

Acquiring Real Property for Federal and Federal-Aid Programs and Projects



Uniform Relocation Assistance and Real Property Acquisition Policies Act of
1970 as Amended. Modified specifically for Alaska. Revised June 2005

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INTRODUCTION

Government agencies often need to acquire private property for public programs or projects. This kind of acquisition has long been recognized as a right of organized government and is known as “the power of eminent domain.” However, our governments cannot abuse this power. The Fifth Amendment of our Constitution states that private property shall not “be taken for public use, without just compensation.” The Fourteenth Amendment provides comparable protection against abuse by State governments.

This brochure explains the rights and benefits of property owners whose real property is to be acquired, in whole or in part, for a federally funded program or project.

The Fifth and Fourteenth Amendments were written when our country had a largely rural population and most of the land affected by public improvement projects was undeveloped. The picture has changed dramatically today. Large urban regions with highly developed land areas and extremely dense populations are now the rule and not the exception.

Since 1971, the acquisition of land for a variety of government programs and projects has been subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act). The Uniform Act provides for fair and equitable treatment of persons whose property will be acquired or who will be displaced because of programs or projects financed with Federal funds. Congress amended and updated the Uniform Act in 1987.

The Uniform Act has three parts or Titles. Title I contains general provisions and definitions. Title II has provisions for relocation assistance for persons displaced because of Federal and federally assisted programs. Title III, the Uniform Real Property

Acquisition Policy, has provisions for consistent treatment of owners when their property is acquired by the Government. This brochure explains the acquisition procedures required by Title III.

All Federal, State, and local public agencies (and others receiving Federal financial assistance for public programs and projects requiring the acquisition of real property) must comply with the policies and provisions set forth in the Uniform Act and its amendments. The rules for the Uniform Act were first published in the Federal Register of March 2, 1989. The rules are reprinted each year in the Code of Federal Regulations, Title 49, Part 24.

The rules provide uniform policy and procedures for the acquisition of real property by all Federal, State, and local government agencies (and by certain private persons) who receive financial assistance for any program or project from the United States Government. The acquisition itself does not need to be federally funded for the rules to apply. If Federal funds are used in any phase of the program or project, the rules of the Uniform Act apply. The rules encourage acquiring agencies to negotiate with property owners in a prompt and amicable manner so that litigation can be avoided.

This brochure is consistent with the rules of the Uniform Act for appraisal and acquisition. These rules assure property owners that their interests will be protected. All Agencies acquiring real property for federally funded projects and programs are required to ensure that you will be treated fairly and equitably. The information in this brochure should assist you in understanding the requirements that must be met by Agencies and your rights and obligations.

IMPORTANT DEFINITIONS

ACQUISITION - The process of acquiring real property (real estate) or some interest therein. See the definition of real property.

AGENCY - A governmental organization (either Federal, State, or local) or a nongovernmental organization (such as a utility company, or a private person using Federal financial assistance for a program or project) that acquires real property or displaces a person.

APPRAISAL - The act or process of estimating the monetary value of an interest in property. The appraisal is to be independent and impartial and prepared by a qualified appraiser. It must set forth an opinion of defined value for an adequately described property. The value will be assigned as of a specific date and will be supported by the presentation and analysis of relevant market data. The term appraisal is also frequently used as a synonym for the written appraisal report.

CONDEMNATION - The legal process of acquiring private property for public use or purpose through the acquiring agency's power of eminent domain. Condemnation is usually not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. An acquiring agency then goes to court to acquire the needed property.

EASEMENT - In general, the right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary (i.e., limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right.

EMINENT DOMAIN - The right of a government to take private property for public use. In the United States, just compensation must be paid for private property acquired for federally funded programs or projects.

FAIR MARKET VALUE - The sale price that a willing and informed seller and a willing and informed buyer can agree to for a particular property.

INTEREST - A right, title, or legal share in something. People who share in the ownership of real property have an interest in the property.

JUST COMPENSATION - The price an Agency must pay to acquire real property. The price offered by the Agency is considered to be fair and equitable to both the property owner and the public. The Agency's offer to the owner is "just compensation" and may not be less than the amount established in the approved appraisal report as the fair market value for the property. If it becomes necessary for the acquiring Agency to use the condemnation process, the amount paid through the court will be just compensation for the acquisition of the property.

LIEN - A charge against a property in which the property is the security for payment of a debt. A mortgage is a lien. So are taxes. Customarily, liens must be paid in full when the property is sold.

NEGOTIATIONS - The process used by acquiring agencies to reach amicable agreements with property owners for the acquisition of needed property. An offer is made for the purchase of property in person or by mail, and the offer is discussed with the owner.

