

******VACATING ROADS******

1. The sample petition for the vacation of highways is found in the back of the manual.
2. The sample notice of the hearing on the petition for vacation of the public roadway is found right after the petition form.
3. Next is a sample resolution on which the board of supervisors vote. Use this form as it is, do not copy back and front, do not staple. The form meets the criteria needed by the Register of Deeds.
4. The vacation of roads is addressed in SDCL 31-3-6 through 31-3-14. Pages in the manual are 55 – 56.

DO NOT FORGET THE LAST STEP, 31-3-11, REGISTER THE VACATION OF THE ROAD AT THE COURTHOUSE IN THE REGISTER OF DEEDS OFFICE AND ALSO NOTIFY YOUR AUDITOR.

DO NOT STAPLE SHEETS TOGETHER!

I am enclosing a copy of the new forms you need to file the information at the courthouse and the other forms mentioned above.

Vacating Roads

Jay Leibel, Attorney

Over the past few months the Association has received an increased number of calls in regard to the vacation of roads. Due to this interest, it was thought a review of the necessary requirements might be helpful.

The laws pertaining to this matter are set forth in SDCL 31-3. This chapter is basically reprinted starting on page 81 of your manual entitled "Highways, Location, Change, and Vacation".

There are a number of steps that need to be taken to legally vacate a road. Those steps are summarized as follows:

1. **Two or more voters submit a petition to the township board requesting a specified road(s) be vacated.**
2. **Upon receipt of the petition, the township board shall give notice of public hearing on the petition which notice needs to be published for at least two consecutive weeks in the local newspaper.**
3. **After the public meeting, the township board shall by resolution vote to either vacate the road or not to vacate the road.**
4. **In the event of a vote to vacate, that resolution shall be printed in the minutes of the board and the resolution published in the newspaper for two consecutive weeks.**
5. **The vacation becomes official thirty (30) days after the second publication provided there is no appeal as provided by law.**
6. **After passage, the resolution must be recorded in the county register of deeds office in order to complete the process.**

Matters of this nature are to be looked at on an individual basis. Simply because the township elects to approve one vacation does not mean it sets a precedence for any and all other requests. Each petition is evaluated on it's individual merits.

The township board should weigh such factors as access to individual property, future possibilities of increased use, maintenance costs, liability to the township, as well as the desires of the adjacent landowners and members of the township. It must be noted that no township may vacate a highway which provides access to public lands. Public Lands for this purpose do not include any school or public lands.

The issue of who pays the costs of a vacation action varies from township to township. Some are of the position it is the responsibility of the township to bear any and all costs associated. Others feel to the contrary and require the petitioners to pay all the costs. Still others have split the cost. For example, the petitioners are responsible for the cost of the petition and resolution and the township bearing the cost of publication and recording fees.

We would suggest if you have any questions or concerns of a specific nature that you contact the state association or an attorney of your own choosing.

Petition for the Vacation of Highway

TO THE HONORABLE BOARD OF THE TOWNSHIP OF _____,
_____ COUNTY, SOUTH DAKOTA:

That the petitioners herein respectfully represent that they are electors residing in the organized civil township of _____; and that as residents and electors of said township, they feel that the public convenience and necessity will be better served by the vacation of a roadway or highway that they are seeking to have vacated is described as being located, to with:

(Sample description)

That portion of the township highway lying on the section line running north and south between Section ___ and Section ___ and/or ___ mile; said roadway being approximately _____ feet in width and approximately _____ feet and/or miles in length; that further your petitioners state that as additional information, they point out:

(Sample information)

This roadway is not currently being used, nor due to its location and expense of development as a roadway do they feel that it will ever be used; or (in the alternative) this roadway has been used, but is not adequately developed due to the traffic upon it, nor do your petitioners feel that it will ever be further developed because of the terrain and limited use of the highway;

WHEREFORE, your petitioners pray that the Board of Supervisors of _____ Township, by resolution, determine that the public interest will be better served by the vacating of the highway described as: (description); and make its Order vacating the same.

Dated this _____ day of _____, 20__.

(Signature of Petitioner)

(Signature of Petitioner)

NOTICE OF HEARING ON PETITION FOR VACATION OF PUBLIC ROADWAY

Notice is hereby given that a Petition requesting that a certain public roadway be vacated in _____ Township, _____ County, South Dakota, pursuant to SDCL 31-3-6, as hereinafter specifically described has been received by the Board of Supervisors of _____ Township; that the Petition may be examined by contacting the Clerk of the Township at the address indicated below; that the specific description of the property being requested to be vacated is:

(Description of road to be vacated)

Therefore, notice is hereby given that the Board of Supervisors of _____ Township will hold a public hearing to consider the vacation of the above described public roadway; that such meeting will be held on _____, the _____ day of _____, 20____, at _____ o'clock ____ .M. at the location of the roadway proposed to be vacated as above described.

That any persons interested in the proposed action may be present at said date and time and present their information, opinions, and/or arguments relative to the proposed action. Any persons unable to attend this hearing may deliver their written opinion for consideration by the Board of Supervisors, such testimony should be delivered prior to the date and time of the scheduled hearing by mailing or delivering the opinion to: _____, Clerk of _____ Township, _____.

_____ TOWNSHIP

By _____
_____ Clerk

IT IS FURTHER ORDERED that all bridges, guardrails and culverts are hereby deemed to revert to (not) revert to and become the personal property and possession of the _____ Township.

The Motion was seconded by Supervisor _____ and upon roll call the vote was as follows:

Supervisor: _____ Yea
_____ Yea
_____ Yea

STATE OF SOUTH DAKOTA)
 :
COUNTY OF _____)

I, _____, being the duly elected, qualified and acting Clerk of the Board of Supervisors of _____ Township, _____ County, South Dakota, do hereby certify that the foregoing is a true and correct copy of the Resolution on the action thereon by the Board of Supervisors of _____ Township, _____ County, South Dakota, at a regular meeting of said Board, held on the _____ day of _____, 20____, as the same appears and is now recorded in the minutes of the Clerk of the said Board of said _____ Township and that the same is a true and correct transcript thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

Clerk

Township _____ Name of person who prepared and filed Resolution: _____ Address _____ City _____ State ___ Zip _____ Phone number _____
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RESOLUTION AND ORDER VACATING ROADWAY

Supervisor _____ of _____ Township _____ County, South Dakota, presented the following Resolution and Order and moved its adoption:

WHEREAS, a petition having been received asking for the vacation of the highway described as: _____ (*description*); and further said petition being in proper form and executed by more than the required number of electors of _____ Township; and further it having been determined that a vacation of said highway will better serve the public convenience; and that further this petition having come on at a regular (special) meeting of the Board; and (no one) appearing in opposition thereto; and said Supervisors having considered said matter and being fully advised in the premises and considering it expediently advisable to do so;

NOW, THEREFORE, BE IT RESOLVED, AND IT IS HEREBY ORDERED:

That the said highway described as; (*description*) be, and the same is hereby declared to be vacated; and further that a copy of this Resolution and Order be spread on the minutes of the Board;

IT IS FURTHER ORDERED that said resolution shall be published in the (newspaper) once each week for (2) consecutive weeks; and that after such publication, such highway shall be, after a lapse of thirty (30) days, vacated without further proceedings unless appealed as hereinafter provided; and that the Clerk herein is further ordered and directed to cause to be recorded a true and correct copy of this Resolution and Order in the office of the Register of Deeds in and for _____ County, South Dakota;