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CHAPTER XX.

EMINENT DOMAIN.

Article ~~7~~ 1.

Eminent Domain and Damages.

Drafting note: Existing Article 7 of Chapter 1 of Title 33.1 is retained as Article 1 of Chapter X of proposed Title 33.2 on Eminent Domain and Damages.

§ 33.2-xxx. Definitions.

As used in this article unless the context clearly indicates otherwise:

"Certificate" means an instrument that, when recorded in the office of the clerk of the circuit court wherein condemnation proceedings are pending or are to be instituted by the Commissioner of Highways, terminates the interest or estate of the owner of the property described therein and vests defeasible title to such property or interest or estate of the owner in the Commonwealth. "Certificate" includes a certificate of deposit and a certificate of take.

"Certificate of deposit" means a certificate issued by the Commissioner of Highways and countersigned by the State Treasurer, stating that any sum or sums designated therein shall be paid pursuant to the order of the court, and which is filed by the Commissioner of Highways with the court wherein condemnation proceedings are pending or are to be instituted in lieu of the payment of funds into court, as provided in subdivision A 2 of § 33.2-xxx [33.1-120].

"Certificate of take" means a certificate recorded by the Commissioner of Highways with the court wherein condemnation proceedings are pending or are to be instituted, in connection with which the Commissioner of Highways has deposited funds with the court as provided in subdivision A 1 of § 33.2-xxx [33.1-120].

"Owner" means any person owning land, buildings, structures, or improvements upon land where such ownership is of record in the land records of the clerk's office of the circuit court of the city or county where the property is located. Owner does not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any

28 person with a judgment or lien against the property. In proceedings instituted by the
29 Commissioner of Highways under Title 25.1 or this title, owner also includes persons owning
30 structures or improvements for which an outdoor advertising permit has been issued by the
31 Commissioner of Highways pursuant to § 33.2-xxx (§ 33.1-360). This definition of owner shall
32 not alter in any way the valuation of such land, buildings, structures or improvements under
33 existing law.

34 "Public highway" means highway, road, or street; and when applicable, the term "public
35 highway" also includes bridge, ferry, causeway, landing or wharf.

36 **Drafting note: A definitions section is added at the beginning of the chapter which**
37 **includes definitions from existing §§ 33.1-89 and 33.1-120.**

38 ~~§ 33.1-89, 33.2-xxx.~~ Power to acquire lands, etc., ~~by purchase, gift or eminent domain;~~
39 conveyance to municipality after acquisition; property owners to be informed and briefed.

40 A. The Commissioner of Highways is ~~hereby~~ vested with the power to acquire by
41 purchase, gift, or power of eminent domain such lands, structures, rights-of-way, franchises,
42 easements, and other interest in lands, including lands under water and riparian rights, of any
43 person, association, partnership, corporation, or municipality or political subdivision, deemed ~~to~~
44 ~~be~~ necessary for the construction, reconstruction, alteration, maintenance, and repair of the
45 public highways of the Commonwealth and for these purposes and all other purposes incidental
46 thereto may condemn property in fee simple and rights-of-way of such width and on such routes
47 and grades and locations as the Commissioner of Highways may deem requisite and suitable,
48 including locations for permanent, temporary, continuous, periodical, or future use; and rights or
49 easements incidental thereto and lands, quarries, and locations, with rights of ingress and egress,
50 containing gravel, clay, sand, stone, rock, timber, and any other road materials deemed useful or
51 necessary in carrying out the purposes ~~aforsaid of this section.~~ ~~For the purpose of this article~~
52 ~~"public highway" means highway, road and street; and when applicable, the term "public~~
53 ~~highway" also includes bridge, ferry, causeway, landing and wharf.~~

54 B. The Commissioner of Highways is authorized to exercise the ~~above~~ power provided
55 under subsection A within municipalities on projects ~~which that~~ are constructed with state or
56 federal participation, if requested by the municipality concerned. Whenever the Commissioner
57 of Highways has acquired property pursuant to a request of the municipality, he shall convey the
58 title so acquired to the municipality, except that rights-of-way or easements acquired for the
59 relocation of a railroad, public utility company, or public service corporation or company,
60 another political subdivision, or a cable television company in connection with ~~said such~~
61 projects shall be conveyed to that entity in accordance with § ~~33.1-96~~ 33.2-XXX. The authority
62 for such conveyance shall apply to acquisitions made by the Commissioner of Highways
63 pursuant to previous requests as well as any subsequent request.

64 C. Any offer by the Commissioner of Highways to a property owner with respect to
65 payment of compensation for the prospective taking of property and damage to property not
66 taken incident to the purposes of this section shall separately state (i) the property to be taken
67 and the amount of compensation offered therefor and (ii) the nature of the prospective damage
68 or damages and the amount of compensation offered for each such prospective damage. The
69 amount of the offer shall not be less than the amount of the approved appraisal of the fair market
70 value of such property, in accordance with the provisions of § 25.1-417. Any such appraisal
71 used by the Commissioner of Highways as the basis for an offer shall be prepared by a real
72 estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

73 D. The Commissioner of Highways shall also provide to a property owner a copy of any
74 report of status of title prepared in connection with such acquisition, if prepared pursuant to
75 subsection D of § 25.1-204.

76 E. In negotiating with a property owner with respect to payment for prospective damage
77 to property not taken incident to the purposes of this section, the Commissioner of Highways
78 shall ensure that such property owner or his authorized representative is properly informed as to
79 the type and amount of foreseeable damage ~~and/or or~~ enhancement. Adequate briefing includes:
80 (i) the giving of plats and profiles of the project, showing cuts and fills, together with elevations

81 and grades; (ii) explanation, in lay terms, of all proposed changes in profile, elevation, and grade
82 of the highway and entrances, including the elevations of proposed pavement and shoulders,
83 both center and edges, with relation to the present pavement, and approximate grade of
84 entrances to the property.

85 F. Any option or deed executed by the property owner shall contain a statement that the
86 plans as they affect his property have been fully explained. However, the requirements of this
87 section with respect to information and briefing and the acknowledgment thereof in options and
88 deeds shall in no way be construed to affect the validity of any conveyance or, to create any
89 right to compensation, or to limit the ~~Commissioner's~~ authority of the Commissioner of
90 Highways to reasonably control the use of public highways so as to promote the public health,
91 safety, and welfare.

92 ~~G. For the purposes of this article, "owner" means any person owning land, buildings,~~
93 ~~structures or improvements upon land where such ownership is of record in the land records of~~
94 ~~the clerk's office of the circuit court of the city or county where the property is located. Owner~~
95 ~~shall not include trustees or beneficiaries under a deed of trust, any person with a security~~
96 ~~interest in the property, or any person with a judgment or lien against the property. In~~
97 ~~proceedings instituted by the Commissioner of Highways under Title 25.1 or this title, owner~~
98 ~~also includes persons owning structures or improvements for which an outdoor advertising~~
99 ~~permit has been issued by the Commissioner of Highways pursuant to § 33.1-360. This~~
100 ~~definition of owner shall not alter in any way the valuation of such land, buildings, structures or~~
101 ~~improvements under existing law.~~

102 **Drafting note: Technical changes are made including moving definitions**
103 **throughout the article to the beginning of this section.**

104 § ~~33.1-89.1~~ 33.2-xxx. Limitation on power of eminent domain.

