisor or designated representative. A copy of both the initial and final offer letters and proof of delivery must be provided with the submission of form [ROW-E-49 Request for ED Proceedings](#).

Do not deviate from the appropriate final offer letter except under special conditions such as unusual splits in ownership, ownership of unproven interests, and multiple ownership. To aid in preparing these letters, the following instructions and examples are guidelines to help eliminate possible misinterpretation of TxDOT's position by property owners.

Instructions and Examples for Special Circumstances:

- ◆ In some cases, more than one person owns an interest in the property, and the percentage of each interest can be verified.

A final offer letter may be addressed and mailed to each person individually and must clearly state that the amount being offered is for each person's individual interest. For example, assume that John Doe and Richard Roe each own a proven undivided one-half interest in a parcel valued at \$1,000:

A final offer letter may be addressed and mailed to John Doe and should state:

“According to authorization by the Texas Transportation Commission, we hereby offer a total sum of \$1,000 for the above captioned tract of land. Our records show that you own an undivided one-half interest in this parcel and, therefore, you are hereby offered the total sum of \$500 for your undivided one-half interest.”

A similar letter may be addressed and mailed to Richard Roe.

- ◆ Or, send one final offer letter jointly to all the various owners and forward copies to each one, provided this letter shows the total amount being offered for the whole property and the amount being offered for each individual interest. Assume that John Doe and Richard Roe each own a proven undivided one-half interest in a parcel valued at \$1,000:

One letter may be addressed to all the owners jointly, and a copy sent to each. This letter should state:

“According to authorization by the Texas Transportation Commission, we hereby offer a total sum of \$1,000.00 for the above captioned tract of land. Our records show that each of you owns an undivided one-half interest in this parcel and, therefore, each of you is hereby offered \$500.00 for your undivided one-half interest.”

The latter method may be preferable because all owners know what is being offered to each individual owner.

- ◆ In most cases when there is a tenant with a compensable interest, make the final offer to the fee owner. Occasionally, when there is a compensable leasehold interest that is negotiated separately from the fee, and either the fee owner or the lessee refuses to negotiate, then both interests must be condemned together. The only exception is the lessee's (or, occasionally, a fee owners) interest for a in a commercial advertising sign structure that may be purchased separately from the land, provided the structure is acquired simultaneously with, or prior to, the closing of title of the interests in the land.

Except for lessee-owned billboards, address the final offer letter only to the fee owners and include the total amount of the approved value. The letter should state that (1) the amount being offered is the total amount for all interests acquired, and (2) for the fee owner to accept the offer, he must directly negotiate and obtain the release of all other property interests.

- ◆ Sometimes, it is impossible to break down the interests to make an offer in a specific amount for each interest.

Address the final offer letter jointly to all persons having an interest, and mail a copy to each person. The letter should show that (1) the amount offered is a joint offer for the full amount of the interests acquired, and (2) the offer must be accepted by all parties. For example, the following applies when John Doe and Richard Roe each own some interest that cannot be broken down in a parcel valued at \$1,000:

Address the letter to both John Doe and Richard Roe at their individual addresses (with a copy mailed to each) stating: “According to authorization by the Texas Transportation Commission,

both of you are offered jointly the total sum of \$1,000 for the entire property. For there to be effective acceptance of this offer, each of you must communicate acceptance to this office.”

- ◆ Mail a copy of the final offer letter to each person known to hold fee title to the interest being acquired regardless of their legal status. If the person is a minor, mail a final offer letter to the person whether or not a guardianship exists. If a guardianship exists, also send a copy of the final offer letter to the guardian.

Follow the same procedure in cases where the owner of the interest to be acquired was legally declared mentally incompetent (or non compos mentis), or in any other situation where a guardianship exists.

- ◆ The final offer letter should point out that the final offer depends on TxDOT receiving clear title.

For example, assume that the owner of a property interest valued at \$1,000 lacks capacity to convey title to the property because the owner is a minor with no guardian. Address and mail the final offer letter to the minor. The letter should state: “You are hereby offered the total sum of \$1,000 for clear title to your property and property rights.”

- ◆ If the property owner has provided written verification of legal representation, and TxDOT has been instructed by the legal representative not to communicate with the owner, send the final offer letter to the property owner in care of the attorney.
- ◆ If the property owner has indicated he/she has legal representation, but has not provided written verification, send the final offer letter to the property owner and copy the attorney.

Written Offers to Unknown or Unlocated Owners

To satisfy the requirement of making a written offer when the [record owner](#) (owners or their heirs) are unknown or cannot be located after due diligence, address the initial offer letter to the record owner at the record owner's last known address, as shown by local tax rolls. Also send a copy of this letter to the address of the subject property, if the address is different from the last known address. In the letter, state that it is the last known means of trying to locate the record owner, or the owner's heirs, and describe the efforts made to find the owner. Such letters should have the notation under TxDOT's return address: “Forwarding and Address Correction Requested.”

Suggested sources for locating people include:

- ◆ area phone books and local directories;
- ◆ directories on the internet;
- ◆ people finder programs;
- ◆ neighbors at last known address;
- ◆ neighbors of the subject property interest;
- ◆ local utility companies;

- ◆ post office for forwarding address;
- ◆ driver's license;
- ◆ probate records;
- ◆ property records;
- ◆ marriage license;
- ◆ voters' registration;
- ◆ civil or criminal court records; and
- ◆ witnesses or attorneys shown on any legal documents found.

Follow the procedure described above when a person without legal claim to a property interest (a ["squatter,"](#) a mere possessor, or an unperfected adverse possessor) is occupying or using the premises. However, when the ED proceedings are filed, make this person without legal claim a party to the proceedings as an adverse possessor even if the owners are found.

Persons/Entities in Bankruptcy

See Chapter 3, [Instructions for Completing ROW-E-49](#), and [Bankruptcy Checklist](#) in the Eminent Domain Guide for detailed information on handling this situation.

Title Update for Eminent Domain

Title for all property interests must be searched before making the initial offer. After the need for ED proceedings is determined, update the search for title information affecting the property interest.

If title insurance is involved, and upon the submission of form [ROW-E-49 Request for ED Proceedings](#) to the appropriate ROW attorney for review, notify the title company (1) that the property interest will be acquired by ED and (2) that an updated title report is requested. The title company must provide TxDOT with an updated industry-standard title commitment.

Form [ROW-E-SubCheck Eminent Domain Package Submission Checklist](#) and updated title information must be included in the submission of the form [ROW-E-49 Request for ED Proceedings](#). The issue date of the commitment must be within 90 days of the date that the ROW attorney receives the submission.

Section 2 — ED Submission Requirements

Timing of Eminent Domain Proceedings

In timing requests for ED proceedings, allow enough time to avoid delay in the desired construction schedule by accounting for the landowner's statutorily required review period for both the initial and final offer letters (a minimum of 44 days total), the ROW attorney to review and process the ED submission, and the time needed for the legal actions by the Office of the Attorney General (OAG).

Right of Way Division Project Delivery's (ROW PD's) requests for ED minute order authority must be received by the Right of Way Division Program Office (ROW Program Office) through Smartsheet by its submission deadline. The ROW Program Office prepares a minute order submission to present to the Texas Transportation Commission. The minute order submission must include the currently revised property descriptions, any bisection clauses, access clauses, and easement preamble clauses. No property interest or access right can be acquired by eminent domain that has not been specifically approved by the Texas Transportation Commission. Requests for ED proceedings received after the submission cut-off date will be included on the following month's minute order submission.

Partial submissions to ROW PD through Smartsheet must include signed and sealed property descriptions and plats, applicable special clauses, and a draft ROW-E-49 form.

Preparation of Property Descriptions and Parcel Plats

A legible copy of the operative property description with parcel plat is to be submitted with form [ROW-E-49 Request for ED Proceedings](#). When the property description has been revised, take care to submit the latest revised version and verify that the initial offer letter, final offer letter, and the appraisal used as the basis of TxDOT's offer reference the most current property description.

If access, bisection, or special clauses are required, these must be attached as separate pages to the property descriptions and parcel plat. Additional information is available in [Preparation of Access, Bisection, and Special Clauses for Easements](#) of the Eminent Domain Guide.

Eminent Domain Submission Requirements

After the final offer letter has been sent or delivered, include with submission to the ROW attorney of the form [ROW-E-49 Request for ED Proceedings](#) through Smartsheet the following documents:

- ◆ A copy of the documentation that the *Landowner's Bill of Rights* statement was provided to the landowner (see the *ROW Acquisition Manual*, Chapter 5). This may consist of documentation establishing the **mailing** by first class certified mail, usually with the initial offer and refer-

enced as an enclosure. In the event the statement was hand delivered to the landowner, documentation may consist of certification, by the right of way agent who made the direct delivery, of the date and fact of such delivery. Attach a copy of the *Landowner's Bill of Rights* statement to the delivery documentation.

- ◆ Form [ROW-E-SubCheck Eminent Domain Package Submission Checklist](#).
- ◆ Completed form *ROW-E-49 Request for ED Proceedings*, together with all supporting documentation, including but not limited to the following:
 - Registered Professional Land Surveyor (RPLS)-sealed parcel plat and property descriptions, including any attached pages for access provisions and any required special clauses and/or sketches or photographs showing location of improvements attached;
 - District-approved ROW map sheet(s) containing the parcel, if one has been prepared containing the parcel, for use by OAG;
 - Both the initial and final offer letter(s) with documentation of mailing and delivery dates;
 - All appraisal reports done for the subject property by or on TxDOT's behalf (including any that were not approved), and any submitted by the property owner with a counteroffer;
 - Current title commitment;
 - Documents affecting title (e.g., deeds, leases, liens, easements, corporate documents, restrictions, probate documents) to the extent that ROW PD has questions and desires review by the ROW attorney, with the questions noted in the transmittal cover memo; and
 - All correspondence regarding the property interest (e.g., relocation agent's, negotiator's, review appraiser's reports or contact logs, or miscellaneous memorandums).

ROW-E-49 Instructions

Detailed instructions for completion of the [ROW-E-49 Request for ED Proceedings](#), are located in Chapter 3, [Instructions for Completing ROW-E-49](#).

Section 3 — Procedure Before Special Commissioners' Hearing

Witnesses and Appraisal Reports for Eminent Domain

ROW PD recommends appraisal and other expert witness(es) for special commissioners' hearing. OAG may recommend (supported by specific justification) that specific expert witnesses be contracted. The ultimate decision whether such witness(es) is placed under contract is a TxDOT determination.

The ROW attorney, upon forwarding the eminent domain file to the OAG, will update Smartsheet with the date file was submitted to the OAG. ROW PD will determine the need to update the appraisal report for eminent domain purposes. If applicable, ROW PD will instruct the appraiser to appraise or update their appraisal reports of the subject property for the special commissioners' hearing. Any new information, appraisals, or updates must be produced to the property owner at least three business days prior to the Special Commissioner's Hearing.

Refer to TxDOT's *ROW Appraisal and Review Manual* for detailed procedures on selecting witnesses, requirements concerning the use of additional appraisers, and the need for updated, revised or new appraisals.

If the AAG handling a case has concerns regarding an appraisal that is to be used in an upcoming legal proceeding, the AAG should detail those concerns to TxDOT in writing. After reviewing the concerns expressed, ROW PD determines the need for obtaining additional or revised appraisals.

Suggestions for Preparation and Use of Court Exhibits

When preparing or obtaining necessary exhibits, TxDOT should consult with the appraisers and the representative of OAG regarding exhibits to be used at special commissioners' hearing or trial. These exhibits become State property and remain available for future needs.

Communications with the Office of the Attorney General

After reviewing the ED Submission and obtaining any necessary revisions, the ROW attorney will submit the ED package to OAG.

OAG is solely responsible for acquiring the property through legal means once in possession of the file. TxDOT should coordinate with OAG regarding the recommended timing of the suit and the desired possession date of the property interest. Any needed revised [ROW-E-49 Request for ED Proceedings](#) forms should be submitted to and reviewed by the ROW attorney for submittal to OAG.

Assisting the Office of the Attorney General

For more information, refer to [Filing of ED Petition & Related Court Papers](#) in the Eminent Domain Guide. TxDOT assists OAG in:

- ◆ setting the commissioners' hearing;
- ◆ notification of commissioners and State appraisal witnesses; and
- ◆ other matters leading up to the hearing.

TxDOT should inform OAG when the above actions are taken and should send to OAG:

- ◆ copies of letters or other communications advising special commissioners of their appointment;
- ◆ copies of the Order Appointing Special Commissioners (should also be sent by TxDOT to each of the parties named in the condemnation petition);
- ◆ a letter to or other communication with the person coordinating reservation of a room for the hearing; and
- ◆ letters or other communications advising of the setting of the hearing.

Checking Title for Correctness

When TxDOT receives the documents proposed by the AAG for e-filing ED proceedings, ROW PD should send a copy of the proposed Plaintiff's Statement (Original Petition) to the title company involved in the ED proceedings, for approval of the parties joined in the lawsuit to ensure the State secures clear title to the property interest.

If any error was made in naming the parties, or if a [joinder](#) of additional parties becomes necessary, TxDOT must immediately notify the OAG so that corrective action can be taken, preferably before the petition for condemnation is filed and, in any event, sufficiently in advance of the special commissioners' hearing to permit the petition to be amended and the additional party to be served with timely notice of hearing.

Filing of Plaintiff's Statement/Petition and Notice of Lis Pendens

OAG will prepare a lis pendens notice on all eminent domain proceedings. This is a legal document filed in the official records or property records of the county where the property is located, giving notice to the public that a lawsuit regarding the property has been filed. Care must be taken to ensure that the ED cause number is included in and the property description is attached to the filed lis pendens. This document makes any subsequent action taken on the property subject to the State's eminent domain suit.

Upon e-filing the condemnation petition, the OAG will send a copy of the filed petition and the Notice of Lis Pendens to the ROW PM. The Notice of Lis Pendens should be signed and dated by the TxDOT representative as “Agent for the State of Texas”, and acknowledged before a notary public or the clerk of the court. The notice and the acknowledgment **must** be signed and acknowledged **after** the Plaintiff's Statement is filed, even though both tasks should be accomplished on the same date if possible (otherwise new interests could arise between the filing of the petition and the time the lis pendens is filed in the official records of the county). Under no circumstances is the notice to be dated or acknowledged prior to the filing of the statement. If the file-stamp or the date of the document predates the filing of the statement, **even by a minute**, the lis pendens is void.

Care also should be taken to insert the cause number of the proceedings. A file-marked copy of the recorded lis pendens should be sent to OAG. See [Petition For Condemnation](#) or [Lis Pendens](#) in the Eminent Domain Guide for additional guidance.

Notice of Lis Pendens - Required Service on Interested Parties

When TxDOT files a lis pendens in the county's official/real property records in connection with an eminent domain proceeding, Texas Property Code Section 12.007(d) requires that **not later than the third day after the date the lis pendens is filed in the county's official/real property records**, ROW PD must, via one of the methods of service discussed below, **serve or cause a copy of the Notice of Lis Pendens to be served on each party** to the proceeding who has an interest in the affected real property. “Each party to the proceeding” means ALL parties to the proceeding that are identifiable and locatable, not just the fee owner(s).

Note: While the statute does not expressly require that a copy of the condemnation petition be provided with the Notice of Lis Pendens, we recommend doing so, to provide the recipient a context for the service of the lis pendens.

Failing to timely serve the Notice of Lis Pendens in compliance with the statute enables any interested party to file a motion under Property Code Sec. 12.0071 to “expunge” from the official records the previously filed lis pendens. The court is required to order the Notice of Lis Pendens expunged “if the court determines that...(3) the person who filed the notice for record did not serve a copy of the notice on each party entitled to a copy under Section 12.007 (d).” An expunction of the lis pendens could potentially disrupt a condemnation proceeding or adversely affect the quality of the State's title, should post-lis pendens interests arise.

It is recommended that a cover letter accompany the Notice of Lis Pendens stating that: “In compliance with Property Code Section 12.007(d), we enclose a copy of the Notice of Lis Pendens the State of Texas has filed in the County's official records, related to an eminent domain proceeding filed by the State to acquire certain property for highway purposes (see enclosed petition for additional information). This required statutory notice of the filing of the lis pendens requires no action by you at this time. In the future, you will receive advance notice of the date of the scheduled special commissioners' hearing.”

Methods and proof of service of Notice of Lis Pendens:

- ◆ A copy of the lis pendens should be served on all known / locatable holders of any interest in the property to be acquired by eminent domain (or on an authorized agent or attorney). It is believed that the legislature did **not** intend for unknown or known /unlocatable parties cited by publication to be served with Notice of Lis Pendens.
- ◆ The Notice of Lis Pendens can be served in person, by mail or even by fax (but not by email). However, the **preferred** method of service is to send the copy of lis pendens and petition by certified mail, return receipt requested, to the party's last known physical or post office box address. This service method is strongly recommended, because an interested party could, during the pendency of the eminent domain proceeding, file a motion to expunge the lis pendens, and the State may then be required to prove compliance with the 3 day notice requirement. Personal service could be difficult to prove if the person personally delivering the Notice of Lis Pendens is no longer available at the time the interested party challenges the State's compliance with the statute. Similarly, it may be difficult to prove that a fax number belonged to the party as the time the notice was faxed.
- ◆ Service of Notice of Lis Pendens via certified U.S. mail is deemed by the Texas rules of civil procedure to occur at the time the notice is deposited in the U.S. mail. In other words, when the party actually receives the mailed notice is irrelevant, so long as it is mailed on or before the third day after the lis pendens is filed of record. Since proving compliance with the 3 day notice requirement would require the State to prove the date the notice was mailed, it is strongly recommended that “proof of mailing” of the notice be obtained from the post office (white receipt for certified mail, stamped by the post office at the time of mailing with the date the item was mailed). This receipt would provide independent documentary proof of the timely mailing of the notice.
- ◆ Until the eminent domain proceeding is concluded, documentation proving the method and timeliness of the services of lis pendens should be retained by ROW PD.

