

Office of Real Estate Services - Project Development Guide

Chapter 2

General Requirements

Uniform Act

Title I - General provisions and definitions

Title II - Uniform relocation assistance for people and businesses

Title III - Uniform real property acquisition policy

REFERENCES

The **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, (Uniform Act)** was passed by Congress in order to make public acquisition of private property and relocation of displaced individuals and businesses as fair and equitable as possible. Several provisions of the law were amended in 1987 as part of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). The Uniform Act is divided into three sections or titles. *Title I*, General Provisions, covers definitions and important limitations, *Title II* covers the provisions applicable to Uniform Relocation Assistance, and *Title III* pertains to the Uniform Real Property Acquisition Policy. In this chapter, we provide an overview of all of the significant requirements of the Uniform Act as well as other related programs impacting project development activities.

The provisions of Title II of the Uniform Act apply if displacement of people, businesses, farms or non-profit organizations becomes necessary. The state Department of Transportation (DOT) or acquiring agency must assure that displaced persons are afforded the proper assistance and provided all the payments to which they are entitled. Title II, Section 205, requires that a relocation assistance advisory program be provided to displaced persons or those caused substantial economic injury because of the acquisition, as appropriate.

Section 202 provides for payment of certain moving and related expenses, and Section 203 provides for replacement housing payments. Provisions for Housing of Last Resort are found in Title II, Section 206. For specifics of the relocation requirements highlighted here, see Chapter 10.

This chapter provides an overview of those requirements with which agencies must comply in order to receive Federal funding for their transportation projects.

SUMMARY

Title III of the Uniform Act, Section 305, specifically provides that each state assure that it will, to the greatest extent practicable under state law, be guided by the land acquisition policies in Section 301 and the provisions of Section 302. Further, it mandates that property owners will be paid or reimbursed for necessary expenses, as specified in Sections 303 and 304.

Assurances and Compliance Requirements

- All states have provided assurances indicating full compliance with all mandatory Uniform

Act provisions, as revised.

- All acquiring agencies must comply with mandatory requirements or risk losing Federal project funding.
- All states, except Texas, provided assurances of full compliance with the provisions which are required only to the greatest extent practicable under state law, e.g., Sections 301 and 302 of the Uniform Act.

UNIFORM ACT ASSURANCES

The importance of properly administering Uniform Act program benefits and services to all property owners and displaced persons cannot be overemphasized. **If such benefits and services are not appropriately provided, project funding for acquisition and construction could be jeopardized.**

2.1. IMPLEMENTATION OF THE UNIFORM ACT

To the greatest extent practicable under state law

All states and the U.S. Territories, by action of their legislatures, have provided the assurances required by the Uniform Act. For the purpose of implementing Title III of the Uniform Act relative to Sections 301 and 302, "to the greatest extent practicable under state law" means if permitted by state law. The state of Texas has an exception in their assurances relative to its legal ability to comply with certain Title III requirements. In all other states there are no exceptions and all the provisions of Federal law and implementing regulations prevail. Thus the concept of "to the greatest extent practicable" has no practical application outside of Texas at this time and does not excuse non-compliance. Local acquiring agencies must certify that they have acted in accordance with the state's requirements for the acquisition of private property.

STATE IMPLEMENTATION

Title III applies to all parcel acquisitions. Title II applies in some cases. Relocation (Title II) is discussed in detail in Chapter 10. It contains specific guidance for projects involving the displacement of people and/or personal property.

Title II – Relocation Program

Section 201 - Establishes uniform policy for fair and equitable treatment of persons displaced.

Section 202 - Moving expenses for individuals, families, and businesses.

Section 203 - Housing payments for residential owners.

Section 204 - Housing payments for residential tenants.

Section 205 - Relocation assistance and advisory services.

Section 206 - Replacement housing must be made available, or housing of last resort provided.

