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# Montana Code Annotated 2021

TITLE 82. MINERALS, OIL, AND GAS

CHAPTER 2. MINING GENERALLY

Part 1. Location and Record of Claims

## Manner Of Locating Claim

**82-2-101. Manner of locating claim.** A person who discovers upon the public domain of the United States, within the state of Montana, a vein, lode, or ledge of rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits or a placer deposit of gold or other deposit of minerals having a commercial value that is subject to entry and patent under the mining laws of the United States may, if qualified by the laws of the United States, locate a mining claim upon the vein, lode, ledge, or deposit in the following manner:

(1) The person shall post conspicuously at the point of discovery a written or printed notice of location containing the name of the claim, the name of the locator or locators, if there is more than one, the date of the location, which must be the date of posting the notice, and the approximate dimensions of the area of the claim intended to be appropriated.

(2) Within 30 days after posting the notice of location, the person shall distinctly mark the location on the ground so that its boundaries can be readily traced. It is prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds:

(a) a tree at least 8 inches in diameter and blazed on four sides;

(b) a post at least 4 inches square by 4 feet 6 inches in length, set 1 foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon the rock and surrounded in all cases by a mound of earth or stone at least 4 feet in diameter by 2 feet in height. A squared stump of the requisite size, surrounded by a mound, must be considered the equivalent of a post and mound.

(c) a stone at least 6 inches square by 18 inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least 4 feet in diameter by 2 feet in height; or

(d) a boulder at least 3 feet above the natural surface of the ground on the upper side. When other monuments or monuments of lesser dimensions than those described in subsections (2)(a) through (2)(c) are used, it is a question for the jury or for the court where the action is tried without a jury as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

(3) Within 60 days after posting notice, the locator shall comply with the United States mining laws.

**History:** En. Sec. 3610, Pol. C. 1895; en. Sec. 1, Ch. 16, L. 1907; Sec. 2283, Rev. C. 1907; re-en. Sec. 7365, R.C.M. 1921; Cal. Civ. C. Sec. 1426; re-en. Sec. 7365, R.C.M. 1935; amd. Sec. 1, Ch. 4, Ex. L. 1971; R.C.M. 1947, 50-701; amd. Sec. 2715, Ch. 56, L. 2009.

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# Record Of Certificate Of Location

**82-2-102. Record of certificate of location.** (1) Within 60 days after posting the notice of location, the locator shall record the location in the office of the county clerk of the county in which the mining claim is situated. The record must consist of a certificate of location for each claim containing:

- (a) the name of the lode or claim and whether located as a lode or placer claim;
- (b) the name of the locator or locators, if there is more than one, together with the post-office address of the locator or locators;
- (c) the date of location and the description of the claim, with reference to some natural object or permanent monument, that will identify the claim and the section, township, and range in which the claim is situated by projected survey lines if located in unsurveyed country; and
- (d) the directions and distances from the discovery point that describe the claim.

(2) The certificate of location must be verified before an officer authorized to administer oaths by the locator or one of the locators, if there is more than one, or by an authorized agent. In the case of a corporation, the verification may be made by an officer of the corporation or by an authorized agent. When the verification is made by an agent, the fact of the agency must be stated in the affidavit. A verified certificate of location or a certified copy of the certificate is prima facie evidence of all facts properly recited in the certificate. Failure of the locator or locators to record a certificate of location as required in this section creates a prima facie presumption of intent to abandon. However, recordation after the 60-day period but before the ground is located by another renews the location and saves the rights of the original locator. Nothing contained in **82-2-112** affects the prima facie presumption created by this section.

**History:** En. Sec. 3612, Pol. C. 1895; amd. Sec. 2, p. 141, L. 1901; amd. Sec. 2, Ch. 16, L. 1907; Sec. 2284, Rev. C. 1907; re-en. Sec. 7366, R.C.M. 1921; re-en. Sec. 7366, R.C.M. 1935; amd. Sec. 2, Ch. 4, Ex. L. 1971; amd. Sec. 1, Ch. 428, L. 1973; R.C.M. 1947, 50-702; amd. Sec. 1, Ch. 137, L. 1991; amd. Sec. 2716, Ch. 56, L. 2009.