Use of Court Reporters

A certified court reporter can, but is not required to, be made available to take full notes of testimony given during a special commissioners' hearing. However, the AAG may ask a representative from TxDOT to arrange for the court reporter. While the decision to have a court reporter is otherwise discretionary, it should be strongly considered for all but the smaller, simpler cases, because a transcript may be helpful or become necessary for trial preparation in the event objections are filed by either side. Depending on the court docket, these cases can become very old before finally going to trial. The transcript will ensure continuity in the event TxDOT personnel or the AAG involved in the case are not available at the time of trial. The transcript should be ordered as soon as objections are filed unless advised otherwise by the AAG. If no objections are filed, it is not necessary to order a transcript from the court reporter.

Fees for these services will vary from one district to the other. The court reporter of the court where the case is heard will record testimony during the trial.

Settlements of Eminent Domain Lawsuits Before Commissioners' Hearing (for State)

If after the eminent domain file has been transmitted to OAG, but prior to the special commissioners' hearing, the property owner(s) agree to accept the State's offer based on the approved value, or the property owner(s) have submitted a counter offer, the OAG is to be notified immediately.

If the eminent domain proceedings have not yet been filed, and the title is clear or can be cleared without legal action, the purchase may be completed according to prescribed negotiation procedure and closing by deed.

If eminent domain proceedings have been filed and the state of title permits closing by deed, the OAG shall first obtain a waiver of any attorney's fees and landowner expenses the landowner may otherwise be entitled to upon the State's voluntary dismissal of the eminent domain proceeding. The proceedings will not be dismissed until the purchase is completed.

Otherwise, if closing by deed is not indicated, such that the interests of parties who have been joined in the petition (other than the fee owner) cannot be released or extinguished, the settlement can be implemented by a stipulated value at the special commissioners' hearing, with any necessary apportionment to be made by the judge after the deposit of the award proceeds.

Section 4 — Special Commissioners' Hearing and Award

Procedure

The case will be assigned to an AAG who will prepare the proper legal papers to initiate the suit by e-filing the Petition or Plaintiff's Statement in the proper court. An Order Appointing Special Commissioners, to be signed by the judge, may be filed at the same time. Each court will dictate how these matters will be handled in its jurisdiction. Additional information may be found in [Filing of ED Petition & Related Court Papers](#), [Petition For Condemnation](#), [Lis Pendens](#) and [Order Appointing Special Commissioners](#) of the Eminent Domain Guide.

After the special commissioners have been appointed by the judge, either the clerk or a TxDOT representative will have them sign the Oath of Special Commissioners, Order Setting Hearing Before Special Commissioners, and the Notices of Hearing. Section 21.014 of the Property Code allows each party a reasonable time to strike one of the three appointed special commissioners. It is required that TxDOT send a copy of the Order Appointing Special Commissioners to each of the parties by certified mail, return receipt requested, as soon as possible after the time the order is signed by the judge. If the TxDOT has received written notice that the property owner is represented by counsel, the party initiating the condemnation proceeding must concurrently provide a copy of the signed order to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail.

In many jurisdictions the TxDOT representative will be responsible for coordinating a date and time for the hearing with all concerned parties, and for meeting with the commissioners to have the necessary papers signed by them. Pursuant to Section 21.015 of the Property Code, the special commissioners may not schedule a hearing before the 20th day after they were appointed.

After the order setting the hearing and a Notice of Hearing for each party named in the suit has been signed by the commissioners, a TxDOT representative competent to testify will serve each named party (or their authorized agent of attorney) with a Notice of Hearing, with a copy of the Petition or Plaintiff's Statement attached. For parties cited by publication, the attorney ad litem appointed by the judge, is to be served. The TxDOT representative will then complete, sign, and file with the clerk of court the Service of Notice of Hearing for each of the notices served. It is required by law that each party be served with a notice of hearing not later than the 20th day before the day set for the hearing (not counting the day of the hearing) before the hearing can be held. See [Filing of ED Petition & Related Court Papers](#), [Oath of Special Commissioners](#), [Order Setting Hearing Before Special Commissioners](#), and [Notice of Hearing with Service of Notice Attached](#) in the Eminent Domain Guide.

At the appointed time and place, the special commissioners will conduct a hearing to determine the amount of compensation to be paid to the property owner(s) in connection with the taking. Normally, a representative from TxDOT will attend the hearing. Both the State and the property

owner(s) will be permitted to offer appropriate evidence of the property owner's entitlement to just compensation. Following the hearing, the special commissioners will set the amount of compensation to be paid in the form of the “Award of Special Commissioners.” The AAG will have already prepared the written Award of Special Commissioners form, and after the appropriate dates and amounts have been entered each commissioner will sign it. The award is then filed with the appropriate county or district court. E-filing procedures may vary from county to county. In most instances the AAG will need to e-file the award, unless the AAG requests that TxDOT personnel present the award to the court for filing. See [Attend Special Commissioners' Hearing](#) and [Award of Commissioners](#) in the Eminent Domain Guide.

Section 5 — Procedures After Special Commissioners' Award

Funding and Depositing the Award, and Filing the Notice of Deposit

After the award has been filed with the court, ROW PD will submit to the ROW Program Office a request for issuance of a State warrant payable to the clerk of the court in the amount set by the special commissioners, less any previously paid possession and use agreement (PUA) proceeds (ignoring, for this purpose, any independent consideration paid through the PUA). This submission will include a file marked copy of the Award of Special Commissioners and necessary supporting papers, as outlined in [Payment of Commissioners' Awards](#).

ROW PD or TxDOT representative will deliver the warrant to the clerk of the court and obtains a receipt from the clerk showing when the deposit was made. A copy of the receipt of deposit should be immediately sent to the OAG, together with a completed Notice of Deposit prepared and signed by a TxDOT representative, the latter which will be e-filed by the AAG. Each party or their legal representative is entitled to receive a copy of the Notice of Deposit, to alert them of the possibility of withdrawing the award proceeds. Determine if the AAG will serve all parties upon e-filing the Notice of Deposit, or whether the TxDOT representative should do so. For further information on preparation of and procedures relating to the Notice of Deposit, see Who, Where, When -Helpful Suggestions for Notice of Deposit and [Memorandum - Notice of Deposit](#).

Establishment of Right of Possession by State

After the written award by the special commissioners has been filed with the appropriate court, the State will be entitled to take possession upon the deposit of the amount of the award into the registry of the court. **Under no circumstances** will TxDOT personnel enter upon or take possession of such a parcel until **after** the State's warrant has been deposited into the registry of the court, unless a PUA has been executed and funded or other legal arrangements have been made by the AAG handling the case. Such deposited funds will be subject to being withdrawn by the parties to the proceedings, but the withdrawal or non-withdrawal of funds does not restrict or affect the State's right of possession. Possession may be taken even though an appeal is filed by either or both parties.

It is recommended that the property be inspected on the date of deposit or if there has been an agreed date of take under a Possession and Use Agreement on the agreed date. This inspection should include taking extensive photographs of the condition of the premises. This information can be extremely valuable in preparing and presenting the case at a subsequent jury trial, particularly in documenting the existence and condition of any real property improvements located on the property as of the date of taking.

Where tenants or owners joined in the ED proceeding do not vacate the premises within the time allowed, forceful eviction will not be used except as a last resort, and only then with prior administrative approval obtained by request through the ROW Program Office. Every possible means of securing peaceful possession will be exhausted. Periodically protest continued occupancy in writing and request immediate vacancy. Document every effort made to secure possession.

Requests for eviction proceedings will outline all the facts in the case, including proposed letting date, the last possible date that the construction schedule will allow for deferral of actual eviction, the identity(ies) of the party(ies) to be joined and the manner in which they may be served with legal process.

Commissioners' Award and Filing of Objections

After the special commissioners' hearing, the commissioners will determine the amount of compensation to be paid to the property owner(s). They will fill in the Award of Special Commissioners prepared by the AAG with the amount of compensation, and will date and sign the decision. Their decision must then be filed with the appropriate court no later than the next working day after the hearing is held. The judge will inform the clerk of the court as to the decision of the special commissioners on the day it is filed. On that same date, the clerk will send notice of the filing of the award to all the parties in the proceeding, or to their attorneys of record, at their respective addresses of record.

A party to a condemnation proceeding may object to the findings of the special commissioners by filing with the court a written statement of the objections, and the grounds for doing so. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners' award is filed with the court.

If there is any indication that the parcel may be contaminated including all parcels that have underground tanks, objections to the award should be filed, even if the award is for an amount acceptable to TxDOT, in order to permit further investigation of the contamination, rather than accepting an award based on an “as if clean” value.

If a party files an objection to the findings of the special commissioners, the court will try the case as a [trial de novo](#) (i.e., new trial) in the same manner as other civil causes. This means starting from the beginning with no previous record, as though there had been no special commissioners' hearing.

After the written Award of Special Commissioners has been filed, form [ROW-E-73 Data Sheet - Special Commissioners' Hearing](#) will be carefully completed. This form should document all pertinent information regarding the special commissioners' hearing. Information called for on page 1 should be filled in by the TxDOT representative who assisted the AAG and was present at the hearing.

Information and the recommendation provided by OAG must be considered. Immediately after the hearing, the AAG and ROW PD may discuss the hearing and formulate opinions. The AAG will summarize the evidence produced and make a recommendation as to whether or not the State should appeal an award that exceeds the State's testimony. This will later be confirmed by memorandum from OAG to the TxDOT representative, setting out the factors that were considered in making the recommendation.

After considering the OAG's recommendation as to acceptance or objection to an award, a decision will be made and communicated to OAG and the ROW Program Office by the ROW manager or supervisor, unless the amount of the award exceeds their signature delegation authority limits. TxDOT's recommendations regarding mediations and trial settlements will be processed in the same manner and subject to the same signature authority limits.

For those awards within established signature authority limits, it is the responsibility of the ROW manager/supervisor to consider the findings and recommendations as presented by staff and OAG, and any other facts or information considered pertinent. In the final analysis, the recommendation for acceptance or appeal is to be based on a studied and objective opinion as to the action considered to be in the best interest of TxDOT. Opinions of either staff or OAG are not binding as to accepting or rejecting the award decision or recommendation. Either source alone can afford adequate support, or a separate and independent decision or recommendation can be made if supported by proper justification and explanation.

By contrast, the decision to accept or appeal from a judgment of the court after jury verdict will be the responsibility of OAG, since the possibility of appeal is dependent upon questions of law bearing upon the possible existence of reversible error in the trial of the case. After a trial is held, either before a judge or jury, OAG will advise by memorandum as to the possibility of a reversible error. If no reversible error has been committed, the State has no further recourse and the judgment is final. If there appears to be reversible error, the OAG's memorandum will so advise and set forth their staff opinions and recommendations. In this situation the recommendations of the ROW Program Office will be obtained.

Factors to Consider in Accepting or Appealing the Special Commissioners' Award

The following factors may be taken into consideration when considering whether or not to appeal an award, and may be used for documentation purposes:

- ◆ Any legal deficiencies in the appraisals approved by the reviewing appraiser. An appraiser may not have had the benefit of legal advice as to the compensability of certain elements of value or damage, the offsetting of benefits, the identification of fixtures, the determination of what constitutes the remaining property for assessment of damages, or any number of other pertinent legal considerations.
- ◆ Inadequacy of data upon which the appraisals are based, or improper application of legal principles to the appraisal processes.

- ◆ The competency and effectiveness of an appraiser as a witness, to include:
 - ability and experience as an appraiser
 - reputation in the area,
 - ability to persuasively and clearly explain his opinion of value and the reasons therefore to a court or jury, and
 - ability to stand up under cross-examination.
- ◆ Adjustment of appraisals to conform to the date of valuation under law.
- ◆ All available appraisals, including landowner's appraisals.
- ◆ Interest or delayed damage payments to which an owner may be entitled under Texas law.
- ◆ Serious doubt as to the highest and best use of the property at the time of the taking and, in appropriate instances, the remaining property after the taking.
- ◆ Extremely complex severance damage or other valuation problems that necessarily produce uncertainties as to value.
- ◆ Uncertainty of Texas law relative to the measure or compensability of particular elements of value or damage, or the admissibility or adequacy of evidence necessary to prove facts in issue, where the circumstances or the evidence make it inadvisable to test the question in the case under consideration.
- ◆ Awards of commissioners or other administrative or quasi-judicial bodies. In Texas, the amount of the award is not admissible.
- ◆ Recent court awards for eminent domain takings in the area.

In addition, the following items may be considered in conjunction with the items in the preceding subsection as justification for settlements. They will not, however, suffice as the sole justification:

- ◆ costs to the acquiring agency and its counsel for preparing and presenting the case at trial or in an appeal;
- ◆ costs to the public for impaneling a jury, maintaining the court, etc.;
- ◆ alleged impossibility of obtaining an unbiased jury; and
- ◆ likelihood of sympathy for the owner.

After review of the available information and a final objections decision has been made, the ROW manager/supervisor (or ROW Program Office, when applicable) will notify OAG requesting appropriate action, and copy the decision to the appropriate staff. It should be noted that objections to the special commissioners' award must be filed on or before the Monday following 20 days of the date the award is filed with the court, excluding the date of the filing. Therefore, a timely response to the OAG is imperative.

If the award is accepted and no objections are filed by any party, a Judgment of Court in Absence of Objection is filed with the presiding court. Step by step instructions for filing the judgment are in [If No Objections](#) and [Judgment of Court In Absence of Objection](#) in the Eminent Domain Guide.

If the decision is made for the State to object to the Award of Special Commissioners, the objections will be prepared and filed by the AAG handling the case. See [If Objections Filed](#) and [Objections to Award of Special Commissioners](#) in the Eminent Domain Guide.

On or soon after the first working day after the first Monday following 20 days after the day the special commissioners file their findings with the court, the TxDOT representative assisting the AAG handling the case will check with the clerk of the court to determine whether objections have been filed by the landowner(s) or any other defendant in the lawsuit. If objections were filed, the TxDOT representative will order a certified copy of same and send copies to the AAG.

Issuance of Citation on the Objections to the Award

If not requested by the objecting party, and if there are other parties named as additional defendants, TxDOT will ensure that precepts (or citations) are issued and served on each party named in the suit.

Even though the objections are filed by a defendant, it is in the State's best interest to have the precepts (citations) issued and served if the objecting party fails to do so. Where the objecting party is the only defendant, do not arrange for precepts until conferring with AAG. With the exception of the first item, the steps given in [If Objections Filed](#) of the Eminent Domain Guide will then be followed.

Settlements of Eminent Domain Lawsuits After Commissioners' Hearing (for State)

After the commissioners' award and the filing of objections by either party, circumstances may occur which warrant the consideration of a settlement. Normally, the possibility of settlement originates through OAG. When this possibility occurs, OAG will advise the TxDOT representative, and provide their recommendation. This recommendation is to receive immediate attention and action by the ROW manager/supervisor or, when settlement authority limits will be exceeded, the ROW Program Office. **Under no condition** will TxDOT personnel contact either the property owners or their attorney(s) concerning any settlement.

TxDOT's recommendation on settlements will generally be based upon the same factors and criteria set out in Actions to be Taken by State on Commissioners' Award and Filing of Objections. Settlement decisions are made by the ROW manager or supervisor, or by the ROW Division Director or designee when the amount of the proposed settlement exceeds delegated manager/supervisor authority.

When TxDOT cannot approve the full amount of a suggested settlement, OAG has requested that TxDOT identify what amount, if any, above the approved value but less than the proposed settlement upon which TxDOT could authorize a settlement, as there could be occasions when a case could be settled for such a figure prior to or during trial. Where TxDOT finds that the total proposed settlement cannot be recommended, but some lesser figure would be proper, the recommendation will be made accordingly.

Occasionally, in preparing for jury trial, well-documented appraisal reports are received which indicate that an award previously regarded as excessive is within the range of value, or that a higher value is adequately supported. Such reports may indicate to TxDOT that OAG should be authorized to offer a settlement before proceeding to trial. Any TxDOT recommendation should include a full and complete analysis of the correctness of the latest appraisals, as well as an analysis of these reports in comparison to previous appraisals. The OAG may be authorized to close the case for an appropriate “not to exceed” amount, or if this is unsuccessful, to proceed to trial. Each proposed settlement will be handled on its individual merits.

If a settlement is authorized and can be agreed upon by all concerned parties, the procedure to be followed in closing the case, whether by deed or **Agreed Judgment**, will be decided by OAG, in consultation with ROW PD. See [Settlements](#) in the Eminent Domain Guide for more detailed instructions on settlement procedures.

Mediation

In some jurisdictions, court dockets are so congested that judges will not set an ED case for trial until after an attempt has been made to settle it before a mediator or because the attorneys involved may believe it could be settled through mediation. Where mediation has either been ordered or jointly agreed upon, ROW PD coordinates with the OAG to set a date and time with the parties. If the mediation authority requested by the OAG exceeds the limits of the ROW manager's or supervisor's authority, the ROW Program Office will determine a limit for settlement authority. If the mediation fails, the case will go to trial unless it is otherwise settled prior to trial.

