

**CHAPTER 15
EMINENT DOMAIN – GOVERNMENT’S POWER**

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§ 15101. Acquisition of Property by Exercise of Eminent Domain.

The government of Guam shall have power to acquire property by the exercise of eminent domain.

SOURCE: CC § 1001 as amended by P.L. 12-107.

§ 15102. Eminent Domain Defined.

Eminent Domain is the right or power of the government to take private property for public use, the right of the government or department or agency thereof, or public corporation to whom the power is delegated by law to condemn private property for public use and to appropriate the ownership and possession thereof for such use upon paying the owner due compensation therefor.

SOURCE: CCP § 1237.

§ 15103. Public Use Defined.

Public use means any use of purpose inuring to the benefit of the public generally or any substantial segment thereof. When the Guam

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Legislature declares a use to be public, such use shall be presumed to be an authorized public use, but the contrary may be proved.

SOURCE: CCP § 1237.

§ 15104. Reversion for Failure to Make Public Use.

Subsequent to any taking of private lands by condemnation, the Government shall be allowed a period of five (5) years to proceed with the public use it has declared to be the reason for condemning the property, or an alternative public use should it become necessary due to a compelling public interest. Upon a failure of the Government to so proceed with the specified or alternative use, the former land owner shall have a right to petition the Superior Court for an order to set aside the taking. Upon a finding that the Government has not so proceeded with the specified or alternative use, the Superior Court shall set aside the taking and revert full title to the property in the former owner, his heirs, successors or assigns upon the refund to the Government of any compensation paid for the property.

SOURCE: CCP § 1238.1 enacted by P.L. 12-103.

§ 15105. Funding for Exercise of Eminent Domain.

(a) The power of Eminent Domain may be exercised by the government of Guam upon authorization and appropriation by the Guam Legislature of funds necessary for payment of just compensation. Such power shall be exercised by the Governor of Guam. If the Legislature enacts and the Governor approves an appropriation of funds for a specified public use, such appropriation shall be deemed to include the authorization for condemnation of private property for such use.

(b) The power of Eminent Domain may also be exercised by the government of Guam upon authorization and appropriation of funds by the Congress of the United States for public use within the Territory of Guam. An appropriation by the Congress of the United States for a specific public use shall be deemed to authorize the acquisition by condemnation or otherwise of private property for such use.

SOURCE: CCP § 1239.

NOTE: See *Government of Guam v. Moylan* (1969) 407 F.2d. 567.

§ 15106. Jurisdiction: Procedure.

The Superior Court of Guam shall have jurisdiction over all actions for condemnation of private property for public use by the government of

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Guam. The procedure in such actions will be governed by the appropriate provisions of the Rules of the Superior Court.

SOURCE: CCP § 1240 repealed and reenacted by P.L. 12-85.

§ 15107. Eminent Domain: Lands, Easements, or Rights of Way for Public Use; Taking of Possession and Title; Authority; Procedure.

In any proceeding in any court of the Territory of Guam which has been or may be instituted by and in the name of and under the authority of the government of Guam for the acquisition of any land, or easement, or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the government of Guam. Said declaration of taking shall contain or have annexed thereto—

(1) A statement of the authority under which and the public use for which, said lands are taken.

(2) A description of the lands taken sufficient for the identification thereof.

(3) A statement of the estate or interest in said lands taken for such public use.

(4) A plan showing the lands taken.

(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

Upon the filing of said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such estate or interest therein as is specified in said declaration, shall vest in the government of Guam, and said lands shall be deemed to be condemned and taken for the use of the government of Guam, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of six percent (6%) per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have

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been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the government of Guam for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have the power to fix the time within which, and the terms upon which, the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

SOURCE: CCP § 1241.

§ 15108. Same: Taking in Advance of Final Judgment; Appeal or Giving Bond as Preventing or Delaying Vesting of Title.

No appeal in any cause under this Chapter nor any bond or undertaking given therein shall operate to prevent or delay the vesting of title to such lands in the government of Guam.

SOURCE: CCP § 1242.

§ 15109. Same: Taking in Advance of Final Judgment; Obligation of the Government of Guam to Pay Ultimate Award When Fixed.

No action irrevocably committing the government of Guam to the payment of the ultimate award shall be taken unless the Governor of Guam shall be of the opinion that the ultimate award probably will be within any limits prescribed by the Guam Legislature or the Congress of the United States on the price to be paid.

SOURCE: CCP § 1243.

§ 15110. Same: Taking in Advance of Final Judgment; Right as Additional to Existing Rights, Powers, and Authority.

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The right to take possession and title in advance of final judgment in condemnation proceedings as provided in this Title shall be in addition to any right, power, or authority conferred by the laws of the government of Guam and shall not be construed as abrogating, limiting, or modifying any such right, power, or authority.

SOURCE: CCP § 1244.

§ 15111. Surveys on Private Property.

When the taking of private property for public use in the Territory of Guam has been authorized either by the Guam Legislature or the Congress of the United States, the government of Guam and its employees, agents, and contractors shall have the right to enter upon any private property which is or may be involved in the public use concerned and to make such surveys as may be necessary to determine precisely the requirements for the public use involved.

If in the course of survey authorized by this section the private property surveyed is damaged to the detriment of the owner, the owner shall have and may assert in accordance with law a claim for compensation for such damage against the government of Guam.

SOURCE: CCP § 1245.

§ 15112. Attorney's Fees and Costs.

In any inverse condemnation action instituted by a private landowner to obtain fair compensation for land that has been expropriated by the government of Guam for public purposes and for which no action in eminent domain has been instituted, the court may award the landowner reasonable attorney's fees and court costs in addition to fair compensation.

SOURCE: Added by P.L. 22-73:8.
