

**Title 13 – Real Property and Housing**  
**Chapter 4 – Quiet Title**

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**Legislative History**

Enacted:

Quiet Title, Ord. 208 (1/27/04), BIA (2/3/04).

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**13-04.010 Title.**

This Chapter may be referred to as the “Quiet Title Code.”

[History] Ord. 208 (1/27/04).

**13-04.020 Authority.**

This Chapter is established pursuant to the authority found in the following provisions of Article VI of the Constitution of the Swinomish Indian Tribal Community:

- Section 1(c)
- Section 1(k)
- Section 1(l)
- Section 1(n)
- Section 1(o)

[History] Ord. 208 (1/27/04).

**13-04.030 Jurisdiction.**

Tribal jurisdiction shall extend to all real property held in trust by the United States for the benefit of the Tribe, tribal members, or any Indian and to all improvements on such property.

[History] Ord. 208 (1/27/04).

**13-04.040 Definitions.**

- (A) For the purposes of this Chapter, unless explicitly stated otherwise, the following words and phrases shall have the following meanings:
- (1) **“Code”** means the Swinomish Tribal Code of the Swinomish Indian Tribal Community.
  - (2) **“County”** means Skagit County.
  - (3) **“Decision maker”** means the person responsible for conducting any proceeding brought under this Chapter and filing a final determination of interest in Tribal Court. If the action is brought under Section 13-04.050, then the decision maker is the Tribal Court. If, in the alternative, the action is brought under Section 13-04.070, then the decision maker is either the mediator or the judge pro tem, depending on the procedure chosen by the Senate.
  - (4) **“Known party”** means any person whose identity becomes known to the plaintiff from a title search, the personal knowledge of the plaintiff, or other source.
  - (5) **“Person”** means a human being, natural person, Tribe, municipality, corporation, firm, partnership, labor organization, or heir, successor in interest, trustee, or agent thereof.

- (6) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation of the Swinomish Indian Tribal Community.
  - (7) **“Rules of Civil Procedure”** means Chapter 3-02, the Rules of Civil Procedure of the Swinomish Tribal Code.
  - (8) **“Tribe”** means the Swinomish Indian Tribal Community.
- (B) All other words and phrases shall have their ordinary and customary meanings.

[History] Ord. 208 (1/27/04).

*Subchapter I – Adjudication Brought by Any Person*

**13-04.050 Any Person as Plaintiff.**

Any person with a claim or interest in an improvement to real property located within the exterior boundaries of the Reservation and held in trust by the United States for the benefit of the Tribe, any tribal member, or any Indian, may commence an action in Tribal Court to quiet title and/or remove a cloud from the title to the improvement.

[History] Ord. 208 (1/27/04).

**13-04.060 Civil Procedure.**

- (A) Any action brought under Section 13-04.050 shall be subject to the Rules of Civil Procedure of the Swinomish Tribal Code, subject to Section 13-04.060(B).
- (B) Section 13-04.070 shall be the procedure for commencement of an action brought under Section 13-04.050.

[History] Ord. 208 (1/27/04).

**13-04.070 Commencement.**

- (A) **Service.**
  - (1) The plaintiff shall serve all known persons with a colorable claim or interest in the subject property according to Chapter 3-02 – the Rules of Civil Procedure.
  - (2) The plaintiff shall serve all unknown persons with a colorable claim or interest in the subject property by publication of notice in a local newspaper of suitable size and general circulation for one month.

- (B) **Summons.** The summons shall state the date and time of the initial hearing in Tribal Court.
- (C) **Complaint.** The complaint shall state the nature of the claim, whether legal, equitable, or both, and identify the subject property with sufficient particularity such that a reasonable person would understand which property was the subject of the action.
- (D) **Answer.**
  - (1) A party with a colorable claim or interest in the subject property may answer the complaint by appearing in court on the date and time stated on the summons or by filing a written pleading in Tribal Court.
  - (2) The answer may set up any available defense, counterclaim, or affirmative defense.

[History] Ord. 208 (1/27/04).

**13-04.080 Right of Appeal.**

- (A) Any party to an action brought under Section 13-04.050 may appeal a final decision to the Court of Appeals.
- (B) All such appeals shall follow the requirements of Chapter 3-04 – Rules of Appellate Procedure.

[History] Ord. 208 (1/27/04).

*Subchapter II – Adjudication Brought by Tribe*

**13-04.090 Tribe as Plaintiff.**

The Tribe may commence an action to quiet title and/or remove a cloud from the title of any and all improvements to real property held in trust by the United States for the benefit of the Tribe, any tribal member, or any Indian.

[History] Ord. 208 (1/27/04).

**13-04.100 Notice.**

- (A) The Tribe shall provide notice of an action brought under Section 13-04.090 reasonably calculated to notify anyone with a claim or interest in the improvement to the real property as follows:

- (1) Specific notice shall be provided by registered mail to anyone identified in tribal records, including records from the Realty Office and Utilities Commission, with a colorable claim to use or possess the improvement to the real property.
  - (2) General notice shall be provided to tribal members by publication in the tribal newsletter, Kee-Yoks and by posting on the bulletin board at the Administration Building and Community Center.
- (B) The notice shall include the following:
- (1) The legal description(s) of the subject property;
  - (2) Other information reasonably calculated to identify the subject property; and
  - (3) The name, address, and phone number of the mediator or judge pro tem selected by the Senate.