Section 6 — Trial and Post-Judgment Procedures

Judgment and Payment Procedures After Settlement

If the case is successfully mediated or otherwise settled before trial, the AAG will prepare an Agreed Judgment, obtain the necessary signatures of opposing parties or their counsel and the judge of the court, and file it with the court.

If the Agreed Judgment is the same as or less than the amount deposited for the Award of Special Commissioners, one certified copy of the judgment will be ordered and when received, will be filed in the public records (or property records) of the county in which the property is located. A file-marked copy of the recorded judgment will be sent to the AAG and the ROW Program Office. A title policy will be ordered from the title company.

If the amount of the judgment is less than what was deposited for the Award of Special Commissioners and the money has been withdrawn from the registry of the court, the AAG will be requested to secure a refund for the State. If the refund is made by the court or district clerk, TxDOT must stay in close contact with the proper party so the funds may be obtained promptly. See [Collection of Refunds Due State](#) for additional information on submitting refunds.

If the Agreed Judgment is greater than the amount deposited for the Award of Special Commissioners, ROW PD submits a copy to the ROW Program Office, with a request for additional funds. See Payment Procedures ([Payment for Condemned Parcels](#)) for further assistance.

When the warrant is received, it will be delivered to the named payee. Generally, this will be the registry of the court. When paid to anyone other than the court, the AAG will prepare a Release or Satisfaction of Judgment to be signed when the warrant is delivered and then filed in the court records or ROW PD will confirm receipt of warrant. After warrant has been received by named payee, a certified copy of the judgment will be filed in the public records (or property records) of the county in which the property is located. A title policy will be ordered from the title company.

Title Policy Issuance after Judgment is Final

When the judgment in the eminent domain proceedings is final and no longer subject to appeal, and the total obligation of the State to the property owners has been paid, a certified copy of such final judgment will be obtained for recording in the deed records of every county in which the property lies. Upon recording of this final judgment, the title company will issue title insurance on the parcel. The amount insured by the policy will not include any interest paid on the judgments (i.e., the amount insured in the title policy on each submission must agree exactly with the base amount of the judgment excluding interest). After the proper entries are made on the project ROW map, if any, the recorded certified copy of the final judgment will be forwarded to the ROW Program Office

along with the Owner Title Policy as part of the normal submission requirements under [Payment for Title Work](#).

Collection of Refunds Due State

Where the amount awarded in the final judgment is less than the amount of the commissioners' award previously deposited by the State, a refund is due the State. In an effort to avoid undue delay in collecting or attempting to collect such refunds, the procedure will be as follows.

Upon receipt of a memorandum from OAG indicating that a commissioners' award has been reduced at the trial, ROW PD should make periodic contacts with the court clerk to determine if the remitted due the State has been deposited. At such time as the funds have been deposited TxDOT is to notify OAG so that an Order of Withdrawal may be prepared. Any contact with the defendants or their counsel should be made through OAG. If at the expiration of sixty (60) days from the date of entry of judgment the funds have not been deposited with the court, ROW PD is to notify OAG and request that whatever collection action deemed necessary be taken to secure the funds due the State.

When a refund is withdrawn from the registry of the court, TxDOT will make the submission to the ROW Program Office according to the procedure outlined in [General Payment Policies and Procedures](#).

Chapter 3 — Instructions for Completing ROW-E-49

Contents:

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[Section 2 — Section I of Form ROW-E-49 \(Nature of Taking\)](#)

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[Section 9 — Section VIII of Form ROW-E-49 \(Environmental\)](#)

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Section 1 — Overview

General

If no entry is applicable under a section, insert the abbreviation N/A (Not Applicable), and explain why no entry is applicable. The explanation should avoid wrong assumptions and unnecessary questions.

Complete the entire form.

In subsections II and III, include pertinent information found on:

- ◆ Owner Title Policy Commitment.
- ◆ Additional property interests (or apparent property interests) discovered during negotiation, appraisal, or inspection of the property. Address **every** title matter listed on the title company's title commitment in some manner on form [ROW-E-49 Request for ED Proceedings](#).

Populate required information at the top of Page 1 (e.g., county name, highway designation, project limits, district, ROW CSJ number, and parcel number). Project Limits are limits of the ROW project and are not the limits of the construction project.

For additional information in completing this form, refer to [In Submitting Form ROW-E-49](#) in the Eminent Domain Guide.

Section 2 — Section I of Form ROW-E-49 (Nature of Taking)

Nature of Taking:

Information requested in Section I is needed to secure authorization from the Texas Transportation Commission and to assist OAG in preparing the appropriate pleadings to acquire the property interests.

- ◆ **A: Property Interest(s) to be Acquired:** examples of common entries here are fee title, highway easement, drainage easement, temporary easement or “access only.” If the submission includes the acquisition of more than one type of interest out of the same tract of land, these interests will be combined into a single suit. For example: “Parcel 7 (fee title) and Parcel 7E, Part 1 and 7E, Part 2 (drainage easements)”.
- ◆ **B: Extent of Taking:** only show whether the acquisition is a partial taking or whole taking.
- ◆ **C: Access Rights to Remainder:** For a partial taking only, indicate whether there is any denial of access on and off the remaining property.
- ◆ **D: Access Rights to Remainder:** If there is any denial of access on and off the remaining property, indicate whether the remaining property is partially or totally denied access.
- ◆ **E: Type Location:** show whether (1) the proposed facility is a “new location” (where no public road access currently exists at the location(s) where access is proposed to be denied, or (2) on “existing location” (if the property interest is being acquired for widening or expanding an existing facility, whether highway, road, street or other public way facility). It is possible for a parcel to be, in part, existing location and, in part, new location (such as a highway which is generally new location but which, in part, incorporates an existing public street or road to which certain property owners had pre-existing access rights).

The field notes must clearly address any restriction on access, or an access addendum clarifying such restriction must be prepared and attached to the field notes.

In specifying the exact location where access will be partially denied, field notes or, when applicable, the access addendum must refer to a specific call in the property description. It is not acceptable for access denial to be described in reference to highway centerline stations, because when on a curve, distance along the ROW line will differ from distance along the centerline. Information provided must correspond with the access clause in the property description. Additional information and examples are available in [Control of Access](#) in the Eminent Domain Guide.

Section 3 — Section II of Form ROW-E-49 (Parties to be Joined)

Holders of Property Interests to be Joined as Parties

Holders of Property Interests to be Joined as Parties include fee owners, adverse claimants, lienholders, easement holders, lessees and tenants, and owners of minerals and mineral leases.

Pleadings are prepared from information furnished in this section, give specific and complete names and service of process address of all persons or entities that are parties.

Fee Owners to be Joined

Additional information is given in [In Submitting Form ROW-E-49](#) of the Eminent Domain Guide.

Show names of fee owners as they appear on the deed or probate document that gives them title to the property being condemned, which are the same as shown on the title commitment. These names should be the same as on the final offer letter. Minor variation in name(s) on the final offer letter is acceptable if it is clearly the same person and, if married, the spouse should be included.

Occasionally, owners may use more than one name. This may be shown as in the following example:

- ◆ Nelly Bly, also known as Nellie Jane Bly, or
- ◆ John B. Brown, being one and the same person referred to in certain instruments of record as J. Bruce Brown or as J. B. Brown. Show marital status of each individual specifically as “a single man,” “a [femme sole](#)” or “a widow.” Show the full name of the spouse of any married owner. List a wife by her given married name, such as:
- ◆ John J. Andrews and Mary Alice Andrews, husband and wife

When one party owns the property as separate property, it is possible that the spouse may have a homestead interest. The spouse of any fee owner should always be named as a party, even when one party owns the property as his separate property.

Give addresses of owners **by house number and street name rather than post office box number** so that service of citation can be made. For rural residents, most areas are covered by the 911 emergency system, and most rural streets are named. The county in which the party resides, and directions by local landmarks is acceptable. Make all addresses as complete as possible. If the address on the final offer letter differs from the one shown on the [ROW-E-49 Request for ED Proceedings](#), include an explanation about this difference in the “Remarks” section.

The submission should advise if an estate is in the process of administration (or if probate proceedings are pending). Show the names and addresses of the administrator (appointed by the court) or

executor under a will that has been admitted to probate, and all heirs and devisees having an interest in the property. Attach copies of probate documents to the form if indicated.

State when a minor or legally declared incompetent person owns an interest or estate in the land. Also, state the name and address of any legal guardian of the person and estate. If there is no legal guardian, the Assistant Attorney General (AAG) can include documents to engage an [Attorney Ad Litem](#) (or a [Guardian Ad Litem](#)) when filing the proceedings.

If ownership is in a corporation, partnership, or in a form beside individual persons, then show the exact name and type (e.g., “a corporation” or “a partnership”). Give the name, title and address of the person(s) authorized to accept service of citation, which would be the registered agent for service as listed in the records of the Office of Secretary of State (SOS). For example:

Acme Processing Company, a Corporation
432 South Congress Avenue
Austin, Texas 78787

Louis A. Boyd, Registered Agent for Service
1237 Crescent Street
Austin, Texas 78787

NOTE: If you are unable to contact the person listed as registered agent, contact the ROW attorney for assistance in validly serving the entity.

A party, usually a tenant, may be listed using a “DBA” (Doing Business As). These listings may or may not actually say “DBA”. Show a party as a DBA if (1) the name does not show that it is a corporation, limited or general partnership or other type of business entity, and (2) it cannot be identified through the SOS as a registered business entity (and is, therefore, likely a sole proprietorship). Clearly show that the individual will be served in the individual owner's name. For example:

John Doe DBA Acme Rental
12345 Main Street
Austin, Texas 78787

Verify the following information with the SOS:

- ◆ the name and address of the corporation, limited partnership, or other registered business entity;
- ◆ the status of the entity;
- ◆ the name and address of a registered agent for service and the officers or manager of the entity (officers or managers may be served if there is difficulty serving the registered agent); and
- ◆ the name and address of an entity operating under an assumed name. This information is also available through direct access with the SOS, and through Internet subscription accounts.

Information on service of citation to banks and governmental bodies is given in [Form ROW-E-49 Preparation](#) of the Eminent Domain Guide.

If the owner is a general partnership, obtain a copy of the partnership agreement to determine if there is a managing partner who is designated to receive service. Note: General partnerships are not listed with the SOS.

If (1) a copy of a partnership agreement cannot be obtained and (2) title to the property is held in a specific partnership name, then serve one of the general partners. All of the general partners do not need to be served unless the title is held in each partner's name **and** in the partnership.

Clearly show whether any of the owners are unknown or cannot be located since OAG includes documents to secure citation by publication. When proceedings are filed, a TxDOT representative signs an Affidavit for Citation by Publication. This affidavit states that the owners, or their location, are still unknown after a diligent search. Refer to [Written Offers to Unknown or Unlocated Owners](#) for locating owners.

TxDOT personnel cannot make service of citation by publication and administer the return. Legally this can only be done by the county sheriff or a constable in the county in which the property interest is located. TxDOT personnel may assist by arranging for the publication, scheduling the timing with the newspaper, picking up the newspaper clippings, and obtaining the affidavit of the publisher for delivery to facilitate the return. Additional instructions for citation by publication can be found in [Citation by Publication](#) of the Eminent Domain Guide.

When a sign or billboard belongs to the fee owner, make note in the “Remarks” section.

If any person or entity to be joined is in bankruptcy, indicate this in the Remarks section. Additional information required is listed on the [Bankruptcy Checklist](#) in the Eminent Domain Guide. An Order to Lift Stay should be obtained before proceeding with the condemnation suit. OAG should provide assistance on how to proceed, and will prepare additional court documents that must be filed with the bankruptcy court.

For service of process and notices on someone other than the named property owner(s), TxDOT must receive either (1) a power of attorney instrument specifically authorizing the acceptance of service of process by the attorney in fact, or (2) a letter from the party asking that TxDOT make service of process to their attorney or their designated agent for service of process.

If TxDOT has received written notice a property owner is represented by counsel, the TxDOT must also concurrently provide a copy of the petition it files to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail. This contact information should be provided alongside the fee owner's service information in the form [ROW-E-49 Request for ED Proceedings](#).

Adverse Claimants to be Joined

Include information concerning anyone claiming to have interest in the property whose claim is adverse or contrary to the record owner. The adverse claimant's alleged interest may or may not be of record. Examples include persons claiming adverse possession, persons claiming an interest from another chain of title, and persons claiming to be heirs of former owners. Show the adverse claimant without regard to the validity of the claim.

Lienholders to be Joined

Give current information concerning proper identification, names, addresses, nature of organization and agents for service of citation as shown in Section II A, [Fee Owners to be Joined](#), of this form. List the current holder of the lien. When an entire lien has been transferred and/or assigned to someone else, the original parties do not need to be listed; list only the current holder of the lien.

When possible, obtain a copy of each lien document from the title company. Copies of liens help in determining if they may be invalidated by any statute of limitations.

Easement Holders to be Joined

State the name of each easement holder and the nature and terms of each easement. The guidance provided above regarding Section II A, [Fee Owners to be Joined](#), of this form applies in giving proper identification and addresses of easement holders.

If an easement or restriction (enforceable against a condemning authority) is created by an instrument of record, give the type and date of such instrument and pertinent recording data.

If a private roadway or a public or private utility facility is discovered on a property (and is not of record), ROW PD should investigate. Report any information on the nature of the interest, area involved, and circumstances/history leading to the placement of the roadway or facility on the property.

Some public utility and public roadway easements that are compatible with highway design and operation may remain in the ROW. Other public utility adjustments should be made under the *Utility Accommodation Policy* and do not need to be joined as a party to the proceedings. TxDOT determines which public easements and public utilities qualify under these categories. If easements or utilities qualify, then list them under [Section III](#) of form [ROW-E-49 Request for ED Proceedings](#) (Holders of Property Interests **Not** To Be Joined as Parties).

If (1) specific utility easements are shown on a plat of the property by page and volume number and (2) these easements are not listed on the title commitment, then obtain copies from county records. After TxDOT determines the easements' compatibility (or adjustment qualifications), list the easements in the appropriate section, either as parties to be joined or as parties not to be joined.

Reciprocal parking and/or ingress-egress easements may exist within protective covenants or restrictions, or they may stand alone; therefore, read the covenants or restrictions very carefully and advise on [ROW-E-49 Request for ED Proceedings](#) if these types of easements exist. These agreements usually exist in shopping centers and malls. List current holders of these rights as parties to be joined.

Lessees and Tenants to be joined

List names and addresses of lessees as described in Section II A, [Fee Owners to be Joined](#), if they are necessary parties. Also, describe in detail the nature and terms of the lease.

Normally, a month-to-month “renter” does not need to be made party to the proceedings since either party can cancel the renter's interest at thirty (30) day intervals. List the renter in [Section III](#), Holders of Property Interests **Not** To Be Joined as Parties. Also see [Form ROW-E-49 Preparation](#) in the Eminent Domain Guide.

When a lease is not recorded or is oral, provide (1) the nature, terms and conditions, and parties to the agreement and (2) other pertinent, available information. If on-site visits or photographs reveal that tenants exist (e.g., tenants in strip shopping centers), then investigate and determine if (1) a lease exists and (2) show necessary parties.

Treat a commercial advertising sign interest in the land as a lease unless the sign structure is owned by the fee owner or a sign site easement exists. If a sign is illegal, the sign interest may not need to be addressed. ROW PD determines if there is a lease and then addresses the lease.

When property is not under lease, list it as “none” in this section.

Owners of Minerals, Mineral Leases to be Joined

On whole takings, review each document creating a mineral estate to determine if the mineral estate is larger than the parcel making up the whole taking. Determine if there is current mineral production near the acquisition area or if there are production facilities, flow lines, or other improvements within the acquisition area. If either condition exists, list the parties to be joined in this section.

List the parties in [Section III](#), Holders of Property Interests Not To Be Joined as Parties (also see [Form ROW-E-49 Preparation](#) in the Eminent Domain Guide).

- ◆ for partial takings or royalty interests;
- ◆ on whole takings where anti-drilling ordinances are in effect; or
- ◆ where the whole mineral estate is not taken and no production or production facilities are within the taking.

Section 4 — Section III of Form ROW-E-49 (Parties Not to be Joined)**Holders of Property Interests Not To Be Joined as Parties:**

If any person or entity listed in the title commitment is **not** a necessary party, give a brief reason in this section. List the name of the entity followed by an appropriate explanation, such as:

- ◆ “1/2 undivided fee owner - acquired by deed”;
- ◆ “lienholder - released”;
- ◆ “public utility easement - handled through utility adjustment”;
- ◆ “easement - not within taking” (or “compatible with proposed highway use”);
- ◆ “tenant by sufferance or allowance” (month to month renters); and
- ◆ “mineral estate - entire estate not in taking, and no production or production facilities within or near the taking”.

Show recording information for instruments, if known. Show leasehold interests (including sign-board leases) that are acquired by negotiation or that are not affected by the taking.

Section 5 — Section IV of Form ROW-E-49 (Taxing Agencies)

Taxing Agencies (Whole Taking Only)

On **whole** takings, join taxing agencies having jurisdiction over the taking. Since the taxing agencies are losing collateral for taxes owed, the agencies will receive consideration in the final judgment. The same concept applies on partial takings where the value of the remainder is so diminished that taxing agencies will likely not be fully compensated for taxes owed. List the taxing agency and the name, title and address of the proper or correct person to be served.