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# Affidavit Of Performance Of Annual Work

**82-2-103. Affidavit of performance of annual work.** (1) The owner of a lode or placer claim who performs or causes to be performed the annual work or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the shall, within 90 days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which the claim or claims are situated the

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owner's affidavit or an affidavit of the person who performed the work or made the improvements, showing:

- (a) the name of the mining claim or claims;
- (b) the location of the claim or claims by section, township, and range, by projected survey lines if located in unsurveyed country;
- (c) the book and page numbers in which the original or latest amended relocation for each claim is recorded;
- (d) the number of days of work done and the character and value of the improvements placed on the claim or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;
- (e) the dates between which the work or improvements were effected;
- (f) at whose instance the work was done or the improvements were made; and
- (g) the actual amount paid for work and improvements and by whom paid when the work and improvements were not done by the owner.

(2) Annual assessment work may be performed or caused to be performed at one or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. The point or points of work may be performed upon a patented claim. If annual assessment work is performed or caused to be performed at one or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

(3) If group work is claimed for a group of claims crossing county lines, the affidavit required by this section must be filed for recording within the required time in each of the counties in which the claims are located.

(4) An affidavit of performance of annual assessment work must be verified before some officer authorized to administer oaths by the locator or one of the locators, if there is more than one, or by an authorized agent. In the case of a corporation, the verification may be made by an officer of the corporation or by an authorized agent. When the verification is made by an agent, the fact of the agency must be stated in the affidavit. The affidavit or a certified copy of the affidavit is prima facie evidence of the facts stated in the affidavit. The failure to file the affidavits within the period allowed is prima facie evidence that the labor has not been performed and that the owner of the claim or claims has abandoned and surrendered the claim or claims.

**History: En. Sec. 1483, 5th Div. Comp. Stat. 1887; amd. Sec. 3614, Pol. C. 1895; re-en. Sec. 7368, R.C.M. 1921; Cal. Civ. C. Sec. 1**

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## Millsites

**82-2-104. Millsites.** Millsite claims may be located and recorded in the same manner as other claims, except that no discovery or discovery work is required. Where a millsite claim is appurtenant to a mining claim, the certificate of location of such millsite claim shall describe, by appropriate reference, the mining claim to which it is appurtenant.

**History:** En. Sec. 3, Ch. 16, L. 1907; Sec. 2285, Rev. C. 1907; re-en. Sec. 7369, R.C.M. 1921; re-en. Sec. 7369, R.C.M. 1935; R.C.M. 1947, 50-705.

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## Relocation Of Abandoned Claim

**82-2-105. Relocation of abandoned claim.** The relocator of an abandoned or forfeited mining claim may adopt as the locator's discovery any shaft or other working existing upon the claim at the date of the relocation in which the vein, lode, or deposit is disclosed, but in that shaft or other working, the relocator shall perform the same discovery work that is required in the case of an original location.

**History:** En. Sec. 4, Ch. 16, L. 1907; Sec. 2286, Rev. C. 1907; re-en. Sec. 7370, R.C.M. 1921; re-en. Sec. 7370, R.C.M. 1935; R.C.M. 1947, 50-706; amd. Sec. 2718, Ch. 56, L. 2009.

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## Rights Of Relocator

**82-2-106. Rights of relocater.** The rights of a relocater of any relocated abandoned or forfeited mining claim date from the posting of the relocater's notice of location on the claim, and while the relocater is performing the acts required by law to perfect the location, the relocater's rights may not be affected by any reentry or resumption of work by the former locator or claimant.

**History:** En. Sec. 5, Ch. 16, L. 1907; Sec. 2287, Rev. C. 1907; re-en. Sec. 7371, R.C.M. 1921; re-en. Sec. 7371, R.C.M. 1935; R.C.M. 1947, 50-707; amd. Sec. 2719, Ch. 56, L. 2009.

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## Amended Location

**82-2-107. Amended location.** A locator or claimant may at any time amend the location and make any change in the boundaries that does not involve a change in the point of discovery as shown by the discovery shaft by marking the location as amended upon the ground and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate.

**History:** En. Sec. 6, Ch. 16, L. 1907; Sec. 2288, Rev. C. 1907; re-en. Sec. 7372, R.C.M. 1921; re-en. Sec. 7372, R.C.M. 1935; R.C.M. 1947, 50-708; amd. Sec. 2720, Ch. 56, L. 2009.

