

TITLE 56

GOVERNMENT PROPERTY ACQUISITION



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CHAPTER 1

Eminent Domain

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§ 101. Purpose.

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

Source: TT Code 1966 § 1301; TT Code 1970, 10 TTC 1; TT Code 1980, 10 TTC 1.

Cross-reference: FSM Const., art. XIII, §§ 5 and 6 states as follows:

Section 5. A lease agreement for the use of land for an indefinite term by a noncitizen, a corporation not wholly owned by citizens, or any government is prohibited.

Section 6. The national government of the Federated States of Micronesia shall seek renegotiation of any agreement for the use of land to which the Government of the United States of America is a party.

Art. XIII, § 5 was amended by Constitutional Convention Committee Proposal No. 90-23, CD1, SD1 which became effective on July 2, 1991. The original language of art. XIII, § 5 was as follows:

Section 5. An agreement for the use of land for an indefinite term is prohibited. An existing agreement becomes void 5 years after the effective date of this Constitution. Within that time, a new agreement shall be concluded between the parties. When the national government is a party, it shall initiate negotiations.

The provisions of the Constitution are found in Part I of this code.

For provisions on real property acquisition requirements, see chapter 2 of this title.

Case annotations: Case annotations prior to the effective date of the constitutional amendment interpret art. XIII, § 5 as originally worded.

Indefinite Land Use Agreements

Read in the light of its legislative history, art. XIII, § 5 of the FSM Constitution was intended to cover leases, not easements, and therefore an easement that is indefinite in term does not violate this constitutional section. Melander v. Kosrae, 3 FSM R. 324, 330 (Kos. S. Ct. Tr. 1988).

The FSM Constitution terminated all existing indefinite term land use agreements five years after the effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. Billimon v. Chuuk, 5 FSM R. 130, 132 (Chk. S. Ct. Tr. 1991).

Easements are not indefinite land use agreements prohibited by the Constitution because "indefinite land use agreement" is a term of art referring to Trust Territory leases for an indefinite term. *Nena v. Kosrae*, 5 FSM R. 417, 423 (Kos. S. Ct. Tr. 1990).

Land granted for "for so long as it is used for missionary purposes," is not a constitutionally prohibited indefinite land use agreement because the length of the term of the land use will continue, with all certainty, as long as a court determines that the land is still being used for missionary purposes. The term is definite, because its termination can be determined with certainty. *Dobich v. Kapriel*, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a gov't. *Dobich v. Kapriel*, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

An easement for a road is not an indefinite land use agreement prohibited by the Constitution because it is perpetual. It is not indefinite in that it is effective into perpetuity. *Nena v. Kosrae (I)*, 6 FSM R. 251, 254 (App. 1993).

An easement may be created for a permanent duration, or, as it is sometimes stated, in fee, which will ordinarily continue in operation and be enforceable forever. The grant of a permanent easement is for as definite a term as the grant of a fee simple estate. Both are permanent and not for a definite term. *Nena v. Kosrae (II)*, 6 FSM R. 437, 439 (App. 1994).

A grant of a permanent or perpetual easement is definite in the same sense that a grant of a fee simple estate is definite. It is a permanent transfer of an interest in land. *Nena v. Kosrae (III)*, 6 FSM R. 564, 568 (App. 1994).

§ 102. Private corporations.

No private corporation except as may be authorized by a district legislature shall have the right of eminent domain in the Trust Territory.

Source: TT Code 1966 § 1303; TT Code 1970, 10 TTC 2; Department of Interior Order 2969 § 8(a); TT Code 1980, 10 TTC 2.

Cross-reference: For provisions on eminent domain powers of public lands authorities, see Secretarial Order No. 2969 § 3(d) and section 103 of this chapter.

§ 103. Definitions.

As used in this chapter, the following terms shall have the meanings set forth below:

(1) “Eminent domain” is the right of the central Government or a district legal entity as may be provided for by district law in accordance with the provisions of 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” shall be construed to cover any use determined by the High Commissioner to be a public use.

Source: TT Code 1966 § 1302; TT Code 1970, 10 TTC 3; Department of Interior Order 2969 § 8(b); TT Code 1980, 10 TTC 3.

§ 104. Complaint.

A complaint must be brought in the Trial Division of the High Court in the name of and on behalf of the Government of the Trust Territory as plaintiff by the Attorney General or the District Attorney 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 statement of what interest in the land is desired by the plaintiff; and

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

Source: TT Code 1966 § 1304; TT Code 1970, 10 TTC 51; TT Code 1980, 10 TTC 51.

