

# ***STEPS TO VACATING ROADS***

*By 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 54 of your manual entitled “ 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) to be vacated.
2. Upon receipt of the petition, the township board shall give notice of public hearing on the petition of 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 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 precedence for any and all other requests. Each petition is evaluated on its 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 of 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.