PERSON - Any individual, partnership, corporation, or association.

PERSONAL PROPERTY - In general, property that can be moved. It is not permanently attached to, or a part of, the real property. Personal property is not to be considered in the appraisal of real property.

PROGRAM OR PROJECT - Any activity or series of activities undertaken by a Federal Agency. Also, any activity undertaken by a State, local Agency, or individual where Federal financial assistance is used in any phase of the activity.

QUALIFIED APPRAISER - A person who, by education, experience, ability, and licensing or certification requirements is capable of preparing an appraisal of a particular piece of real estate.

REAL PROPERTY - The interest, rights, and benefits that go along with the ownership of real estate, which is the land and the improvements thereon.

PROPERTY APPRAISAL AND THE DETERMINATION OF JUST COMPENSATION

PROPERTY APPRAISAL

An Agency normally determines what specific property needs to be acquired for a public project or program only after the project has been planned and government requirements have been met. The Agency will also review public records and other information about property in the area.

You, the property owner, will be notified as soon as possible of (1) the Agency's interest in acquiring your property, (2) the Agency's obligation to secure any necessary appraisals, and (3) any other useful information.

When a government agency begins to acquire private property for public use, the first personal contact with you, the property owner, should be no later than during the appraisal of the property.

An appraiser will then contact you to make an appointment to inspect your property. The appraiser is responsible for determining the initial fair market value of the property. The Agency will use the appraiser's report to establish the just compensation to be offered for the property.

You, or any representative that you designate, will be invited to accompany the appraiser when the property is inspected. This provides you an opportunity to point out any unusual or hidden features of the property that the appraiser could overlook. At this time, you should also advise the appraiser if any of the following conditions exist:

(1) There are other owners. (2) There are tenants on the property. (3) There are, on your property, items of real or personal property that belong to someone else.

It would also be helpful to tell the appraiser about other properties in your area that have recently sold

The appraiser will inspect your property and note its physical characteristics. He or she will review sales of other properties similar to yours in order to compare the facts of those sales with the facts about your property. The appraiser will analyze all elements that affect value.

By law, the appraiser must disregard the influence of the future public project on the value of the property. However, the appraiser must consider normal depreciation and physical deterioration that has taken place.

The appraisal report will describe your property and the Agency will determine a value based on the condition of the property on the day that the appraiser last saw it, as compared with other similar properties that have sold.

JUST COMPENSATION

Once the appraisal has been completed, a review appraiser from the Agency will review the report to ensure that all applicable appraisal standards and requirements were met. The review appraiser will give the Agency an approved appraisal to use in determining the amount of just compensation to be offered for your real property. This amount will never be less than the fair market value established by the approved appraisal.

If the Agency is only acquiring a part of your property, any allowable damages or benefits to the remaining property will be included in this amount. The Agency will prepare a written offer of just compensation to provide to you when negotiations begin.

BUILDINGS, STRUCTURES AND IMPROVEMENTS

Sometimes buildings, structures, or other improvements considered to be real property are located on the property to be acquired. If this is the case, the Agency must offer to acquire such buildings, structures, or other improvements if they must be removed or if the Agency decides that the improvements will be adversely affected by the public program or project. When an improvement can be considered real property (if owned by the owner of the real property on which it is located) then this improvement will be treated as real property.

TENANT-OWNED BUILDINGS, STRUCTURES AND IMPROVEMENTS

Sometimes, tenants lease real property and build or add improvements for their use. Frequently, they have the right or obligation to remove the improvements at the expiration of the lease term. If, under State law, the improvements are considered to be real property, the Agency must make an offer to the tenants to acquire these improvements.

In order to be paid for these improvements, the tenant-owner must assign, transfer, and release to the Agency all right, title, and interest in the improvements. Also, the owner of the real property on which the improvements are located must disclaim all interest in the improvements.

Just compensation for an improvement will be the amount that the improvement contributes to the fair market value of the whole property, or its value for removal from the property (salvage value), whichever is greater.

A tenant-owner can reject payment for the tenant-owned improvements and obtain payment for his or her property interests in accordance with other applicable laws. The Agency cannot pay for tenant-owned improvements if such payment would result in the duplication of any other compensation otherwise authorized by law.

If improvements are considered personal property under State law, the tenant-owner may be reimbursed for moving them under the relocation assistance provisions. The Agency will personally contact the tenant-owners of improvements to explain the procedures to be followed. Any payments must be in accordance with Federal rules and any applicable State laws.

EXCEPTIONS TO APPRAISAL REQUIREMENTS

An appraisal is not required under the following circumstances:

If you elect to donate the property and release the Agency from the obligation of performing an appraisal.