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## Relocation By Owner

**82-2-108. Relocation by owner.** A locator or claimant may at any time relocate the locator's or claimant's own claim for any purpose, except to avoid the performance of annual labor on the claim, and, by the relocation, may change the boundaries of the claim, the point of discovery, or both. However, the relocation must comply in all respects with the requirements of this part as to an original location.

**History:** En. Sec. 7, Ch. 16, L. 1907; Sec. 2289, Rev. C. 1907; re-en. Sec. 7373, R.C.M. 1921; re-en. Sec. 7373, R.C.M. 1935; R.C.M. 1947, 50-709; amd. Sec. 2721, Ch. 56, L. 2009.

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## Amendment Or Relocation Not Waiver Of Acquired Rights

**82-2-109. Amendment or relocation not waiver of acquired rights.** When a locator or claimant amends or relocates the locator's or claimant's own claim, the amendment or relocation may not be construed as a waiver of any right or title acquired by the locator or claimant by virtue of the previous location or record of that location, except as to portions of the previous location that may be omitted from the boundaries of the claim as amended or relocated. As to the portion of ground included both in the original location and the location as amended or relocated, the locator or claimant may rely either upon the original location or the location as amended or relocated or upon both. However, this

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section may not be construed as permitting the locator or claimant to hold a tract that does not include a valid discovery.

**History:** En. Sec. 8, Ch. 16, L. 1907; Sec. 2290, Rev. C. 1907; re-en. Sec. 7374, R.C.M. 1921; re-en. Sec. 7374, R.C.M. 1935; R.C.M. 1947, 50-710; amd. Sec. 2722, Ch. 56, L. 2009.

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## Rights Of Third Persons Not Affected

**82-2-110. Rights of third persons not affected.** No amendment or relocation of a mining claim by the locator or claimant thereof shall interfere with any third person's right existing at the time of such amendment or relocation.

**History:** En. Sec. 9, Ch. 16, L. 1907; Sec. 2291, Rev. C. 1907; re-en. Sec. 7375, R.C.M. 1921; re-en. Sec. 7375, R.C.M. 1935; R.C.M. 1947, 50-711.

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## Validating Locations Already Made

**82-2-111. Validating locations already made.** All mining locations made and recorded under the laws of this state heretofore in force that in any respect have failed to conform to the requirements of such laws shall, nevertheless, in the absence of the rights of third persons accruing prior to the passage of this part, be valid if the making and recording of such locations conform to the requirements of this part.

**History:** En. Sec. 10, Ch. 16, L. 1907; Sec. 2292, Rev. C. 1907; re-en. Sec. 7376, R.C.M. 1921; re-en. Sec. 7376, R.C.M. 1935; R.C.M. 1947, 50-712.

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## Defective Locations Good Against Persons With Notice

**82-2-112. Defective locations good against persons with notice.** The period of time prescribed by this part for the performance of any act may not be considered mandatory if the act is performed before the rights of third persons have intervened, and a defect in the posted notice or recorded certificate may not be considered material except as against one who has located the same ground or some portion of the same ground in good faith and without notice. Notice to an agent who

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makes a location on behalf of another must be considered notice to the agent's principal, and notice to one of several coclaimants must be considered notice to all.

**History:** En. Sec. 11, Ch. 16, L. 1907; Sec. 2293, Rev. C. 1907; re-en. Sec. 7377, R.C.M. 1921; re-en. Sec. 7377, R.C.M. 1935; R.C.M. 1947, 50-713; amd. Sec. 2723, Ch. 56, L. 2009.

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## Effect Of Patent

**82-2-113. Effect of patent.** The issuance of a United States patent for a mining claim is considered conclusive evidence that the requirements of the laws of this state relative to the location and record of such mining claim have been duly complied with. However, if questions of priority are involved, the date of the location shall be an issuable fact when it is claimed to have been prior to the date of the record of the location.

**History:** En. Sec. 12, Ch. 16, L. 1907; Sec. 2294, Rev. C. 1907; re-en. Sec. 7378, R.C.M. 1921; re-en. Sec. 7378, R.C.M. 1935; amd. Sec. 10, Ch. 39, L. 1977; R.C.M. 1947, 50-714.