105 No property that is within an agricultural and forestal district as provided by the
106 Agricultural and Forestal Districts Act (§ 15.2-4300 et seq.) shall be condemned by the
107 Commissioner of Highways except in accordance with § 15.2-4313.

108 **Drafting note: Technical changes.**

109 § ~~33.1-89.2~~ 33.2-xxx. Additional power to acquire lands, etc., by purchase, gift, or
110 eminent domain.

111 The Commissioner of Highways may use the powers granted in this title to acquire
112 needed property interests for purposes set out in Chapter ~~10.1 XXX~~ (§ ~~33.1-391.1~~ 33.2-XXX et
113 seq.) ~~of this title~~. Whenever the term "highway purpose ~~or purposes~~," "highway project," or
114 "highway construction" appears in this title, it means "highway, passenger and freight rail, or
115 public transportation purposes."

116 **Drafting note: Technical changes are made.**

117 § ~~33.1-90~~ 33.2-xxx. Acquisition of real property ~~which that~~ may be needed for
118 transportation projects; sale of certain real property.

119 A. When the Commissioner of Highways determines that any real property will be
120 required in connection with the construction of a transportation project, or project as defined in
121 § ~~33.1-268~~ 33.2-XXX, within a period not exceeding ~~twelve~~ 12 years for the Interstate ~~Highway~~
122 System or ~~ten~~ 10 years for any other highway system or transportation project from the time of
123 such determination, and that it would be advantageous to the Commonwealth to acquire such
124 real property, he may proceed to do so. The Commissioner of Highways may lease any real
125 property so acquired to the owner from whom such real property is acquired; if requested by
126 him, and if not so requested, to another person upon such terms and conditions as in the
127 judgment of the Commissioner of Highways may be in the public interest. If the transportation
128 project contemplated, or project as defined in § ~~33.1-268~~ 33.2-XXX, has not been let to contract
129 or construction has not commenced within a period of ~~twenty~~ 20 years from the date of the
130 acquisition of such property, and a need for the use of such property has not been determined for
131 any alternative transportation project, then upon written demand of the owner ~~or owners~~, or their
132 heirs or assigns, that is received (i) within ~~ninety~~ 90 days from the expiration of such ~~twenty-~~
133 ~~year~~ 20-year period or such extension as provided for in this section or (ii) within ~~thirty~~ 30 days
134 from publication of a notice of the intent of the Commissioner of Highways to dispose of such

135 property in a newspaper of general circulation in the political subdivision in which the property
136 is located ~~of a notice of the Commissioner's intent to dispose of such property~~ and the
137 Commissioner of Highways shall notify to the extent practical, the last known ~~owner(s)~~ owner
138 of said property by certified mail, then such property shall be reconveyed by the Commonwealth
139 ~~of Virginia~~ to such owner ~~or owners~~, or their heirs or assigns, upon repayment of the original
140 purchase price, without interest. ~~Unless the reconveyance is concluded no later than six months~~
141 ~~If the reconveyance is not concluded within six months~~ from ~~the~~ receipt by the Commissioner of
142 Highways of a written demand, the reconveyance opportunity shall lapse. However, the ~~twenty-~~
143 ~~year~~ 20-year limit established by this section within which the Department must let to contract
144 or begin construction in order to avoid reconveyance shall be extended by the number of days of
145 delay ~~occasioned~~ caused by litigation involving the project or by the failure of the
146 Commonwealth to receive anticipated federal funds for such project. The ~~twenty-year~~ 20-year
147 limit may also be extended in those instances ~~when in which~~ a project is included in the ~~six-year~~
148 ~~improvement program~~ Six-Year Improvement Program of the ~~Commonwealth Transportation~~
149 Board or the ~~six-year improvement program~~ Six-Year Improvement Program for secondary
150 ~~roads~~ highways prepared by the county boards of supervisors and ~~where in which~~ steps have
151 been taken to move forward. No such reconveyance shall be required for rights-of-way acquired
152 for future transportation improvements at the request of local governing bodies; or for rights-of-
153 way acquired for state construction designed to provide future additional lanes or other
154 enhancements to existing transportation facilities.

155 B. If any real property acquired under this article for use in connection with a
156 transportation project is subsequently offered for sale by the Department and such property is
157 suitable for independent development, the Department shall offer the property for sale at fair
158 market value to the owner from whom it was acquired; before such property is offered for sale
159 to any other person. The Commissioner of Highways shall notify, to the extent practicable, the
160 last known owner of such property by certified mail, and the owner shall have ~~thirty~~ 30 days
161 from the date of such notice to advise the Commissioner of Highways of his interest in

162 purchasing the property. ~~The If the~~ purchase of the property by the owner from ~~which whom~~ it
163 was acquired is ~~to be not~~ concluded ~~no later than~~ within six months from ~~the~~ receipt by the
164 Commissioner of Highways of a written notice, or the purchase opportunity shall lapse. The
165 provisions of this subsection shall apply only to property to which the provisions of subsection
166 A ~~of this section~~ do not apply.

167 C. Subsection B ~~of this section~~ shall not apply to Department projects carried out in
168 cooperation with the United States Army Corps of Engineers as part of a nonstructural flood
169 control project. No property acquired by the Commonwealth under this article in connection
170 with such a project shall subsequently be offered for sale by the Commonwealth, but, if such
171 property is no longer needed by the Commonwealth for such project, such property shall be
172 conveyed to the locality in which such project is located and used in connection with the
173 redevelopment. Should property not be used for economic development, property ~~will~~ shall
174 revert to the Commonwealth and ~~shall~~ may be used for any purposes deemed appropriate,
175 including resale.

176 **Drafting note: Technical changes are made including the rewording of unclear and**
177 **outdated language.**

178 ~~§ 33.1-90.1.~~

179 **Drafting note: Repealed by Acts 1992, c. 108.**

180 ~~§ 33.1-90.2 33.2-xxx. Same; reconveyance~~ Reconveyance where property deemed
181 suitable for mass transit purposes.

182 ~~In the event If~~ any real property ~~which that~~, under the provisions of § ~~33.1-90 33.2-~~
183 ~~XXX~~, is or may become eligible for reconveyance ~~and~~ is deemed suitable for the mass transit
184 purposes of a public agency, authority, instrumentality, or public service corporation or
185 company, and such entity has submitted tentative plans to the Commissioner of Highways for a
186 mass transit facility utilizing such real property, or portions thereof, and, prior to the eligibility
187 of that real property for reconveyance under ~~§ 33.1-90 et seq. this article~~, the Commissioner of
188 Highways has approved the use of such real property for mass transit purposes, such real estate

189 shall not be eligible for reconveyance under those sections. Upon the formulation of final plans
190 for the facility, the Commissioner of Highways is authorized to enter into an agreement with
191 any ~~of the above-described entities~~ such entity for the conveyance of the property to such entity.
192 Any property or portions thereof not necessary for the mass transit facility shall become eligible
193 for reconveyance under the provisions of § ~~33.1-90~~ 33.2-XXX upon a determination of the final
194 plans for the facility. Such agreement shall provide for the payment to the Commonwealth of an
195 amount equal to that expended by the Commonwealth in the acquisition of such real property,
196 including proportionate administrative costs and costs under the federal Uniform Relocation
197 Assistance and Real Property Acquisition Policies Act of 1970, as amended. Upon payment of
198 the agreed consideration, the Commissioner of Highways shall convey the specified property to
199 the facility. However, if construction of such planned facilities is not commenced within ~~ten~~ 10
200 years from the date of the agreement between the transit agency and the Commissioner of
201 Highways, the persons who would otherwise have been authorized to petition for reconveyance
202 under § ~~33.1-90~~ 33.2-XXX or their heirs or assigns may seek reconveyance under the same
203 procedures and on the same basis as established in § ~~33.1-90~~ 33.2-XXX.