If the Agency determines that the acquisition is uncomplicated, and a review of available data supports a fair market value of \$10,000 or less. (In some States an approval has been given to use a fair market value of up to \$25,000.)

NEGOTIATIONS

THE WRITTEN OFFER

The next step of the acquisition process is negotiations. The Agency will begin negotiations with you or your designated representative by delivering the written offer of just compensation for the purchase of the real property. If practical, this offer will be delivered in person by a representative of the Agency. Otherwise, the offer will be made by mail and followed up with a contact in person or by telephone. All owners of the property with known addresses will be contacted unless they collectively have designated one person to represent their interests.

The Agency's written offer will consist of a written summary statement that includes all of the following information:

(1) The amount offered as just compensation. (2) The description and location of the property and the interest to be acquired. (3) The identification of the buildings and other improvements that are considered to be part of the real property.

The offer may also list items of real property that you may retain and remove from the property and their retention values. If you decide to retain any or all of these items, the offer will be reduced by the value of the items retained. You will be responsible for removing the items from the property in a timely manner. The Agency may elect to withhold a portion of the remaining offer until the retained items are removed from the property. The Agency should also explain its acquisition policies

and procedures in writing, by use of a brochure similar to this, or in person.

Any separately held ownership interests in the property, such as tenant-owned improvements, will be identified by the Agency.

The Agency may negotiate with each person who holds a separate ownership interest, or, if appropriate, negotiate with the primary owner and prepare a check payable jointly to all owners.

The Agency will give you a reasonable amount of time to consider the written offer and to ask questions or to request clarification of anything that is not understood. If you believe that all relevant material was not considered during the appraisal, you may present such information at this time. Modifications in the proposed terms and conditions of the purchase may also be requested. The Agency will consider any reasonable requests that are made during negotiations.

PARTIAL ACQUISITION

Sometimes, an Agency does not need all the property you own. The Agency usually only purchases what it needs.

If the Agency intends to acquire only a portion of the property, the Agency must state the amount to be paid for the part to be acquired. In addition, an amount will be stated separately for damages, if any, to the portion of the property you will keep.

If the Agency determines that the remainder property will have little or no value or use to you, the Agency will consider this remainder to be an uneconomic remnant and will offer to purchase it. You will have the option of accepting the offer for purchase of the uneconomic remnant or of keeping the property.

AGREEMENT BETWEEN YOU AND THE AGENCY

When you reach agreement with the Agency on the offer, you will be asked to sign a purchase agreement, a deed, an easement, or some other form of conveyance document prepared by the Agency. Your signatures will affirm that you and the Agency are in agreement concerning the

acquisition of the property, including the terms and conditions of the acquisition.

If you do not reach an agreement with the Agency because of some important point connected with the acquisition offer and the Agency has exhausted all its opportunities to reach a settlement with you, the Agency will initiate condemnation proceedings.

The Agency may not take any action to force you into accepting its offer. Prohibited Agency actions include the following:

(1) Advancing the condemnation process. (2) Deferring negotiations. (3) Deferring condemnation. (4) Delaying the deposit of funds for the owner's use with the court when condemnation is initiated. (5) Any other coercive action designed to force an agreement by an owner regarding the price to be paid for the property.

NEGOTIATIONS THAT DO NOT INVOLVE CONDEMNATION

Not all agencies have the power of eminent domain or elect to use it for all projects or programs. Therefore, the acquisition procedures that may lead to condemnation will not apply.

VOLUNTARY TRANSACTIONS

Voluntary transactions do not involve condemnation; however, these transactions must meet all the following conditions:

The Agency does not need to acquire a specific site or property. In this situation, the Agency may limit its search to a particular general area, but all owners are to be treated similarly. The Agency cannot condemn to acquire any site in the area if all other offers were made as voluntary transactions.

The property is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

The Agency will not acquire the property unless an agreement is negotiated. The Agency will inform the owner in writing of this fact.

Before making an offer for the property, the Agency will inform the owner of what it believes to be fair market value for the property.

AGENCIES WITHOUT EMINENT DOMAIN AUTHORITY

An Agency or person without eminent domain authority must tell owners that the Agency will be unable to acquire a property if negotiations fail to result in an amicable agreement. The Agency must give the owner this information before making an offer for a property. The Agency must also inform an owner of what it believes to be the fair market value of the property.

PAYMENT AND POSSESSION

PAYMENT

The third step in the acquisition process is payment for your property. As soon as all of the necessary paperwork has been completed for transferring title of the property, the Agency will pay any liens that may exist against the property and pay your equity to you. Your incidental expenses will also be paid or reimbursed.