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## Amended Locations

**82-2-114. Amended locations.** If, at any time, the locator of a mining claim or the locator's successors or assigns determine that the original declaratory statement was defective or erroneous, determine that the requirements of law were not complied with, or want to change the boundaries or take in any part of an overlapping claim that has been abandoned or if the original declaratory statement was filed prior to the passage of this law and the locator or the locator's successor's or assigns want the benefit of this part, the locator or the successors or assigns may file an additional or amended declaratory statement subject to the provisions of this part. However, the relocation or filing of the amended or additional declaratory statement may not interfere with the existing rights of others at the time of the relocation or filing of the amended or additional declaratory statement, and the relocation or amended or additional declaratory statement or other record may not preclude the claimant or claimants from proving any title that the claimant may have held under the previous location and notice.

**History:** En. Sec. 1, p. 56, L. 1901; re-en. Sec. 2295, Rev. C. 1907; re-en. Sec. 7379, R.C.M. 1921; Cal. Civ. C. Sec. 1426h; re-en. Sec. 7379, R.C.M. 1935; R.C.M. 1947, 50-715; amd. Sec. 2724, Ch. 56, L. 2009.



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# Filing Of False Mining Claims

**82-2-115. Filing of false mining claims.** A person who offers a location certificate for a placer mining claim or lode claim or affidavit of assessment work to be filed in an office of a county clerk of this state on the person's own behalf or for any other person or a person who procures others to do so, knowing that the claim, certificate, or affidavit was not preceded by a proper location of the claim physically upon the ground by the establishment of a proper notice of claim and the designation of the surface boundaries of the claim by substantial posts or monuments as required by the laws of the state, shall be punished by imprisonment in the state prison for not more than 5 years, by a fine of not more than \$5,000, or by both.

**History:** En. Sec. 1, Ch. 135, L. 1973; R.C.M. 1947, 50-702.1; amd. Sec. 2725, Ch. 56, L. 2009.

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## Part 2. Rights-of-Way and Eminent Domain

# Right-Of-Way Of Owners Of Mines

**82-2-201. Right-of-way of owners of mines.** The owner of a mining claim held under the laws of the United States by patent or otherwise or under the local laws and customs of the state has a right-of-way over and across the land or mining claim of another, patented or otherwise, as prescribed in this part.

**History:** En. Sec. 1, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 886, 5th Div. Rev. Stat. 1879; re-en. Sec. 1495, Comp. Stat. 1887; amd. and re-en. Sec. 3630, Pol. C. 1895; re-en. Sec. 2297, Rev. C. 1907; re-en. Sec. 7382, R.C.M. 1921; re-en. Sec. 7382, R.C.M. 1935; R.C.M. 1947, 50-801.



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## Proceedings To Obtain Right-Of-Way

**82-2-203. Proceedings to obtain right-of-way.** Whenever the owner desires to work a mine or mining claim and it is necessary that the owner have a right-of-way for any of the purposes mentioned in **82-2-201** and **82-2-202** in order to work the mine or mining claim successfully and conveniently and if the right-of-way has not been acquired by agreement between the owner of the mining claim and the owner of the land or claims over, under, across, and upon which the mining claim owner seeks to establish the right-of-way, it is lawful for the mining claim owner to present to the judge of the district court a complaint asking that the right-of-way be granted. The complaint must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the land to be affected by the right-of-way, with the names of the occupants or owners of the affected land, and may also set forth any tender or offer.

**History:** En. Sec. 3, p. 597, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 888, 5th Div. Rev. Stat. 1879; re-en. Sec. 1497, Comp. Stat. 1887; amd. and re-en. Sec. 3632, Pol. C. 1895; re-en. Sec. 2299, Rev. C. 1907; re-en. Sec. 7384, R.C.M. 1921; re-en. Sec. 7384, R.C.M. 1935; R.C.M. 1947, 50-803; amd. Sec. 2726, Ch. 56, L. 2009; amd. Sec. 38, Ch. 55, L. 2015.

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## Proceedings Before The Court

**82-2-204. Proceedings before the court.** Upon the receipt of the complaint and filing thereof with the clerk of the court, the judge must direct a summons to issue to the defendants named in the complaint requiring them to appear before the judge on a day therein named, which must be not less than 10 days from the service thereof, and show cause why such right-of-way should not be allowed. The summons may be served on each of the parties in the manner prescribed by law for serving summons in other actions.

