

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 47

CONDEMNATION OF TRUST OR RESTRICTED LAND UNDER
POWER OF EMINENT DOMAIN

S. W. S. T. CODE
 Amendment
 New Adoption
Judicial Approved
12-5-84
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47-01-01 SCOPE OR POWER OF EMINENT DOMAIN

The Sisseton-Wahpeton Sioux Tribe shall have authority pursuant to this Chapter and in accordance with Section 8 of the Act of October 19, 1984, 98 Stat, 2411 (P.L. 98-513), to condemn trust or restricted land within the original exterior boundaries of the Lake Traverse Reservation, as described in Article III of the Treaty of February 19, 1867, 15 Stat. 505, for public uses, including the elimination of fractional heirship interests in such land, the consolidation of tribal interests in land and the development of tribal agriculture.

47-02-01 PETITIO FOR ASCERTAINMENT OF COMPENSATION BY JURY

In all cases where the Sisseton-Wahpeton Sioux Tribe shall determine to condemn trust or restricted land, it shall file a petition in the Tribal Court praying that the just compensation to be made for such property may be ascertained by a jury.

47-03-01 CONTENTS OF PETITION FOR ASCERTAINMENT OF COMPENSATION

A petition filed pursuant to Section 47-02-01 shall name the Sisseton-Wahpeton Sioux Tribe as plaintiff, and all persons having interest in or liens upon the property affected by the proceedings as defendants, so far as they shall be known at the time of filing the same. It shall contain a description of the property to be taken or damaged shall be clearly set forth in the petition. It shall not be necessary to specify the interests or claims of the several defendants in the land or property affected by the proceedings.

47-04-01 AMENDMENT OF PETITION AND NOTICE

If any person is a proper party defendant to a proceedings under this Chapter, or any property affected thereby, shall have been omitted from said petition or notice, the plaintiff may file amendments to the same, which amendments from the filing thereof shall have the same effect as though contained in said petition and notice.

- 47-05-01 VERIFICATION OF PETITION - STATEMENT OF GOOD FAITH**
Said petition shall be signed or verified in the manner provided by law for the signing or verification of complaints in actions in the Tribal Court, and the affidavit of verification shall contain the further statement that the proceeding is in good faith for the purpose specified in the petition.
- 47-06-01 ATTACHMENT OF DOCUMENT AUTHORIZING CONDEMNATION**
In all cases, the petition shall have attached to it a copy of a resolution of the Tribal Council authorizing the taking of the trust or restricted land described in the petition.
- 47-07-01 ADDITIONAL PLEADING NOT REQUIRED**
No pleading other than the petition shall be required in a proceeding under this Chapter, unless ordered by the Court.
- 47-08-01 INTERPLEADER OF ADVERSE CLAIMANTS TO COMPENSATION**
If there be adverse claimants for the compensation, the court may require such adverse claimants to interplead, so as to determine fully the rights and interest in such compensation.
- 47-09-01 UNITED STATES NOT AN INDISPENSABLE PARTY - UNITED STATES RIGHT OF INTERVENTION**
The United States shall not be an indispensable party in any proceeding under this Chapter. The United States, upon timely application, shall have a right to intervene in any proceeding under this Chapter.
- 47-10-01 NOTICE OF PENDENCY OF ACTION FILED WITH CLERK OF COURT AND COUNTY REGISTER OF DEEDS - EFFECT OF RECORDING**
At any time after the filing of the petition, the plaintiff may file for record in the office of the Clerk of Court and in the office of the register of Deeds for the county in which the land described in the petition is situated a notice of the pendency of the proceeding, containing the names of the parties plaintiff and defendant, a statement of the purpose of the proceeding, and a description of the property to be condemned, which notice shall be recorded and indexed in the same manner as for the recording and indexing of notices of pendency of actions in the Tribal or State Circuit Court, as the case may be, and from the date of the filing thereof shall be notice to all subsequent purchasers or encumbrances of the property therein described.

47-11-01 SUMMONS TO DEFENDANTS - CONTENTS

At any time after the filing of the petition, the plaintiff may issue a summons to the defendants, which shall be entitled in the action or proceeding, and state the time and place of filing the petition, the nature of the proceeding, and contain a notice to the effect that if the defendants do not appear in said proceeding within thirty days from the service thereof, exclusive of the day of service, the plaintiff will apply to the court for an order to impanel a jury and ascertain the just compensation for the property proposed to be taken or damaged in such proceeding. The summons may be served as in civil actions unless otherwise provided in this Chapter.

