South Dakota Statutes

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CHAPTER 45-4

LOCATION AND WORKING OF MINING CLAIMS

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45-4-1.  Discovery of lode within limits of claim essential. No location of a mining claim may be made until the discovery of the vein or lode within the limits of the claim located.

45-4-2.  Conditions precedent to filing of location certificate. Before filing a location certificate pursuant to § 45-4-4, the discoverer shall locate the claim:

(1)  By erecting a monument at the place of discovery and posting on the monument a plain sign or notice containing the name of the lode, the name of any locator, the date of discovery, the number of feet claimed in length on either side of the discovery, and the number of feet in width claimed on each side of the lode; and

(2)  By marking the surface boundaries of the claim.

45-4-3.  Marking surface boundaries of claim. Surface boundaries shall be marked by eight substantial posts, hewed or blazed on the side or sides facing the claim and plainly marked with the name of the lode and the corner, end, or side of the claim that they respectively represent and sunk in the ground; one at each corner and one at the center of each side line and one at each end of the lode. If it is impracticable because of rock or precipitous ground to sink such posts, they may be placed in a monument of stone.

45-4-4.  Location certificate--Recording of claim--Contents--Validity. The discoverer of a lode shall within sixty days from the date of discovery record the claim in the office of the register of deeds of the county in which the lode is located by a location certificate which shall contain:

(1)  The name of the lode;

(2)  The name of the locator or locators;

(3)  The date of location;

(4)  If a lode claim, the number of linear feet in length claimed along the course of the vein each way from the point of discovery, with the width claimed on each side of the center of the vein; the general course of the vein or lode as near as may be; and a description of the claim located by reference to some natural object or permanent monument as will identify the claim.

Any location certificate of a lode claim that does not contain the information specified in this section is void.

45-4-5.  Location certificate limited to single location. No location certificate may claim more than one location whether the location is made by one or several locators. If the certificate purports to claim more than one location, it is void except as to the first location described in the
certificate. If the locations are described together or so that it cannot be determined which location is first described, the certificate is void for all locations described in the certificate.

45-4-6. Dimensions of lode claim—Determination of width by election. The length of any lode claim may equal but not exceed fifteen hundred feet along the vein or lode. The width of a lode claim shall be three hundred feet on each side of the center of the vein or lode. However, any county may, at any general election, determine upon a width less than three hundred feet but not less than twenty-five feet on each side of the vein or lode.

45-4-7. Fee for recording and certification of location certificate—Certified copy. The register of deeds may receive the fee as established by subdivisions 7-9-15(1) and (2) for each location certificate recorded and certified by the register of deeds and shall furnish the locators with a certified copy of the certificate if demanded.

45-4-8. Additional location certificate—Relocation—Existing rights of others not affected—Claimant not precluded from proving title under previous location. If the locator of any mining claim or the locator’s assigns:

(1) Believes that the original certificate was defective or erroneous;

(2) Believes that the requirements of the law were not complied with before filing; or

(3) Desires to change the surface boundaries of the claim or to take in any part of an overlapping claim which has been abandoned;
the locator or the locator’s assigns may file an additional certificate subject to the provisions of this chapter. No such relocation interferes with the existing rights of others at the time of the relocation, and no such relocation nor the record of any such relocation precludes the claimant from proving any such title as the claimant may have held under any previous location.

45-4-9. Relocation of abandoned lode—Fixing of boundaries—Erection of new discovery monument—Contents of relocation certificate. The relocation of an abandoned lode mining claim shall be by fixing new boundaries in the same manner as if it were the location of a new claim, or the relocator may erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new discovery monument shall be erected. In any case whether the whole or part of an abandoned claim is taken, the location certificate must state that the whole or any part of the new location is located as abandoned property.

45-4-10. Location certificate—Surface ground included and excluded. The location or location certificate of any lode claim includes all surface ground within the surface lines of the lode claim and all lodes and ledges throughout their entire depth, the top or apex of which lie inside of the lode claim lines extended vertically and including parts of the lodes or ledges as they continue by dip beyond the side lines of the claim. The lode claim does not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether
by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

45-4-11. Longitudinal limits of claim. If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior.

45-4-12. Repealed by SL 1993, ch 330, § 1

45-4-13. Right to mine separate from right to surface--Security required of miner--Enforcement. When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it be refused, may enjoin such miner from working until such security is given.