On **partial** takings, do not list taxing agencies unless a pending tax suit or a tax lien exists as a result of a previous lawsuit.

The agents for service for the typical tax agencies include:

- ◆ For county: (person's name), county judge;
- ◆ For city: (person's name), mayor or city secretary; and
- ◆ For independent school district: (person's name), superintendent.

TxDOT should cooperate with the taxing agencies in the area if the taxing agencies request notification of ED lawsuit filings. However, the taxing agencies only need to be served with notice when they are joined as parties (as described above).

Section 6 — Section V of Form ROW-E-49 (Special Clauses)

Overview

Note the existence of any of these clauses, if applicable, which are to be attached to the Registered Professional Land Surveyor (RPLS-sealed) property descriptions in the following order:

1. Access addendum, if needed (if access is not addressed within the body of the field notes)
2. Bisections clause(s)
3. Retention of Property Rights

Bisected Improvement(s)

Mark the blank for Category I or Category II bisection or mark the blank "None Involved," as appropriate.

Category I bisection exists when the improvement is located partially in the acquisition area and partially on the remainder property, but the portion (of the improvement) on the remainder property **cannot** be reconstructed to economically restore utility. For example, the proposed ROW line cuts through the improvement so that the portion (of the improvement) remaining on the remainder property cannot be structurally or economically reconstructed (as to the latter, the cost to cure damages to the portion of the improvement located on the remainder property cannot exceed the damages the owner would suffer if the damage was not cured). In such instances, the State should acquire the entire improvement. Also, the State must have the right to enter the remainder property to remove the improvement. For all Category I bisections, attach an appropriate clause (written by TxDOT) to the RPLS-sealed property descriptions used to obtain the minute order authorization for ED proceedings.

Category II bisection exists when the improvement is located partially in the acquisition area and partially on the remainder property, but all or the portion of the improvement on the remainder property **can be** reconstructed to economically restore the utility. The State should acquire either 1) only that portion of the improvement located in the new ROW, or 2) as much of the remaining improvement as is needed to make a safe cut of the improvement beyond the ROW line. For item 1, a temporary right of entry (to cut the improvement at the ROW line) may be required. For item 2, attach the following to the RPLS-sealed property descriptions and parcel plats (used to obtain the minute order authorizing ED action): (a) a clause that includes a temporary right of entry and (b) a specific and locatable description of the cut line location. For Category II bisections, TxDOT determines if entry on the remainder property is necessary and prepares the appropriate clause.

Instruction for preparing these clauses is in [Preparation of Access, Bisection, and Special Clauses for Easements](#) of the Eminent Domain Guide.

Property Rights To Be Retained by Owner

If the property owner will retain property rights (e.g., cattle pass, private water line, gas line, etc.), then mark the appropriate blank on the form. Otherwise, mark the blank “None Involved”.

Retention of property rights is used as a negotiation tool. These privileges are usually forfeited (by the owner) when (1) negotiations fail and (2) property interest must be acquired through the ED process.

Section 7 — Section VI of Form ROW-E-49 (Timing of Proceedings)

Timing of Proceedings (Month and Year):

The dates requested under this section should provide a best estimate of:

- ◆ The proposed date for letting of a construction contract, which will affect the subject property interest;
- ◆ Date Possession of Subject Property Interest Is Needed (may be different from letting date)

The date requested under Item B should be realistic and show if earlier possession of the property interest is needed for any reason (e.g., provide time for sale of improvements).

Section 8 — Section VII of Form ROW-E-49 (Appraisals)

Appraisals

Information in the recommended appraisal of the property should match information on this form.

- ◆ Original appraiser(s) and value(s)

List names of all appraisers who appraised the property interest and the value that each appraiser determined. This applies whether or not the appraisal report was approved by ROW PD. It is imperative that the assigned AAG be aware of any existing appraisal reports that were not approved after review.

- ◆ Approved Value

From values listed above, fill in the value of the property interest that the ROW PD recommends as fair compensation to the property interest owner.

- ◆ Recommended Appraisal Witness(es)

List the appraisers that TxDOT recommends to reappraise the property interest and serve as witness for the amount of just compensation (at the special commissioners' hearing).

- ◆ Special Comments on Witness(es), if any

Enter comments supporting recommendation of appraisal witness(es). Consider various factors listed in TxDOT's *ROW Appraisal and Review Manual*. If any appraiser is listed whose appraisal was not approved by ROW PD, explain the reasons and include the appraisal report and appraisal review in the submission package.

Section 9 — Section VIII of Form ROW-E-49 (Environmental)

Environmental

If there are known underground storage tanks or possible contaminants, mark the appropriate box and describe:

- ◆ contamination type or possible source; or
- ◆ storage tanks on the property.

State whether clean-up is in process or there is an agreement to [clean-up](#).

Detail whether there is either known or potential contamination remaining on the property.

Section 10 — Section IX of Form ROW-E-49 (Attached Documents)

Attached Documents

- ◆ Check **only** the items attached.
- ◆ Attach a copy of and check the box for:
 - ROW agent's negotiation reports;
 - review appraiser and relocation agent's contact logs; and
 - other correspondence with the owner.

These items may be useful to the AAG handling the case since the items may inform the attorney of:

- ◆ problems found; and
- ◆ additional documentation of the making of a “bona fide offer”.

If ROW PD wants the ROW attorney to address specific concerns, attach related documents such as:

- ◆ leases;
- ◆ instruments creating easements;
- ◆ partnership agreements;
- ◆ deeds;
- ◆ restrictive covenants; or
- ◆ liens.

When available, provide:

- ◆ photographs of the general neighborhood and subject property;
- ◆ parcel plats or property descriptions showing dimensions of the acquisition area and improvements, and their location relative to the proposed ROW line; and
- ◆ other similar documents not included in the appraisal.

Section 11 — Section X of Form ROW-E-49 (Remarks)

Procedure

In this section of the form, include (with continuation on attachment, if necessary) the following:

- ◆ Appropriate remarks or comments not previously stated;
- ◆ Note that title history of a property interest may have a material effect on the property interest's market value and serve as a source of information to use for cross-examination purposes. Examples of title history include:
 - restrictive covenants of record;
 - discrepancies, conflicts or shortages in boundary lines or area; and
 - encroachments or overlapping of improvements.
- ◆ Information on potential and existing problems;
- ◆ Explanations on discovered inconsistencies in information;
- ◆ A review of any restrictive covenants to determine (1) whether any reverter provisions exist and (2) whether any easements or liens are created. If reverter provisions exist, discuss them; and
- ◆ Relocation assistance (yes or no).

Chapter 4 — LPA Acquisition by Eminent Domain

Contents:

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Section 1 — Overview

LPA Responsible for Condemnation

A Local Public Agency (LPA) will initiate condemnation proceedings whenever it is unable to obtain a conveyance by negotiation of all interests. Condemnation proceedings are the LPAs' responsibility and will be conducted at LPA expense, except as provided for in the contractual agreement with the State. The LPA is responsible for ensuring that all owners of compensable property interests are properly made parties to the condemnation proceedings. Action to be taken in regard to taxing agencies is outlined in [Past Due or Delinquent Taxes](#) and [Current Taxes](#) in the *ROW Acquisition Manual*.

Property descriptions, including applicable special clauses, must be used by the LPA in all condemnation documents.

Filing of Notice of Lis Pendens

The LPA must file a Notice of Lis Pendens with the county clerk of the county where the land is located. This should be done immediately after the plaintiff's statement/petition is filed with the judge. If a Notice of Lis Pendens is not filed prior to filing of a certified copy of the final judgment, the land may be sold to a purchaser who is without knowledge of the pending litigation. This could require a re-filing of the plaintiff's statement against the new owner.

See Chapter 2, Section 3 [Notice of Lis Pendens-Required Service on Interested Parties](#), for a discussion of the statutory requirement of Property Code Section 12.007(d).

Section 2 — Eminent Domain Forms for City

Forms

The following sample forms are for fee title (less oil, gas and sulfur) and easements as indicated. These forms are suggested as guidelines for use by cities in ED proceedings for on-system projects only. Eminent domain counsel should consult the Texas Property Code, Chapter 21 (Eminent Domain) and modify these sample forms accordingly.

[Plaintiff's Statement \(fee\)](#)

[Plaintiff's Statement \(easement\)](#)

[Order Appointing Special Commissioners \(fee\)](#)

[Order Appointing Special Commissioners \(easement\)](#)

[Oaths of Special Commissioners \(fee or easement\)](#)

[Order Setting Hearing before Special Commissioners \(fee or easement\)](#)

[Notice of Hearing \(fee\)](#) (includes Return of Notice of Hearing)

[Notice of Hearing \(easement\)](#) (includes Return of Notice of Hearing)

[Award of Special Commissioners \(fee\)](#)

[Award of Special Commissioners \(easement\)](#)

[Notice of Deposit \(fee\)](#)

[Notice of Deposit \(easement\)](#)

[Judgment of Court in Absence of Objection \(fee\)](#)

[Judgment of Court in Absence of Objection \(easement\)](#)

The fee title and easement forms for Judgment of Court in Absence of Objection are the only sample forms of judgment prepared since it is the only situation in which standardization is practical.

The sample Plaintiff's Statement for an easement taking may require alterations to fit varying circumstances. Therefore, the following clauses are suggested as substitutions.

For Taking Drainage Easement Only

- ◆ Substitute for Clause I in the sample Plaintiff's Statement:

“That the State of Texas is now constructing, laying out and reconstructing a highway, designated as a part of the State Highway System by the Texas Transportation Commission of the State of Texas, in the City of XXXXX, XXXXX County, Texas, and that such construction, reconstruction and maintenance upon said highway will run over and across the following described real property which lies within the corporate limits of XXXXX County, Texas:”

- ◆ Substitute for Clause II in the sample Plaintiff's Statement:

“The Texas Transportation Commission of the State of Texas has found and determined that it is necessary and convenient to run said highway adjacent to said hereinabove described tract of land, and that it is necessary to the design of said highway facility to acquire an easement for the purpose of opening, constructing, and maintaining a permanent drainage channel in, along, upon and across said hereinabove described tract of land; and the City of XXXXX, XXXXX County, Texas, has found and determined that it is necessary to acquire said drainage channel easement through these proceedings in eminent domain, pursuant to existing law, same to be paid for by said City, with title thereto vesting in the State of Texas, for the purpose of opening, constructing, and maintaining a permanent drainage channel in, along, upon and across said tract of land with the right and privilege at all times of having ingress, egress, and regress in, along, upon and across such property for the purpose of making additions to, improvements on, and repairs to the said drainage channel or any part thereof, and the right to remove from said premises and use, for highway purposes, any stone, earth, gravel, caliche or other road building material which may be excavated in the opening, construction or maintenance of said channel or drainage easement.”

The metes and bounds description used when a drainage easement is acquired should be a description of only the easement area acquired. When the substitute clauses above are used to acquire only a drainage easement, it will be necessary to make changes in some of the other forms to show that the purpose of the taking is for a drainage channel rather than for highway ROW.

Section 3 — Eminent Domain Forms for County

Forms

The following sample forms are for fee title (less oil, gas and sulfur) and easements as indicated. These forms are suggested as guidelines for use by counties in ED proceedings for on-system projects only. Eminent domain counsel should consult the Texas Property Code, Chapter 21 (Eminent Domain) and modify these sample forms accordingly.

[Plaintiff's Statement \(fee\)](#)

[Plaintiff's Statement \(easement\)](#)

[Order Appointing Special Commissioners \(fee\)](#)

[Order Appointing Special Commissioners \(easement\)](#)

[Oaths of Special Commissioners \(fee or easement\)](#)

[Order Setting Hearing before Special Commissioners \(fee or easement\)](#)

[Notice of Hearing \(fee\) \(includes Return of Notice of Hearing\)](#)

[Notice of Hearing \(easement\) \(includes Return of Notice of Hearing\)](#)

[Award of Special Commissioners \(fee\)](#)

[Award of Special Commissioners \(easement\)](#)

[Notice of Deposit \(fee or easement\)](#)

[Judgment of Court in Absence of Objection \(fee\)](#)

[Judgment of Court in Absence of Objection \(easement\)](#)

The fee title and easement forms for Judgment of Court in Absence of Objection are the only prepared sample forms of judgment since it is the only situation in which standardization is practical.

The sample Plaintiff's Statement for an easement taking may require alterations, similar to those set out in Eminent Domain Forms for City, to fit varying circumstances. Therefore, the following clauses are suggested as substitutions:

For Taking Drainage Easement Only:

- ◆ Substitute for Clause I in the sample Plaintiff's Statement:

“That the State of Texas is now constructing, laying out, and reconstructing a highway, designated as a part of the State Highway System by the Texas Transportation Commission of the State of Texas, in XXXXX County, Texas, and that such construction, reconstruction, and maintenance upon said highway will run adjacent to the following described real property situated in XXXXX County, Texas:”

- ◆ Substitute for Clause II in the sample Plaintiff's Statement:

“The Texas Transportation Commission of the State of Texas has found and determined that it is necessary and convenient to run said highway adjacent to the said hereinabove described tract of land, and that it is necessary to the design of said highway facility to acquire an easement for the purpose of opening, constructing, and maintaining a permanent drainage channel in, along, upon and across said hereinabove described tract of land and the Commissioners' Court of XXXXX County, Texas, has found and determined that it is necessary to acquire said drainage channel easement through these proceedings in eminent domain, pursuant to existing law, same to be paid for by said County, with title thereto vesting in the State of Texas, for the purpose of opening, constructing, and maintaining a permanent drainage channel in, along, upon and across said tract of land with the right and privilege at all times of having ingress, egress, and regress in, along, upon and across such property for the purpose of making additions to, improvements on, and repairs to the said drainage channel or any part thereof, and the right to remove from said premises and use, for highway purposes, any stone, earth, gravel, caliche or other road building material which may be excavated in the opening, construction or maintenance of said channel or drainage easement.”

The metes and bounds description used when a drainage easement is acquired should be a description of only the easement area acquired. When the substitute clauses above are used to acquire only a drainage easement, it will be necessary to make appropriate changes in some of the other forms to show that the purpose of the taking is for a drainage channel rather than for highway ROW.

Section 4 — Miscellaneous Procedures for LPA Acquisition in ED

Commission Authorization of County Eminent Domain

Authority for counties to acquire highway ROW by purchase or condemnation is contained in *Transportation Code, Section 224.003*. To prevent the undue burden of TxDOT obtaining a separate minute order for each section of highway, with attached volumes of property descriptions, a policy and procedure was established by the Texas Transportation Commission as set forth in Minute Order No. [42204](#). When a county requests formal verification of the State's request for the acquisition of certain ROW, furnish it a certified copy of Minute Order No. 42204, accompanied by a **certification** by the District Engineer or designee in accordance with Minute Order No. 42204. Certified copies of this minute order may be obtained from the ROW Program Office. This procedure will meet the requirements of *Transportation Code, Section 224.003*.

Condemnation in City's Name

Contractual agreements with cities make special provisions for a city to initiate condemnation proceedings in its own name. In these cases, the property so acquired will be conveyed from the city to the State by an instrument acceptable to TxDOT. If no excess taking is involved, the consideration shown in the instrument of conveyance will read:

“XX% reimbursement of grantor's cost of \$XXXXX as set forth in the final judgment in Cause No. XXXXX.”

If the taking is in excess of TxDOT needs, see [Policy on “Uneconomic Remainders” \(Excess Takings\)](#) in the *ROW Acquisition Manual* for the procedure to be followed.

Requirements for Notification to TxDOT

Responsibility rests with LPAs to give prompt notice to TxDOT about all action taken in respect to condemnation proceedings. This includes written notification prior to filing of proceedings. The LPA must not initiate condemnation proceedings until authorized by TxDOT. Notice of the following events is required:

- ◆ date of filing the petition (TxDOT should be furnished with a file stamped “copy of the petition”.);
- ◆ date of hearing before the special commissioners as soon as it is set, and prompt notification of any postponements;
- ◆ date of the filing and the amount of the award, and whether the county or city plans to recommend appeal within the statutory allowable period (This should be furnished immediately to TxDOT.);

- ◆ date of filing of notice of appeal by either party;
- ◆ date of the jury trial, as soon as it is set;
- ◆ date and the amount of the jury verdict and whether the county or city intends to appeal; and
- ◆ notice of appeal of the jury verdict by the property owner, if applicable.

LPA Appeal of Unfavorable Awards

Whenever an award by the special commissioners is greater than the approved value, TxDOT and the LPA should make every effort to agree on whether or not to appeal the award. Although the final decision for appeal rests with the LPA, TxDOT's desires should be strongly considered by the LPA in making its final determination. In the event the LPA fails or refuses to file an appeal, the ROW Program Office will decide whether or not to recommend intervention by TxDOT in the condemnation proceedings.

State Intervention in Eminent Domain

TxDOT has the right to become a party to ED proceedings at any time or stage and for all purposes, including the right of appeal. Any determination by the ROW Program Office to intervene should be made in a timely manner to give OAG time to prepare and file a written notice of appeal within the period allowed by statute, as outlined in [Actions to be Taken](#) by State on Commissioner's Award and Filing of Objections.

The immediate information needed to prepare an appeal on behalf of the State is as follows:

- ◆ style of the case;
- ◆ the docket number;
- ◆ the court in which the case is pending; and
- ◆ the amount and date of the filing of the written award by the special commissioners.

Send this information along with TxDOT's recommendation of intervention.

