



4.2 ROLES AND RESPONSIBILITIES IN LITIGATION

For purposes of this chapter, the state of Wisconsin, Department of Transportation (WisDOT) (a.k.a., condemnor) will be referred to as the “defendant.” The property owner or parties of interest (a.k.a., condemnee) filing the appeal will be referred to as the “plaintiff.” The Department of Justice, Attorney General’s Office will be referred to as DOJ. Only WisDOT can approve transportation related offering prices, Awards of Damages, payment of County Condemnation Commission awards or circuit court judgments, stipulated settlements and related expenses for the state highway systems in accordance with [s. 84.01\(2\), Wis. Stats.](#) WisDOT, however, must consider the DOJ - Attorney General's recommendation regarding appellate action before action is taken. Within WisDOT, several positions play a key role in the litigation process. Wisconsin Statutes say:

- [Section 84.01\(2\)](#) - Powers and duties: general provision. The department shall have charge of all matters pertaining to the expenditure of state and federal aid for the improvement of highways, and shall do all things necessary and expedient in the exercise of such supervision.
- [Section 25.40\(2\)\(a\)](#) - Payments from the Transportation Fund shall be made only on the order of the secretary of Transportation, from which order the secretary of Administration shall draw a warrant in favor of the payee and charge the same to the Transportation Fund.

4.2.1 Office of General Counsel

These are the responsibilities and role of WisDOT’s Office of General Counsel (OGC) in the litigation process:

- Manage and approve legal services contracts and billing from DOJ and from any outside counsel.
- Manage and approve DOJ direct hiring and billing of appraisers and expert witnesses for trials. OGC will advise on expert witness procedures.
- Provide drainage and change of grade claim advice and assistance. If concerns regarding drainage and change of grade cannot be resolved at regional level and a formal claim is filed with WisDOT, forward to OGC.
- Provide pre-condemnation and relocation assistance advice (acquisition strategy, title, access, sign, and valuation issues) to the regions upon request of BTS-RE statewide litigation or acquisition facilitator.
- Provide right of entry and writ of assistance advice and assistance.
- Provide settlement advice upon request of BTS-RE statewide litigation facilitator or DOJ.
- Whenever there is a recommendation for a trial court determination to be appealed to a higher court, OGC must be informed (by the assigned DOJ attorney) and will review and determine if it’s in the department’s best interest to appeal or petition to court of appeals or Supreme Court.

4.2.2 Real Estate Statewide Litigation Facilitator

The statewide litigation facilitator works to coordinate statewide real estate related litigation activities and will serve as liaison between BTS-RE, OGC, and DOJ. This position is

responsible for monitoring statewide litigation related activities and for working directly with the regions to create and maintain a systematic statewide approach to coordinating processes and processing activities relating directly to real estate litigation matters. This individual may also provide functional guidance to regional offices on an as needed basis; can assist on condemnation hearings or court trial processes; and, will provide assistance as needed to DOJ district attorneys, municipal or village attorneys, corporation counsel, and other counsel.

4.2.3 Real Estate & Technical Services Managers

Real Estate management will attend initial case review meetings and, if appropriate, may attend post litigation wrap-up conferences. The BTS-RE manager or Real Estate supervisor approves litigation reports for WisDOT. Regional Real Estate management has the authority to review and approve litigation settlements for state projects and local projects with state or federal funds in the right of way. DOJ and/or WisDOT may request the involvement of the BTS-RE statewide litigation facilitator in settlement decisions regarding complex or significant cases. In making such decisions, consideration must be given to:

- Degree of risk if brought to trial.
- Possible cost benefit of avoiding further litigation expenses.
- Risk of a precedent-setting verdict.
- Strength of case.

4.2.4 Regional Litigation Coordinators

Regional Real Estate litigation coordinators are the main contact for attorneys assigned to a real estate litigation case. They are responsible for providing the necessary WisDOT support to the assigned attorney. Below is a typical list of coordinator duties and responsibilities:

1. Receive and disperse Notice of Appeal in accordance with Section 4.3.2 of this manual.
 - The regional litigation coordinator is responsible for using READS to research and organize case related data. When a Real Estate related appeal is received, the regional litigation coordinator is responsible for creating a litigation record in READS and for entering and retrieving all key case data from within READS.
2. Prepare attorney working file.
 - Identify people with knowledge of negotiation and acquisition history.
 - Include all relevant WisDOT file information and documents.
 - Tab and index file documentation in an organized manner.
3. Meet with counsel for preliminary evaluation of case.
 - Identify and provide counsel with names and phone numbers of all potential witnesses, such as: 1) staff and fee appraisers; 2) WisDOT engineers, design supervisors, traffic engineers, etc.; 3) local highway authority personnel, zoning administrators and sewer authorities; and, 4) other state agencies.
 - Prior to meeting, become thoroughly familiar with project and parcel history.
 - Review existing appraisal reports, Negotiation Diary (RE2058), and other relevant documents.
4. Coordinate case with other agencies, when appropriate.
5. Oversee coordination of appraisal reports.
 - At direction of counsel, arrange for updated reports ensuring compliance with statutory rules governing just compensation.
 - Make recommendations on need for additional expert valuation witnesses.

- Monitor and ensure new or updated reports are furnished to counsel in time to allow for review prior to date of exchange.
 - Provide names of possible fee appraisers and with concurrence of counsel; will hire and process contracts for expert trial witnesses.
 - Provide necessary documents, plats and other WisDOT materials to fee appraiser for use in appraisal of property.
 - Provide or arrange for written analysis of appraisals (strengths/weaknesses, methodology, comparable sales, etc.).
6. Gather information (with direction of counsel).
 - Certified copies of deeds, survey maps or other recorded documents.
 - Contact, interview and summarize evidence by potential witnesses.
 - Relevant zoning ordinances.
 7. If owner's attorney requests to see WisDOT files and information.
 - Assemble and review files, excluding documents subject to attorney-client privilege.
 - Assemble documents and information from WisDOT regions or BTS-RE files and forward to counsel.
 - Upon approval of counsel, arrange for and monitor owner's or owner's attorney's inspection of files.
 8. Depositions.
 - Assist counsel in formulating questions for written interrogatories, oral depositions and request for admission of facts.
 - Assist counsel, as needed, to obtain supporting documentation and identify fact sources to prepare affidavits in support of motions.
 - Attend depositions.
 9. Attend/assist counsel at motion hearings, when requested.
 10. Objectively participate in settlement/risk analysis process.
 11. Attend pretrial conference when personal appearance of counsel is required.
 12. Identify, locate and prepare exhibits in consultation with counsel.
 13. Obtain, review and analyze jury questionnaires.
 14. Attend commission hearings, where applicable.
 15. Attend trial and with direction of counsel, assist in selection of jury, tracking or exhibits and coordinating witness appearances.
 16. Calculate and voucher final payments.
 17. Prepare Litigation Report and Case Summary (RE1651); ensure all related data is complete in READS.
 18. Assist counsel, as necessary, in appellate court process.