Title II - Relocation, Section 201 declares that "The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal or federally-assisted programs... shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole." Toward this goal, **Section 202** provides for moving and related expenses for residences and businesses; **Section 203** requires replacement housing payments for homeowners; and **Section 204** calls for replacement housing payments for tenants and certain others. **Section 205** requires that acquiring agencies provide relocation assistance advisory services to those displaced, and **Section 206** indicates that no person shall be required to move...unless replacement housing...is available to such person. If not, housing of last resort will be made available by use of project funds. For more specific guidance on those projects where Title II Relocation is involved, refer to Chapter 10.

The **purpose of Title III** is to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners, and to promote public confidence in Federal land acquisition practices.

To accomplish these goals, **Section 301 of the law requires that** to the greatest extent practicable under state law:

- a. The head of the acquiring **agency** shall make every reasonable effort to acquire expeditiously real property by negotiation. The use here and subsequently of the term **agency** refers to that governmental unit, whether it be state, local, or Federal which is responsible for the acquisition of real property.

Title III - Acquisition Program

Section 301 -

- Acquire expeditiously by negotiations.
- Afford owner opportunity to accompany appraiser.
- Establish just compensation (JC) amount.
- Disregard increase or decrease in value caused by project.
- Provide written statement of and summary of basis for JC.
- Owner retains property until paid the fair market value (FMV) or that amount is deposited in court.
- At least 90 days occupancy permitted after acquisition offer made.
- If continued occupancy as tenant, rent at market rate.

- Coercion prohibited.
- Agency may condemn property, may not force owner to sue to prove taking.
- Agency shall offer to acquire uneconomic remnants.
- Fully-informed owner may donate property to agency.

Section 302 - Agency shall acquire equal interest in land and improvements. Tenants must receive offer for their interest in the FMV of any improvements.

Section 303 - Acquiring agency will pay property transfer expenses.

Section 304 - If agency cannot acquire property by condemnation, owner must be reimbursed for costs.

Section 305 - State agencies that want to receive Federal funds will assure compliance with these regulations. A state is responsible for its agencies and local governments.

ACQUISITION PROGRAM

- b. Real property shall be appraised before the initiation of negotiations and the owner, or a designated representative, shall be given an opportunity to accompany the appraiser during the inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in the cases involving the acquisition of property with a low FMV or donated property. When preparing a waiver valuation there is no requirement to offer an opportunity to accompany the person preparing the waiver valuation, however this is considered a good practice.
- c. Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be JC for the acquisition and shall make a prompt offer for the established amount. In no event shall such amount be less than the agency's approved appraisal of the FMV of such property.
- d. Any increase or decrease in the FMV of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property.
- e. The head of the agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount established as JC for the real property acquired.
- f. Any damages to remaining real property shall be separately stated.
- g. No owner shall be required to surrender possession of real property before the agency concerned pays the agreed purchase price, or deposits with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the FMV of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

- h. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, or to move a business or farm operation, without at least 90 days' written notice from the head of the agency concerned, of the date by which such move is required.
- i. If the head of the agency concerned permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the agency concerned on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.
- j. The head of the agency concerned shall not advance the time of condemnation, defer negotiations or condemnation, delay the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.
- k. If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the agency concerned shall institute formal condemnation proceedings. No agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the real property.
- l. If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the agency concerned shall offer to acquire the uneconomic remnant. For the purpose of the law, an uneconomic remnant is a parcel of real property that the owner is left with after a partial acquisition and which the head of the Federal agency concerned determines to have little or no value or utility to the owner.
- m. A person whose real property is being acquired in accordance with this title of the law may, after the person has been fully informed of his right to receive JC for such property, donate such property, any part thereof, any interest therein, or any compensation paid, to the agency, as such person shall determine.