When it is determined that TxDOT will intervene, submit the following items to the ROW Program Office so that OAG can represent the State:

- ◆ One ROW map for OAG;
- ◆ Three copies of each property description for the parcel(s) involved;
- ◆ Title policy commitment or Attorney's Certificate with attached statement that the parties before the court are all that are necessary and no other parties need be joined (The basis of this statement should be a recheck of the records to determine if a conveyance of all or any of the property has been made after the previous examination, and a review of the court proceedings to safeguard against any possible omissions.);

- ◆ Recommendation of the appraiser or other witnesses on valuation for testimony in court proceedings. It will speed the acquisition of ROW if the recommendation is supported by comments from TxDOT.

Use of State Approved Appraisers and Expert Witnesses in Condemnation

See TxDOT's *ROW Appraisal and Review Manual* for detailed procedures and responsibilities regarding LPA use of the State's approved appraisers and expert witnesses in condemnation.

Exhibits for Eminent Domain Purposes

Furnish maps and other exhibits prepared by TxDOT personnel, if available, to the LPA. When an LPA desires to purchase aerial maps, special exhibits, related photographs and other similar materials for use in condemnation proceedings, TxDOT will reimburse the percentage of such costs as shown in the contractual agreement of such costs if TxDOT gives prior approval.

Improvements Acquired in Eminent Domain

When property is acquired in fee or easement in the State's name in condemnation proceedings, title to all **fixed improvements** located on the property should also be acquired. The sample forms provided in this manual incorporate acquisition of improvements. These sample forms are not always used, however, and TxDOT should emphasize to any LPA the need to acquire fixed improvements. Improvements acquired by the State in condemnation will be disposed of in the same manner as improvements acquired by negotiation.

Settlements of Eminent Domain Lawsuits (for LPA)

Transportation Code, Section 224.005 and contractual agreements with LPAs provide that when ROW is acquired by negotiation, State participation will be based on the lesser of either the approved value, as determined by TxDOT, or the actual purchase price paid by the LPA. For condemned ROW, State participation will be based on the final judgment, with the condition that TxDOT is notified in writing before filing the suit and that prompt notice is also given of all action taken.

Normally, if a commissioners' award is appealed, new or updated appraisals are obtained by the LPA before proceeding to trial. If these new appraisals show a value greater than the original offer, TxDOT will notify the LPA that the new value supersedes the original approved value. The LPA may then re-negotiate on that basis and acquire title either by deed or by valid court judgment. TxDOT will not authorize the LPA to settle a case in an amount above TxDOT's approved value.

Chapter 5 — Payment and LPA Reimbursement Procedures for Condemned Parcels

Contents:

[Section 1 — General Payment Procedures](#)

[Section 2 — Payment for Condemnation Judgments](#)

[Section 3 — Payment of Commissioners' Awards](#)

[Section 4 — Payment of Final Judgment](#)

[Section 5 — Payment of Special Commissioners' Fees and Eminent Domain Costs](#)

[Section 6 — Payment of Owner's Litigation Expenses](#)

[Section 7 — Eligible Condemnation Costs and Methods of Reimbursement \(for LPA\)](#)

[Section 8 — Submission for Single Reimbursement Based on Final Judgment \(for LPA\)](#)

[Section 9 — Submissions for Partial Reimbursement Based on 80% of the State's Participation
Amount of the Commissioners' Award \(for LPA\)](#)

[Section 10 — Submission for Reimbursement Following Partial Reimbursement on the Commis-
sioners' Award \(for LPA\)](#)

Section 1 — General Payment Procedures

Procedure

See the [Right of Way Payments Checklist Job Aid](#) for additional information regarding payments and supporting documentation. Use TxDOTCONNECT (TxC) to process payments (see [TxC Job Aid Processing Payments](#)). TxC is TxDOT's custom-built system for managing the delivery of transportation programs, projects, and right of way.

Section 2 — Payment for Condemnation Judgments

Procedure

Submit payment requests through TxDOTCONNECT (TxC).

OnBase is the enterprise content management platform used by TxDOT to electronically store documents. Supporting documentation to upload to OnBase for judgment payment request:

- ◆ copy of judgment signed by judge;

Requests for payment of title expense must be supported by copy of the judgment that has been recorded in the deed records as described in the *ROW Acquisition Manual*, Chapter 18, [Payment for Title Work](#).

Section 3 — Payment of Commissioners' Awards

Procedure

Submit payment requests through TxC. If owner executed a PUA submit a payment request for the difference. Include a comment under payment memo on the payment request explaining the difference.

Supporting documentation to upload to OnBase for commissioners' award payment request:

- ◆ copy of Award of Special Commissioner signed by special commissioners;

Perform the following steps:

- ◆ Prepare the Notice of Deposit after receiving the warrant for payment of the award.
- ◆ Promptly deliver the warrant to the clerk of the court for deposit into the registry of the court.
- ◆ Obtain and keep the clerk's receipt showing the date of deposit into the registry of the court.
- ◆ To avoid unnecessary payment of interest when no objections are filed to the award, deposit the State's warrant into the registry of the court before, or no later than, the time that the Judgment in Absence of Objections is signed by the judge of the court.

Section 4 — Payment of Final Judgment

Procedure

When the amount awarded in the final judgment is more than the commissioners' award, submit a payment request for the difference in TxC.

Supporting documentation to upload to OnBase for final judgment payment request:

- ◆ copy of judgment signed by judge
- ◆ Judgment Interest Form, if applicable.

After receipt of warrant for additional payment ROW Project Delivery delivers warrant to the clerk of the court, for deposit into registry of the court, where judgment specifically provides for such deposit. If the judgment provides the payment is to be made directly to a party, OAG is to prepare a release of judgment and acknowledgment of receipt of funds to be signed at the time the warrant is delivered.

Section 5 — Payment of Special Commissioners' Fees and Eminent Domain Costs

Special Commissioners' Fees

Property Code, Section 21.047 provides for setting fees for services by the special commissioners. The presiding judge has jurisdiction for setting a reasonable fee for each special commissioner. Submit payment requests through TxC for special commissioners' fees.

Supporting documentation to upload to OnBase for special commissioners' fees payment request:

- ◆ copy of the commissioners' award showing the fees set by the judge; **or**
- ◆ copy of an order by the judge setting the fees.

Any variation in the names of commissioners used requires an affirmation by TxDOT that the person's name shown in the award and the person's name appearing differently is the same person. For this reason, the special commissioners should sign the award exactly as their names appear in the award or order appointing the commissioners. If the case is dismissed, then the payment request must include a fully signed copy of the Order of Dismissal.

Other ED costs will also require payment requests created in TxC for payment. The following subsection provides information required for each situation.

Situations and Required Information

When No Objections are filed to the commissioners' award, the filing fee is due when the judgment is entered only if the judgment assesses the costs against the State. Submit payment request for filing fees.

Supporting documentation to upload with payment request:

- ◆ invoice.

When Objections to the Commissioners' Award have been filed by either party, the filing fee is payable by the State.

Make all payment requests for other eminent domain fees prescribed by law, and show an itemized listing of all eligible charges, or support the billing by a signed copy of the clerk's itemized listing of charges.

Other items and services required by the State may also be due. Pay these directly to the person who provided them, and do not include them in the clerk's bill of costs. These items may include certified copies, recording Notice of Lis Pendens, and recording judgments in the deed records. Submit payment request through TxC.

Supporting documentation to upload to OnBase for payment request:

- ◆ invoice or itemized listing of all eligible charges.

Service of Notice of Hearing out of State. When notices of hearing must be served on out-of-state parties to condemnation proceedings, this service is usually performed by a private process server or the sheriff of the county in which the defendant resides, and payment for this service is authorized.

State law provides that any person competent to testify may serve the notice (*Property Code, Section 21.016*). TxDOT must directly process and handle all out-of-state services and must be responsible for paying the sheriff or other party who serves the defendant. If TxDOT receives a request from another State to serve a notice to a Texas resident, TxDOT may, at its discretion and taking into account its own particular workload, perform such service. If TxDOT declines to serve notice, promptly return the request to the other State along with an explanation.

Submit payment request through TxC.

Supporting documentation to upload to OnBase for payment request:

- ◆ invoice.

Service of Notice of Hearing within the State. State law provides that any person competent to testify may serve the notice (*Property Code, Section 21.016*). When an authorized person serves notices of hearing on parties to condemnation proceedings, fees for such services, if any, must be paid directly to the authorized person.

TxDOT must obtain all notices required after the hearing when requested by OAG.

Citation by Publication. Submit payment request through TxC.

Supporting documentation to upload to OnBase for payment request:

- ◆ invoice;

Court Reporters and Court Stenographers. Pay the fees for a statement of facts (or transcript) for any condemnation proceeding when this service is requested by OAG or TxDOT.

Make payment to the court reporter on the basis of the legal established rate per one hundred words for the original statement of facts and a reasonable charge for additional copies. Though the law is silent in regard to the allowable charges for copies, the charge should not exceed the cost of the original transcript and is usually based upon a rate of approximately one half the established rate for the original transcript.

Submit payment request through TxC.

Supporting documentation to upload to OnBase for payment request:

- ◆ invoice.

Recording of Lis Pendens. Submit payment request through TxC.

Supporting documentation to upload to OnBase for payment request:

- ◆ invoice.

Recording of Judgments in the Deed Records. Submit payment request through TxC when the county clerk will be paid separately for recording judgments in the deed records.

Supporting documentation to upload to OnBase for payment request:

- ◆ invoice.

Furnishing Certified Copies. Submit payment request through TxC when certified copies of papers (such as the Award of Special Commissioners or judgment) are required.

Supporting documentation to upload to OnBase for payment request:

- ◆ invoice.

Section 6 — Payment of Owner's Litigation Expenses

Procedure

If Federal funds are used in any part of a transportation project, the provisions of *42USC Section 4654* apply to LPA ROW acquisition projects.

In the event it is necessary to request the court to dismiss the condemnation proceedings due to the State's faulty petition, error in property description or parcel plats, etc., *Property Code*, Section *21.0195* requires the court to conduct a hearing. The court may only grant such a motion if it is determined that the property owner's interest will not be materially affected by such dismissal. When the court does allow such a dismissal, in addition to the payment of the property owner's expenses incurred (including reasonable and necessary attorney's fees), TxDOT is required to pay the property owner an allowance for the value of TxDOT's use of the property while in possession and any damage the condemnation has caused to the property owner (all as determined by the court).

42USC Section 4654 concerns inverse condemnation where an owner files suit against a condemning authority contending that property rights have been taken without compensation. These suits take different forms and may be filed against the State, an LPA, or both. TxDOT and local governments must conform to the requirements of *42USC Section 4654* and LPAs should be instructed to include eligible costs described herein as part of the final judgment. Cost participation should be the same as participation in ROW acquisition on the project involved. Attorney's fees are not compensable in an inverse condemnation case.

Payment of Litigation Expenses (for LPA)

If Federal funds are used in any part of a transportation project, the provisions of *42USC Section 4654* apply to LPA ROW acquisition projects.

Section 7 — Eligible Condemnation Costs and Methods of Reimbursement (for LPA)

Overview

LPA reimbursement for a condemned parcel is based on the final judgment amount and on eligible ED costs. Eligibility for reimbursement of condemnation charges (adjudged against the LPA and/or the State and paid by the LPA) is determined according to *Attorney General's Opinion Nos. M-134, M-142, M-483, H-886 and DM-26*. The cost of recording judgments in the deed records is not eligible for State participation because of the division of responsibilities in the contractual agreement, which states that the LPA must record all conveyance instruments at their own expense. Except for this, there is no distinction between the condemnation charges for which the city can be reimbursed and those for which the State can pay, as discussed in *Payment of Litigation Expenses*. The differences between charges that the State can pay and those that can be paid by a county are discussed in *Attorney General's Opinion No. M-142*. Counties should refrain from entering judgments calling for county payment of court costs that are a transfer of money from one county fund to another.

LPAs should normally make a single reimbursement request covering all eligible costs on a condemned parcel. However, in appealed cases the LPA also has the option of (1) asking for partial reimbursement at the award stage, and (2) then billing the State for the remaining costs following the final judgment, as discussed in [Submissions for Partial Reimbursement Based on 80% of the State's Participation Amount](#).

When objections to the Award of Special Commissioners are filed and the LPA has deposited the amount of the award in the court, the LPA may request reimbursement based on 80% of the State's participation of the amount awarded by the special commissioners and 100% of all eligible costs incurred up to the time of the reimbursement request. Following the final judgment and its full payment into the court, the LPA must submit a second reimbursement request for (1) the difference between 80% of the State's participation of the award and the final judgment, and (2) all other eligible costs not included in the previous billing, as discussed in [Submission for Reimbursement Following Partial Reimbursement on the Commissioners' Award](#).

Section 8 — Submission for Single Reimbursement Based on Final Judgment (for LPA)

Procedure

When an LPA elects to make only one reimbursement request based on a final judgment, perform the following actions:

- ◆ Send one certified recorded copy of the final judgment and the necessary assurance of title to the ROW Program Office with, or before, submission of the reimbursement request.
- ◆ Support the request with form [ROW-N-20AB Tabulation of Cost & Request for Reimbursement](#). Prepare form *ROW-N-20AB Tabulation of Cost & Request for Reimbursement* for condemned parcels according to the following instructions:
 - In Column 1, show the parcel number.
 - In Column 2, show the amount awarded by final judgment, plus eligible ED costs as indicated on the supporting breakdown.
 - In Column 3, show the amount of the LPA's requested reimbursement.
 - In Column 5, show a total of Columns 3 and 4, and show the total amount of reimbursement requested.
 - Enter the word “Condemnation” in Column 6, along with the item number of any improvement included in the State's approved value not acquired in the name of the State by final judgment.
 - In condemnation, all consideration due a property owner is reduced to a monetary amount. Therefore, Column 7 does not apply for condemned parcels.
 - In the lower portion of the form, show the total acreage acquired by condemnation of all parcels included in the reimbursement.

If the final judgment submitted does not repeat the appointment of the commissioners, include with the submission for reimbursement one copy of either (1) the Order Appointing Special Commissioners, or (2) the Award of Special Commissioners repeating their appointment.

Also include written evidence of the fees set by the judge, as outlined in [Payment of Litigation Expenses \(for LPA\)](#). This is usually shown in the Award of Special Commissioners.

TxDOT must complete and attach one copy of form [ROW-N-20C Check Sheet to Support Reimbursement on Condemned Parcel](#) with the LPA's request for reimbursement.

Section 9 — Submissions for Partial Reimbursement Based on 80% of the State's Participation Amount of the Commissioners' Award (for LPA)

Procedure

Where objections have been filed to an award, an LPA may request reimbursement based on 80% of the State's participation of the commissioners' award and 100% of all other eligible eminent domain costs paid up to that date. Prepare the request like requests for reimbursement based on the final judgment. This tabulation must indicate that only 80% of the State's participation of the award is used to complete the gross cost shown in Column 2 of form [ROW-N-20AB Tabulation of Cost & Request for Reimbursement](#).

LPA reimbursement requests like this must be accompanied by one certified copy of the Award of Special Commissioners supported by a title policy commitment in the name of the State, **or** if costs have been adjudged against the city or State, either:

- ◆ send one copy of the court clerk's statement or bill of cost to support the court officer's fees in the billing, or
- ◆ itemize the charges on the breakdown of costs.

TxDOT must complete and attach one copy of form [ROW-N-20C Check Sheet to Support Reimbursement on Condemned Parcel](#).

Section 10 — Submission for Reimbursement Following Partial Reimbursement on the Commissioners' Award (for LPA)

Procedure

When final judgment is given on a parcel where reimbursement was made based upon 80% of the State's participation of the commissioners' award, prepare the final reimbursement request like a single reimbursement request based completely on the final judgment, except indicate that only the difference between 80% of the State's participation of the commissioners' award and final judgment (along with other eligible eminent domain costs not submitted in the previous reimbursement) is included in the tabulation. Form [ROW-N-20AB Tabulation of Cost & Request for Reimbursement](#) must contain a reference to the previous reimbursement.

TxDOT must prepare and attach one copy of form [ROW-N-20C Check Sheet to Support Reimbursement on Condemned Parcel](#).

Appendix A — Eminent Domain Guide

Contents:

[Section 1 — Preface](#)

[Section 2 — Eminent Domain Submission Checklist](#)

[Section 3 — Special Situations](#)

[Section 4 — Form ROW-E-49 Checklist](#)

[Section 5 — Preparation of Access, Bisection, and Special Clauses for Easements](#)

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[Section 7 — Bankruptcy Checklist](#)

[Section 8 — Who, Where, When - Helpful Suggestions](#)

Section 1 — Preface

Overview

The objective of this guide is to facilitate the ROW Program Office training efforts for ED proceedings by providing ROW personnel with a concise, easy to follow guide which sets out procedures and time lines of ED activities and requirements. With this objective in mind, checklists, court papers with helpful suggestions and cross-referencing within the *Right of Way Manuals* are included. The goal is for relatively inexperienced ROW personnel to proceed through a not too complex ED situation from the decision to condemn to parcel acquisition, with minimum outside guidance and direction. Users should recognize this guide does not cover all situations, inasmuch as no guide can be all encompassing without becoming unnecessarily involved, weighty and therefore probably unusable. Since the ED process of itself is dynamic in nature, change will occur and experienced ROW personnel will recognize this and always seek the advice of the ROW Program Office and/or the Office of the Attorney General (OAG) before proceeding with an action which could jeopardize an ED acquisition procedure.