204 This section shall not compel the Commissioner of Highways to convey any such
205 property to such entities in contravention of any federal law or regulation affecting the
206 disposition of real property acquired for highway purposes when such property is no longer
207 needed for such purposes when such property has been acquired with federal funding
208 participation.

209 **Drafting note: Technical changes are made including updating the name of the**
210 **Uniform Relocation Assistance and Real Property Acquisitions Act of 1970.**

211 § ~~33.1-91~~ 33.2-xxx. Authority to acquire entire tract of land, or parcel thereof, when only
212 part to be utilized for highway purposes.

213 In acquiring rights-of-way for highway construction, reconstruction, or improvement,
214 and lands incidental to such construction, reconstruction, or improvement, the Commissioner of
215 Highways is authorized and empowered, whenever a portion of a tract of land is to be utilized

216 for right-of-way; or a purpose incidental to the construction, reconstruction, or improvement of
217 a public highway, to acquire by purchase, gift, or ~~by~~ the exercise of the power of eminent
218 domain the entire tract of land or any part thereof; whenever (i) the remainder of such tract or
219 part thereof can no longer be utilized for the purpose for which the entire tract is then being
220 utilized; ~~or;~~ (ii) a portion of a building is to be taken ~~or;~~ (iii) the cost of removal or relocation of
221 the buildings; or other improvements on the remaining portion; necessitated by the taking;
222 would exceed the cost of destroying such buildings or other improvements; ~~or;~~ (iv) the highway
223 project will leave the remaining portions without a means of access to a public highway; or
224 ~~whenever~~ (v) in the judgment of the Commissioner of Highways the resulting damages to the
225 remainder of such tract or part thereof lying outside the proposed right-of-way, or the area being
226 acquired for a purpose incidental to the construction, reconstruction, or improvement of a public
227 highway, will approximate or equal the fair market value of such remaining lands; ~~provided,~~
228 ~~however, that.~~ However, the Commissioner of Highways shall not acquire the remainder of such
229 tracts by purchase where the remaining portion is in excess of 10 acres or; by condemnation
230 where the remaining portion is in excess of two acres. Nothing contained ~~herein in this section~~
231 shall be construed as preventing the Commissioner of Highways from complying, where
232 applicable, with the provisions of § 25.1-417.

233 **Drafting note: Technical changes.**

234 § ~~33.1-91.1~~ 33.2-xxx. Authority to acquire land to replace parkland; applicability.

235 For the purposes of this section, the term "parkland" only includes parks and recreational
236 areas under the jurisdiction of state agencies or local governing bodies. Notwithstanding any
237 contrary provision of this title, the Commissioner of Highways may acquire by gift or purchase
238 any property without a permanent residential structure, or an interest in property, needed to
239 replace parkland that is acquired for the improvement, maintenance, construction, or
240 reconstruction of highways. Land acquired to replace parkland shall be abutting or appurtenant
241 to the property of rights-of-way acquired for the improvement, maintenance, construction, or
242 reconstruction of highways. ~~For the purposes of this section, the term "parkland" shall only~~

243 ~~include parks and recreational areas under the jurisdiction of local governing bodies or state~~
244 ~~agencies.~~ Before exercising the authority granted by this section, the Commissioner of
245 Highways shall notify the local governing body or state agency having jurisdiction over the
246 parkland and shall obtain the concurrence of the local governing body or state agency that
247 replacement parklands should be acquired and conveyed to the local governing body or state
248 agency in exchange for the parkland needed for the improvement, maintenance, construction, or
249 reconstruction of the highway.

250 The provisions of this section shall apply only in Albemarle County and the City of
251 Charlottesville.

252 **Drafting note: Technical changes.**

253 § ~~33.1-92~~ 33.2-xxx. Acquisition of residue parcels declared to be in public interest.

254 The acquisition of such residue parcels in addition to the lands necessary for the
255 immediate use for highway rights-of-way or purposes incidental to the construction,
256 reconstruction, or improvement of public highways, is hereby declared to be in the public
257 interest and constitutes a public use as the term public uses is used in Article I, Section 11 of the
258 Constitution of Virginia.

259 **Drafting note: Technical change.**

260 § ~~33.1-93~~ 33.2-xxx. Use and disposition of residue parcels of land.

261 The Commissioner of Highways may lease, sell, or exchange such residue parcels of
262 land upon such terms and conditions as in the judgment of the Commissioner of Highways may
263 be in the public interest; provided, however, that the Commissioner of Highways shall not use
264 such parcels for any commercial purpose. The Commissioner of Highways may lease, sell, or
265 exchange such residue parcels of land, as may have been acquired under the provisions of
266 ~~Article 5 (§ 33.1-267 et seq.) of Chapter 3 of Title 33.1, XX-XXX~~ upon such terms and
267 conditions as in the judgment of the Commissioner of Highways may be in the public interest.
268 The Commissioner of Highways may lease such parcels of land, as may have been acquired
269 under the provisions of § ~~33.1-90~~ 33.2-XXX in the event the former owner fails to make the

270 request authorized under ~~the aforesaid section § 33.2-XXX~~ to ~~others~~ persons other than the
271 former owner, upon such terms and conditions as in the judgment of the Commissioner of
272 Highways may be in the public interest. The provisions of ~~Articles 10 (§ 33.1-144 et seq.) and~~
273 ~~11 (§ 33.1-150 et seq.) of Chapter 1 of Title 33.1 XX-XXX~~ shall not be construed to apply to
274 the disposition of land ~~hereinabove~~ authorized in this section.

275 **Drafting note: Technical changes.**

276 § ~~33.1-94~~ 33.2-xxx. Right to enter on land to ascertain its suitability for highway and
277 other transportation purposes; damage resulting from such entry.

278 A. The Commissioner of Highways, through his duly authorized officers, agents, or
279 ~~servants~~ employees, may enter upon any land in the Commonwealth for the purposes of making
280 examination and survey thereof, including ~~but not limited to~~ photographing_; testing, including
281 ~~but not limited to~~ soil borings or testing for contamination_; making appraisals_; and taking such
282 actions as may be necessary or desirable to determine its suitability for highway and other
283 transportation purposes_; or for any other purpose incidental thereto. Such officers, agents, or
284 servants shall exercise care to protect any improvements, growing crops, or timber in making
285 such examination or survey.

286 B. Notice shall be sent to the owner by mail, at the address recorded in the tax records,
287 not less than 15 days prior to the first date of the proposed entry. Notice of intent to enter shall
288 be deemed made on the date of mailing.

289 C. The notice shall include the anticipated date or dates such entry is proposed to be
290 made and the purpose of such entry. Any entry authorized by this section shall be for the
291 purposes of making examination and survey thereof, including ~~but not limited to~~
292 photographing_; testing, including ~~but not limited to~~ soil borings or testing for contamination_;
293 making appraisals_; and taking such other actions as may be necessary or desirable to determine
294 the suitability of such property for highway and transportation purposes_; and shall not be
295 deemed a trespass.