Frequently the property to be acquired contains buildings, structures, or other improvements. From time to time, these buildings, structures, or improvements are owned not by the owner of the land but by a tenant. **Section 302** of the Uniform Act addresses the acquisition of such buildings, structures, and improvements and with the satisfaction of tenant rights. It provides that to the greatest extent practicable under state law:

- a. If an agency acquires any interest in real property, it shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property which:
 - 1. It requires to be removed from the real property; or
 - 2. It determines will be adversely affected by the use to which such real property will be put.
- b. JC for such building, structure, or improvement shall be the greater of:
 - 1. The FMV which such building, structure, or improvement contributes to the FMV of the real property to be acquired, or
 - 2. The FMV value of such building, structure, or improvement for removal from the real property.

The payment of FMV is to the tenant-owner of such building, structure, or improvement.

- c. No such payment shall be made unless the owner disclaims all interest in the improvements of the tenant. The tenant shall assign, transfer, and release to the acquiring agency all the rights, title, and interest in and to such improvements.

The law also provides in **Section 303** that the acquiring agency will pay certain expenses incidental to the transfer of property such as recording fees, transfer taxes, penalty costs for prepayment of any preexisting recorded mortgage and a pro rata share of prepaid property taxes.

Section 304 of the Act provides that if the acquiring agency institutes condemnation proceedings and it is the judgment of the court that the agency cannot acquire the real property by condemnation, or the agency abandons the proceeding, then the property owner shall be reimbursed for reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the condemnation proceedings. These provisions shall apply if an owner is successful in an inverse condemnation proceeding, or the agency effects settlement of such proceeding.

As previously discussed, **Section 305** provides that state agencies administering programs receiving Federal financial assistance must provide assurances that payments described in Sections 303 and 304 will be made and be guided to the greatest extent practicable under state law, by the land acquisition policies in Section 301 and the provisions of Section 302, as a condition of such Federal assistance.

The uniform policy on real property acquisition set out in **Section 301** is intended to guide Federal agencies, to the greatest extent practicable, in acquiring real property. **Section 305(1)** makes the policy applicable in the same manner to state agencies or political subdivisions of a state. The states and political subdivisions will also be guided by the provisions of **Section 302**.

2.2. REGULATION SOURCES

The acquisition of private property for public use is governed by a host of rules and regulations, some Federal and some as a result of state requirements.

The U.S. Constitution, while requiring that **JC** be paid to the owners of private property acquired for public use, does not define the term **JC**, nor does it prescribe methods or procedures for accomplishing such acquisitions. These are defined in statutory and case law at the Federal and state levels.

Major Federal laws governing acquisition

Uniform Relocation and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4801 et seq.)

Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.)

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.)

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. Section 9601 et seq.)

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.)

The Flood Disaster Protection Act of 1973 (Public Law. 93-234)

The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.)

Executive Order 11063: Equal Opportunity and Housing, as amended by Executive Order 12892

Executive Order 11246: Equal Employment Opportunity, as amended

Executive Order 11625: Minority Business Enterprise

Executive Order 11988: Floodplain Management

Executive Order 11990: Protection of Wetlands

Executive Order 12250: Leadership and Coordination of Non-Discrimination Laws

Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.)

Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs (January 17, 1994)

APPLICABLE FEDERAL LAWS

The Congress of the United States has enacted a number of laws which bear on acquisition of private property for public use. The most prominent of these is the Uniform Act. Other public laws which affect acquisition programs include environmental laws, housing acts, and civil rights legislation. After the Congress or state legislative bodies have enacted legislation and it is signed into law, it is the responsibility of the appropriate department of government to develop regulations to implement the law.

A Federal law, such as the Uniform Act, sets forth the general requirements or provisions which the Congress deemed important. Executive agencies of the Federal government have input into procedures through the promulgation of regulations. Such Federal regulations may be government-

wide or promulgated by one department or agency, depending upon the applicability of the legislation.

