

# **TITLE 43**

## **LAND ACQUISITION BY GOVERNMENT**

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## TITLE 43

### LAND ACQUISITION BY GOVERNMENT

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#### CHAPTER 1

#### LAND ACQUISITION

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**§1-101. Application of chapter.** — This chapter shall be applicable to the acquisition of real property under the laws of the state of Pohnpei for use in any project or program of the Pohnpei Government or local governments or the agencies created by the above enumerated governmental divisions hereinafter referred to as “government.”

Source: P.L. No. 6-71 §1; 67 TTC §451 (1980)

**§1-102. Procedures generally.** —

(1) In acquiring real property the government will, to the greatest extent practicable:

(a) Make every reasonable effort to acquire real property expeditiously through negotiation;

(b) Before the initiation of negotiations, have the real property appraised and give the owner or his representative an opportunity to accompany the appraiser during the inspection of the property;

(c) Before the initiation of negotiations, establish an amount that is believed to be just compensation for the real property, and make a prompt written offer to acquire the property for that amount. In no event will the just compensation offered be less than the government’s approved appraisal of the fair market value of such property. At the time the government makes an offer to purchase real property, the owner of that property will be provided with a written statement of the basis for the amount estimated to be just compensation.

(i) In determining just compensation for the property any increase or decrease of the fair market value caused by the public improvement for which the property is acquired prior to the date of valuation will be disregarded (other than that caused by physical deterioration).

(d) Before requiring any owner to surrender possession of any real property, government will:

(i) Pay the agreed purchase price; or

(ii) Deposit with the court, for the benefit of the owner, an amount not less than the government’s approved appraisal of the fair market value of the property; or

(iii) Pay the amount of the award of compensation in condemnation proceedings for the property.

(e) If interest in the real property is to be acquired by exercise of power of eminent domain, institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of this real property; and

(f) If the acquisition of only part of the property will leave its owner with an uneconomic remnant, offer to acquire that remnant.

(2) In acquiring real property, to the greatest extent practicable the government will not:

(a) Schedule a construction or development of the public improvement that will require any person lawfully occupying real property to move from a dwelling, or move his business or farm operation, without giving that person at least 90 days written notice of the date he is required to move;

(b) If acquired property is rented to the former owner or tenant for a short term or subject to termination by the government on short notice, charge a rent that is more than the fair rental value of the property to a short term occupant;

(c) Advance the time of condemnation;

(d) Defer negotiations, condemnation or deposit of funds in court for use of the owner; or

(e) Take any course of action to compel an owner to agree to a price for his property.

(3) Should a court determine condemnation was unauthorized or should the property owner obtain a judgment in the nature of inverse condemnation, then the owner shall be reimbursed for reasonable expenses of litigation, in line with Section 304 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(4) Nothing in this section should be construed to preclude a donation by an owner after his property has been appraised and the full amount of the estimated just compensation has been tendered to him.

Source: P.L. No. 6-71 §1; 67 TTC §452 (1980)

**§1-103. Interest in improvements.** — In acquiring any interest in real property the government will acquire at least an equal interest in all building structures or other improvements located on that real property which will be removed or which will be adversely affected by the completed project.

Source: P.L. No. 6-71 §1; 67 TTC §453 (1980)

**§1-104. Payments for improvements by tenants.** —

(1) In the case of the building structure or other improvements owned by the tenant on real property acquired for a project to which this chapter applies the government will, subject to Subsection (2) of this section, pay the tenant the larger of:

(a) The fair market value of the improvement (as established by the government's appraiser),

assuming its removal from the property; or

(b) The enhancement to the fair market value of the real property.

(2) Payments will also be made for improvements that are damaged as well as those that must be removed.

(3) A payment may not be made to a tenant under Subsection (1) of this section unless:

(a) The tenant, in consideration for the payment, assigns, transfers, and releases to the government all his rights, title, and interest in the improvements;

(b) The owner of the land involved disclaims any interest in the improvements; or

(c) The payment is not duplicated by any payment otherwise authorized by law or regulation.

Source: P.L. No. 6-71 §1; 67 TTC §454 (1980)

**§1-105. Expenses incidental to transfer of title.** — As soon as possible after real property has been acquired, the government shall reimburse the owner for:

(1) Recording fees, taxes, and similar expenses incidental to conveying the real property to the agency; and

(2) The penalty cost for prepayment of any pre-existing recorded mortgage entered into in good faith and encumbering the real property.

