

§ 40A-51. Remedy where no declaration of taking filed; recording memorandum of action.

(a) If property has been taken by an act or omission of a condemnor listed in G.S. 40A-3(b) or (c) and no complaint containing a declaration of taking has been filed the owner of the property, may initiate an action to seek compensation for the taking. The action may be initiated within 24 months of the date of the taking of the affected property or the completion of the project involving the taking, whichever shall occur later. The complaint shall be filed in the superior court and shall contain the following: the names and places of residence of all persons who are, or claim to be, owners of the property, so far as the same can by reasonable diligence be ascertained; if any persons are under a legal disability, it must be so stated; a statement as to any encumbrances on the property; the particular facts which constitute the taking together with the dates that they allegedly occurred, and; a description of the property taken. Upon the filing of said complaint summons shall issue and together with a copy of the complaint be served on the condemnor. The allegations of said complaint shall be deemed denied; however, the condemnor within 60 days of service summons and complaint may file answer thereto. If the taking is admitted by the condemnor, it shall, at the time of filing the answer, deposit with the court the estimated amount of compensation for the taking. Notice of the deposit shall be given to the owner. The owner may apply for disbursement of the deposit and disbursement shall be made in accordance with the applicable provisions of G.S. 40A-44. If a taking is admitted, the condemnor shall, within 90 days of the filing of the answer to the complaint, file a map or plat of the property taken. The procedure hereinbefore set out in this Article and in Article 4 shall be followed for the purpose of determining all matters raised by the pleadings and the determination of just compensation.

(b) The owner at the time of filing of the complaint shall record a memorandum of action with the register of deeds in all counties in which the property involved is located. The memorandum is to be recorded among the land records of the county. The memorandum of action shall contain:

- (1) The names of those persons who the owner is informed and believes to be or claim to be owners of the property;
- (2) A description of the entire tract or tracts affected by the alleged taking sufficient for the identification thereof;
- (3) A statement of the property allegedly taken; and
- (4) The date on which owner alleges the taking occurred, the date on which said action was instituted, the county in which it was instituted, and such other reference thereto as may be necessary for the identification of said action.

(c) Nothing in this section shall in any manner affect an owner's common-law right to bring an action in tort for damage to his property. (1981, c. 919, s. 1.)