Statute - 42 U.S.C. 4801 et. seq., the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)

Regulation - 49 Code of Federal Regulation (CFR) Part 24

Policy Interpretations

GOVERNMENT-WIDE REGULATION HIERARCHY

In an effort to reduce the number of regulations issued by Federal agencies that govern public acquisition and relocation activities, the Federal agencies consolidated the regulations pertaining to these activities into a single regulation applicable Government-wide to all acquiring agencies or federally assisted programs administered by the agency. The single regulation is **Title 49 Code of Federal Regulation (CFR) Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.**

Laws and regulations applicable only to the Federal Highway Administration (FHWA), such as **Title 23 U.S.C.** and **Title 23 CFR**, address transportation and funding reimbursement issues not covered in the Uniform Act. Title 23 CFR contains program requirements that are in addition to the Uniform Act, as applied to FHWA programs and projects. These have the force and effect of law.

The statute, **Title 23 U.S.C.**, authorizes the FHWA to acquire property for constructing Federal-aid highways and facilitate the transfer of federally owned lands. It makes provision for credits to the state or local matching share for the donation of property when such real property is to be utilized in a Federal-aid project. It governs the expenditures of highway trust fund monies. The FHWA funding provisions in **23 CFR 710** address funding reimbursement, approval of state DOT ROW procedures, allowable types of settlements, functional replacement, Federal land transfers, property management, and other ROW issues.

Following the passage of the Uniform Act and the 1987 amendments thereto, each state legislature passed enabling legislation allowing the state to comply with the provisions of the Uniform Act. These laws are referred to as *state consent legislation or implementing legislation*. Several states have passed legislation which guarantees persons or businesses acquired or displaced by public acquisition, relocation assistance benefits and/or JC which is over and above that provided by the Uniform Act.

Statute – 23 U.S.C. 101 et. seq., contains FHWA authority to acquire ROW for transportation projects

Regulation – 23 CFR Part 710, Right-of-Way and Real Estate, contains program definitions and funding reimbursement authority

- Acquire ROW
- Program administration
- Definitions
- Funding and reimbursement
- State responsibilities
- Approval of state DOT ROW procedures
- Project development
- Settlements
- Court awards
- Federal land transfers
- Property management

Policy Interpretations

TRANSPORTATION RELATED PROGRAM HIERARCHY

There are times when acquisition in eminent domain programs results in condemnation litigation. At these times, the court establishes the JC. As might be expected, some condemnation cases have been appealed all the way to the Supreme Court of the United States. A number of cases became landmark cases and serve as the basis for judicial decisions for subsequent condemnation actions. State courts also make determinations that affect condemnation efforts in that particular state. Thus, acquisition of private property for public purposes and administration of the Uniform Act is a complex and complicated matter governed by a myriad of laws, regulations, and precedents. Familiarity with them is essential for a successful acquisition and relocation program.

2.3. IMPACTS OF STATE LAW AND REGULATIONS

The FHWA view of the state DOT Role

- State DOT is responsible for all the FHWA Federal-aid transportation projects.
- A local public agency (LPA) can have its own procedures approved by the state DOT, or use state DOT procedures.
- State law may specify payments or services beyond that required in Federal requirements.

STATE DOT ROLE

In 23 CFR 710.105(b) **acquiring agency** means a state agency, other entity, or person acquiring real property for Title 23 of the United States Code purposes. Under Section 302 of Title 23 U.S.C., **the state DOT is responsible for all FHWA transportation projects using Federal-aid funds, under the Federal/state relationship, including those projects administered at the county or city level.**

The state DOT is the authority responsible for establishing appraisal, acquisition, relocation and other right-of-way (ROW) program requirements for Federal-aid highway projects. The FHWA approves the state DOT ROW procedures or operations manual as the basis for Federal-aid participation in program activities and expenditures. The use of a state DOT ROW operations manual by a LPA or submitting its own procedures to the state DOT for approval, if they wish to deviate from the state's accepted procedure, is a matter to be resolved between the state DOT and the LPA.

Individual states have over the years enacted a series of laws governing public acquisitions within their jurisdiction. In addition, agencies within states have promulgated regulations to facilitate their acquisition programs.