Section 2 — Eminent Domain Submission Checklist

Reference

For detailed instructions on completing form [ROW-E-49 Request for ED Proceedings](#), refer to Chapter 3, [Instructions for Completing ROW-E-49](#).

Prior to Submitting Eminent Domain Request

If at any time it is verified the landowner is represented by an attorney, all communications must be made to the attorney. TxDOT should request verification of the attorney's status. Verification should be in writing from **the property owner** verifying the attorney represents them. In certain circumstances the attorney may authorize you to communicate with his/her client.

- ◆ In the case of a final offer letter you must advise the attorney of the requirement to send this to the landowner - also send a copy to the attorney.
 - Send final offer letter (each owner must receive).
 - Determine whether a housing supplement is involved and note this in the [transmittal memo](#) forwarding the form [ROW-E-49 Request for ED Proceedings](#).
- ◆ Submit Eminent Domain Request
 - Submit form *ROW-E-49 Request for ED Proceedings*. Refer to checklist.
 - Ensure updated appraisal is requested.
 - Ensure title update is requested.
 - If updated appraisal value increases, mail [ROW-N-PostPetition Post Petition Updated Appraisal Letter](#).

Filing of ED Petition & Related Court Papers

Once the ROW Program Office sends the request for condemnation to the Attorney General, all communications with the landowners, their attorney or any party named in the case must originate from the AAG assigned. Clear any requests or correspondence with the assigned AAG. An exception to this procedure is the formal serving of Notices and issuance of Post Petition Updated Appraisal Letter.

The following procedures should be performed after receipt of Attorney Generals' papers (ED Petition and related documents):

- ◆ Request title company approval of parties to the condemnation (if appropriate).
- ◆ File original Petition for Condemnation signed by the AAG.

- ◆ File Lis Pendens signed by a TxDOT employee or representative and notarized.
- ◆ Send a copy of the Lis Pendens to each of the parties by certified mail, return receipt requested.
- ◆ File Order Appointing Commissioners signed by the judge of the court in which the proceeding will be held.
- ◆ Send a copy of the executed Order Appointing Commissioners to each of the parties by certified mail, return receipt requested as well as each property owner's attorney by first class mail, commercial delivery service, fax, or e-mail.
- ◆ If the judge allows both parties to suggest commissioners and AAG authorizes you to do so, notify owner/attorney you are requesting appointment of commissioners.
- ◆ Establish and coordinate date and location of Hearing with:
 - Commissioners
 - Property owner/attorney
 - Appraiser
 - AAG
 - Court reporter
 - Engineering witness
 - Any expert witness if appropriate.
- ◆ Obtain commissioners' signatures on Oath of Commissioners, Order Setting Hearing and Notices of Hearing.
- ◆ Obtain commissioners' social security numbers.
- ◆ File Oath of Special Commissioners.
- ◆ File Order Setting Hearing (must have Cause Number).
- ◆ Serve Notices of Hearing. (Personal service must be made no later than the 20th day before the scheduled Hearing date.)
- ◆ Fill out Services of Notice.
- ◆ File Notice of Hearing and Services of Notice. A separate Notice of Hearing must be issued, served, returned and filed for each party joined.
- ◆ If authorized by AAG, notify parties of any change in location and date of Hearing.
- ◆ Send letters to commissioners, court reporter, appraiser(s), technical experts and all State witnesses reminding them of date, time and location of the Hearing.
- ◆ Send file-marked copies of papers filed to the AAG.
- ◆ Arrange prehearing conference with AAG and State witnesses.
- ◆ Have exhibits requested by AAG prepared and ready for use in prehearing conference.

- ◆ Have commissioners view property if appropriate.
- ◆ Review Award before the Hearing. In particular, check names, dates, property descriptions, and special clauses.
- ◆ Complete the appropriate fields on the eminent domain page in TxC.

Attend Special Commissioners' Hearing

- ◆ Take notes during the hearing in anticipation of filling out form [ROW-E-73 Data Sheet - Special Commissioners' Hearing](#)
- ◆ Ensure commissioners have signed the award.
- ◆ Immediately following the Hearing, meet with the AAG to discuss actions to be taken on the Award.
- ◆ Arrange for Award to be signed by the judge.
- ◆ Ensure the Award is filed after the judge signs.
- ◆ File *ROW-E-73 Data Sheet - Special Commissioners' Hearing* in OnBase as soon as possible after the Hearing.
- ◆ Ensure copies of the Award or notice of the Award are mailed out by the court.
- ◆ Obtain fully signed copy(s) or certified copy(s) of the Award.
- ◆ Ensure request for payment of commissioners' award is submitted using TxC, along with uploading to OnBase a copy of award. (Refer to [Payment Procedure for Condemned Parcels.](#))
- ◆ Update eminent domain page in TxC to identify special commissioners, hearing date, special commissioner award amount and date of the award.

If No Objections

- ◆ As soon as possible, after the close of business of the first Monday following 20 days, verify no objections were filed.
- ◆ Receive warrant and Judgment in Absence of Objections.
- ◆ Prepare Notice of Deposit (signed by a TxDOT employee or TxDOT representative).
- ◆ Arrange for judge to sign Judgment in Absence of Objections.
- ◆ Arrange for deposit of money and judgment to be filed.
- ◆ Serve Notice of Deposit, by sending a copy of the Notice of Deposit via certified mail or fax to owner or attorney of record and other parties on the same day the money is deposited.
- ◆ Arrange for a certified copy of the judgment to be filed in the Property Records of the County where the parcel is located.
- ◆ Request title policy.

- ◆ Email copies of all documents filed to the AAG and upload to OnBase.
- ◆ Update eminent domain page in TxC to show amount and date of deposit. Under Judgments, fill in the judgment type, amount, date, recording information from real property records and date filed.

If Objections Filed

- ◆ File objections when received from the AAG.
- ◆ As soon as possible, after the close of business of the first Monday following 20 days, verify if objections were filed by the defendant.
- ◆ Order transcript if objections are filed.
- ◆ Receive warrant and prepare Notice of Deposit.
- ◆ Have appraiser or TxDOT representative take pictures and inspect property on the day money is to be deposited.
- ◆ Arrange for deposit of warrant in the registry of the court where the proceedings were conducted - file Notice of Deposit.
- ◆ Serve Notice of Deposit by sending a copy of the Notice of Deposit via certified mail or fax to owner or attorney of record and all other parties on the same day the money was deposited. Be sure date is filled in.
- ◆ Email file-marked copy of Notice of Deposit to AAG and upload to OnBase.
- ◆ Update eminent domain page in TxC with date objections were filed and the filing party.

Mediation

- ◆ ROW Project Delivery receives request for mediation from Assistant Attorney General. Encourage Assistant Attorney General to send the mediation notice as soon as possible if judge sets date. Mediation maybe set without judge's order.
- ◆ Order may contain date of mediation and name the mediator - if not, ROW Project Delivery coordinates with Assistant Attorney General regarding mediator and date.
- ◆ ROW Project Delivery decides who will represent them at mediation, i.e., district engineer, ROW manager, etc., and coordinates dates with them.
- ◆ ROW Project Delivery confirms mediation date with all parties and requests dates and availability for pre-mediation conference call with the Assistant Attorney General and the ROW Program Office if needed. Consideration should be given to the amount of time needed for TxDOT personnel to prepare analysis.
- ◆ ROW Project Delivery mediation coordinator sets pre-mediation and sends letter confirming all dates to all parties.

- ◆ If needed, a pre-mediation conference call is held between TxDOT representatives and the Assistant Attorney General.
- ◆ AAG will request approval of the amount of settlement authority from ROW Project Delivery Manager, Project Delivery Director, or Division Director. The amount requested will determine who has the authority to approve the amount. (Note: Cannot settle for more without calling for additional authorization.)
- ◆ Mediation is attended.
- ◆ When the scheduled mediation is over, if a settlement has not been reached on all outstanding issues, the mediation is considered complete and may not be extended. Any further settlement offers will be processed in accordance with normal settlement procedures.
- ◆ Within ten (10) days of the mediation, the Assistant Attorney General shall send a post-mediation settlement memorandum detailing the events of the mediation to ROW Project Delivery.
- ◆ The appropriate TxDOT representative will reply to the Assistant Attorney General's memorandum confirming the settlement.
- ◆ If settled, the Assistant Attorney General will prepare an Agreed Judgment and send it to ROW Project Delivery to be processed.
- ◆ ROW Project Delivery submits a payment request through TxC to pay the mediator. This *cannot* be paid until after Mediation.
- ◆ Update eminent domain page in TxC with mediation settlements and approvals.

Settlements

- ◆ Memorandum regarding proposed settlement is received from the AAG.
- ◆ The ROW Project Delivery Manager, Project Delivery Director, or Division Director should review the proposed settlement and reply to AAG.
- ◆ If proposed settlement is accepted, AAG will prepare Agreed Judgment and may send it to TxDOT to secure parties' signatures. (AAG will direct this action.)
- ◆ File the Agreed Judgment in the court record of the court where the proceeding is pending and certified copy(s) is (are) ordered.
- ◆ If Agreed Judgment is for an equal or lesser amount, the certified copy is filed in the Property Records of the County where the parcel is located.
- ◆ If Agreed Judgment is for a greater amount, file-marked copy is used to request additional funds through TxC. (Note: payee(s) shown in Agreed Judgment.)
- ◆ Warrant is received and delivered to payee shown in Agreed Judgment.
- ◆ If delivered to other than the court, AAG should send a Release (or Satisfaction) of Judgment to be signed when warrant is delivered.

- ◆ If applicable, Release (or Satisfaction) of Judgment is filed in the court record where the proceeding is pending.
- ◆ A certified copy is ordered and filed in the Property Records.
- ◆ Order title policy.
- ◆ Email file-marked copies of all documents filed to the AAG and upload to OnBase.
- ◆ Update eminent domain page in TxC with any legal settlements and approvals.

Jury Trial

- ◆ File request for Jury and pay Jury fee.
- ◆ Coordinate service of Citation (a/k/a precepts) with Objections to Award attached with AAG.
- ◆ Respond to discovery requests by AAG.
- ◆ Coordinate pretrial meetings with all State witnesses as requested by the AAG.
- ◆ Ensure additional appraisers, technical experts/witnesses are contracted.
- ◆ If a Guardian or Attorney Ad Litem was required for the special commissioners' hearing ensure a new one is appointed for the trial.
- ◆ Coordinate preparation of exhibits as requested by the AAG.
- ◆ Attend trial and assist AAG as requested.
- ◆ File judgment with court.
- ◆ Obtain certified copy(s) of judgment.
- ◆ If Jury Award is the same as or less than special commissioners' award, file certified copy of judgment in Property Records.
- ◆ Email file-marked copies of all documents to AAG and upload to OnBase.
- ◆ If Jury Award is greater than special commissioners' award, upload filed-marked copy of judgment to OnBase with request for additional funds through TxC.
- ◆ Warrant is received and deposited in the registry of the court.
- ◆ Request title policy.
- ◆ Upload file-marked copy of judgment and title policy to OnBase.
- ◆ Send file-marked copy of Notice of Deposit to AAG and upload to OnBase.
- ◆ File certified copy of the judgment in the Property Records of the County where the parcel is located.
- ◆ Update eminent domain page in TxC with jury trial information.

Section 3 — Special Situations

Substitute a Commissioner

- ◆ If appointed commissioner cannot serve, file Motion to Substitute Commissioner.
- ◆ If either a Motion to Substitute Commission is filed or an appointed commissioner is struck by a party pursuant to Section 21.014 of the Property Code, file Order Replacing Special Commissioner signed by the judge.
- ◆ File Oath of replacement special commissioner signed by commissioner - notarized.
- ◆ Send file-marked copies of filed documents to the AAG.

Appointment of a Guardian Ad Litem

(If owner is a minor or has been legally declared mentally incapacitated)

- ◆ File Motion to Appoint a Guardian Ad Litem.
- ◆ File Order Appointing Guardian Ad Litem.
- ◆ Ensure Guardian Ad Litem is notified of appointment and provided with background material including order appointing, petition, etc.
- ◆ Send file-marked copy of the Motion and Appointment to the AAG.
- ◆ Serve Guardian Ad Litem with Notice of Hearing in lieu of minor, etc.

Citation by Publication

- ◆ File Petition, Lis Pendens, Order Appointing Commissioners and Oath of Commissioners as usual.
- ◆ Notify judge, Service of Citation by Publication is required.
- ◆ Ensure “Due Diligence” in attempt to identify and/or locate landowners who will be served in the Citation by Publication.
- ◆ Fill in and file Affidavit for Citation by Publication (must have Affidavit signed and notarized).
- ◆ Present the Affidavit for Citation by Publication to the commissioners.
- ◆ Before setting the Hearing, advise the commissioners they **must** set the Hearing at 10:00 A.M. on the first Monday following forty-two (42) days after they issue the Citation by Publication.
- ◆ Deliver the signed Citation by Publication to the sheriff, constable or clerk of the court in which the condemnation proceeding is pending.

- ◆ After the Citation by Publication has been published as required (once a week for four consecutive weeks), obtain the completed Officer's Return. Attached to the return must be both the original Citation by Publication and the Publisher's Affidavit with a printed copy of the Notice attached to the Affidavit.
- ◆ Ensure the Officer's Return is signed and dated no earlier than 28 days after the first date of publication.
- ◆ File the Officer's Return.
- ◆ Arrange court reporter, courtroom, etc. for the hearing.
- ◆ Upon completion of the hearing, file the Order Adjourning Hearing.
- ◆ File Motion to Appoint Attorney Ad Litem.
- ◆ Arrange for judge to sign Order Appointing Attorney Ad Litem.
- ◆ File Order Appointing Attorney Ad Litem.
- ◆ Notify the appointed Attorney Ad Litem and provide a copy of all papers on file including the Order Appointing Attorney Ad Litem.
- ◆ Serve Notice of Hearing on all known located owners and other joined parties including Attorney Ad Litem.
- ◆ Arrange for the newly set hearing (e.g., witnesses, court reporter, courtroom, technical experts).
- ◆ Send file-marked copies of all papers filed to the AAG.

Section 4 — Form ROW-E-49 Checklist

In Advance of Completing a Form ROW-E-49:

Read pre-appraisal reports.

Read Negotiator's reports.

Read and verify information in the Title Commitment.

Complete [Eminent Domain Submission Checklist](#).

For detailed instructions, refer to Chapter 3, [Instructions for Completing ROW-E-49](#).

In Submitting Form ROW-E-49

Verify and Include the Information Required On A Form ROW-E-49.

Header

1. Indicate the revision history of form ROW-E-49 as well as the month and year of the parcel's minute order.

Section I. Nature of Taking

1. ITEM I-A. Specify interest to be acquired (e.g., "Fee Title," "Drainage Easement"). Include a copy of the last deed or conveyance into the property owners.
2. ITEM I-B. Check the box, partial or whole taking.
3. ITEM I-C. Check the box, indicating whether there is a denial of access to the remainder property.
4. ITEM 1-D. Check appropriate box indicating whether the denial is partial, or total.
5. ITEM 1-E. Indicate road location type.

Section II. Holders of Property Interests (Refer to Chapter 3, [Instructions for Completing ROW-E-49](#).)

1. ITEM II-A. Show name and address of owner and aliases. (Spelling of names in title commitment must be used in form [ROW-E-49 Request for ED Proceedings](#).) Address cannot be a P.O. Box. If there is no address other than a P.O. Box, a description of how to get to the location where the service will be made must be included.
2. ITEM II-A. Show marital status of owner. Include spouse's name if applicable.

3. ITEM II-A. Parties other than owner of record that may have an unrecorded legitimate ownership interest in the parcel, show how the property interest was obtained (e.g., “probate of will”) under the remarks section (Item X).
4. ITEM II-A. If owner is a minor or has been legally declared mentally incompetent, show name and address of guardian. Clearly state if no guardian has been appointed under the remarks section (Item X).
5. ITEM II-A. If ownership is other than a person, show exact name of entity as well as agent for service and agent's address. (Address cannot be a P.O. Box.) See Form ROW-E-49 Preparation Suggestions for agent and citation information. The nature of the owning entity is to be shown (e.g., Partnership, Board of Trustees). It is necessary to give the name, title, or position and address of the person(s) authorized to accept service of citation for the organization. (Address cannot be a P.O. Box.)
6. ITEM II-A. If ownership is a partnership, TxDOT should try to obtain a partnership agreement to determine if a specific partner can receive service. Name and addresses, if known or can be determined, should be listed. If the partnership agreement cannot be obtained, or is silent whether a specific partner can receive service, the names and addresses should be listed for all general partners (if a limited partnership, for registered agent for service or general partners), if known or can be determined.
7. ITEM II-A. If TxDOT has received written notice a property owner is represented by counsel, the TxDOT must also concurrently provide a copy of the petition it files to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail. This contact information should be provided alongside the fee owner's service information..
8. ITEM II-B. Adverse Claimant (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))
 - Include full name and address whether the claim appears valid or not. (Address cannot be a P.O. Box.) If a claim is made, then the individual/entity must be joined.
9. ITEM II-C. Lienholder (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))
 - The name and address of each easement holder are to be stated. (Address cannot be a P.O. Box.) If the easement is for a public utility or common carrier and will be handled through a utility adjustment, the easement holder will normally not be joined, but will be noted in Section III of the form [ROW-E-49 Request for ED Proceedings.](#)
10. ITEM II-D. Easement Holder (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))
 - Include name and address. (Address cannot be a P.O. Box.)
11. ITEM II-E. Lessees and tenants (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))
 - List owner's names and address separately. (Address cannot be a P.O. Box.) Advise ROW Program Office if there is or is not production in the area or if any improvements were placed on the property.
12. ITEM II-F. Minerals, mineral leases, etc. (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))

- List owner's names and address separately. (Address cannot be a P.O. Box.) Advise ROW Program Office if there is or is not production in the area or if any improvements were placed on the property.