[History] Ord. 208 (1/27/04).

**13-04.110 Mediation.**

- (A) **Senate Shall Appoint.** The Senate shall appoint a mediator to conduct all adjudications brought by the Tribe, subject to Section 13-04.120. The Senate may delegate its power of appointment to the Legal Department or Tribal Court.
- (B) **Recognized Authority.** The mediator shall be recognized as an authority in resolving disputes over money, property, or both using alternative dispute resolution. The mediator shall use procedures and techniques generally accepted by practitioners in the field.
- (C) **Conflicting Claims.**
  - (1) **Consensus.** The mediator shall strive to resolve the conflicting claims by reaching a consensus.
  - (2) **No Consensus.** If the mediator cannot find a consensus, he or she shall render a resolution that is fair, reasonable, consistent with tribal tradition, and in the best interest of the Tribe and its members.
- (D) **Determination of Interest.** The mediator shall file a determination of interest in Tribal Court establishing the ownership, leasehold, usufructary, or other interests each of the parties may have in all the properties subject to the adjudication.

[History] Ord. 208 (1/27/04).

**13-04.120 Judge Pro Tem.**

- (A) In its discretion, the Senate may appoint a judge pro tem instead of a mediator to conduct an adjudication brought by the Tribe.
- (B) The judge pro tem shall be qualified to appear in Tribal Court and shall be a member in good standing of the Washington State Bar.
- (C) The judge pro tem shall hear evidence and make findings of fact and conclusions of law in accordance with Chapter 3-02 – Rules of Civil Procedure and the Rules of Evidence.
- (D) The judge pro tem shall file a determination of interest in Tribal Court establishing the ownership, leasehold, usufructary, or other interests each of the parties may have in the subject properties.

[History] Ord. 208 (1/27/04).

**13-04.130 Submission of Claims.**

All persons with a colorable claim to the subject properties shall submit their claims according to the procedures established by the mediator or judge pro tem.

[History] Ord. 208 (1/27/04).

**13-04.140 Right of Appeal.**

- (A) **All Final Determinations Appealable.** All final determinations of interest filed in cases brought under Section 13-04.090 shall be appealable in Tribal Court.
- (B) **Determination of Mediator.**
  - (1) Tribal Court shall overturn a final determination filed by a mediator upon a finding that the mediator’s final determination was arbitrary and capricious.
  - (2) Upon finding that the mediator’s final determination was arbitrary and capricious, the Tribal Court shall notify the Senate.
  - (3) Upon receipt of a finding overturning a mediator’s final determination, the Senate shall appoint a judge pro tem pursuant to the terms and provisions of Section 13-04.120.
- (C) **Determination of Judge Pro Tem.** Tribal Court shall overturn a final determination filed by a judge pro tem as follows:
  - (1) Findings of fact shall be reviewed for an abuse of discretion.

- (2) Conclusions of law shall be reviewed de novo.
- (3) If the Tribal Court finds an error of fact or law, it shall remand the case to the judge pro tem for further proceedings.

[History] Ord. 208 (1/27/04).

***Subchapter III – Provisions that Apply to Both Adjudications***

**13-04.150 Adverse Claims.**

- (A) A proceeding brought under this Chapter is a proceeding against the world. When any person commences an action under this Chapter, all persons with an adverse or conflicting claim or interest on the subject property shall come forward to assert his or her own claim or interest.
- (B) No person who received actual notice of the action and failed to come forward to assert his or her claim or interest in the subject property shall subsequently assert a claim or interest.
- (C) No person who received constructive notice shall assert a claim or interest after ninety days from the commencement of the action.

[History] Ord. 208 (1/27/04).

**13-04.160 Right of Entry.**

A party may, upon motion and for cause, obtain an order from Tribal Court requiring the party in possession of the subject property to allow the moving party to enter the property to conduct a survey.

[History] Ord. 208 (1/27/04).

**13-04.170 Superior Title.**

In any action to quiet title or remove a cloud from title brought under this Chapter, the party with superior title, whether legal, equitable, or both, shall prevail. The decision maker shall determine title and grant relief according to the Code, tribal tradition, the best interests of the Tribe, and the equities of the case.

[History] Ord. 208 (1/27/04).

**13-04.180 Heirs.**

The final determination of interest shall be binding and conclusive on the heirs and/or successors in interest to the parties to the action.

[History] Ord. 208 (1/27/04).

**13-04.190 Recordation.**

The final determination of interest shall be recorded on a deed of title with the Tribe and the County.

[History] Ord. 208 (1/27/04).

*Subchapter IV – Repealer and Severability*

**13-04.200 Repealer.**

[Reserved]

**13-04.210 Severability.**

The provisions of this Chapter are severable. If a court of competent jurisdiction holds any of the provisions of this Chapter invalid, the validity of the remaining provisions shall be unaffected, such that the remaining provisions shall remain in full force and effect.

[History] Ord. 208 (1/27/04).