Source: P.L. No. 6-71 §1; 67 TTC §455 (1980)

**§1-106. Authority of Governor to promulgate regulations.** — The Governor shall have authority to issue regulations to implement this chapter.

Source: P.L. No. 6-71 §1; 67 TTC §456 (1980)

LAND ACQUISITION BY GOVERNMENT

## CHAPTER 2 EMINENT DOMAIN

### Section

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### PART A GENERAL PROVISIONS

**§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)

**§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)

**§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

**§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)

**§2-105. Failure of parties to appear at proceedings.** — In the event of the failure of any of the parties specified in §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)

**§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)

**§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)

**§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)

**§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)

**§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 §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 Court upon the execution of a quit claim deed in favor of the plaintiff.
- (4) Payment to the Clerk of 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)

**§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 §2-106, that shall refer to the original summons already served on the defendants, and shall otherwise conform to the requirements set out in §2-110.

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

**§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)

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## CHAPTER 3 RELOCATION ASSISTANCE

### Section

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**§3-101. Declaration of policy.** — The purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of persons displaced by the acquisition of real property by the Pohnpei Government and local land acquisition programs or by programs of rehabilitation of buildings or other improvements conducted pursuant to governmental supervision. The policy shall be uniform as to:

- (1) Relocation payments;
- (2) Advisory assistance; and
- (3) Assurance of availability of standard housing.

Source: P.L. No. 6-71 §2; 67 TTC §501 (1980)

**§3-102. Definitions.** — As used in this chapter:

(1) “Agency” means any department, agency or instrumentality of the state of Pohnpei, or of a political subdivision of the state of Pohnpei, or any department, agency or instrumentality of two or more political subdivisions of the state of Pohnpei

(2) “Person” means any individual, partnership, corporation or association.

(3) “Displaced person” means any person who, on or after the effective date of this chapter [*July 31, 1975*], moves from real property or moves his personal property from real property, as a result of the acquisition of such real property in whole or in part, or as the result of the written order of the acquiring agency to vacate real property for a program or project undertaken by an agency, and, solely for the purpose of §3-103(1) and (2) and §3-106, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(4) “Business” means any lawful activity, excepting a farm operation, conducted primarily:

- (a) For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing or marketing of products, commodities, or any other personal property;
- (b) For the sale of services to the public; or
- (c) By a nonprofit organization.

(5) “Farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including copra, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

Source: P.L. No. 6-71 §2; 67 TTC §502 (1980)

**§3-103. Moving and related expenses. —**

(1) If an agency acquires real property for public use, it shall make fair and reasonable relocation payments to displaced persons and businesses as required by this chapter for:

- (a) Actual reasonable expenses in moving himself, his family, business, farm operation or other personal property;
- (b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the agency; and
- (c) Actual reasonable expenses in searching for a replacement business or farm.

(2) Any displaced person eligible for payments under Subsection (1) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by Subsection (1) of this section may receive a moving expense allowance, determined according to a schedule established by the agency, not to exceed \$300, and a dislocation allowance of \$200.

(3) Any displaced person eligible for payment under Subsection (1) of this section, who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by Subsection (1) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than \$2,500 nor more than \$10,000. In the case of a business no payment shall be made under this subsection unless the agency is satisfied that the business:

- (a) Cannot be relocated without a substantial loss of its existing patronage, and
- (b) Is not a part of a commercial enterprise having at least one other establishment not being acquired by the agency, which is engaged in the same or similar business.

For purposes of this subsection, the term “average annual net earnings” means one-half of any net earnings of the business or farm operation before income taxes during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for such project, or during such other period as the agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during such period.

Source: P.L. No 6-71 §2; 67 TTC §503 (1980)

**§3-104. Replacement housing for homeowners. —**

(1) In addition to payments otherwise authorized by this chapter, the agency shall make an additional payment not in excess of \$15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

- (a) The amount, if any, that when added to the acquisition cost of the dwelling acquired, equals the reasonable cost of a comparable replacement dwelling that is a decent, safe and sanitary dwelling according to contemporary community standards and adequate to accommodate such displaced person, reasonably accessible to public services and places of employment, and available on the private market. All determinations required to carry out this paragraph shall be determined by regulations issued pursuant to §3-108.
- (b) The amount, if any, that will compensate the displaced person for any increased interest costs that the person is required to pay for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the dwelling acquired was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that

amount of the principal of the mortgage on the replacement dwelling that is equal to the unpaid balance of the mortgage on the acquired dwelling over the remainder term of the mortgage on the acquired dwelling reduced to discounted present value. The discount rate shall be determined by regulations issued pursuant to §3-108; and