Section III. Holders of property interests NOT to be joined

(Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))

- ◆ Specify the interest not to be joined and the reason why.
- ◆ Cite recording information, if known.

Examples of Property Interests not to be joined:

- ◆ Month to month tenants
- ◆ For tenants at will - note this is the case.
- ◆ For mineral leases - note no production, no surface rights, etc.
- ◆ For sign leases - note acquired by negotiations, not affected by take, etc.
- ◆ For liens - partial or whole release acquired.

Section IV. Taxing Agencies (Whole taking only) (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))

- ◆ Include name, title or position and address.
- ◆ On partial take, if remainder is insufficient to cover the taxing agency fully for liens, they should be notified of ED proceedings.

Section V. Special Clauses necessary for attachment to property description. (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))

- ◆ ITEM V-A. Bisected improvements (Refer to [Bisected Improvement\(s\)](#)).
- ◆ ITEM V-B. Property rights to be retained by owner (Refer to [Property Rights To Be Retained by Owner](#))

NOTE: Clauses should be in a TxDOT prepared attachment to the property description in the following order:

- Access (Typically access should be addressed in the field notes without need for a separate clause.)
- Bisection
- Retention of Property Rights
- ITEM V-C. Note: If not checked, the ROW Program Office will conduct an Engineering review.
- ◆ ITEM VI. Timing of Proceedings

- ITEM VI-A. Date is the proposed letting of a construction contract, which will affect **this** parcel. (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))
- ITEM VI-B. Date requested reflects earlier possession requirement because of relocation, property management, etc. (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))
- ITEM VI-C. Indicate whether there is a Possession and Use Agreement.
- ITEM VI-D. Indicate whether that agreement contains non-standard language.
- ITEM VI-E. Date Possession and Use Agreement payment tendered

Section VII. Appraisals

- ◆ A copy of all appraisals conducted on the parcel is/are to be submitted. (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))
- ◆ Dollar figure must agree with appraisal and Final Offer Letter.

Section VIII. Environmental Concerns

Fill in the appropriate blank. If yes, situations which potentially affect the value of the parcel must be fully explained.

Section IX. Attached Documents (2 copies of each document, except appraisal) (Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))

- ◆ Include leases, partnerships, agreements or any documents filed of record relative to the property showing why or why not a party should be joined.

Section X. Remarks

(Refer to Chapter 3, [Instructions for Completing ROW-E-49.](#))

Section 5 — Preparation of Access, Bisection, and Special Clauses for Easements

Overview

For acquisitions by condemnation, in addition to the property descriptions submitted per Chapter 3, [Instructions for Completing ROW-E-49](#), it will often be necessary to include additional special clauses to adapt the acquisition for the specifics of the project and the parcel. Control of Access and Bisection Clauses are to be prepared in accordance with the following samples and should be included on the Special Clause Exhibit made a part of the form [ROW-E-49 Request for ED Proceedings](#) and prescribed in the [Special Clauses For Conveyance Instruments](#). While OAG may eventually use additional clauses to facilitate settlement of a case, the only special clauses that should be included with the form *ROW-E-49 Request for ED Proceedings* are for access or bisected improvements.

Control of Access

Control of access clauses for condemnation are similar to those used for negotiated acquisitions, which are described in [Special Clauses For Conveyance Instruments](#); however, the format used to describe the specifics of the access rights involved is varied to accommodate the legal concerns associated with an acquisition by ED. Generally, control of access clauses will be required for each partial taking fee acquisition on designated controlled access facilities. Control of access clauses may also be necessary on non-controlled access highway facilities, but which are designed in such a way as to preclude practical physical access. Such occurrences are usually the result of design requirements calling for elevated structures, embankments or some similar physical restriction.

The following examples are intended to represent sample control of access clauses. Control of access clauses are to be incorporated into the metes and bounds survey description.

- ◆ Where access is permitted to the entire remainder(s), use;
Access will be permitted to the north remainder abutting the highway facility along Call 1 of the foregoing property description.
- ◆ Where access is to be denied to the entire remainder(s), use;
Access will not be permitted to the north remainder abutting the highway facility along Call 1 and 2 of the foregoing property description.
- ◆ Where a property owner has two remainders and access is to be fully permitted to one and fully denied to the other, use;
Access will be permitted to the south remainder abutting the highway facility along Call 1 of the foregoing property description for Part 1.

Access will be denied to the north remainder abutting the highway facility along Call 1 of the foregoing property description for Part 2.

- ◆ Where access is to be partially permitted and partially denied to a single remainder, use;

Access will be permitted to the north remainder abutting the highway facility along Call 1 of the foregoing property description.

AND,

Access will be denied to the north remainder abutting the highway facility along Call 2 of the foregoing property description.

- ◆ Where access is permitted to part of one remainder and denied in part to that same remainder (as in the preceding example) but where the limits of access are not coincident with the beginning and ending points of the property description calls, use;

Access will be permitted to the north remainder abutting the highway facility from a point being the beginning of Call 1 of the foregoing property description to a point being North 25E 15' 10" East a distance of 25 feet from the beginning of said Call 1; and also from a point being located northeasterly on a curve to the left (said curve having a radial bearing of North 75E 10' 15" West, a central angle of 32E 20" and a chord bearing/distance of North 01E 25' 15" East/75.00 feet) an arc distance of 50 feet from the beginning of Call 2 of said description to the end of said Call 2.

AND,

Access will be denied to the remainder abutting the highway facility for a distance of 150 feet from a point being North 25E 15' 10" East 25 feet from the beginning of Call 1 of the foregoing property description to a point located northeasterly on a curve to the left (said curve having a radial bearing North 70E 10' 15" West, a central angle of 32E 20" and a chord bearing/distance of North 01E 25' 15" East/75.00 feet) an arc distance of 50 feet from the beginning of Call 2 of said description.

- ◆ Where access is to be denied at locations other than along the new ROW line as it abuts the applicable taking, the following is to be added after and independent from the access clause(s) being used to describe access abutting the taking.

AND IN ADDITION THERETO:

Access will be denied to and from tract of land described in Volume 123, Page 456 of the Real Property Records of Jones County along the existing north right of way line of Interstate Highway 123 for a distance of 300 feet. Said distance of 50 feet from the end of Call 1 of the foregoing property description and continues along the said existing north right of way line North 20E 10' 00" East for a distance of 100 feet to the end of this additional access denial.

- ◆ Care should be taken to insure that the parent tract recording noted in the preamble to the property description applies not only to the area described by the metes and bounds, but also is

relevant to the tract abutting the additional access denial. If necessary, additional recording data can be included in the additional access denial provision as has been previously noted.

Bisection Clauses

Bisection clauses for condemnation are similar to those used for negotiated acquisitions, which are described in Special Clauses For Conveyance Instruments; however, the format used to describe the specifics involved is varied to accommodate the legal concerns associated with a forced taking. Generally, while OAG may choose to alter the final version of the bisection clauses in order to accommodate a judicial settlement, for the purpose of completing the Special Clause Exhibit as made a part of the form [ROW-E-49 Request for ED Proceedings](#) and prescribed in Special Clauses For Conveyance Instruments, an owner who does not accept the State's final offer will not be permitted the opportunity to retain either a “Category I” bisected improvement or that portion of a “Category II” bisected improvement lying between the cut line and the highway facility.

Generally, bisection clauses are to be included for each bisected improvement owned by the condemnee. Improvements located upon the land to be acquired but owned by a party other than the condemnee usually do not need to be referenced on the form *ROW-E-49 Request for ED Proceedings* or Special Clause Exhibit; however, it is best to discuss the merits of such an inclusion with the ROW Program Office prior to the submission of the ED request.

The following examples are intended to represent sample bisected improvements clauses. These bisection clauses are to be included on the Special Clause Exhibit.

Category I Bisection. Where an improvement has been classified as a “Category I” bisected improvement and it will be the intention of the State to acquire title to the whole improvement, including the portion lying outside the area of the land acquisition, as well as the right to enter the remainder for the purpose of removing the improvement, use

AND IN ADDITION THERETO:

Title to all of that (describe improvement as noted on Form ROW-A-10) located partially on the remainder of the herein described parcel, said improvement being bisected by the proposed north right of way line, with the result that the portion of the said improvement lying adjacent to the said right of way line would be in such a condition that it could not be adequately reconstructed at such location, plus the temporary right to enter upon the said remaining property for the sole purpose of removing all of the said improvements.

Category II Bisection (on ROW only). Where an improvement has been classified as a “Category II” bisected improvement and it will be necessary for the State to acquire title to only that portion of the improvement located on the new ROW, there is no need to include any bisection clause. However, as it will be the State's responsibility to cut the subject improvement at the line of bisection, it

is very likely that the State will need to secure the right to enter upon the acquired parcels remainder for the purpose of making the necessary cut and removal operations. For such occurrences, use;

AND IN ADDITION THERETO:

The temporary right to enter upon the remainder of the herein described parcel for the sole purpose of cutting that (described improvement as noted on the Form ROW-A-10) along the line of bisection, same being coincident with the proposed north right of way line.

Category II Bisection (beyond ROW line). Where an improvement has been classified as a “Category II” bisected improvement and it will be necessary for the State to acquire not only title to the portion of the improvement located within the new ROW but also to a portion located on the remainder, it will be necessary to establish the cut line based on structural engineering and appraisal standards. The method for defining the cut line location in the bisection clause will vary depending upon the type of structure and the actual location of the cut. Using reference to either the existing or proposed ROW lines or to definitive and readily identifiable structural monumentation is recommended. For occurrences of bisections of this nature, use;

AND IN ADDITION THERETO:

Title to a portion of that (described improvement as noted on Form ROW-A-10) located on the remainder of the herein described parcel, said improvement being bisected by the proposed north right of way line, with the result that the portion of the said improvement lying between the hereinafter described cut line and the new north right of way line would be in such a condition that it could not be adequately reconstructed at such location, said cut line lying between a point being located on the eastern exterior wall of the said improvement 35 feet north of the most southeast corner of the said improvement, said cut line running coincident with a line running approximately one foot south of the common wall between the storage room and the main office portions of the said improvement, plus the temporary right of enter upon the said remaining property for the sole purpose of making the necessary cut along said cut line and removing all of the described portion of the said improvement.

Clauses for Highway, Drainage, or Temporary Easement Purposes

When an easement is acquired or condemned, the purpose(s) of the easement must be described either in the preface to the easement property description or in a clause attached to the easement property description. This is also true concerning the intended duration of a temporary easement. The following examples are offered for use in describing the purpose of a general highway, drainage or temporary easement, and the duration of the latter. Note that it may be necessary to adapt the description to the specifics of the project and the parcel.

- ◆ Permanent Easement for Highway Drainage Purposes

“An easement for the purpose of opening, constructing and maintaining a permanent channel or drainage easement in, along, upon and across the premises described in the following property description, together with the right and privilege at all times of ingress and egress to and from said premises for the purpose of making any additions, improvements, modifications or repairs which the State deems necessary, and the right to remove from said premises and use, for highway purposes, any stone, earth, gravel or caliche or other road building material which may be excavated in the opening, construction or maintenance of said channel or drainage easement.”

◆ Permanent Easement for General Highway Purposes

(**Note:** While there is a strong preference for acquiring fee title, except where the parcel is to be used solely for drainage purposes, there may be circumstances where the acquisition of an easement for general highway purposes may be appropriate): **“An easement for highway purposes, for the purposes of laying out, opening, constructing, operating, maintaining and reconstructing a highway facility thereon, together with necessary incidentals and appurtenances thereto, in, along, upon and across the tract or parcel of land in _____ County, Texas, more particularly described in the following property description.”**

◆ Temporary Easement

“A TEMPORARY EASEMENT for the duration of (insert number of months/years) from the date of possession of said easement (or, in the alternative, specify a duration following a specific date certain) for the purpose of (insert purpose for temporary easement), in, along, upon, and across the premises described in the following property description, with the temporary right and privilege of having ingress, egress, and regress in, along, upon, and across said tract of land for the purpose of (insert same purpose stated above).”

Section 6 — Form ROW-E-49 Preparation

Corporate Information

The correct name of corporations and the name and address of the registered agent can be obtained from the Secretary of State Corporate Division at (512) 463-5555. Information may also be obtained from the Secretary of State through E-mail at corpinfo@sos.state.tx.us

Resolution Trust Corporation

In cases where property or lien interests appear to remain of record in the Resolution Trust Corporation, the FDIC will be served as the Successor to the Resolution Trust Corporation. (It is recommended that one contact Division Legal when the Resolution Trust Corporation is involved.)

Bank Information

Information about banks, transfer of assets, etc., can be obtained by calling:

- ◆ Texas Department of Banking for State banking, and
- ◆ the Comptroller of the Currency for National Banks.

FDIC

FDIC service is perfected upon the FDIC when the Petition and Notice is:

(Parties must receive notice 60 days prior to the Hearing.)

Served by certified, return receipt requested mail, pursuant to 12 CFR, Section 309.7 upon the designated agent for service for Texas:

Judith Sinclair Regional Counsel
Legal Division of Supervision Designated Agent for Service FDIC
1910 Pacific Ave., Ste. 1900
Dallas, Texas 75201;
and,

Served by certified, return receipt requested mail, pursuant to 28 USC Section 2410, to:

Attorney General of the United States Main Justice Building, Room 5111
10th and Constitution Avenue
N.W. Washington, D.C. 20530;
and,

By delivering a copy of the Notice and Petition, pursuant to *28 USC Section 2410* and *Rule 4(d)(4)*, *Federal Rules of Civil Procedure*, to:

U.S. Attorney for District in which property is located.

Internal Revenue Service Parties

Internal Revenue Service Parties must receive Notice of Hearing 60 days prior to the scheduled date of the Hearing. A copy of the Tax Lien must be included with the Notice of Hearing. A copy of the Petition should include, (1) the numbered address of the taxpayer who created the lien and, (2) the identity of the Internal Revenue office which filed the Notice and the date and place it was filed. A copy of the lien should be attached to the Petition.

Served by certified, return receipt requested mail, pursuant to *28 USC Section 2410*, to:

Attorney General of the United States Main Justice Building, Room 5111
10th and Constitution Avenue N.W.
Washington, D.C. 20530;
and,

By delivering a copy of the Notice and Petition, pursuant to *28 USC Section 2410* and *Rule 4(d)(4)*, *Federal Rules of Civil Procedure*, to:

U.S. Attorney for District in which property is located.

Section 7 — Bankruptcy Checklist

Overview

When any person or entity (e.g., landowner, lienholder, mortgagee, tenant) who is in bankruptcy, has an interest in the property to be acquired, it is important to proceed with caution. Actions against a bankruptcy “debtor” or the debtor’s “property” are prohibited by the automatic “stay” which goes into effect at the time the bankruptcy case is filed. Unless an order “lifting” the stay is obtained, certain actions (including condemnation) could be deemed to be void, as in violation of the automatic stay, and could subject TxDOT to sanctions by the bankruptcy court. If you have a case, which involves a bankruptcy, the following information needs to be acquired from the bankruptcy court clerk in order to determine the best way to proceed. This information will alert the Assistant Attorney General (AAG) as to whether or not further proceedings in the bankruptcy court are required. Remember, that a Motion for Relief from Stay requires a filing fee, a substantial sum for mailouts, and very possibly a hearing, so the expense is not trivial.

Obtain:

- ◆ Style of case including name of debtor, court where filed, **case number**, and chapter filed under (e.g., 7, 11 or 13).
- ◆ Date the Petition was filed with the bankruptcy court.
- ◆ Copy of the Bankruptcy Petition or Suggestion/Notice of Bankruptcy, if available.
- ◆ Any additional information about the property owner/party/debtor, such as DL#, last 4 of SSN, birth date.

If you have any questions, please contact the AAG in charge of your case before proceeding.

Section 8 — Who, Where, When - Helpful Suggestions

Overview

The following pages contain names of documents prepared and provided by OAG, in ED proceedings. The *Notice of Deposit* is a TxDOT-prepared form; a Memorandum is used in each condemnation case. In addition to the document title, each page contains information on who signs and where and when the documents are filed. Also, some helpful suggestions are provided.

Petition For Condemnation

(For sample forms, see [Forms](#) for Cities and [Forms](#) for Counties.)

- ◆ Who Signs
 - AAG
- ◆ Where Filed
 - County court at law or district court as indicated on the petition. If there is more than one court of its type in the county where the land is located, the petition must be filed with the clerk for that court or courts
- ◆ When Filed
 - First document to be filed when a condemnation is to be pursued.
- ◆ Helpful Suggestions
 - Ensure property description and TxDOT prepared access and/or special clauses are attached. These must conform to the approved Minute Order.
 - Ensure title update has been requested.
 - Make sure a Cause Number is assigned.
 - If appropriate, make sure you have a check for up-front filing fees. (In many jurisdictions fees will be accumulated and billed at end of lawsuit.)