47-12-01 PUBLICATION OF SUMMONS TO UNKNOWN OR NONRESIDENT OWNERS - PERSONAL SERVICE OUTSIDE RESERVATION

If there are unknown owners or persons interested in the property to be taken or damaged, or if any of the defendants are not residents of the Lake Traverse Indian Reservation, the plaintiff may apply to the court upon affidavit setting forth the nature of the proceeding, and the facts in relation to such unknown persons or nonresident defendants, for an order of publication of such summons, whereupon the court shall grant such order. The summons as published shall have annexed thereto a notice that if the defendants as to whom publication has been ordered do not appear in said proceeding within thirty days from the first publication thereof, the plaintiff will make application to the court for the order mentioned in the body of the summons. Such summons shall be published for thirty days at least once in each week in some newspaper published and of general circulation within the Lake Traverse Indian Reservation, and each publication of the same shall show at the top thereof the date of the first publication. Personal service on any defendant outside of the Lake Traverse Indian Reservation shall be of the same effect as service within the Reservation and shall dispense with necessity of publication as to such defendant.

47-13-01 NOTICE OF PROCEEDING TO UNITED STATES - CONTENTS

Within ten days after the filing of the petition, the plaintiff shall serve upon the Superintendent of the Sisseton Agency of the United States Bureau of Indian Affairs and upon the United States Attorney for the district within which the land to be condemned is situated a notice of the pendency of the condemnation proceedings, which shall be entitled in the action or proceeding, and state the time and place of filing the petition, the nature of the proceeding, and the right of the United States to intervene in such proceeding. In all cases, the notice shall have attached to it a copy of the petition and a copy of the Tribal Council Resolution required by section 47-06-01 of this Chapter. Unless within thirty days from the service of the notice the United States enters an appearance in the proceeding, the parties shall not be required to make service upon the United States of papers filed in the proceeding.

47-14-01 HEARING ON RIGHT TO TAKE - TIME FOR DEMAND - WAIVER OF RIGHT TO QUESTION NECESSITY - FINDING OF NECESSITY AS BINDING
Within thirty days from the date the summons described in section 47-11-01 is served, the defendant may demand a hearing in Tribal Court on the Tribe's right to take. Failure to make such a demand or to consent in writing to the taking, within the thirty day period, shall constitute a waiver of the right to question the necessity of the taking. The finding of necessity by the plaintiff, unless based upon fraud, bad faith or/and abuse of discretion, shall be binding on all persons.

47-15-01 OFFER TO DEPOSIT COMPENSATION WITH CLERK - EVIDENCE OF OFFER NOT ADMISSIBLE

When the remedy is exercised under the provisions of this chapter, the plaintiff may at the time of service of the summons on any defendant serve upon him an offer in writing to the effect that the plaintiff will deposit with the Bureau of Indian Affairs a sum of money specified to be paid to defendant or other parties entitled thereto as compensation for all of the property taken or damaged. If the defendant fails to accept the offer by filing notice of acceptance with the Clerk of Court within ten days after service of the offer upon him, it is deemed to be withdrawn, and cannot be given in evidence.

47-16-01 ORDER TO SUMMON JURY ON DEFAULT

If no appearance be made by any defendant within the time specified in the summons, the plaintiff, upon affidavit of the default, may apply to the court for an order directing the clerk of courts to draw and summon nine jurors to attend at the courthouse or place of holding the Tribal Court, at a time to be specified in such order. Said jurors shall be drawn and summoned for other proceedings before the Tribal Court.

47-17-01 JURY TRIAL - CHALLENGE OF JURORS - CONDUCT OF TRIAL - DEFAULT BY PLAINTIFF

At the time and place specified in the order made pursuant to section 47-16-01 a session of the Tribal Court shall be held, at which the proceedings in impanelling the jury, trial and rendering of the verdict or verdicts shall be conducted in the same manner as in civil actions except that every defendant shall have the same rights and privileges, upon such trial, to challenge jurors and examine and cross-examine witnesses and participate there in, by himself or attorney, as a defendant in a civil action who has appeared and answered. As to all the defendants who appear within the time specified in the summons, the proceeding shall be conducted in like manner except that three days' notice of the time and place of trial may be given by either party and the case brought on for trial at any session of the court called for such purpose, and on the failure of the plaintiff, after such notice, to proceed with the trial, said petition shall be dismissed as to such defendant, and

any lis pendens involving the title of property of such defendant shall be discharged and no other proceeding for the same purpose shall be brought by the plaintiff against such defendant until after the expiration of one year, and then only upon the condition that the plaintiff will, in good faith prosecute such proceeding against such defendant with reasonable diligence.