Since the enactment of the Uniform Act and passage of the various state consent laws, basic public acquisition policy has become more uniform. However, a number of states have adopted laws which provide property owners certain benefits, not all of which are monetary in nature.

- In some states, the legislature has determined that damages during construction, such as dirt, noise, or extra travel caused by increased distance from one point to another, and/or owner litigation or appraisal costs may be compensable under state law.
- Similarly, businesses may be compensated for goodwill or business losses that are attributable to the acquisition or relocation.
- Some state laws provide payment for additional relocation expenses. These can include the acquisition of personal property and additional monetary benefits for relocation that are above the amounts set out in the Uniform Act.

Because of variation in eminent domain laws among states, it is important that agents dealing with public acquisition of private property be familiar with applicable state law. Representatives of an LPA should contact legal counsel and experienced state staff that have dealt with such issues and have expertise to assist and answer various project questions.

2.4. SIMPLIFIED PROCESS

There are few shortcuts in a quality ROW program, but there are opportunities to simplify and streamline the process. Some of these methods will be explored in greater depth in subsequent chapters of this guide.

Tools for expediting the acquisition process include:

- Selection of the appropriate appraisal format.
- Appraisal waiver for non-complex/low value acquisitions.
- Use of a roster of qualified appraisers.
- Single appraiser/negotiator.
- Notice of intent to acquire.
- Use of the minimum payment provision.
- Accelerated negotiations (first contact by mail).
- Use of administrative settlements.
- Use of a brochure to explain the acquisition process.
- Use of simplified title report procedures and innovative title data purchase.
- Use of qualified ROW acquisition and relocation contractors.

Benefits derived from simplifying the ROW acquisition process include:

- Monetary savings (cost of program delivery).
- Time savings.
- Convenience for property owners and displaced persons.

2.5. ENVIRONMENTAL IMPACTS AND PUBLIC INVOLVEMENT

Early in the development of a Federal-aid transportation project, environmental issues are identified and evaluated to determine the impacts of a project in accordance with the National Environmental Policy Act (NEPA) at 42 U.S.C. 4321, implemented by the FHWA regulations at 23 CFR Part 771, Environmental Impact and Related Procedures. The level of analysis varies with each project. Public involvement and a systematic interdisciplinary approach are essential components of the evaluation process for proposed actions. Early coordination involves the exchange of information with the private sector and public agencies from the inception of proposals to the preparation of the appropriate environmental document. A proposed major highway will normally require an extensive environmental study; a minor improvement of an existing highway will normally involve a relatively brief and simple assessment.

All actions that are not Class I or II are Class III.

All actions in this class (Class III) require the preparation of an environmental assessment (EA) to determine the appropriate environmental document required. See 23 CFR 771.115(c). This document provides the basis for a decision regarding whether the impact requires a finding of no significant impact (FONSI) or full environmental impact statement (EIS).

Class I - Environmental impact statements are prepared for important Federal-aid highway projects having significant environmental impacts, or, using the words from NEPA, for ". . . major Federal actions significantly affecting the quality of the human environment."

Class I - Environmental Impact Statement

These are extensive documents prepared for major Federal actions significantly affecting the quality of the human environment.

Class II - Categorical Exclusion

Actions that do not individually or cumulatively have a significant environmental effect. See 23 CFR 771.115(b). These actions, from a ROW perspective, typically involve roadway repairs and reconstruction on existing ROW, or involving very minor amounts of environmental involvement or additional ROW. Typically these result in a FONSI determination.

Class III - Environmental Assessment

Actions in which the significance of the environmental impact is not clearly established. All actions that are not Class I or II are automatically Class III. The result of this Class III process will normally be a FONSI or, on rare occasions with significant impacts, an EIS.