(c) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement dwelling that is decent, safe and sanitary according to contemporary community standards not later than the end of the one-year period beginning on the date on which he receives final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

Source: P.L. No. 6-71 §2; 67 TTC §504 (1980)

**§3-105. Replacement housing for tenants and certain others.** — In addition to amounts otherwise authorized by this chapter, an agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under §1-104, which dwelling was actually and lawfully occupied by the displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. The payment shall be either:

(1) The amount necessary to enable the displaced person to lease or rent, for a period not to exceed four years, a decent, safe and sanitary dwelling according to contemporary community standards and adequate to accommodate the person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed \$4,000, or

(2) The amount necessary to enable the person to make a down payment including incidental expenses described in §3-104(1)(c) on the purchase of a decent, safe and sanitary dwelling according to contemporary community standards and adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed \$4,000, except that if the amount exceeds \$2,000, the person must equally match any amount in excess of \$2,000 in making the down payment.

Source: P.L. No. 6-71 §2; 67 TTC §505 (1980)

**§3-106. Relocation assistance advisory programs.** —

(1) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person on or after the effective date of this chapter [*July 31, 1975*], the agency shall provide a relocation assistance advisory program for displaced persons that shall offer the services prescribed in Subsection (2) of this section. If the agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer the person relocation advisory services under the program.

(2) Each relocation assistance program required by Subsection (1) of this section shall include such measures, facilities or services as may be necessary or appropriate in order to:

(a) Determine the needs of displaced persons, business concerns, and nonprofit organizations for relocation assistance;

(b) Assist owners of displaced businesses and farm operations in obtaining and becoming established in suitable business locations or replacement farms;

(c) Supply information concerning programs of the state government's offering assistance to displaced persons and business concerns;

(d) Assist in minimizing hardships to displaced persons in adjusting to relocation; and

(e) Secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas that may affect the carrying out of the relocation program.

Source: P.L. No. 6-71 §2; 67 TTC §506 (1980)

**§3-107. Assurance of availability of standard housing.** — Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person on or after the effective date of this chapter [*July 31, 1975*], the agency shall assure that, within a reasonable period of time prior to displacement, there will be available in areas not generally less suitable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, dwellings that are decent, safe, and sanitary according to contemporary community standards and that are equal in number to the number of and available to displaced persons who require dwellings and that are reasonably accessible to the places of employment of said persons, except that regulations issued pursuant to §3-108 may prescribe situations when these assurances may be waived.

Source: P.L. No. 6-71 §2; 67 TTC §507 (1980)

**§3-108. Authority of chief executive to promulgate regulations.** —

(1) The chief executive in each local jurisdiction of the state of Pohnpei shall adopt rules and regulations necessary to assure that:

(a) The payments and assistance authorized by this chapter shall be administered in a manner that is fair and reasonable, and as uniform as practicable;

(b) A displaced person who makes proper application for a payment authorized by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(c) Any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of payment, may have his application reviewed by the Governor.

(2) The Governor may prescribe other regulations and procedures, consistent with this chapter.

Source: P.L. No. 6-71 §2; 67 TTC §508 (1980)

**§3-109. Administration.** — In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the agency with the approval of the Governor may enter into contracts with any individual, firm, association or corporation for services in connection with those programs, or may carry out its functions under this chapter through any federal agency or any department or instrumentality of the state of Pohnpei or its political subdivisions having an established organization for conducting relocation assistance programs.

Source: P.L. No. 6-71 §2; 67 TTC §509 (1980)

**§3-110. Availability of funds.** — Funds appropriated or otherwise available to any agency for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out this chapter as applied to that purpose or project.

Source: P.L. No. 6-71 §2; 67 TTC §510 (1980)

**§3-111. Payments not to be considered as income or resources.** — No payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any law of the state of Pohnpei, or for the purpose of any tax law. These payments shall not be considered as income or resources of any recipient of public assistance and the payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

Source: P.L. No. 6-71 §2; 67 TTC §511 (1980)

**§3-112. Appeal procedure.** — Any person or business concern aggrieved by a final administrative determination pursuant to §3-108(1)(c) concerning eligibility for relocation payments authorized by this chapter may appeal that determination to the Trial Division of the Pohnpei Supreme Court in the area in which the land taken for public use is located or the rehabilitation program is conducted.

Source: P.L. No. 6-71 §2; 67 TTC §512 (1980)

**TITLES 44 & 45  
[RESERVED]**

LAND ACQUISITION BY GOVERNMENT

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