



4.4 CLAIMS AND LEGAL ACTIONS

4.4.1 Drainage and Change of Grade Claims

Typically, drainage and change of grade concerns are initially directed to the project engineer. If Real Estate is the owner's first point of contact, Real Estate should involve the Project Development Section (PDS) and Maintenance, if appropriate, to investigate owner's claim and make a determination as to course of action. If the problem cannot be remedied and the owner files a formal claim, the claim should be forwarded to the Office of General Counsel (OGC). The property owner's claim must be filed with WisDOT within three years after alleged damage occurred. Claim must be filed with WisDOT per [s. 88.87 Wis. Stats.](#), within three years after the alleged damage occurred. Note: There is no WisDOT form. Property owners generate claims.

4.4.1.1 Drainage Claim Details

The claim shall include a written, sworn statement from the landowner of the alleged faulty construction and a legal description of the land alleged to have been damaged by excessive flowing or pooling waters. Within 90 days after receiving the claim, WisDOT has three options:

1. Correct causes of damages. Send BTS-RE appraisal manager - claim from landowner. Verification from project engineer that claim is warranted, (i.e., it is determined that project directly caused alleged problem); and, provide a written estimate to correct problem and a recommendation from region.
2. Acquire right to use land for drainage or overflow purposes. If drainage rights or easements are to be purchased or condemned as provided in [s. 88.87\(2\)\(b\) Wis. Stats.](#), region will develop a plat defining area of easement (as a new parcel) and proceed with purchase under our standard acquisition process. An existing project plat may be used if that project has not yet been closed.
3. Deny claim. If BTS-RE appraisal manager denies claim, region will be notified in writing and region is required to notify property owner in writing of this denial. If no action is taken within 90-day period, property owner may consider claim denied or may bring an inverse condemnation action under [s. 32.10, Wis. Stats.](#)

4.4.1.2 Change of Grade Claim Details

When a street or highway improvement project causes a change of grade that damages an adjacent property but does not require a taking, the property owner may file a claim for damages within 90 days following the completion of the project. The claim can only be filed for damages if there was not a prior taking from the property. The claim for such damages is more completely described in [s. 32.18 Wis. Stats.](#) The original claim and a regional analysis of the change of grade claim along with a recommendation for approval or denial should be sent to the BTS-RE appraisal manager. If a cost to cure is recommended, an estimate must accompany the submittal. If a dollar recommendation is submitted, it must be accompanied with an appraisal. Within 90 days after receiving the claim the department has three options:

1. Correct alleged cause or damage.
2. Approve claim.
3. Deny claim.

If the claim is denied, the owner may file an action against the department within 90 days. If an action is filed, the region follows the same procedure as if it was an appeal under [Chapter 32, Wisconsin Statutes](#). See sub-section 4.3.1 of this manual.

4.4.2 Incidental Expenses to Transfer Property

Claims must be filed as per [s. 32.195 Wis. Stats](#). Claims eligible for reimbursement are listed on the Relocation Claim - Application and Release (RE1527). Region/CO approves claim and supporting documentation is placed in the file.

4.4.3 Claim or Action Against a State Employee

Claims must be served on the Attorney General as provided for in [Sections 893.82](#) and [895.46, Wis. Stats](#). Original documents are sent to Risk Management.

4.4.4 Construction Claim

Any claim during construction is forwarded to the regional Project Development Section (PDS).

4.4.5 Crop Loss Damage Claim

For a crop loss damage claim (caused by survey crews), the regional Survey Unit completes the Survey Damage Agreement, ED717-71 and voucher payment, if warranted.

4.4.6 Notice of Claim Filed with Claim Board

Any party receiving a Notice of Claim from the Claims Board must contact Risk Management to see if they have been served.

4.4.7 Lawsuits Naming the State

In actions in which the state of Wisconsin or WisDOT is named as a defendant, use the same procedure for handling an appeal under [Chapter 32, Wisconsin Statutes](#). Also see sub-section 4.3.1 of this manual.

4.4.8 Subpoena

Any party served a subpoena to appear at an administrative proceeding or civil act or criminal proceeding must contact the Office of General Counsel. Contact should be made via phone since this is usually time sensitive and the original documents must be forwarded immediately.

4.4.9 Inverse Condemnation

Inverse condemnation is a condemnation proceeding instituted by the property owner rather than WisDOT. If the property owner believes his or her property has been taken or damaged by the actions of the WisDOT, without receiving just compensation, he or she may commence an inverse condemnation action. See [s. 32.10 Wis. Stats.](#) for details. To be handled the same as an appeal from a deed or the Award of Damages. Also see sub-section 4.3.2 of this manual.

4.4.10 Right to Take

An owner may contest the taking by commencing an action in circuit court (not the Condemnation Commission) of the county in which the property is located within 40 days from the day of service or date of publication of the Jurisdictional Offer. This action shall not prevent the condemnor from proceeding with the condemnation. Note: The acceptance and retention (i.e., cashing the check) of any compensation resulting from an award made prior to the commencement of such an action shall be an absolute bar to such action [s. 32.05\(3\)\(h\) Wis. Stats.](#) The regional litigation coordinator should make an effort to monitor the payment status of the award check when a right to take is filed within the 40-day statutory period and to promptly advise the attorney representing WisDOT when the check is cashed. When a right to take appeal has been filed, we suggest that the regional litigation coordinator contact the BTS-RE/Finance to determine if the acquisition check has been cashed. If the check has not been cashed, give BTS-RE/Finance the payee's name and the check number and have them contact the regional coordinator if the check comes in. The day before depositions and the day before court, the regional coordinator should again contact the BTS-RE/Finance to confirm that the check has not been cashed.