296 D. Notwithstanding the provisions in subsections A and B, nothing shall preclude entry
297 prior to the anticipated date of entry specified in the notice if the property owner or his
298 designated representative agrees to or requests a date of entry prior to the date of entry specified
299 in the notice.

300 E. The Commissioner of Highways, through his duly authorized officers, agents, or
301 servants, shall make reimbursement for any actual damages to real or personal property
302 resulting from entry upon the property. In any action filed under this section, the court may
303 award the owner his reasonable attorney fees, court costs, and fees for no more than three expert
304 witnesses testifying at trial if (i) the court finds that the Commissioner of Highways maliciously,
305 willfully, or recklessly damaged the owner's property and (ii) the court awards the owner actual
306 damages in an amount 30 percent or more greater than the ~~Commissioner's~~ final written offer of
307 the Commissioner of Highways made no later than 30 days after the filing of an answer in
308 circuit court or the return date in general district court. A proceeding under this subsection shall
309 not preclude the owner from pursuing any additional remedies available to the landowner.

310 **Drafting note: Here and in other proposed sections, "but not limited to" or similar**
311 **language is removed when using the term "including" as provided in § 1-218. Technical**
312 **changes are also made.**

313 § ~~33.1-95~~ 33.2-xxx. Limitations in Title 25.1 not applicable to Commissioner of
314 Highways.

315 Except as to procedure, the Commissioner of Highways shall not be subject to any
316 limitations in Title 25.1 in exercising the power of eminent domain pursuant to this title.

317 **Drafting note: Technical change.**

318 § ~~33.1-95.1~~ 33.2-xxx. Notice of exercise of eminent domain power; evidence of value.

319 A. As used in this section:

320 "Owner" means any person owning an estate or interest in buildings, structures, or other
321 improvements on real property, which estate or interest is recorded in the official records of the
322 circuit court where the property is located, or improvements for which a permit has been issued

323 by the Commissioner of Highways pursuant to § 33.2-xxx [33.1-360]. "Owner" does not include
324 trustees or beneficiaries under a deed of trust or any person owning only a security interest in
325 the real property.

326 "Fair market value" means the price that the real property would bring if it were offered
327 for sale by one who wanted to sell, but was under no necessity, and was bought by one who
328 wanted to buy, but was under no necessity.

329 B. Notwithstanding anything to the contrary contained in this chapter or in Chapter 2 (§
330 25.1-200 et seq.) of Title 25.1:

331 1. The Commissioner of Highways shall notify every owner, as defined in this section,
332 of a building, structure, or other improvement, ~~as defined in this section,~~ if the Commissioner of
333 Highways intends to exercise the power of eminent domain in a manner that would result in a
334 taking of the building, structure, or other improvement~~;~~.

335 2. The owner of any such building, structure, or other improvement may present
336 evidence of the fair market value of such building, structure, or other improvement in the
337 proceedings described in § 25.1-233, provided such owner has filed a petition for intervention
338 pursuant to § 25.1-218~~;~~.

339 ~~3. For purposes of this section, "owner" means any person owning an estate or interest in~~
340 ~~buildings, structures, or other improvements on real property, which estate or interest is~~
341 ~~recorded in the official records of the circuit court where the property is located, or~~
342 ~~improvements for which a permit has been issued by the Commissioner of Highways pursuant~~
343 ~~to § 33.1-360 and shall not include trustees or beneficiaries under a deed of trust or any person~~
344 ~~owning only a security interest in the real property;~~

345 ~~4. For purposes of this section, "fair market value" means the price that the real property~~
346 ~~would bring if it were offered for sale by one who wanted to sell, but was under no necessity,~~
347 ~~and was bought by one who wanted to buy, but was under no necessity;~~

348 ~~5.~~3. If the owner of such building, structure, or improvement is different from the owner
349 of the underlying land, then such owner shall not be allowed to proffer any evidence of value

350 that the owner of the underlying land would not be permitted to proffer if the building, structure,
351 or improvement were owned by the owner of the underlying land; and

352 ~~6.4.~~ The provisions of this section shall not apply to condemnation proceedings in
353 which the petition for condemnation was filed prior to July 1, 2000.

354 **Drafting note: Technical changes.**

355 ~~§ 33.1-96 33.2-xxx.~~ Acquisition of interests for exchange with railroad, public utility
356 company, public service corporation or company, political subdivision, or cable television
357 company; relocation of poles, lines, etc.

358 Whenever any railroad, public utility company, public service corporation or company,
359 political subdivision, or cable television company owns or occupies any privately owned land
360 either under a claim of right or with the apparent acquiescence of the private landowner which
361 the Commissioner of Highways deems necessary and intends to acquire for any highway
362 project, and such land owned or occupied by the railroad, public utility company, public service
363 corporation or company, political subdivision, or cable television company is devoted to a
364 public use, the Commissioner of Highways may acquire by gift, purchase, or by the exercise of
365 the power of eminent domain additional land or easement, right-of-way, or interest in land
366 adjacent to or approximately adjacent to such land needed and proposed to be acquired for such
367 highway project and may then convey the same to the railroad, public utility company, public
368 service corporation or company, political subdivision, or cable television company for use by it
369 in lieu of the land theretofore owned or occupied by it but needed by the Commissioner of
370 Highways for such highway project. The condemnation of such land, easement, ~~rights-of-way~~
371 ~~right-of-way~~, or other interest in land to be conveyed to any railroad, public utility company,
372 public service corporation or company, political subdivision, or cable television company shall
373 be governed by the procedure prescribed by this article and may be carried out at the same time
374 if against the same property owner and if against the same landowner or in the same
375 proceedings in which land is condemned for highway purposes. The Commissioner of
376 Highways may, under the same procedure and conditions prescribed by this article, with respect

377 to property needed for highway purposes, enter upon and take possession of such property to be
378 conveyed to any railroad, public utility company, public service corporation or company,
379 political subdivision, or cable television company in the manner provided in §§ ~~33.1-119~~ 33.2-
380 XXX through ~~33.1-129~~, 33.2-XXX and proceed with the relocation of the installations of the
381 railroad or public utility company in order that the construction of the highway project may be
382 carried out without delay.

383 After the acquisition of the land owned or occupied by railroads, public utility
384 companies, public service ~~corporation~~ corporations or companies, political subdivisions, or
385 cable television companies and the acquisition of the additional land, easement, right-of-way, or
386 other interest in land for such railroads, utility companies, public service corporations or
387 companies, political subdivisions, or cable television companies as ~~hereinabove~~ provided ~~for in~~
388 this section, in the event the poles, lines, or other facilities are not removed by such railroads or
389 utility companies within ~~sixty~~ 60 days from the date of the taking by the Commissioner of
390 Highways, the Commissioner of Highways is ~~hereby~~ vested with the power to remove and
391 relocate such facilities at his own cost.

392 Any conveyance previously made by the Commissioner of Highways in exchange for
393 land ~~which that~~ was needed for a highway project is hereby declared to be valid and effective in
394 all respects.

395 **Drafting note: Technical changes.**

396 § ~~33.1-97~~ 33.2-xxx. Acquisition of land in median ~~strips~~ of highways for public mass
397 ~~transportation transit~~; disposition of such property.

398 When acquiring land for the construction of highways with divided roadways, the
399 Commissioner of Highways may, if he deems it necessary and appropriate, also acquire by gift,
400 purchase, or by the exercise of the power of eminent domain as vested in him by § ~~33.1-89~~ 33.2-
401 XXX, in addition to the land necessary for such highways, sufficient land in the median ~~strips~~
402 for use for public mass ~~transportation transit~~ and may convey or otherwise make available the
403 same to a public agency or authority or public service corporation or public service company for

404 the construction and operation thereon of public facilities for mass ~~transportation of passengers~~
405 transit.

