

Alicia G. Limtiaco
Attorney General



Alberto E. Tolentino
Chief Deputy Attorney General

Office of the Attorney General

June 19, 2008

LEGAL MEMORANDUM

Ref: DPW 08-0555

TO: Receiver, *U.S.A. v. Government of Guam*, District Court of Guam, Civil Case No. 02-00022

FROM: Attorney General *K.*

SUBJECT: Ownership of Land in Condemnation Proceeding

You have asked whether Gershman, Brickner & Bratton, Inc. as the Receiver appointed by the U.S. District Court of Guam judge in *U.S.A. v. Government of Guam, Civil Case No. 02-00022* may apply to the government of Guam for a zone change and solid waste permit as the "owner" of the Layon land being condemned for the government's new landfill site.

The application procedure for zone changes and solid waste permits require that the "owner" of the land, which is the subject of an application, sign off on the application. The land for which the zone change and solid waste permit is sought is currently the subject of a condemnation proceeding filed in the Superior Court of Guam in *Government of Guam v. 1,348,474 Square Meters, More or Less*, Civil Case No. CV 0084-08. On January 24, 2008, the government filed a Declaration of Taking to use the land as a new solid waste sanitary landfill, and deposited \$1,200,000 into the registry of the court as the estimated compensation for the land taking.

The two sections of Guam law on eminent domain relative to this discussion provide in pertinent part as follows:

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

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,

21 G.C.A. §15107. [Emphasis added.]

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

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. [Emphasis added.]

21 G.C.A. §15110. [Emphasis added.] See, also, 21 G.C.A. §15108.¹

The sections quoted above make it clear that upon the happening of two things, title passes to the government of Guam, and that this passage of title takes place in advance of the final judgment. First, the government must file a declaration of taking that contains all the information required by the eminent domain law. Second, the government must file with the court a deposit in the amount of compensation estimated to cover the taking as specified in the declaration.

Section 15107 of Guam's eminent domain law is very similar to that of several other states² and that of the Federal government in that they all pass title immediately upon the payment of compensation, usually to the court. Compare the Federal law which

¹ Section 15108 provides "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."

² Some states that currently have, or used to have, a law almost identical to Guam's 21 G.C.A. §15107 vesting title upon filing of the declaration of taking and depositing an estimated compensation amount into court are California, Michigan, Pennsylvania, South Dakota, and Alaska. See, e.g., *Weston Investment Co. v. State*, 189 P.2d 262 (Cal. 1948); *Goodwill Community Chapel v. General Motors Corp.*, 503 N.W.2d 705 (Mich. App. 1993); *Urban Redevelopment Authority of Pittsburgh v. Hackaday*, 501 A.2d 349 (Pa. 1985); *South Dakota Department of Transportation v. Freeman*, 378 N.W.2d 241 (S.D. 1985); *State v. 18,018 Square Feet, More or Less*, 621 P.2d 887 (Ala. 1980). For the District of Columbia, see *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153 (1992).

provides in pertinent part:

(b) Vesting of Title. - - On filing the declaration of taking and depositing in the court, to the use of the persons entitled to the compensation, the amount of the estimated compensation stated in the declaration - -

- (1) title to the estate or interest specified in the declaration vests in the Government;
- (2) the land is condemned and taken for the use of the Government; and
- (3) the right to just compensation for the land vests in the persons entitled to the compensation.

40 U.S.C. §3114(b).

On Guam, the title that vests is "fee simple absolute." *Black's Law Dictionary, 5th ed.*, defines "absolute title" and "fee simple absolute," respectively, as:

... an exclusive title, or at least a title which excludes all others not compatible with it. An absolute title to land cannot exist at the same time in different persons or in different governments.

... an estate limited absolutely to a man and his heirs and assigns forever without limitation or condition. An absolute or fee-simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate. Such estate is unlimited as to duration, disposition, and descendibility. *Slayden v. Hardin*, 79 S.W.2d 11,12 (Ky. xxxx).

Also, "to vest" means "to give an immediate, fixed right of present or future enjoyment" or "to deliver full possession of land or of an estate." *Black's Law Dictionary, 5th ed.*

When the ordinary meaning of the terms "to vest" and "fee simple absolute title" is applied to 21 G.C.A. §15107, one would have to conclude that the government of Guam acquired title immediately on January 24, 2008 when it filed in the Superior Court of Guam its Declaration of Taking and deposited \$1,200,000 as estimated compensation.

In fact, §15107 also provides that once the declaration and deposit are filed, the parties in interest may at any time file an application to have the deposit paid over to them. The right of private land owners to receive compensation is an important element in determining whether a taking has actually occurred, and when compensation is payable, a taking is deemed to have taken place. See *LaFontaine's Heirs at Law and Next of Kin*

To: Receiver

Subject: Title to Land in Condemnation Proceeding

June 19, 2008

Page -4-

v. LaFontaine's Heirs at Law and Next of Kin, 107 A.2d 653 (Md. 1954). Since §15107 makes the compensation money available to the parties in interest immediately upon the government's filing of the declaration and deposit, then the last step necessary to complete the taking must have taken place when the declaration was filed and deposit made to the court.

Thus, Guam's eminent domain law makes it abundantly clear that the private landowners title is divested to the government immediately upon the filing of the declaration of taking and deposit of estimated compensation into court. In the case of *Government of Guam v. 1,348,474 Square Meters, More or Less*, Civil Case No. CV 0084-08, that took place on January 24, 2008.

Therefore, the government of Guam is now the owner of the property in the condemnation case, and the government of Guam may represent itself as the owner on the zone change and solid waste permit applications, or for any other purpose. The Department of Land Management has general jurisdiction over all government land not in the inventory of Chamorro Homelands, and the Department of Public Works (DPW) has control and administrative authority over the Layon landfill land.

When preparing the applications, the Receiver must indicate that the government of Guam is the title holder and owner of the property. However, since the Receiver has assumed all the powers and duties of the Solid Waste Division of DPW, and of DPW itself insofar as DPW affects the government's compliance with the Consent Decree, the Receiver may sign the application on behalf of DPW.



DEBORAH RIVERA
Assistant Attorney General