47-18-01 JURY COMPOSITION - VERDICT - DISAGREEMENT

Proceedings under this Chapter shall be held before a jury composed of six jurors and one alternate. A verdict may be rendered by not less than five-sixths of the jurors constituting a jury. Where five-sixths of the jurors constituting a jury cannot agree after being kept together for as long as is deemed reasonable by the Court, the Court shall discharge the jury and direct a new trial before another jury.

47-19-01 CONTINUANCE OF PROCEEDINGS AS TO DEFENDANTS NOT SERVED

As to all defendants not served before the trial said proceedings shall be continued as the court may direct, for the purpose of serving the summons on such defendants.

47-20-01 ISSUE TRIED BY JURY

The only issue that shall be tried by the jury upon the petition shall be the amount of compensation to be paid for the property taken or damaged.

47-21-01 VIEW OF PREMISES BY JURY

Upon the demand of any party to the proceeding, if the court deem it necessary, the jury may view the premises under such rules as the court may prescribe for such viewing.

47-22-01 COMPENSATION DETERMINED FOR EACH PARCEL OR FRACTIONAL INTEREST

If the compensation for all the property taken or damaged in ascertained by the jury upon one trial, they shall ascertain and return in their verdict the compensation to be paid for each distinct lot or parcel of land or property taken or damaged or for each fractional interest in any allotment or part thereof taken or damaged. Upon request, the court may provide the jury with technical assistance in computing the compensation determined.

47-23-01 RECORDING OR VERDICT - JUDGEMENT ON VERDICT

Upon the return of the verdict, the court shall order the same to be recorded, and shall enter such judgement thereon as the nature of the case may require, and that the plaintiff pay to the persons entitled thereto the amount of compensation ascertained by the verdict.

47-24-01 EFFECT OF JUDGEMENT

Subject to the right of a defendant to seek review of any Tribal Court judgement in the United States District Court, pursuant to Section 8 (c) of the Act of October 19, 1984, 98 Stat. 2411, and Section 47-25-01 of this Chapter, a final judgement in favor of the Tribe is conclusive as to the title of the Tribe, in and to the interest in the trust or restricted land described in said judgement, against any and all parties in said action, including unknown defendants, and against any and all persons claiming from, through or under such a party by title accruing after the filing of the judgement by the clerk of the Tribal Court or after the filing of a notice of pendency of the action pursuant to Section 47-10-01 of this Chapter.

47-25-01 JUDICIAL REVIEW - INTERTRIBAL COURT OF APPEALS AND/OR UNITED STATES DISTRICT COURT

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Amendment
New Adoption
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7-85

In all case provided for this Chapter, appeals shall be allowed to the Intertribal Court of Appeals or such other appellate tribunal as may be provided by the Tribe, the same as in other civil actions. Any appeal to the Intertribal Court of Appeals shall be taken in accordance with the Uniform Code and Rules of said Court.

47-25-02

In accordance with Section 8 (c) of the Act of October 19, 1984, 98 Stat. 2411, a final judgement of the Intertribal Court of Appeals or such other appellate tribunal as may be provided by the Tribe may be reviewed by the United States District Court for the district within which the affected interest in land is located. In order to obtain such federal court review, a notice of appeal shall be filed with the clerk of the Tribal Court and with the clerk of the federal court within thirty days of the date of entry of the judgement or order of condemnation from which an appeal is taken. If a timely notice of appeal is filed by a party, and other party may file a notice of appeal in the same manner within fourteen days of the date on which the first notice of appeal was filed. Any judicial review under this section, either by the Intertribal Court of Appeals or the United States District Court, shall not delay or prevent the plaintiff from proceeding with the work or improvement for which the plaintiff sought condemnation; provided that the plaintiff shall deposit with the clerk of court, for the use and benefit of the defendant seeking Intertribal Court of Appeals or federal court review such sum as shall be awarded by the verdict and shall give to such defendant a bond in such sum as the court shall direct, to secure the payment of any additional sum which may be awarded to the appellant in the future proceedings therein.

47-26-01

SEVERABILITY

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

CODE

Amendment

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