The following situations require special provisions in the petition:

- ◆ Interstate - Partial Taking
- ◆ Interstate - Access Denied
- ◆ Interstate - Partial Taking with Easement
- ◆ Interstate - Category I Bisection, Controlled Access
- ◆ Non-Interstate Controlled Access - Partial Taking, Access Permitted
- ◆ Non-Interstate Controlled Access - New Location, Access Partially Denied

- ◆ Non-Interstate Controlled Access - Partial Taking with Easement
- ◆ Non-Interstate Controlled Access - New Location, Access Denied
- ◆ Non-Interstate Controlled Access - Whole Taking
- ◆ Non-Interstate Non-Controlled Access - Partial Taking and Whole Taking
- ◆ Non-Interstate Non-Controlled Access - Partial Taking with Easement
- ◆ Non-Interstate Non-Controlled Access - Category I Bisection
- ◆ Category I and/or II Bisection language
- ◆ When IRS is a Defendant
 - Send file marked copy to AAG.

Lis Pendens

- ◆ Who Signs
 - TxDOT employee or ROWAPS (Right of Way Acquisition Professional Services) provider
 - Notary Public
- ◆ Where Filed
 - County Property Records
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - Immediately after the Petition has been filed and the Cause Number is filled in and the State agent's signature has been notarized.
- ◆ Helpful Suggestions
 - Fill in the Cause Number.
 - Ensure property description and TxDOT prepared access and special clauses are attached.
 - Fill in court number if required.
 - Ensure full name of the court is included.
 - Ensure correct parties are named.
 - Send file-marked copy to AAG.
 - Send file-marked copy to each of the parties by certified mail, return receipt requested.
 - If appropriate, make sure you have a check or ability to pay for the filing in the County Property Records.

Order Appointing Special Commissioners

(For sample forms, see [Forms](#) for Cities and [Forms](#) for Counties.)

- ◆ Who Signs
 - Judge of the court where proceedings are pending.
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - After verifying each commissioner can serve.
- ◆ Helpful Suggestions
 - Fill in the Cause Number.
 - Fill in the date the Petition was filed.
 - Ensure judge fills in the names of the three commissioners, dates and signs the order.
 - Ensure order is filed prior to special commissioners' hearing.
 - Send file-marked copy to AAG and each of the parties.

Motion to Substitute Special Commissioner with Order Attached

- ◆ Who Signs
 - AAG (motion)
 - Judge (order)
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - Upon completion of signatures.
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - Ensure names are filled in.
 - Ensure commissioner's oath is signed and filed prior to the special commissioners' hearing.
 - Send file-marked copy to AAG.

Oath of Special Commissioners

(For sample forms, see [Forms](#) for Cities and [Forms](#) for Counties.)

- ◆ Who Signs
 - Each special commissioner
 - Notary for each commissioner's signature
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - Once all three special commissioners have signed.
- ◆ Helpful Suggestions
 - Fill in the Cause Number.
 - Send file-marked copy to AAG.
 - If an appointed commissioner is struck, the newly appointed commissioner will need to execute an oath.

Order Setting Hearing Before Special Commissioners

(For sample forms, see [Forms](#) for Cities and [Forms](#) for Counties.)

- ◆ Who Signs
 - Each special commissioner
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - After special commissioners have signed and set the date of the hearing.
 - Commissioners may not set a hearing before the 20th day after they were appointed.
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - Fill in date, commencing time and location after coordinating with AAG, owner/attorney if authorized by the AAG, commissioners, appraiser, State witnesses and court reporter.
 - Ensure date the commissioners signed is filled in.
 - Send file-marked copy to the AAG.

Designation of Counsel In Charge For (Named Party) with Certificate of Service

- ◆ Who Signs
 - AAG
- ◆ Where Filed

- Court record of court where proceedings are pending.
- ◆ When Filed
 - Usually filed by the AAG.
- ◆ Helpful Suggestions
 - Make sure a Cause Number is assigned.
 - Usually filed by the AAG by mail or may be sent to TxDOT for filing.
 - Ensure the Designation and Certificate of Service are filed.
 - Designation and Certificate of Service should be received by all parties and counsels named. (May be handled by AAG.)
 - The Service is perfected by sending certified mail, return receipt requested.
 - Send file-marked copy to the AAG.

Acceptance of Service And Waiver of Notice of Hearing

- ◆ Who Signs
 - Defendant or defendant's attorney
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - When signed by defendant or defendant's attorney.
- ◆ Helpful Suggestions
 - Ensure the Cause Number is on the document.
 - May require separate forms for property owner and attorney.
 - Must be filed in advance of the Hearing.
 - Ensure the property owner has a copy of the Petition - if not, send with the form.
 - Ensure the date and place of the Hearing are filled in on the form.
 - Send file-marked copy to the AAG.

Notice of Hearing with Service of Notice Attached

(For sample forms, see [Forms](#) for Cities and [Forms](#) for Counties.)

- ◆ Who Signs
 - Each special commissioner signs the Notice of Hearing.
 - Person competent to testify who serves Notice of Hearing signs Service of Notice - signature must be notarized.

- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - Upon completing the Service and when the Service of Notice has been signed and notarized.
- ◆ Helpful Suggestions
 - Fill out Cause Number.
 - Ensure copy of Notice of Hearing, along with a complete Petition is served on the party named not later than the 20th day before the day set for hearing.
 - Ensure Service of Notice of Hearing is completed and is signed by the person competent to testify, who made Service and their signature has been acknowledged by a Notary Public.
 - Send file-marked copy to AAG.

Plaintiff's Motion For Nonsuit And Dismissal

NOTE: This pleading and order serves to dismiss the entire cause or action.

- ◆ Who Signs
 - AAG
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - After property has been closed by deed or deleted by design change, etc.
 - Upon receipt from AAG.
- ◆ Helpful Suggestions
 - Ensure the Cause Number is on the document.
 - Arrange to present to the judge with an Order of Nonsuit and Dismissal.
 - Ensure wording on the Motion reflects the reason for dismissal (e.g., the parcel has been deleted from the project, the State has negotiated the sale).
 - Send file-marked copy to the AAG.
 - The AAG may forward a release of Lis Pendens, which should be executed and filed in the Real Property Records after the Order of Dismissal has been signed by the judge.
 - If the defendant in the Cause raises the question of attorney fees, appraisal costs, etc., consult with the AAG.

Order of Nonsuit And Dismissal

- ◆ Who Signs
 - Judge of court where proceedings are pending.
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - Once the judge has signed.
- ◆ Helpful Suggestions
 - Ensure the Cause Number is on the document.
 - Ensure the judge has filled in the amounts to be paid to the commissioners.
 - Upload copy to OnBase for payment of commissioners.
 - Send file-marked copy to the AAG.

Award of Commissioners

(For sample forms, see [Forms](#) for Cities and [Forms](#) for Counties.)

- ◆ Who Signs
 - Each commissioner present at the Hearing
 - Judge of court where proceedings are pending.
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - On the day the Award is signed by the commissioners or on the next working day.
- ◆ Helpful Suggestions
 - Fill out Cause Number.
 - Check Award before the Hearing. If blank, fill in name of court, date commissioners were appointed, names of commissioners, date of order setting hearing and date of hearing.
 - Ensure Award contains property description and access, bisection and special clauses if appropriate.
 - Check amount of Award.
 - Arrange for judge to sign.
 - Ensure payment to commissioners is filled in by the judge.
 - Send file-marked copy to AAG.
 - Upload fully signed copy for payment of the award and special commissioners to OnBase.

- Ensure Clerk mails to parties to be notified of filing of commissioners' award.

Judgment of Court In Absence of Objection

(For sample forms, see [Forms](#) for Cities and [Forms](#) for Counties.)

- ◆ Who Signs
 - Judge of the court where the proceedings are filed.
- ◆ Where Filed
 - Court record of court where proceedings are pending.
 - Property Records
- ◆ When Filed
 - Upon being signed by the judge.
 - Once money is deposited.
- ◆ Helpful Suggestions
 - Ensure the Cause Number is on the document.
 - Ensure the judgment has the property description and TxDOT prepared access, bisection or special clauses attached.
 - Deposit the funds before arranging for the judge to sign. Have copy of receipt of deposit so the judge knows money is deposited.
 - Arrange for the judge to sign.
 - Obtain certified copies. Arrange for certified copy of the judgment to be filed in the Property Records.
 - Order title policy from the title company.
 - Send file-marked copy to the AAG and upload to OnBase.
 - Verify the Notice of Decision or Award mailing date from the Clerk before having a Judgment in Absence of Objection signed by the judge to ensure the correct number of days have lapsed.

Objections to Award of Special Commissioners

- ◆ Who Signs
 - AAG
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - Upon receipt from AAG.

- Within appeal period (i.e., before the close of business of the first Monday following 20 days of the Hearing).
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - AAG should sign Certificate of Service.
 - Call AAG if objections have not been received by the week before the deadline.
 - Send file-marked copy to AAG.
 - Objections to Award are to be served on opposing parties by way of Citation (a/k/a precept) requested of and issued by the clerk. (The Clerk will attach a copy of the Objections.) Unlike Notices of Hearing, post-objection service is required to be made by a Sheriff/Constable or authorized private process server.

Notice Of Deposit

- ◆ Who Signs
 - TxDOT employee “agent” or ROWAPS provider
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - As soon as warrant is received and Notice is completed.
- ◆ Helpful Suggestions
 - Ensure the Cause Number is on the document.
 - If objections were filed, notify appraiser of the need to photograph and inspect the property on the date of deposit.
 - Ensure a receipt for the deposit is obtained.
 - Send file-marked copy to the AAG and upload to OnBase. Include a copy of receipt of the warrant by the clerk of the court.
 - Usually the Notice of Deposit is done in conjunction with a Judgment in Absence of Objections. Whether objections have or have not been filed, the depositing of the funds in the registry of the court is the action that transfers possession of the property to the State.
 - The Notice of Deposit pleading form will be prepared locally by TxDOT employee or ROWAPS provider in order to expedite the commissioners' award funds being deposited into the registry of the court. The Notice of Deposit and the Certificate of Service will be signed by an agent for TxDOT (either a TxDOT employee or a ROWAPS provider) and will then be delivered and filed with the proper court clerk along with the warrant. All parties to the suit, or their attorneys of record if they have one, need to be listed in the

certificate of service portion of the form. The date in the certificate is to be the date the warrant and Notice of Deposit are delivered to the court clerk.

- **On this same date**, copies **must** be transmitted to all parties or their attorneys of record as stated in the certificate. If transmitted by mail, utilize certified mail, return receipt requested. Sufficient copies of the signed Notice of Deposit should be made so that all of the parties or attorneys of record as listed in the Notice are properly served with such copies, as stated in the certificate. Note that the Rules of Civil Procedure (Rule 21a) provide that service by mail shall be complete upon mailing by certified mail (depositing the properly addressed and postage paid envelope) in a post office or official depository under the care and custody of the United States Postal Service.
- If service is by telephonic document transfer (fax) it must be accomplished before 5 p.m. (local time of the recipient) of the date in the certificate, as Rule 21a provides that any such notice by telephonic document transfer after 5 p.m. (local time of the recipient) shall be deemed served on the following day.
- The court clerk's receipt showing the date the deposit was made into the registry of the court will be obtained and retained by TxDOT, with copies of this receipt to be forwarded immediately to the Assistant Attorney General handling the proceeding, in order to document the date possession is taken by the State.
- To preclude unnecessary payment of interest when no objections are filed to the award, the State's warrant must be deposited into the registry of the court prior to or no later than the date that the Judgment in Absence of Objections is signed by the judge of the court in which the proceedings were held.

Disclaimer of Interest of Defendant And Certificate of Service

- ◆ Who Signs
 - Disclaimer - defendant or defendant's attorney.
 - Certificate of Service - person sending out the disclaimer.
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - Upon receipt if appropriate.
 - Normally sent to the court by the attorney of the plaintiff or the defendant's attorney.
- ◆ Helpful Suggestions
 - Make sure a Cause Number is assigned.
 - Make sure the Disclaimer is signed.
 - Make sure the Certificate of Service is dated and signed.

- All parties and counsels should receive a copy of the Disclaimer (normally sent with Certificate of Service).
- Service is perfected by certified mail.
- Send file-marked copy to AAG.

Order of Dismissal of/Or As a Defendant

NOTE: **Does not dismiss entire case.**

- ◆ Who Signs
 - The judge of the court where the proceedings are pending
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - After the judge has signed.
- ◆ Helpful Suggestions
 - Make sure a Cause Number is assigned.
 - Make sure the judge dates and signs.
 - Send file-marked copy to AAG.

Order Scheduling a Hearing

(Note: Used when Citation by Publication required.)

- ◆ Who Signs
 - Each special commissioner
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - When filled in and signed by each commissioner.
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - Ensure time of hearing is 10:00 A.M.
 - Ensure date is first Monday following 42 days after special commissioners issue the Citation by Publication.
 - Send file-marked copy to AAG.

Affidavit For Citation by Publication

- ◆ Who Signs
 - Agent for the State
 - Notary Public
- ◆ Where Filed
- ◆ Court record of court where proceedings are pending.
- ◆ When Filed
 - Upon completing signatures.
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - Ensure name of unknown person(s) with proper wording (e.g., unknown, heirs, assigns) is included in the affidavit.
 - Send file-marked copy to AAG.

Citation by Publication

- ◆ Who Signs
 - Each special commissioner
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - After special commissioners have signed the notice.
- ◆ Helpful Suggestions
 - Fill in Cause Number, date and location (refer to Order Scheduling a Hearing).
 - Ensure the name of the court, the date the original petition was filed for the case and the name and address of AAG are included.
 - Ensure the County where the tract of land is located is included.
 - Take to either the sheriff or constable of the county or the clerk of the court in which the proceedings are pending to be served.
 - At this time do not serve Notice of Hearing to landowners whose identities and locations are known.
 - When the Citation by Publication is delivered to be served, include accounting authorization for payment.
 - Process payment through TxC.
 - Send file-marked copy to AAG.

Publisher's Certificate

- ◆ Who Signs
 - Owner or appropriate officer of the newspaper which published the Citation by Publication.
 - Notary Public
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - Upon completion of the Certificate.
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - This certificate should be given to the sheriff or constable or the clerk of the court where the proceedings are pending and attached to the Citation by Publication.
 - Ensure name, position, newspaper's name, dates of publication and cost of publication are filled in and documents are signed and notarized.
 - Send file-marked copy to AAG.

Officer's Return

- ◆ Who Signs
 - Sheriff or Constable or clerk of the court in which the proceedings are pending to whom you gave Citation by Publication.
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - Upon receipt and after sheriff, constable or clerk of the court where proceedings are pending has signed.
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - Ensure officer's return includes the date the Citation by Publication was received for Service, name of newspaper which published the Notice, the County in which it was published and dates of publication.
 - Ensure printed copies of each Citation by Publication are attached.
 - Ensure officer's return is dated no earlier than 28 days after the first date of publication.
 - Send file-marked copy to AAG.

Motion to Appoint Attorney Ad Litem

- ◆ Who Signs
 - AAG
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - When completed - after initial hearing in a case requiring Citation by Publication.
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - Fill in date of initial Citation by Publication Hearing.
 - Fill in date and location of the pending Hearing (refer to Order Adjourning Hearing and Order Resetting).
 - Send file-marked copy to AAG.
 - A similar motion will also be required in a case that required the appointment of an Attorney Ad Litem for the commissioners' hearing.

Order Appointing Attorney Ad Litem

- ◆ Who Signs
 - Judge of the court where proceedings are pending.
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - After the judge has signed the order.
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - Fill in date of initial Citation by Publication Hearing.
 - Fill in date and location of the pending Hearing (refer to Order Adjourning Hearing and Order Scheduling a Hearing).
 - Fill in County name.
 - Send file-marked copy to AAG.
 - A similar order will also be required in a case that required the appointment of an Attorney Ad Litem for the commissioners' hearing.

Motion to Appoint Guardian Ad Litem

- ◆ Who Signs
 - AAG
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - When completed
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - Fill in date and location of the pending Hearing.
 - File and advise judge of the necessity to appoint a Guardian Ad Litem.
 - Send file-marked copy to AAG.

Order Appointing Guardian Ad Litem

- ◆ Who Signs
 - Judge of the court where proceedings are pending.
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed
 - After the judge has signed the order.
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - Fill in date and location of the Hearing.
 - Notify the appointed Guardian Ad Litem - provide any background material and a copy of the appointing order.
 - Send file-marked copy to AAG.

Order Adjourning Hearing

- ◆ Who Signs
 - Each special commissioner
- ◆ Where Filed
 - Court record of court where proceedings are pending.
- ◆ When Filed

- After special commissioners have signed the order.
- ◆ Helpful Suggestions
 - Fill in Cause Number.
 - Ensure the date to which the Hearing is reset gives ample time for services to be made on known located parties.
 - Send file-marked copy to AAG.

Discovery Documents

Objections and Responses to Interrogatories

Objections and Responses to Request for Production

Objections and Responses to Request for Admissions

- ◆ Who Signs
 - Objections and Responses to Interrogatories - District representative with knowledge.
 - Objections and Responses to Request for Production - attorney.
 - Objections and Responses to Request for Admissions - attorney.
- ◆ Where Filed
 - Court where proceedings are pending.
- ◆ When Filed
 - As directed by the AAG.
- ◆ Helpful Suggestions
 - Individuals named may be called to testify.
 - After AAG receives TxDOT's draft, they will put answers in final form and send back to TxDOT for handling.
 - Give full and complete answers.
 - If other questions arise, call AAG for guidance. (Different attorneys handle these in different ways.)
 - Send file-marked copies of any documents filed to the AAG.