DOCUMENT CATEGORIES

The need for an EIS depends upon the environmental impacts identified for a Federal-aid project. A majority of Federal-aid projects do not significantly affect the quality of the human environment, and therefore an EIS is seldom necessary. As a project passes through the various stages of preconstruction development (planning, location, and design) additional studies are carried out as the need becomes evident. At the conclusion of this process, approval of the appropriate environmental document is granted, and further project activities may proceed.

Usually, authorization to acquire ROW is given after the appropriate final environmental document is approved. Special circumstances may arise where approval may be given prior to that time but only under special conditions. For hardship and protective buying acquisitions, the acquiring agency may request and the FHWA may approve Federal participation in the acquisition of a particular parcel or a limited number of parcels within the limits of a proposed highway corridor prior to processing of the final environmental document. However, this can only be done after the agency has given official notice to the public that it has selected a particular location to be the preferred or recommended alignment for a proposed highway, or a public hearing has been held or an opportunity for such a hearing has been afforded. In 1991, a provision was made for agencies to acquire properties before completion of the environmental process when using their own funds and, under certain specific circumstances, be reimbursed if the agency is able to comply with stringent comprehensive requirements. To date no agency has used this provision.

Lead time is the period between planning and completing a finished product or service. For the ROW staff this involves:

- Estimating time required to do the job.
- Marshalling necessary resources.
- Applying ROW process streamline techniques.
- Delivering a quality ROW product or service.
- If other functions encroach on ROW lead time, they assume responsibility for delay.
- If ROW encroaches on other functions, it must assume responsibility for delay.

LEAD TIME CONCERN

2.6. LEAD TIME

A persistent problem in completing the ROW program function is the lack of lead time to accomplish the required steps in the acquisition and relocation process.

It is important that managers maintain an awareness of the time necessary to accomplish the ROW program function. **Sufficient time should be allowed to accomplish the statutory requirements of the Uniform Act.** When other project activities such as environmental studies and/or design functions encroach on the time established to complete the ROW phase, construction letting dates can be affected.

The ROW time element varies depending upon the number and complexity of the parcels to be acquired and whether relocation is needed. The time needed to perform these activities can run from several months to much longer on complex projects. The requirements of the Uniform Act have prescribed time limits (at least 90 days before being required to move, for example) and, coupled with internal administrative and procedural time limits, adequate time is needed for right of way related activities.

ROW activities should be carefully coordinated with other elements of the project to assure that the appraisals, negotiations, relocation efforts, and property management, including any utility work, are accomplished in a professional, legal and timely manner. As all states have passed legislation complying with the Uniform Act, by adhering to state law and approved highway agency procedures, local agencies will automatically comply with Federal and state requirements.

2.7. SEPARATION OF FUNCTIONS

The acquisition of private property for public use is a serious matter. Those in government charged with managing and implementing property acquisition programs have a responsibility both to the governmental body and to the public to see that such acquisition programs are professionally and fairly carried out.

CAUTION

The acquisition of private property and/or relocation of an individual, family, or business can involve very personal and delicate circumstances that may be emotionally charged. It is therefore of the utmost importance that all dealings with those affected by acquisition programs be on a professional level and be conducted by sensitive

To this end, it is imperative that certain functions in the acquisition process be kept separate and distinct.

- It is the appraiser's function to estimate the FMV of the property or property interest to be acquired.
- It is the review appraiser's responsibility to examine the appraisal report to assure that it meets the acquiring agency's appraisal standards and to seek correction or revision if necessary.
- It is also the reviewer's responsibility to recommend or approve a value for the property or property interest to be acquired.

agency representatives.

The ROW process should not in fact, or appearance, ever be anything but a fair and honest representation of the situation to those affected by a project.

Where streamlined techniques are allowed, usually on lower valued, non-complex acquisitions, extreme care must be exercised to ensure that the rights and benefits of our customers are not infringed upon.