§ 105. Failure of parties to appear at proceedings.

In the event of the failure of any of the parties specified in section 104 of this chapter 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: TT Code 1966 § 1311; TT Code 1970, 10 TTC 52; TT Code 1980, 10 TTC 52.

§ 106. Issuance of summons.

The Clerk of Court 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.

Source: TT Code 1966 § 1305 (part); TT Code 1970, 10 TTC 53(1) (part); TT Code 1980, 10 TTC 53 (1) (part).

§ 107. Service of summons.

(1) When the defendants are known, the summons shall be served by delivering to them a copy thereof along with a copy of the complaint.

(2) 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 district 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 magistrate of the municipality in which the property is situated.

(3) 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 High Court jurisdiction to proceed with and finally determine the case.

Source: TT Code 1966 § 1305 (part); TT Code 1970, 10 TTC 53(1) (part), (2); TT Code 1980, 10 TTC 53(1) (part), (2).

§ 108. Establishment of value of land.

(1) Upon a *prima facie* showing by the Attorney General or the District attorney 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.

(2) The Court may appoint three assessors to assist in the proceedings and perform such functions as the Court may direct.

(3) 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: TT Code 1966 § 1306; TT Code 1970, 10 TTC 54; TT Code 1980, 10 TTC 54.

Cross-reference: For provisions on fair-market value, see section 203 of this title.

§ 109. Determination of ownership in event of dispute.

In the event there is a dispute over the ownership of the property which 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: TT Code 1966 § 1307; TT Code 1970, 10 TTC 55; TT Code 1980, 10 TTC 55.

§ 110. 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 the judgment.

Source: TT Code 1966 § 1308; TT Code 1970, 10 TTC 56; TT Code 1980, 10 TTC 56.

Case annotation: A motion for removal will be denied where, in an action in eminent domain under Truk State law the only defense available are those relating to the taking, and the counterclaims asserted as a basis for national court jurisdiction do not fall within a defense to the taking. *Chuuk v. Land Known as Mononong*, 5 FSM R. 272, 273 (Chk. 1992).

The acquisition of interests in private land by the state for a public purpose without the consent of the interested parties is permitted under the Kosrae Constitution, Article XI, § 5, which requires specific procedures to be followed, which are set forth in Kosrae State Code § 11.103. The state must first negotiate with each interested party, provide a written statement of the public purpose for which the interest is sought and negotiate in good faith. If the negotiations are not successful, the state may begin a court action to acquire the interest in land. *Sigrah v. Kosrae*, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

Since the state's statutory authority to acquire interests in land through court action has never been utilized to forcibly purchase an interest in private land for a public purpose, the court cannot conclude that the state is likely to prevail on the merits of its claim due to a complete absence of court decisions applying or interpreting this authority. *Sigrah v. Kosrae*, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

§ 111. Immediate possession procedure—Generally.

(1) 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 Courts.

(2) In addition to the requirements set out in section 106 of this chapter, the summons shall state the following:

(a) that the plaintiff requires immediate possession of the property;

(b) that sum of money which is considered to be the fair value of the property has been paid to the Clerk of Courts, which sum shall draw interest at the rate of three percent per annum from the date of the summons until claimed by the defendant or ordered paid to the defendant by the Court;

(c) that the defendant may at any time claim and receive the money which has been deposited with the Clerk of Courts upon the execution of a quitclaim deed in favor of the plaintiff;

(3) Payment to the Clerk of Courts in accordance with this section shall entitle the Government to take immediate possession of the land.

Source: TT Code 1966 § 1309; TT Code 1970, 10 TTC 57; TT Code 1980, 10 TTC 57.

Cross-reference: For provisions on Government actions before acquiring possession, see section 204 of this title.

§ 112. Immediate possession procedure—Possession after proceedings commenced.

(1) 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 which is considered to be the fair value of the land shall be paid to the Clerk of Courts.

(2) A summons shall be issued and served in the same manner as the summons in section 106 of this chapter, which shall refer to the original summons already served on the defendants, and shall otherwise conform to the requirements set out in section 111 of this chapter.

Source: TT Code 1966 § 1310; TT Code 1970, 10 TTC 58; TT Code 1980, 10 TTC 58.

§ 113. Costs of proceedings.

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

Source: TT Code 1966 § 1312; TT Code 1970, 10 TTC 59; TT Code 1980, 10 TTC 59.