406 Such additional land shall be acquired only after an agreement has been made between
407 the Commissioner of Highways and a public agency or authority or public service corporation
408 or public service company whereby such agency, authority, corporation, or company has agreed
409 to pay the cost of the additional land acquired and all expense incidental to its acquisition.

410 The condemnation of such land to be conveyed for use for public mass ~~transportation~~
411 transit shall be governed by the procedure prescribed by this article and may be carried out at
412 the same time if against the same property owner and if against the same landowner or in the
413 same proceedings in which land is condemned for highway purposes. The Commissioner of
414 Highways may, under the same procedure and conditions prescribed by this article with respect
415 to property needed for highway purposes, enter upon and take possession of such property to be
416 conveyed to a public agency or authority or public service corporation or public service
417 company in the manner provided in §§ ~~33.1-119, 33.2-XXX~~ through ~~33.1-129 of the Code~~ 33.2-
418 XXX.

419 The Board is authorized and directed with the consent of the Federal Highway
420 Administration to permit the Washington Metropolitan Area Transit Authority to commence
421 construction of rapid transit and ancillary facilities within the proposed median ~~strip~~ of Interstate
422 Route 66 between Glebe Road in Arlington County and Nutley Road in Fairfax County.
423 ~~Provided, however,~~ provided that (i) construction of rapid transit shall conform with highway
424 plans and that construction procedures shall be reviewed and approved by the Commissioner of
425 Highways. ~~Provided, further, that and (ii)~~ prior to construction of rapid transit, a mutually
426 satisfactory allocation of cost shall be agreed to by the Washington Metropolitan Area Transit
427 Authority, the ~~Commonwealth Transportation~~ Board, and the Federal Highway Administration.

428 **Drafting note: Technical changes.**

429 § ~~33.1-98, 33.2-XXX~~. Procedure in general; suits in name of Commissioner of Highways;
430 survival; validation of suits; notice of filing.

431 A. Proceedings for condemnation under this article shall be instituted and conducted in
432 accordance with the procedures provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, except
433 that the provisions of §§ ~~33.1-119~~ 33.2-XXX through ~~33.1-132~~ 33.2-XXX shall be applicable to
434 such proceedings.

435 B. All suits shall be instituted and conducted in the name of the Commissioner of
436 Highways as petitioner without naming the individual who may be such Commissioner of
437 Highways or acting Commissioner of Highways. In the event of the death, removal, retirement,
438 or resignation of the Commissioner of Highways or acting Commissioner of Highways, the suit
439 shall automatically survive to a successor Commissioner of Highways or acting Commissioner
440 of Highways, as the case may be. All suits heretofore filed in accordance with the provisions of
441 this section are hereby ratified, validated, and confirmed.

442 C. In addition to any other notices required to be served pursuant to this section, in any
443 proceeding instituted by the Commissioner of Highways under this title, a copy of the notice of
444 the filing of the petition also shall be served, in the same manner as such notice is served upon
445 owners, upon any person owning structures or improvements for which an outdoor advertising
446 permit has been issued by the Commissioner of Highways pursuant to § ~~33.1-360~~ 33.2-XXX.

447 **Drafting note: Technical changes.**

448 ~~§ 33.1-99.~~

449 **Drafting note: Repealed by Acts 1972, c. 765.**

450 ~~§ 33.1-100. Reserved.~~

451 **Drafting note: This section is removed because it is carried as reserved in the**
452 **existing title.**

453 ~~§§ 33.1-101. through 33.1-105.~~

454 **Drafting note: Repealed by Acts 1972, c. 765.**

455 ~~§ 33.1-106. Reserved.~~

456 **Drafting note: This section is removed because it is carried as reserved in the**
457 **existing title.**

458 | ~~§§ 33.1-107. through 33.1-115.~~

459 | **Drafting note: Repealed by Acts 1972, c. 765.**

460 | ~~§ 33.1-116.~~

461 | **Drafting note: Repealed by Acts 1970, c. 40.**

462 | ~~§ 33.1-117~~ 33.2-xxx. Taking ~~road~~ highway materials from streams, rivers, and
463 | watercourses.

464 | Whenever the Commissioner of Highways determines that it is necessary or desirable to
465 | remove materials from the streams, rivers, or watercourses for use on public ~~roads~~ highways, he
466 | shall submit to the Marine Resources Commission his plan for the removal and all conditions
467 | relating thereto for its review and concurrence. After receiving the concurrence of the Marine
468 | Resources Commission, the Commissioner of Highways may take for use on the public ~~roads~~
469 | highways in ~~this the~~ Commonwealth sand, gravel, rock, and any other materials deemed by him
470 | suitable for road purposes from the streams, rivers, and watercourses, title to the bed of which is
471 | in the Commonwealth, and in addition to the power of eminent domain already vested in him
472 | may acquire by condemnation all property, rights, and easements necessary to enable him to
473 | obtain and make use of such materials. All such proceedings shall be governed by the provisions
474 | of law governing the exercise by the Commissioner of Highways of the power of eminent
475 | domain for state highway purposes.

476 | **Drafting note: Technical changes.**

477 | ~~§ 33.1-118. Reserved.~~

478 | **Drafting note: This section is removed because it is carried as reserved in the**
479 | **existing title.**

480 | ~~§ 33.1-119~~ 33.2-xxx. Authority to take possession and title to property before or during
481 | condemnation; purpose and intent of provisions.

482 | In addition to the exercise of the power of eminent domain prior to the entry upon land
483 | being condemned, as provided ~~hereinabove in this article~~, the Commissioner of Highways is
484 | authorized to acquire title and to enter upon and take possession of such property and rights-of-

485 way, for the purposes set out in § ~~33.1-89~~ 33.2-XXX, as the Commissioner of Highways may
486 deem necessary, and proceed with the construction of such highway, such taking to be made
487 pursuant to ~~the following sections §§ 33.2-XXX through 33.2-XXX~~.

488 It is the intention of ~~these sections~~ this article to provide that such property and rights-of-
489 way may, in the discretion of the Commissioner of Highways, be condemned during or after the
490 construction of the highway, as well as prior thereto, and to direct the fund out of which the
491 judgment of the court in condemnation proceedings shall be paid, and to provide that in all other
492 respects the provisions of this article shall apply, whether the property and rights-of-way are
493 condemned before, during, or after the construction of the highway. ~~But~~ However, the
494 authorities constructing such highway under the authority of ~~these sections~~ this article shall use
495 diligence to protect growing crops and pastures and to prevent damage to any property not
496 taken. So far as possible all rights-of-way shall be acquired or contracted for before any
497 condemnation is resorted to.

498 **Drafting note: Technical changes.**

499 § ~~33.1-120~~ 33.2-xxx. Payments into court or filing certificate of deposit before entering
500 upon land.

501 A. Before entering upon, or taking possession of land pursuant to § ~~33.1-119~~ 33.2-XXX,
502 the Commissioner of Highways shall either:

503 1. Pay into the court wherein condemnation proceedings are pending, or are to be
504 instituted such sum as is required by subsection B; or

505 2. File with the court wherein condemnation proceedings are pending, or are to be
506 instituted, a certificate of deposit issued by the Commissioner of Highways for such sum as is
507 required by subsection B, which shall be deemed and held for the purpose of this chapter to be
508 payment into the custody of such court.