45-4-14. Fencing of mining claim or mineral property for protection of livestock--Duties on abandonment--Liability for damages--Violation as misdemeanor. Any person, firm, association, or corporation who makes or sinks discovery shafts, open cuts, adits, or equivalents on a mining claim or on mineral property, ground, or premises shall immediately, while using the discovery shafts, open cuts, adits, or equivalents, make them secure and safe, either by means of a substantial fence or otherwise, to guard against the possibility of livestock falling into or becoming injured or destroyed by reason of the openings. Before abandoning the discovery shafts, open cuts, adits, or equivalents, the person, firm, association, or corporation shall fill in or slope such openings, as a further precaution. Any person, firm, association, or corporation that fails or refuses to fully comply with this section is liable in damages for injury to or destruction of livestock caused thereby to the owner of the livestock and is guilty of a Class 2 misdemeanor.

45-4-15. Actions involving mining claims--Proof of customs, usages, or regulations. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this state and of the United States, must govern the decision of the action.

Source: CCivP 1877, § 649; CL 1887, § 5463; RCCivP 1903, § 689; RC 1919, § 2865; SDC 1939 & Supp 1960, § 37.1522.
45-4-16. Actions involving mining claims--Survey ordered by court. In all actions in any circuit court of this state in which the title or right of possession to any mining claim is in dispute, the court may, upon application of any of the parties to the suit, enter an order for the underground as well as surface survey of the part of the property in dispute as may be necessary to a just determination of the question involved.

45-4-17. Order requiring survey of disputed claim--Designation of surveyor--Witnesses to examine property. The order specified in § 45-4-16 shall designate some competent surveyor not related to any of the parties to the suit nor in any way interested in the result of the suit to conduct the survey. Upon the application of the party adverse to the application, the court may also appoint some competent surveyor to be selected by the adverse applicant who shall attend the survey and observe the method of making the survey at the cost of the party asking for the survey. The order may specify the names of witnesses named by either party, not exceeding three on each side, who may enter into and examine the property.

45-4-18. Order requiring survey of disputed claim to be made in open court or upon notice--Agreement--Affidavits. No such order may be made for survey and inspection except in open court or in chambers upon notice of at least six days, and only by agreement of parties or upon the affidavit of two or more persons that the survey and inspection is necessary to the just determination of the suit. The affidavits shall state the facts in the case and the necessity for the survey. No such order may be made unless it appears that the party asking for the order has been refused the privilege of survey and inspection by the adverse party.

45-4-19. Order for removal of obstacles in drifts or shafts. The court may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of the property if removal is shown to be necessary to a just determination of the question involved.

45-4-20. Association with another to obtain possession of a lode, gulch, or placer claim by force and violence, by threats of violence, or by stealth--Misdemeanor. Any person who associates with another to obtain possession of a lode, gulch, or placer claim, then in the actual possession of another, by force and violence or by threats of violence or by stealth, and who carries out such purpose by:

1. Making threats against the person or persons in possession;
2. Entering the lode or mining claim for such purposes; or
3. Entering a lode, gulch, placer claim, quartz mill, or other mining property, or, not being upon the property but being within hearing distance of the property, and making threats or use of any language, sign, or gesture calculated to intimidate any person at work on the
property or from continuing work on or in the property, or intimidating others from working on or in the property, is guilty of a Class 1 misdemeanor.

45-4-21. Trials under § 45-4-20--Evidence sufficient for conviction. On trials under § 45-4-20, proof of a common purpose of two or more persons to obtain possession of property or to intimidate laborers as set forth in § 45-4-20, accompanied or followed by any of the acts specified, by any of them, is sufficient evidence to convict any person committing such acts, although the parties may not be associated together at the time of committing the acts.

45-4-22. Writs of injunction to restore person to possession of mining property. The circuit court may issue writs of injunction for affirmative relief having the force and effect of a writ of restitution restoring any person to the possession of any mining property:

1. From which the person may have been ousted by force and violence or by fraud;
2. From possession of which the person is kept by threats; or
3. If such possession was taken from the person by entry of the adverse party on a Sunday or legal holiday or while the party in possession was temporarily absent from the property.

The granting of the writ extends only to the right of possession under the facts of the case with respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had been issued.

45-4-23. Recording required--Affidavit of labor--Recording fee. On or before December thirtieth, following the end of each federal assessment year for which labor is performed or improvements are made or compliance requirements arising under federal law to hold a mining claim have been met, the person on whose behalf such labor was performed, improvements made, or other compliance requirements met, shall cause to be recorded with the register of deeds either:

1. An affidavit specifying any such labor or improvements; or
2. An affidavit or other recordable document specifying compliance with federal law. Any such instrument recorded with the register of deeds on or before December 30, 1993, specifying compliance with federal law for assessment year 1993 shall be effective to satisfy the 1993 filing requirements of this statute.
The register of deeds shall charge and receive a fee for recording the instruments included in this section in accordance with subdivisions 7-9-15(1) and (2) and an additional fee of twenty-five cents for each such claim listed.