**History:** En. Sec. 4, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 889, 5th Div. Rev. Stat. 1879; re-en. Sec. 1498, Comp. Stat. 1887; amd. and re-en. Sec. 3633, Pol. C. 1895; re-en. Sec. 2300, Rev. C. 1907; re-en. Sec. 7385, R.C.M. 1921; re-en. Sec. 7385, R.C.M. 1935; R.C.M. 1947, 50-804.

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## Court Order And Appointment Of Commissioners

**82-2-205. Court order and appointment of commissioners.** Upon the return of the summons or upon any day to which the hearing is adjourned, the defendants may answer, issue must be joined, and the judge shall hear the allegations and proofs of the respective parties. If, upon the hearing, the judge is satisfied that the claims of the plaintiff may be worked conveniently only by means of the privilege asked for, the judge shall make an order adjudging and awarding to the plaintiff the right-of-way and shall appoint three commissioners who are disinterested persons and residents of the county to assess the damages to the lands or claims affected by the order.

**History:** En. Sec. 5, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 890, 5th Div. Rev. Stat. 1879; re-en. Sec. 1499, Comp. Stat. 1887; amd. and re-en. Sec. 3634, Pol. C. 1895; re-en. Sec. 2301, Rev. C. 1907; re-en. Sec. 7386, R.C.M. 1921; re-en. Sec. 7386, R.C.M. 1935; amd. Sec. 11, Ch. 39, L. 1977; R.C.M. 1947, 50-805; amd. Sec. 2727, Ch. 56, L. 2009.

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## Commissioners To Assess Damages

**82-2-206. Commissioners to assess damages.** The commissioners must be sworn to faithfully and impartially discharge their duties and must without delay examine the property, lands, and claims and assess the damages resulting from such right-of-way and report the amount to the judge, and if such right-of-way affects the property of more than one person, such report must contain an assessment of damages to each person.

**History:** En. Sec. 6, p. 598, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 891, 5th Div. Rev. Stat. 1879; re-en. Sec. 1500, Comp. Stat. 1887; amd. and re-en. Sec. 3635, Pol. C. 1895; re-en. Sec. 2302, Rev. C. 1907; re-en. Sec. 7387, R.C.M. 1921; re-en. Sec. 7387, R.C.M. 1935; R.C.M. 1947, 50-806.

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## Power To Set Aside Commissioners' Report

**82-2-207. Power to set aside commissioners' report.** For good cause shown, the judge may set aside the report of the commissioners and appoint three other commissioners.

**History:** En. Sec. 7, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 892, 5th Div. Rev. Stat. 1879; re-en. Sec. 1501, Comp. Stat. 1887; amd. and re-en. Sec. 3636, Pol. C. 1895; re-en. Sec. 2303, Rev. C. 1907; re-en. Sec. 7388, R.C.M. 1921; re-en. Sec. 7388, R.C.M. 1935; R.C.M. 1947, 50-807.

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## Right-Of-Way To Commence Upon Payment Of Assessed Damages

**82-2-208. Right-of-way to commence upon payment of assessed damages.** Upon the payment of the sum assessed as damages and all costs to the persons to whom it is awarded or the payment of the same to the clerk for the use of such person, plaintiff is entitled to the right-of-way and may immediately proceed to occupy the same and to erect thereon such works and structures and make therein such excavations as may be necessary to the use and enjoyment of the right-of-way so awarded.

**History:** En. Sec. 8, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 893, 5th Div. Rev. Stat. 1879; re-en. Sec. 1502, Comp. Stat. 1887; amd. and re-en. Sec. 3637, Pol. C. 1895; re-en. Sec. 2304, Rev. C. 1907; re-en. Sec. 7389, R.C.M. 1921; re-en. Sec. 7389, R.C.M. 1935; R.C.M. 1947, 50-808.

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## Appeal From Assessment Of Damages

**82-2-209. Appeal from assessment of damages.** An appeal from the assessment of damages made by the commissioners may be taken to the district court by any party interested at any time within 10 days after the filing of the report of the commissioners. A written notice of appeal must be filed with the clerk and served upon the opposite party.