509 B. The amount to be paid into the court as provided in subdivision A 1 or represented by
510 a certificate of deposit as provided in subdivision A 2 shall be the amount that the
511 Commissioner of Highways estimates to be the fair value of the land taken, or interest therein

512 sought, and damage done, which estimate shall be based on a bona fide appraisal if required by
513 § 25.1-417.

514 C. If the Commissioner of Highways makes a payment into court as provided in
515 subdivision A 1, ~~it the court~~ shall also record a certificate of take pursuant to § ~~33.1-122~~ 33.2-
516 XXX.

517 D. Payment against a certificate of deposit, when ordered by the court named therein,
518 shall be paid by the Commissioner of Highways.

519 E. As used in this article:

520 ~~"Certificate" means an instrument that, when recorded in the office of the clerk of the~~
521 ~~circuit court wherein condemnation proceedings are pending or are to be instituted by the~~
522 ~~Commissioner, terminates the interest or estate of the owner of the property described therein~~
523 ~~and vests defeasible title to such property or interest or estate of the owner in the~~
524 ~~Commonwealth. "Certificate" includes a certificate of deposit and a certificate of take.~~

525 ~~"Certificate of deposit" means a certificate issued by the Commissioner of Highways and~~
526 ~~countersigned by the State Treasurer, stating that any sum or sums designated therein shall be~~
527 ~~paid pursuant to the order of the court, and which is filed by the Commissioner with the court~~
528 ~~wherein condemnation proceedings are pending or are to be instituted in lieu of the payment of~~
529 ~~funds into court, as provided in subdivision A 2.~~

530 ~~"Certificate of take" means a certificate recorded by the Commissioner with the court~~
531 ~~wherein condemnation proceedings are pending or are to be instituted, in connection with which~~
532 ~~the Commissioner has deposited funds with the court as provided in subdivision A 1.~~

533 F. The Commissioner of Highways shall not be permitted to force relocation on
534 improved owner-occupied property until the owner is permitted to withdraw the funds
535 represented by the certificate filed with the court. However, if the owner refuses to withdraw the
536 funds represented by the certificate filed with the court or if the Commissioner of Highways
537 reasonably believes that the owner does not possess clear title to the property being taken, that
538 ownership of the property is disputed, or that certain owners cannot be located, the

539 Commissioner of Highways may petition the court to establish that the owner does not possess
540 clear title, that the ownership of the property is in dispute, that certain owners ~~can not~~ cannot be
541 located, or that the owner has refused to withdraw the funds represented by the certificate filed
542 with the court, and request that the Commissioner of Highways be given authority to force
543 relocation.

544 **Drafting note: Technical changes.**

545 § ~~33.1-121~~ 33.2-xxx. Payment of certificates of deposit; notice to owner.

546 A. A certificate of deposit shall be deemed and held for the purpose of this article to be
547 payment into the custody of such court. Payment against any certificate of deposit so issued and
548 countersigned, when ordered by the court named therein, shall be paid by the State Treasurer on
549 warrants of the Comptroller, issued on vouchers signed by the Commissioner of Highways.

550 B. A duplicate of each certificate of deposit so issued and countersigned shall be kept as
551 a record in the office of the Commissioner of Highways and a copy thereof shall be filed with
552 the State Treasurer.

553 C. The Commissioner of Highways shall give notice to the owner or tenant of the
554 freehold by registered mail, if known, that a certificate of deposit will be filed.

555 **Drafting note: Technical changes.**

556 § ~~33.1-122~~ 33.2-xxx. Recordation of certificates; transfer of title or interest; land situate
557 in two or more counties or cities.

558 The certificate of the Commissioner of Highways shall be recorded in the clerk's office
559 of the court where deeds are recorded. Upon such recordation, the interest or estate of the owner
560 of such property shall terminate and the title to such property or interest or estate of the owner
561 shall be vested in the Commonwealth ~~and such~~. Such owner shall have such interest or estate in
562 the funds held on deposit by virtue of the certificate as he had in the property taken or damaged,
563 and all liens by deed of trust, judgment, or otherwise upon such property or estate or interest
564 shall be transferred to such funds. The title in the Commonwealth shall be defeasible until the
565 reaching of an agreement between the Commissioner of Highways and such owner, as provided

566 in § ~~33.1-129~~ 33.2-XXX, or the compensation determined by condemnation proceedings as
567 ~~hereinafter~~ provided in §§ 33.2-xxx through 33.2-xxx [33.1-123 - 33.1-130].

568 If the land affected by the certificate ~~aforsaid~~ is situate in two or more counties or cities,
569 the clerk of the court wherein the certificate is recorded shall certify a copy of such certificate to
570 the clerk of the court of the counties or cities in which any portion of the land lies, who shall
571 record the same in his deed book and index it in the name of the person who had the land before
572 and also in the name of the Commonwealth.

573 **Drafting note: Technical changes.**

574 § ~~33.1-123~~ 33.2-xxx. Certificates to describe land and list owners.

575 The certificate shall set forth the description of the land or interest therein being taken or
576 damaged, and, if known, the owner ~~or owners, if known~~.

577 **Drafting note: Technical changes.**

578 § ~~33.1-124~~ 33.2-xxx. Proceedings for distribution of funds; effect of acceptance of
579 payments; evidence as to amount of deposit or certificate.

580 A. Any person or persons shown by a certificate to be entitled thereto may petition the
581 court for the distribution of all or any part of the funds deposited with the court pursuant to
582 subdivision A 1 of § ~~33.1-120~~ 33.2-XXX or represented by a certificate of deposit filed pursuant
583 to subdivision A 2 of § ~~33.1-120~~ 33.2-XXX.

584 B. A copy of such petition shall be served on the Commissioner of Highways, his
585 deputy, or any attorney authorized to accept service with a notice, returnable to the court or
586 judge not less than 21 days after such service, to show cause, if any, ~~the Commissioner can~~, why
587 such amount should not be distributed in accordance with the prayers of the petition.

588 C. If the Commissioner of Highways does not, on or before the return day of the petition,
589 show such cause, and if the record in the proceeding does not disclose any denial or dispute with
590 respect thereto, the court shall enter an order directing the distribution of such amount in
591 accordance with the prayers of the petition. However, in the case of a nonresident petitioner the
592 court may in its discretion require a bond before ordering the distribution.

593 D. If funds have been deposited with the court pursuant to subdivision A 1 of § ~~33.1-120~~
594 ~~33.2-XXX~~, any interest that has accrued on the funds shall be payable to the person or persons
595 entitled to receive such funds.

596 E. If funds are not then on deposit with the court but are represented by a certificate of
597 deposit filed pursuant to subdivision A 2 of § ~~33.1-120~~ ~~33.2-XXX~~, a certified copy of such order
598 shall forthwith be sent to the Commissioner of Highways by the clerk. It shall be the duty of the
599 Commissioner of Highways to deposit such funds with the court within 21 days of the date of
600 such order.

601 F. Interest shall be payable on funds represented by a certificate of deposit from the date
602 of filing of the certificate of deposit until the funds are paid into court at the rate of interest
603 established pursuant to § 6621(a)(2) of the Internal Revenue Code ~~(as such section may be~~
604 ~~amended from time to time)~~ of 1954, as amended or renumbered, for the month in which the
605 order pursuant to this section is entered. However, interest shall not accrue if an injunction is
606 filed against the Department ~~of Transportation~~ that enjoins the taking of the property described
607 in the certificate.