SEPARATION OF FUNCTIONS

The appraiser, review appraiser, and negotiator shall not have any interest, direct or indirect, in the property which is being acquired. Per 49 CFR 24.102(n), no appraiser shall act as a negotiator for real property which that person has appraised, except that the acquiring agency may permit the same person to both determine the value of and negotiate an acquisition where the value of the acquisition is \$10,000 or less. However, the determination of value must be approved by another person before the commencement of negotiations. **Per 49 CFR 24.102(d) and 23 CFR 710.201(j), when a contractor has made the value determination, an agency staff person or official shall determine and approve the JC amount before the offer is made.** It is most important that the acquiring agency assure that there is no conflict of interest in the ROW process. All elements of the ROW program should be performed with discretion and confidentiality.

2.8. PROPERTY OWNER LEGAL RIGHTS

Just as the government has the right to acquire private property, the owner of the private property also has rights and entitlements. **Owner** refers to either the fee owner of the realty or the tenant-owner of improvements upon it. For discussion of tenant-owned improvements, see chapter 14.2.

49 CFR Part 24 describes what owners are entitled to:

- 24.102(d) - JC for their property, which may not be less than the acquiring agency's approved appraisal of the FMV;
- 24.102(c) - an opportunity to accompany the appraiser who appraises their property;
- 24.102(e) - a written statement of, and summary of the basis for, the amount established by the acquiring agency as JC;
- 24.102(j) - a payment of the agreed upon purchase price (or a deposit in the court) before

- being required to surrender possession of the property;
- 24.106 - reimbursement for certain expenses incidental to transfer of title to the acquiring agency;
- 24.107 - reimbursement for certain litigation expenses;
- 24.203(a)(3) - a minimum 90 day written notice to vacate occupied property; and
- 24.203 - relocation assistance services and payments, where applicable. These may involve residential housing supplements, moving costs, or business, non-profit, farm payments such as reestablishment, moving costs, etc.

Per 24.102 and 24.203, the agency must advise property owners of their rights and entitlements through a written statement, or brochure, and assure that they receive all of the services and payments to which they are entitled under Federal and state law and regulations.

2.9. ENHANCED STATE ASSISTANCE TO LOCAL AGENCIES

Federally assisted state programs generally adhere to state law and procedures governing acquisition.

STATE PROGRAMS

The state DOT is ultimately accountable for the acquisition and relocation activities of local agencies that perform these functions on Federal-aid projects. It is advisable that the state and the local acquiring agency work closely together during the entire acquisition process both to expedite the acquisitions and to assure that all requirements are met.

Individual states have enacted laws governing public acquisitions within their jurisdiction. In addition, agencies within states have promulgated regulations to facilitate their acquisition programs. Since the enactment of the Uniform Act and passage of the various state consent laws, basic public acquisition policy has become more uniform.

Because of the variations in eminent domain laws among the states, it is important that individuals dealing with public acquisition of private property be intimately familiar with the applicable state laws and implementing regulations. There should be free and open lines of communication both at the administrative/management and journeyman levels of each acquiring agency. Normally, the state has a larger, more experienced staff which can, and should, serve as a valuable resource for the local acquiring agency.

Each state DOT has a program to assist local governments in complying with Federal-aid program requirements, and have resources available to assist LPAs in any acquisition or relocation activities they may encounter. Many states provide assistance and guidance to local acquiring agencies. These activities may include information and training, as well as monitoring activities to assure compliance with the Uniform Act and state law. The state and the LPA should establish a mutually acceptable program of state assistance which will best aid the LPA in the accomplishment of its acquisition and relocation programs.

AGENCY COORDINATOR

Designate an LPA coordinator to provide information and establish appropriate contacts within the state DOT.

TRAINING

Provide training for LPA personnel, especially in the more technical acquisition areas.

MONITORING

Monitor LPA activities on a regular and ongoing basis.

TECHNICAL SERVICES

Provide technical services to LPAs which they may not be able to provide for themselves.

ADVISORY SERVICES

Provide advisory services, brochures, forms and sample letters developed to meet Federal as well as state requirements.

STATE DOT and LPA PROGRAMS