**History:** En. Sec. 9, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 894, 5th Div. Rev. Stat. 1879; re-en. Sec. 1503, Comp. Stat. 1887; amd. and re-en. Sec. 3638, Pol. C. 1895; re-en. Sec. 2305, Rev. C. 1907; re-en. Sec. 7390, R.C.M. 1921; re-en. Sec. 7390, R.C.M. 1935; R.C.M. 1947, 50-809.

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## Trial On Appeal And Costs

**82-2-210. Trial on appeal and costs.** On appeal, the question of the amount of damages may be tried by the court or jury as in other cases. If the appellant recovers damages exceeding the amount awarded by the commissioners, the opposite party must pay the costs of appeal, otherwise the appellant.

**History:** En. Sec. 10, p. 599, Cod. Stat. 1871, on Jan. 12, 1872; re-en. Sec. 895, 5th Div. Rev. Stat. 1879; re-en. Sec. 1504, Comp. Stat. 1887; amd. and re-en. Sec. 3639, Pol. C. 1895; re-en. Sec. 2306, Rev. C. 1907; re-en. Sec. 7391, R.C.M. 1921; re-en. Sec. 7391, R.C.M. 1935; R.C.M. 1947, 50-810.

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## Payment Of Costs

**82-2-211. Payment of costs.** All costs and expenses of the proceedings under the provisions of this part, except as provided in **82-2-210**, must be paid by the plaintiff or party making the application. The judge may, if the right-of-way asked for is denied, allow the opposite party a reasonable counsel fee.

**History:** En. Sec. 3640, Pol. C. 1895; re-en. Sec. 2307, Rev. C. 1907; re-en. Sec. 7392, R.C.M. 1921; re-en. Sec. 7392, R.C.M. 1935; R.C.M. 1947, 50-811.

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## Eminent Domain For Open-Pit Mining -- Purchase Of Property Required

**82-2-221. Eminent domain for open-pit mining -- purchase of property required.** (1) (a) Subject to subsection (1)(b), when the right of eminent domain is exercised pursuant to Title 70, chapter 30, to acquire estates and rights in land for the purpose of open-pit mining of the ores, metals, or minerals owned by the condemnor, the decree must be granted on the condition that the condemnor protects the public in the immediate area by agreeing to purchase all property within 300 yards of the surface tract condemned, including vacant lots.

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(b) In order to fall within the protection provided by subsection (1)(a), the owner of land within 300 yards of the surface tract condemned shall serve upon the condemnor and file with the court a written offer stating the amount asked for the property within 30 days from the entry of the court order appointing commissioners in the eminent domain proceeding.

(2) If the condemnor and an owner are unable to agree upon the compensation to be paid for the property, the court, upon petition of either party, may proceed to determine the compensation to be paid for property in the manner prescribed in Title 70, chapters 30 and 31, for ascertaining the value of property taken through the exercise of the right of eminent domain.

**History:** En. Sec. 1, Ch. 240, L. 1961; amd. Sec. 1, Ch. 304, L. 1973; R.C.M. 1947, 50-813; amd. Sec. 97, Ch. 125, L. 2001.

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## Construction Of Alternate Facilities

**82-2-222. Construction of alternate facilities.** If a mineral owner seeks to condemn streets, roads, alleys, or highways pursuant to Title 70, chapter 30, for the purposes stated in **82-2-221**, there must also be attached to the complaint for condemnation a plat or plats showing the alternate facilities to be proposed and paid for by the condemnor. The court, in its final order of condemnation, may order the condemnor to construct reasonable and adequate alternate facilities that it considers appropriate under the circumstances.

**History:** En. Sec. 2, Ch. 240, L. 1961; R.C.M. 1947, 50-814; amd. Sec. 98, Ch. 125, L. 2001.

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## Compensation For Property

**82-2-223. Compensation for property.** (1) The measure of compensation for the property located within 300 yards of the surfaced tract condemned shall be the fair market value or the value of similar property in a similar area not affected by open-pit mining operations, whichever the owner of the surface property shall elect to receive.

(2) The measure of compensation for a building owned by the city, county, or state shall be the value of the cost of replacing the building in a similar area not affected by open-pit mining operations.

**History:** En. Sec. 3, Ch. 240, L. 1961; amd. Sec. 2, Ch. 304, L. 1973; R.C.M. 1947, 50-815.