

835.00 EMINENT DOMAIN - SERIES PREFACE.

The eminent domain powers of the Department of Transportation (and municipalities condemning land for state highway purposes) are governed by Article 9 of Chapter 136 of the General Statutes. The eminent domain powers of private and local public condemners are set forth in Chapter 40A. Both N.C. Gen. Stat. § 136-109(d) and N.C. Gen. Stat. § 40A-29 provide a right to a jury trial on the issue of just compensation. However, the measures of just compensation differ between the two statutory schemes.

N.C. Gen. Stat. § 136-112 provides that the measure of compensation where the entire tract is taken is the fair market value of the tract at the time of the taking. The measure of compensation for a partial taking is the difference between the fair market value of the entire tract immediately before the taking and the fair market value of the remaining property immediately after the taking. The statute specifically states that both general and special benefits resulting to the property from the public improvements are to be taken into account in determining the fair market value of the property.

N.C. Gen. Stat. § 40A-64 also provides that the measure of compensation where the entire tract is taken is the fair market value of the property, and N.C. Gen. Stat. § 40A-65 specifies what factors the jury can consider in determining fair market value. The most important difference between the measure of compensation under Chapter 40A and the measure of compensation under Chapter 136 arises when only a part of the property is condemned. Under Chapter 40A, there are two different methods of computing the compensation, and the defendant landowner is entitled to receive the greater of either: (1) the fair market value of the property actually taken or (2) the difference between the fair market value of the entire tract before the taking and the fair market value of

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GENERAL CIVIL VOLUME
APRIL 1999

the remaining property. N.C. Gen. Stat. § 40A-65 also specifies what factors must be taken into account in determining these fair market values.