Incidental expenses are all those reasonable expenses incurred as a result of transferring title to the Agency such as:

Recording fees, transfer taxes, documentary stamps, evidence of title, surveys, legal descriptions of the real property, and other similar expenses necessary to convey the property to the Agency. The Agency, however, is not required to pay costs required solely to perfect your title (that is, to assure that the title to the real property is entirely without fault or defect).

Penalty costs and other charges for prepaying any preexisting recorded mortgage entered into in good faith encumbering the real property.

The pro rata share of any prepaid real property taxes that can be allocated to the period after the agency obtains title to the property or takes possession of it, whichever is earlier.

If possible, the Agency will pay these costs directly so that you will not need to pay the costs and then claim reimbursement from the Agency.

POSSESSION

The Agency may not take possession of your property unless both of these conditions have been met:

(1) You have been paid the agreed purchase price. In the case of condemnation, the Agency must have deposited with the court an amount for your benefit that is at least the Agency's approved appraisal of the fair market value of the property.

(2) All persons occupying the property have received a written notice to move at least 90 days in advance of the required move. In this context, the term “persons” includes residential occupants (both homeowners and tenants), businesses (including non-profit organizations), and farms.

An occupant of a residence cannot be required to move until at least 90 days after a comparable replacement dwelling has been made ready for occupancy. Only in unusual circumstances (such as when continued occupancy would constitute a substantial danger to the health or safety of the occupants) could vacation of the property be required in less than 90 days.

SETTLEMENTS AND CONDEMNATION

SETTLEMENTS

The Agency will make every effort to reach an agreement with you during negotiations. You may provide additional information, and make reasonable counter offers and proposals for the Agency to consider. When it is in the public interest, most agencies may use the information provided as a basis for administrative and legal settlements, as appropriate.

CONDEMNATION

If an agreement cannot be reached, the Agency can acquire the property by exercising its power of eminent domain. It will do this by instituting formal condemnation proceedings with the appropriate State or Federal court.

If the property is being acquired directly by a Federal Agency, the condemnation action will take place in a Federal court and Federal procedures will be followed. If the property is being acquired by anyone else that has condemnation authority, the condemnation action will take place in State court and the procedures will depend upon State law.

In many States, a board of viewers or commissioners, or a similar body, will initially determine the amount of compensation you are due for the property. You and the Agency will be allowed to present information to the court during all proceedings. If you or the Agency are dissatisfied with the board's determination of compensation, a trial by a judge or a jury may be scheduled. The final amount of just compensation will be set by the court after it has heard all arguments.

LITIGATION EXPENSES

Normally, the Agency will not reimburse you for costs incurred as a result of condemnation proceedings. The Agency will reimburse you, however, under any of the following conditions:

- (1) The court determines that the Agency cannot acquire your property by condemnation.
- (2) The condemnation proceedings are abandoned by the Agency without an agreed upon settlement.
- (3) You initiate an inverse condemnation action and the court agrees with you that the Agency has taken your real property rights without the payment of just compensation, or the Agency elects to settle the case without further legal action.

The Agency may also be subject to State laws that require reimbursement for these or other condemnation costs.

REQUIRED ASSURANCES OR CERTIFICATIONS

Any Agency receiving Federal financial assistance for a program or project must assure or certify to the Federal Agency providing funds that in acquiring real property it agrees to the following:

The Agency will comply with the land acquisition policies in the regulations governing real property acquisitions (49 CFR PART 24) to the greatest extent practical under State law. Nearly all the States can comply with all of the regulations.

The Agency will pay or reimburse property owners for the incidental expenses needed to transfer real property to the Agency. In addition, the Agency will pay a property owner's litigation expenses if:

(1) there is a court judgment that an Agency cannot acquire the owner's real property by condemnation, (2) the Agency abandons condemnation proceedings, or (3) the court rules in favor of the owner in an inverse condemnation proceeding.

The requirement for assurances or certification guarantees that you will be treated fairly and equitably by Agencies acquiring real property for federally funded projects and programs. The information in this brochure should assist you in understanding the requirements that must be met by Agencies, and your rights and obligations.

A FINAL WORD

This brochure explains your rights and entitlements as an owner of real property to be acquired for a federally funded project or program. The Relocation Assistance regulations covering persons that must move from a property as a result of acquisition are explained in a brochure entitled *Your Rights and Benefits as a Displaced Person Under the Federal Relocation Assistance Program*. This brochure, or one like it, should be available from the Agency.

Should you have additional questions about acquisition or relocation assistance, please contact the Agency responsible for the federally funded project or program in your area.