608 G. If the Commissioner of Highways shows such cause, or if the record in the
609 proceeding discloses any denial or dispute as to the persons entitled to such distribution or to
610 any interest or share therein, the court shall direct such proceedings as are provided by § 25.1-
611 240 for the distribution of awards.

612 H. However, the acceptance of such payment shall not limit the amount to be allowed by
613 a commissioner in a condemnation proceeding, nor limit the rights of any party or parties to the
614 proceeding to appeal from any decision therein; nor shall any party to such proceeding be
615 entitled to introduce evidence of any amount deposited with the court or represented by a
616 certificate, nor of any amount ~~which that~~ has been accepted by any party entitled thereto
617 pursuant to this section.

618 **Drafting note: Technical changes.**

619 § ~~33.1-125~~ 33.2-xxx. Reformation, alteration, revision, amendment₂ or invalidation of
620 certificate.

621 Upon the recordation of such certificate, no reformation, alteration, revision,
622 amendment₂ or invalidation shall be made for any purpose without the prior consent of the court
623 wherein such certificate is recorded. The court or judge in vacation shall have jurisdiction to
624 reform, alter, revise, amend₂ or invalidate in whole or in part any certificate₂; to correct mistakes
625 in the description of the property affected by such certificate₂; to correct the name ~~or names~~
626 the owner ~~or owners~~ in the certificate₂; to correct any other error ~~which that~~ may exist with
627 respect to such certificate₂; or for any other purpose. A petition filed by the Commissioner of
628 Highways with the court setting forth any error made in such certificate, or the necessity of any
629 change therein, shall be deemed sufficient basis for the reformation, alteration, revision,
630 amendment₂ or invalidation in whole or in part of such certificate. The court may enter an order
631 permitting the reformation, alteration, revision, amendment₂ or invalidation in whole or in part₂
632 and such order, together with any revised certificate ~~which that~~ may be necessary₂, shall be
633 spread in the current deed book. The filing of any certificate pursuant to the provisions of this
634 section shall not alter the date of taking as established by the filing of the original certificate
635 pursuant to § ~~33.1-122~~ 33.2-XXX as to any land ~~which that~~ is included in the amended
636 certificate, and no such amended certificate shall include any land not in the original certificate.
637 Nothing herein contained shall be construed to prohibit or preclude any person damaged
638 thereby₂ from showing in the proper proceeding the damage suffered by reason of such mistake
639 or the invalidation of a certificate of deposit as herein provided.

640 **Drafting note: Technical changes.**

641 § ~~33.1-126~~.

642 **Drafting note: Repealed by Acts 1994, c. 432.**

643 § ~~33.1-127~~ 33.2-xxx. When condemnation proceedings instituted; payment of
644 compensation or damages; order confirming award; recording.

645 Within 180 days after the recordation of such certificate, if the Commissioner of
646 Highways and the owner~~-or owners~~ of such lands or interest therein taken or damaged by the
647 Commissioner of Highways are unable to agree as to the compensation or damages, if any,
648 caused thereby, or such consent cannot be obtained due to the incapacity of the~~owners~~ owner or
649 one or more of~~them~~ the owners, or because such owner~~;~~ or owners~~;~~ be are unknown or cannot
650 with reasonable diligence be found within~~this the~~ Commonwealth, the Commissioner of
651 Highways shall institute condemnation proceedings, as provided in this article, unless said
652 proceedings shall have been instituted prior to the recordation of such certificate. The amount of
653 such compensation and damages, if any, awarded to the owner~~-or owners~~ in such proceedings
654 shall be paid out of the appropriations to the~~Virginia~~ Department~~of Transportation~~. The final
655 order confirming the~~Commissioner's~~ award of the Commissioner of Highways shall confirm
656 absolute and indefeasible title to the land, or interest therein sought, in the Commonwealth and
657 shall be spread in the current deed book.

658 **Drafting note: Technical changes.**

659 §~~33.1-128~~ 33.2-xxx. Awards in greater or lesser amounts than deposit; interest.

660 A. If the amount of an award in a condemnation proceeding is greater than that deposited
661 with the court or represented by a certificate of deposit, the excess amount, together with
662 interest accrued on such excess amount, shall be paid into court for the person or persons
663 entitled thereto.

664 B. Interest shall accrue on the excess amount at the rate of interest established pursuant
665 to § 6621(a)(2) of the Internal Revenue Code~~(as such section may be amended from time to~~
666 time) of 1954, as amended or renumbered, compiled by the~~Virginia~~ Department~~of~~
667 ~~Transportation~~ for the month in which the award is rendered, computed from the date of such
668 deposit to the date of payment into court, and shall be paid into court for the person or persons
669 entitled thereto. However, any (i) interest that accrued before July 1, 1970, shall be paid at the
670 rate of five percent; (ii) interest accruing thereafter and prior to July 1, 1981, shall be paid at the
671 rate of six percent; (iii) interest accruing thereafter and prior to July 1, 1994, shall be paid at the

672 rate of eight percent; and (iv) interest accruing thereafter and prior to July 1, 2003, shall be paid
673 at the general account composite rate, compiled by the Department of the Treasury of Virginia
674 for the month in which the award is rendered.

675 C. If the amount of an award in a condemnation proceeding is less than that deposited
676 with the court or represented by a certificate of deposit, and the person or persons entitled
677 thereto have received a distribution of the funds pursuant to § ~~33.1-124~~ 33.2-XXX, the
678 Commissioner of Highways shall recover (i) the amount of such excess and (ii) interest on such
679 excess at the rate of interest established pursuant to § 6621(a)(2) of the Internal Revenue Code
680 ~~(as such section may be amended from time to time)~~ of 1954, as amended or renumbered. If any
681 person has been paid a greater sum than that to which he is entitled as determined by the award,
682 judgment shall be entered for the Commissioner of Highways against such person for the
683 amount of such excess and interest. However, the Commissioner of Highways shall not be
684 entitled to recover the amount of such excess and interest in the event the Commissioner of
685 Highways acquired, by virtue of the certificate, an entire parcel of land containing a dwelling,
686 ~~multiple family multiple-family~~ dwelling, or building used for commercial purposes at the time
687 of initiation of negotiations for the acquisition of such property.

688 **Drafting note: The provisions dealing with what rates of interest are payable and**
689 **when appear to be obsolete and are thus removed. Technical changes are also made.**

690 § ~~33.1-129~~ 33.2-xxx. Agreements as to compensation; petition and order of court
691 thereon; disposition of deposit.

692 At any time after the recordation of such certificate, but prior to the institution of
693 condemnation proceedings, if the Commissioner of Highways and the owner, or owners of the
694 land or interest therein taken or damaged are able to agree as to compensation for the land taken
695 and damages, if any, caused by such taking, the Commissioner of Highways shall file with the
696 court a petition so stating, with a copy of the agreement attached. If condemnation proceedings
697 are already pending at the time of reaching such agreement, no such petition shall be required,
698 but the motion for dismissal of such proceedings shall contain an averment that such agreement

699 | has been reached. Upon the filing of such ~~a~~ petition, or ~~a~~ motion to dismiss, ~~as herein provided,~~
700 | the court shall thereupon enter an order confirming absolute and indefeasible title to the land or
701 | interest therein in the Commonwealth. Such order shall be spread in the current deed book.
702 | Upon entry of such order, the Commissioner of Highways and State Treasurer shall be relieved
703 | of further obligation by virtue of having filed such certificate of deposit with the court.

