

# CIVIL PROCEDURE

## SUBCHAPTER G

### EMINENT DOMAIN

#### Section 893.1. Who May Exercise Authority

The Tribal Legislative Body, and any officer or Agency of the Tribe specifically authorized to do so by statute may obtain real or personal property by eminent domain proceedings in conformance with the Tribal Constitution, the Indian Civil Rights Act, and this Subchapter.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

#### Section 893.2. What Property May be Condemned by Eminent Domain

Except property made exempt from eminent domain by the Tribal Constitution and statutes, all property real and personal within the tribal jurisdiction, not owned by the Tribe and its agencies, shall be subject to eminent domain except title to property held in trust by the United States for an Indian or Tribe, or property held by an Indian or Tribe subject to a restriction against alienation imposed by the United States unless the United States has consented to the eminent domain of said property. Any lease or tribally granted assignment, or other non-trust right to use such trust or restricted property conveyed by tribal or federal law shall be subject to eminent domain in conformism with the Tribal Constitution and statutes and the Indian Civil Rights Act.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

#### Section 893.3. Condemnation of Property

(a) **Applicability of Other Rules.** The Rules of Civil Procedure for the Courts of the Tribe govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this Subchapter.

(b) **Joinder of Properties.** The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c) **Amount to be Paid.** The owner shall be entitled to receive just compensation for all property or rights to property taken from him in eminent domain proceedings.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

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### Section 893.4 Complaint

(a) **Caption.** The complaint shall contain a caption as provided in Section 110(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(b) **Contents.** The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendant only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendant all person having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interest to be acquired, and also those whose names have otherwise been learned. All other may be made defendants under the designation "Unknown Owners." Process shall be served as provided in Section 893.5 of this Subchapter upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in Section 893.6 of this Subchapter. The Court meanwhile may order such distribution of a deposit as the facts warrant.

(c) **Filing.** In addition to filing the complaint with the Court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 893.5 Process in Eminent Domain

(a) **Notice; Delivery.** Upon the filing of the complaint the plaintiff shall forthwith deliver to the clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons.

(b) **Same; Form.** Each notice shall state the Court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of his property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within twenty 20 days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's

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attorney and an address where he may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

(c) **Service of Notice.**

(1) Personal Service. Personal service of the notice shall be made in accordance with the rules for personal service of summons upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known. A copy of the complaint may, but need not, be served.

(2) Service by Publication. Upon the filing of a certificate of the plaintiff's attorney stating that he believes a defendant cannot be personally served, because after diligent inquiry his place of residence cannot be ascertained by the plaintiff or, if ascertained, that it is beyond the territorial limits of personal service as provided in this Section, service of the notice shall be made on that defendant by publication in a newspaper published in the county where the property is located, or if there is no such newspaper, then in a newspaper having a general circulation where the property is located, once a week for not less than three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this Section but whose place of residence is then known. Unknown owners may be served by publication in a like manner by a notice addressed to "Unknown Owners."

(3) When Publication Service Complete. Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiff's attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

(d) **Return; Amendment.** Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 893.6 Appearance or Answer

If a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter he shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of his property, he shall serve his answer within twenty 20 days after the service of notice upon him. the answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking of his property. A defendant waives all defenses and objection not so presented, but at the trial of the issue of just compensation, whether or not he has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he

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may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 893.7. Amendment of Pleadings

Without leave of Court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by Section 893.9 of this Subchapter. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Section 231(b) of this Title, upon any party affected thereby who has appeared and, in the manner provided in Section 893.9 of this Subchapter, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the Court for the use of the defendants at least one copy of each amendment, and he shall furnish additional copies on the request of the clerk or of a defendant. Within the time allowed by Section 893.6 of this subchapter, a defendant may serve his answer to the amended pleading, in the form and manner and with the same effect as there provided.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 893.8. Substitution of Parties

If a defendant dies or becomes incompetent or transfers his interest after his joinder, the court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in Section 893.5(c).

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 893.9 Dismissal of Action

(a) **As of Right.** If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in the property or take possession thereof, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(b) **By Stipulation.** Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the Court may vacate any judgment that has been entered.

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(c) **By Order of the Court.** At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the Court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, without awarding just compensation of the possession, title or lesser interest so taken, or, if the possession, title, or interest in such property is to be returned to the defendant upon dismissal by motion of the plaintiff, the Court may also award reasonable actual damages incurred, not to exceed One Thousand Dollars (\$1,000.00) in excess of fair rental value of the premises during the period in which the plaintiff held possession or title against the plaintiff notwithstanding the doctrine of sovereign immunity. The Court at any time may drop a defendant unnecessarily or improperly joined.

(d) **Effect.** Except as otherwise provided in the notice, or stipulation of dismissal, or order of the court, any dismissal is without prejudice.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 893.10. Deposit and Its Distribution

The plaintiff shall deposit with the Court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted by statute. In such cases the Court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceed the amount which has been paid to him on distribution of the deposit, the Court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the Court shall enter judgment against him and in favor of the plaintiff for the overpayment.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]

### Section 893.11. Costs

Costs shall normally be paid by the Plaintiff in condemnation actions unless the court, in its discretion determines that a defendant should pay their own costs, which may include a reasonable portion of plaintiff's costs because of inequitable conduct or other statutory reason.

[History: PUBLIC LAW #SF-85-58, June 21, 1985.]