



**ELLIS COUNTY COURT AT LAW NO. 1  
JUDGE JIM CHAPMAN**

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**Condemnation Cases – Award of Special Commissioners Withdrawal Process**

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When a Condemning Authority petitions in an eminent domain proceeding it will typically name, as a party in interest, every person or entity that may potentially hold an interest of any type in the real property it is seeking to condemn. As a result, many Special Commissioners' Awards contain a lengthy list of Awardees. Once the Condemning Authority has deposited the Award into the Registry of the Court, the Court must ensure that every Awardee listed has an opportunity to assert a claim for any share of the Award they/it may be entitled to. This presents a challenge for any Awardee seeking to withdraw the awarded funds from the Registry of the Court as the Awardee will need to obtain the agreement of, waiver from, or provide appropriate notice to the other Awardees of the action to withdraw the Award.

The following is the Court's Policy for the withdrawal of the Award of Special Commissioners in condemnation cases so that each potential claimant is presented an opportunity to present a claim to the Award if so desired. Determine which Scenario your case falls within from Scenarios A, B and C below:

**Scenario A – Agreed Order**

1. File a Motion for Apportionment and Withdrawal of Funds specifically stating the amount of funds sought to be withdrawn; and
2. Submit an Agreed Order for Withdrawal of Funds which all named Awardees in the case have signed. Any non-signors must have filed a waiver of interest with the Court; and
3. Provide a no taxes owed certificate or a taxes due statement and designate in the Order that all taxes due should be paid from the funds in the Registry of the Court prior to disbursement of the requested withdrawal.
4. In these agreed cases, no hearing will be required.

**Scenario B – No Agreement but all awardees are known and can be personally served**

1. File a Motion for Apportionment and Withdrawal of Funds specifically stating the amount of funds sought to be withdrawn; and
2. Obtain a hearing date for the Motion, generally 30 days out to allow for service of citation; and
3. Personally serve on all Awardees the Motion for Apportionment and Withdrawal of Funds, Award of Special Commissioners, and a Notice of Hearing on the Motion at least twenty days in advance of the hearing; and
4. Provide a no taxes owed certificate or designate in the Order that all taxes due should be paid from the funds in the Registry of the Court prior to disbursement of the requested withdrawal; and
5. Conduct a hearing on the record, with a live witness, to prove up the Movant's interest in the property for which funds are on deposit in the registry.
6. If there is a dispute as to the apportionment, it will be necessary to file a Trespass to Try Title cause of action.

**Scenario C – No Agreement and there are Unknown Heirs, Awardees with Unknown Addresses or Unknown Entity Owners**

1. File a Motion for Apportionment and Withdrawal of Funds specifically stating the amount of funds sought to be withdrawn; and
2. File a Motion for the Appointment of an Ad Litem to represent the Unknown Heirs, Awardees with an unknown address and/or Unknown Entity Owners of any forfeited entity, if such appointment has not already been done earlier in the case; and
3. Obtain a hearing date for the Motion at least 30 days out, such date will need to be 60 or more days out to allow time for Citation by Publication to be accomplished if it has not already been done; and
4. If not already done, Accomplish Citation by Publication in accordance with TRCP 109, 115 and 116, making sure it is also published on the State's Public Information Internet Website. The hearing date obtained in #3 above should be listed in the Citation; and
5. Personally serve on all known Awardees the Motion for Apportionment and Withdrawal of Funds, Award of Special Commissioners, and a Notice of Hearing on the Motion at least twenty days in advance of the hearing; and
6. Provide a no taxes owed certificate or designate in the Order that all taxes due should be paid from the funds in the Registry of the Court prior to disbursement of the requested withdrawal; and
7. Conduct a hearing on the record, with a live witness to prove up the Movant's interest in the property for which funds are on deposit in the registry.
8. If there is a dispute as to the apportionment, it will be necessary to file a Trespass to Try Title cause of action.