

## Chapter 2

### **Eminent Domain**

#### Section

##### Part A General Provisions

###### 2-101 Purpose

###### 2-102 Private corporations

###### 2-103 Definitions

##### Part B Procedures and Proceedings

###### 2-104 Complaint

###### 2-105 Failure of parties to appear at proceedings

###### 2-106 Issuance and service of summons

###### 2-107 Establishment of value of land

###### 2-108 Determination of ownership in event of dispute

###### 2-109 Final judgment

###### 2-110 Immediate possession procedure; generally

###### 2-111 Immediate possession procedure; possession after proceedings commenced

###### 2-112 Costs of proceedings

##### Part A General Provisions

#### 43 PC 2-101. Purpose.

It is the purpose of this chapter to set up procedures to be followed by the Pohnpei Government in the exercise of its inherent power to acquire real property by eminent domain.

Source: TTC §1301 (1966); 10 TTC §1 (1970); 10 TTC §1 (1980)

#### 43 PC 2-102. Private corporations.

No private corporation except as may be authorized by the Pohnpei Legislature shall have the right of eminent domain in the state of Pohnpei.

Source: TTC §1303 (1966); 10 TTC §2 (1970); Department of Interior Order No. 2969 §8(a); 10 TTC §2 (1980)

43 PC 2-103 Definitions. As used in this chapter, the following terms shall have the meanings set forth below:

(1) Eminent Domain. “Eminent domain” is the right of the Pohnpei Government or a state legal entity as may be provided for by state law in accordance with this chapter to condemn property for public use or purposes and to appropriate the ownership and possession of such property for such public use upon paying the owner a just compensation to be ascertained according to the law.

(2) Public Use. Public use shall be construed to cover any use determined by the Governor to be a public use.

Source: TTC §1302 (1966); 10 TTC §3 (1970); Department of Interior Order No. 2969 §8(b); 10 TTC §3 (1980)

#### Part b Procedures and Proceedings

#### 43 PC 2-104. Complaint.

A complaint must be brought in the Trial Division of the Pohnpei Supreme Court in the name of and on behalf of the Pohnpei Government as plaintiff by the Attorney General and must contain:

(1) The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be called defendants.

(2) A statement of the right or authority of the plaintiff.

(3) A description of each parcel of land to be acquired and a statement of what interest in the land is desired by the plaintiff.

(4) A general statement of the purpose of the taking.

Source: TTC §1304 (1966); 10 TTC §51 (1970); 10 TTC §51 (1980)

43 PC 2-105. Failure of parties to appear at proceedings.

In the event of the failure of any of the parties specified in 43 PC 2-104 to appear in the proceedings, the court shall, nevertheless, proceed to fix the amount of compensation and order that the amount be paid by the government, without interest, to the rightful claimants on demand at any time within seven years from the date of the final judgment.

Source: TTC §1311 (1966); 10 TTC §52 (1970); 10 TTC §52 (1980)

43 PC 2-106. Issuance and service of summons.

(1) The clerk of courts shall issue a summons which shall contain the names of the parties, a general description of the whole property, or a reference to the complaint for the description of the land, and a notice to the defendants to appear in the proceedings. When the defendants are known the summons shall be served by delivering to them a copy thereof along with a copy of the complaint. If the defendants, whether known or unknown, cannot be found, then a copy of the summons and complaint shall be posted as follows:

(a) On the property;

(b) On the administration building or such other place where public notices are usually posted in the local government center;

(c) At a public place in a village located near the property; and

(d) By delivering one copy of the summons and complaint to the chief executive of the local jurisdiction in which the property is situated.

(2) The service of the summons and the complaints or the posting thereof as provided herein shall be sufficient to give the Trial Division of the Pohnpei Supreme Court jurisdiction to proceed with and finally determine the case.

Source: TTC §1305 (1966); 10 TTC §53 (1970); 10 TTC §53 (1980)

43 PC 2-107. Establishment of value of land.

Upon a prima facie showing by the Attorney General that the property desired to be purchased by the government is for public use, the court must hear the parties, and establish a fair value for the land. The court may appoint three assessors to assist in the proceedings and perform such functions as the court may direct. In the event assessors are appointed by the court, they shall take and subscribe an oath before the judge that they will faithfully perform their duties as assessors.

Source: TTC §1306 (1966); 10 TTC §54 (1970); 10 TTC §54 (1980)

43 PC 2-108. Determination of ownership in event of dispute.

In the event there is a dispute over the ownership of the property that is the subject of an eminent domain proceeding, the court shall adjudicate and determine the ownership of the property as part of the proceedings.

Source: TTC §1307 (1966); 10 TTC §55 (1970); 10 TTC §55 (1980)

#### 43 PC 2-109. Final judgment.

The record of the final judgment in the proceedings shall state the particular land or interest in land which the government has acquired and the compensation to be paid to the defendants and the clerk of courts shall issue a certificate of title in accordance with said judgment.

Source: TTC §1308 (1966); 10 TTC §56 (1970); 10 TTC §56 (1980)

#### 43 PC 2-110. Immediate possession procedure; generally.

In the event the government desires to enter into immediate possession of the property, the government shall file a declaration of taking and pay a sum of money which is considered to be the fair value of the property to the Clerk of the Pohnpei Supreme Court. In addition to the requirements set out in 43 PC 2-106, the summons shall state the following:

- (1) That the plaintiff requires immediate possession of the property;
- (2) That a sum of money which is considered to be the fair value of the property has been paid to the Clerk of the Pohnpei Supreme Court, which sum shall draw interest at the rate of three percent (3%) per annum from the date of the summons until claimed by the defendant or ordered paid to the defendant by the court.
- (3) That the defendant may at any time claim and receive the money that has been deposited with the Clerk of the Pohnpei Supreme Court upon the execution of a quit claim deed in favor of the plaintiff.
- (4) Payment to the Clerk of the Pohnpei Supreme Court in accordance with this section shall entitle the government to take immediate possession of the land.

Source: TTC §1309 (1966); 10 TTC §57 (1970); 10 TTC §57 (1980)

#### 43 PC 2-111. Immediate possession procedure; possession after proceedings commenced.

In the event the government determines that it requires immediate possession of the property after eminent domain proceedings have been commenced, but before the rights of the parties and the amount of compensation are determined, a declaration of taking shall be filed in the court and a sum of money that is considered to be fair value of the land shall be paid to the Clerk of the Pohnpei Supreme Court. A summons shall be issued and served in the same manner as the summons in 43 PC 2-106, that shall refer to the original summons already served on the defendants, and shall otherwise conform to the requirements set out in 43 PC 2-110.

Source: TTC §1310 (1966); 10 TTC §58 (1970); 10 TTC §58 (1980)

43 PC 2-112. Costs of proceedings.

The costs in all cases brought under this chapter shall be paid by the plaintiff.

Source: TTC §1312 (1966); 10 TTC §59 (1970); 10 TTC §59 (1980)