

Right of Way Acquisition

AN EXPLANATION

Introduction

The improvement or relocation of streets, roads and bridges frequently involves the acquisition of private property.

There must be proper safeguards for both the taxpayers, who pay for the improvements, and for the property owners, from whom the necessary right of way must be acquired. Through the years, a process has been developed to accomplish these two objectives.

To familiarize you with the acquisition process, we have prepared this informational brochure. Though it is brief, we hope it will help you become more familiar with our practices and better equipped to know what to expect during dealings with your county or city representatives.

We sincerely hope the information contained in this brochure will give you a solid basis of understanding in your dealings with local public agencies and a foundation on which mutual confidence and cooperation can grow.

Land acquisition procedures, where federal funds are involved in the project, are governed by Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended. The procedures under this law can be separated into five phases. They are:

1. Donations
2. Appraisal
3. Negotiation
4. Settlement
5. Eminent Domain

Each phase will be discussed in this brochure.

DONATIONS ✓

The donation procedure is a very important tool for local public agencies since many have limited financial resources. Also, many acquisitions are relatively minor and often the benefits realized by the property owner offset the value of the donated property.

Property owners, having been made aware of their right to receive just compensation, may elect to waive this right and donate their property to the local public agency.

In this situation, an owner will be asked to sign a Waiver of Compensation in addition to the deed and other supporting documents.

APPRAISAL

In certain cases where property is to be acquired from you, you have the right to an appraisal. This is a written statement which estimates the fair market value of your property or a portion thereof. This value is based on sale prices of comparable properties.

The appraisal will be prepared by a qualified person with experience in the type of property they are appraising.

The appraisers will make every effort to extend to you, or your designated representative, an invitation to accompany them when inspecting your property. Appraisers will work with you and welcome assistance from you or your representative during the inspection of the property.

Completed appraisals will be reviewed for accuracy and consistency by a highly qualified review

appraiser to develop an estimate of just compensation, which is the basis for the approved offer.

Losses in value for which you may be paid include those caused by the loss of land, buildings, improvements, other property rights and damages to the remaining property.

NEGOTIATIONS

A negotiator will contact you and advise you of the acquisition procedures as well as explain in detail how the design and construction features of the improvement will affect your property. You will be informed of any facts or information that you desire to know concerning your transaction. If you decide not to donate, the negotiator will give you a written offer that is approved by the agency.

It has been concluded through experience in negotiations that owners cannot all be treated equally under a flexible procedure where offers can be increased or decreased through a trading process. In justice to all, offers must be based on facts and not on an owner's skill and ability to negotiate and trade.

If it is discovered that additional facts or items of value were not considered in any valuation of your property, an adjustment will be considered and a revised offer may be presented to you.

The negotiator will only discuss the details of your property transaction with you or with your properly authorized attorney or representative. Normally, prior to negotiations with your representative, we must have a letter from you or your representative advising that he/she has been authorized to negotiate in your behalf. We do not normally negotiate through real estate firms or other parties who do not have a direct interest in your property.

Relocation assistance will be provided during negotiations to persons being displaced from their homes, businesses or farm operation. Relocation assistance will also be provided if, because of the acquisition, personal property must be moved.

If terms of the settlement cannot be reached by negotiation, then the law of eminent domain must be invoked. Details of the procedures under this law are included in the eminent domain section of this brochure.

SETTLEMENTS

1. Your signed deed and supporting documents (mortgage releases, leases, etc.) will be retained either by the acquiring agency or by an escrow agent until the settlement is made with you. The documents will then be recorded in the appropriate office of recorder of deeds. Closing costs and recording fees are paid by the acquiring public agency.
2. You can expect payment within a reasonable time after the executed deed of conveyance and all documents required for clear title are received in the office of the acquiring agency. Any payment for real property will be made to you or placed in an escrow account for distribution prior to or on the required date of possession.
3. Occupants who must move themselves or move personal property located on land acquired will be given a written notice to vacate a minimum of 90 days in advance of the date they are required to surrender possession of the property.
4. Owners will be reimbursed for a pro-rata portion of the state, county and city real estate taxes paid for the current taxable year on the property purchased. The pro-rata portion of taxes will cover the full number of months remaining in the calendar year after payment is received for the real property. Claims must be made within six months after the city or county tax delinquent date. Delinquent tax payments are not reimbursable. It is the owner's responsibility to submit a claim to the local public agency.
5. Owners will be reimbursed for actual penalty cost for prepayment of a pre-existing mortgage entered into in good faith and filed of record prior to the date of public knowledge of the

project. To be eligible for this payment, the property must be acquired in its entirety or the acquisition must be of such magnitude that the remainder will not provide collateral for the mortgage and / or the mortgagor requires prepayment of the mortgage.

6. Owners have the right to request review of the pro-rata portion of real estate taxes. They also may request review of any penalty cost for prepayment of a pre-existing recorded mortgage. If after this review you are not in agreement, you have the right to a formal appeal. This appeal must be filed within 60 days after receipt in writing of the review findings. If the relief you request is not granted in the formal appeal, you have the right to judicial review.

EMINENT DOMAIN

In unusual cases it may not be possible for the owner and the agency to agree on the amount to be paid. If this occurs, it will be necessary to follow the procedure provided under the law of eminent domain to establish the price to be paid.

If this course of action is taken, the following procedure is used:

In the circuit court of the county where the property is located, the local public agency will file a condemnation petition setting out the land and / or rights to be acquired and naming all parties who own an interest in it.

The circuit judge will set a date for hearing the petition, after which due notice of the hearing date will be given to the landowners affected through a summons. If, on the date set, the court finds the petition to be proper, the judge will appoint three disinterested persons, who own land and reside in the same county, to view the premises and establish just compensation for rights acquired. These persons are called commissioners.

The court-appointed commissioners, after considering the facts, make their decision and file their report with the clerk of the court. After the commissioners' report is filed in court, the local public agency must deposit the amount established by them with the circuit clerk before taking possession of the property.

Both sides have 10 days after receiving the notice that the commissioners' report has been filed to file exceptions to the commissioners' award if they are not satisfied. They also have the right to ask that the matter be tried before a jury for final determination. If exceptions are not filed by either the owner or the local public agency, the award amount determined by the court-appointed commissioners becomes final.

The landowner can withdraw the court deposit at any time, regardless of whether such exceptions are filed or not. However, if exceptions are filed and a sustained verdict is for a smaller amount, the owner must refund the difference with interest. If the jury award is higher, the local public agency must pay the difference plus interest.

The above is set out not as legal advice but to inform you of the alternatives available to you. For specific information or advice concerning condemnation, we suggest that you consult an attorney of your choice. However, property owners are not required to be represented by an attorney during the process.

Conclusion

In this brochure we cannot answer every question concerning local public agency land acquisition procedures. However, we hope the information will help you to understand the general procedures we must follow when acquiring real estate.

We sincerely hope that your upcoming transaction with our agency will be a pleasant experience for both you and our personnel whom you meet. We believe that you will find them courteous, thoughtful and aware of their obligations to you as an individual and to the public in general.