704 | If it shall appear from such petition and agreement, or motion to dismiss a pending suit,
705 | that no person or persons other than those executing such agreement are entitled to the fund on
706 | deposit, the court shall direct that such fund, after payment therefrom of any taxes ~~which that~~
707 | may be charged against such land taken, be disbursed and distributed in accordance with the
708 | statement or charge in the petition, or motion, among the parties or persons entitled thereto. If it
709 | shall appear that a controversy exists as to the persons entitled to such fund, such distribution
710 | shall be made in accordance with the provisions of § ~~33.1-124~~ 33.2-XXX.

711 | **Drafting note: Technical changes.**

712 | § ~~33.1-130~~ 33.2-xxx. Enhancement to be offset against damage.

713 | In all cases under the provisions of this article, the enhancement, if any, in value of the
714 | remaining property of the landowner by reason of the construction or improvement
715 | contemplated or made by the Commissioner, of Highways shall be offset against the damage, if
716 | any, resulting to such remaining property of such landowner by reason of such construction or
717 | improvement. ~~But~~ However, such enhancement in value shall not be offset against the value of
718 | the property taken. ~~And, and~~ if such enhancement in value ~~shall exceed~~ exceeds the damage,
719 | there shall be no recovery ~~over~~ against the landowner for such excess.

720 | **Drafting note: Technical changes.**

721 | § ~~33.1-131~~. Reserved.

722 | **Drafting note: This section is removed because it is carried as reserved in the**
723 | **existing title.**

724 | § ~~33.1-132~~ 33.2-xxx. Remedy of landowners under certain conditions.

725 Whenever the Commissioner of Highways enters upon and takes possession of property
726 ~~under the provisions of pursuant to §§ 33.1-119, 33.2-XXX~~ through ~~33.1-121, 33.2-XXX~~ and has
727 not instituted condemnation proceedings within 180 days after the recordation of a certificate as
728 required by § ~~33.1-127, 33.2-XXX~~, whether the construction of the highway project has been
729 completed or not, the property owner may, if no agreement has been made with the
730 Commissioner of Highways as to compensation and damage, if any, petition the circuit court of
731 the county or the court of the city in which such cases are tried, and in which the greater portion
732 of the property lies for the appointment of commissioners or a jury to determine just
733 compensation for the property taken and damages done, if any. A copy of such petition shall be
734 served upon the Commissioner of Highways at least 10 days before it is presented to the court,
735 and the Commissioner of Highways shall file an answer thereto within five days after the
736 petition is so presented. ~~If it be found by the court~~ If the court finds that a reasonable time has
737 elapsed for the completion of the construction of the highway project or that 60 days have
738 elapsed since the completion of the construction of the highway project or that more than 180
739 days have elapsed since the Commissioner of Highways entered upon and took possession of
740 the property, without condemnation proceedings being instituted and without an agreement
741 having been made between the property owner and the Commissioner of Highways as to
742 compensation and damages, if any, commissioners or a jury shall be appointed to ascertain the
743 amount of compensation to be paid for the property taken and damages done, if any. The
744 proceedings shall thereafter be governed by the procedure prescribed by Chapter 2 (§ 25.1-200
745 et seq.) of Title 25.1 insofar as the same may be applicable.

746 **Drafting note: Technical changes.**

747 ~~Article 7.1.~~

748 ~~Relocation Assistance to Persons Displaced by Highway Construction.~~

749 ~~§§ 33.1-132.1. through 33.1-132.11.~~

750 **Drafting note: Repealed by Acts 1972, c. 738.**

751

752 Article ~~8~~2.

753 Acquisition of Land Used as Cemeteries.

754 **Drafting note: Existing Article 8 of Chapter 1 of Title 33.1 is retained as Article 2 of**
755 **Chapter X of Title 33.2 on Acquisition of Land Used as Cemeteries.**

756 § ~~33.1-133~~ 33.2-xxx. Commissioner of Highways may enter into agreement with person,
757 church, association, etc.

758 Whenever it becomes necessary for the Commissioner of Highways to acquire land or
759 other interest therein, for the purposes set forth in this title, and such land to be acquired is a part
760 or the whole of a cemetery or graveyard owned by any person, church, association, corporation,
761 or ~~any~~ other legal entity, ~~which that~~ has the legal authority to make disposition of the same, the
762 Commissioner of Highways may enter into agreements with such person, church, association,
763 corporation, or other legal entity, for the removal of any remains ~~which that~~ may be interred
764 upon the land. Such agreement shall provide for reinterment in some suitable repository. For
765 purposes of this article, the sprinkling of ashes or their burial in a biodegradable container on
766 private residential property, not subject to regulation under Chapter 3 (§ 57-22 et seq.) of Title
767 57, shall not constitute the creation of a cemetery or graveyard.

768 **Drafting note: Technical changes.**

769 § ~~33.1-134~~ 33.2-xxx. Commissioner of Highways may file petition for condemnation
770 when no agreement can be reached; notice of condemnation proceedings.

771 In the event no agreement can be reached as provided ~~hereinabove in § 33.2-XXX~~
772 [preceding section], or whenever such land is a part or the whole of a cemetery or graveyard
773 owned by persons unknown, or by any person, church, association, corporation, or other legal
774 entity, not having legal authority to make disposition of the same, the Commissioner of
775 Highways shall petition the court of the city or county in which the land is situate, and in which
776 condemnation proceedings are instituted to acquire land, for the purpose of condemning such
777 land and having the remains interred in such cemetery or graveyard removed to some suitable
778 repository. To such petition the owner ~~or owners~~ of the land and next of kin ~~to the persons of~~

779 ~~those~~ interred therein, if known, shall be made defendants and served with notice. If such owner
780 ~~or owners~~ and next of kin ~~be unknown, or infant, insane or incompetent, are unknown, less than~~
781 ~~18 years of age, have been adjudicated insane or incompetent, or nonresident are nonresidents~~ of
782 ~~this the~~ Commonwealth, such notice shall be served in the manner prescribed by Chapter 2 (§
783 25.1-200 et seq.) of Title 25.1.

784 **Drafting note: Technical changes.**

785 § ~~33.1-135~~ 33.2-xxx. Contents of petition for condemnation.

786 The contents of such petition shall comply with all statutory requirements prescribed for
787 the exercise of the power of eminent domain by the Commissioner of Highways; and shall
788 contain the reasons why it is practical to acquire such land and remove any remains ~~which that~~
789 may be interred therein.

790 **Drafting note: Technical changes.**

791 § ~~33.1-136~~ 33.2-xxx. Removal and reinterment of remains; other proceedings.

792 The trial court shall determine a suitable repository for reinterment and the manner in
793 which the removal and reinterment is to be undertaken; and shall tax the cost and expense of
794 such removal and reinterment against the Commissioner of Highways. Insofar as possible and
795 reasonable, the court shall consider the wishes of the next of kin of those interred in such graves
796 in making the determination as to a suitable repository and manner of removal and reinterment.
797 All other proceedings in the condemnation of such land and the determination of just
798 compensation for such taking and damages suffered shall be conducted in accordance with the
799 statutes made and provided for the exercise of the power of eminent domain by the
800 Commissioner of Highways.

801 **Drafting note: Technical changes.**

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