

LPA- Right of Way Workshop December 13, 2016

MoDOT-St. Louis District
RW Staff
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WELCOME!

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FOUNDATIONS

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)

On January 2, 1971, Public Law 91-646, the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," (Uniform Act) was signed into law. The Uniform Act, provides important protections and assistance for people affected by Federally funded projects. This law was enacted by Congress to ensure that people whose real property is acquired, or who move as a result of projects receiving Federal funds, will be treated fairly and equitably and will receive assistance in moving from the property they occupy.

-United States DOT designated Lead Federal Agency

-MoDOT oversees compliance in Missouri

MoDOT's LPA Manual is based on this Federal law, as well as applicable Missouri statutes.

REFERENCES

Missouri's LPA Policy Manual- located within section 136 of MoDOT's Engineering Policy Guide

Land Acquisition: Section 136.8

<http://epg.modot.org/index.php?title=136.8> Local Public Agency Land Acquisition

Federal Statute

<http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter61&edition=prelim>

Federal Regulations

<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=3bdda26e1102fe42dd21611091c4a569&rgn=div5&view=text&node=49:1.0.1.1.18&idno=49>

Missouri Revised Statutes, Chapter 523

<http://www.moga.mo.gov/mostatutes/ChaptersIndex/chaptIndex523.html>



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136.8 Local Public Agency Land Acquisition

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Forms

- Acquisition Authority Request (Form 136.8.1) [↗](#)
- Adjustment of Value or Just Compensation (Form 136.8.2) [↗](#)
- Administrative Settlement Justification (Form 136.8.3) [↗](#)
- Appraisal Monitor Checklist (Form 136.8.4) [↗](#)
- Appraisal Review (Form 136.8.5) [↗](#)
- Assumptions and Limiting Conditions (Form 136.8.6) [↗](#)
- Certificate of Appraiser (Form 136.8.7) [↗](#)
- Clearance Certification Statement (Form 136.8.8) [↗](#)
- Comparable Lease (Form 136.8.9) [↗](#)
- Donation in Exchange for Construction Features Letter (Form 136.8.10) [↗](#)
- Final Vacancy Notice for Relocation (Form 136.8.11) [↗](#)
- Legal Justification for Settlement (Form 136.8.12) [↗](#)
- Legal Trial Report (Form 136.8.13) [↗](#)
- LPA Right of Way Acquisition Brochure
- LPA Negotiator Services Agreement (Form 136.8.14) [↗](#)
- Negotiator's Report (Form 136.8.15) [↗](#)
- Nonresidential Sale (Form 136.8.16) [↗](#)
- Parcel File Checklist (Form 136.8.17) [↗](#)
- Plan Review Checklist (Form 136.8.18) [↗](#)
- Privately Donated Land as Credit to Matching Share of Project Costs (Soft Match), Form 136.8.19 [↗](#)

RIGHT OF WAY BASICS

The Uniform Act governs both
Right of Way acquisition and Relocation assistance

What does this cover?

- Purchase of new rights-of-way and other property rights
- Purchase of easements- permanent AND temporary
- Purchase of construction licenses
- Total relocation of displaced persons
- Total relocation of displaced businesses
- Partial relocation of personal property items

FINANCE AND RECORDKEEPING

ACQUISITION AUTHORITY

All Federally funded projects that include RW activity require this process before expenditures occur

Approval of Right of Way plans by MoDOT RW staff

- AFTER approval of preliminary plans by MoDOT LPA Design liaison
- Looking for RW-specific details with negotiation in mind

Submittal of Request for Acquisition Authority

- “A-Date” when Federal funds are to be obligated
- “Notice to Proceed” when locally funded- still must comply with applicable regulations
- Need 106, CE or other relevant environmental document, scheduling tool
- Must name individual conducting negotiations

RIGHT OF WAY ACQUISITION SCHEDULING TOOL

County/City: _____
Route: _____
Job Number: _____
Letting Date: _____
No. of Parcels: _____

A-Date/Notice to Proceed....._____

*Securing appraisal contracts
Appraisers developing reports
Securing review appraisal contracts*

Appraisals/Payment Estimates Complete....._____

Appraisals being reviewed

Appraisal Reviews Complete....._____

*Preparing negotiation packets
(deeds, offer letters, brochures,
prorata tax claim forms, etc.)*

Written Offers Made....._____

Negotiation period

60-Day Notices Sent....._____

Negotiations continue

File Condemnation Petition or Cancel Project....._____

*Condemnation Hearing
Condemnation Commissioners' Viewing
Condemnation Commissioners' Award*

Submit Clearance Certification....._____

NOTE: *Complete the schedule as if no donations are expected.*
NOTE: *If relocation/personal property is involved, contact MoDOT for
additional information regarding scheduling.*

REIMBURSEMENT ELIGIBILITY

Some expenses may be submitted for reimbursement as preliminary engineering items with prior approval.

- Cost estimates prior to appraisal phase
- Title work
- Description writing

Reimbursement-eligible expenses after receipt of A-Date

- Real property acquisition.
- Incidental costs to the acquisition. (i.e. appraisal, appraisal review, negotiation, and relocation expense, recording documents, etc.)
- Pro rata taxes and/or special assessments.
- Permanent and temporary easements.
- Damages to remainder of real property.
- Cost of acquisition through condemnation, interest on legal settlement or court awards, and court commissioner fees.
- Tenant-owned improvements.
- Uneconomic remnants.
- Construction in exchange for donation, or mitigation of damages.
- Relocation payments and expenses.

REIMBURSEMENT CLAIMS

Requests for reimbursement of RW expenses should include the following support items

- Plan sheet showing authorized and actual acquisition areas
- Statement of cost of right of way showing:
 - parcel number
 - cost of parcel
 - cost of excess land, if any
 - credits by parcel or project
 - incidental expenses by parcel or project
 - cost of construction performed in mitigation of damages on a parcel basis if claimed as a right of way item. (Refer to 23 CFR 710.203(a)(1))

DOCUMENTATION- FYI

- All documents relating to acquisition of the right of way shall be available for inspection at reasonable times by authorized representatives of MoDOT and Federal Highway Administration. Refer to 23 CFR 710.201 (f). All documentation shall be kept a minimum of **three years after the final invoice is submitted** for the right of way costs.
- All plans, contracts, deeds, appraisals, options, vouchers, correspondence and all other documents and papers shall carry the Federal-aid project number for identification.

DOCUMENTATION- FYI

- The acquiring agency shall maintain a project file (i.e. appraisal data book(s), title services contract, public hearing record, etc.) and a parcel file containing the information pertaining to the acquisition of the parcel.
- The parcel file should contain documentation that demonstrates compliance with applicable laws and requirements and should be available for inspection at reasonable times by authorized representatives of MoDOT and Federal Highway Administration and other authorized federal representatives. Refer to 23 CFR 710.201 (f). The records shall be retained for **at least three years after the final payment for the construction project** from the Federal Highway Administration.
- LPAs must maintain an inventory of all improvements acquired; how these improvements are disposed of; an accounting of management expenses (i.e. advertising for disposal, preparing demolition contracts, etc.), rental receipts received, and recovery payments for disposition of improvements; and rodent control costs. See EPG 136.8.12 Property Management for additional requirements.

ACQUISITION

VALUATION

Sponsors may request donations of necessary property and property rights from impacted owners. When owners are not agreeable to a true donation, or donation in exchange for construction features, you **MUST** determine a value for land and/or rights to be acquired.

Valuation formats:

- **Waiver Valuation/Payment Estimate-** may be developed by non-appraisers
- **Value Finding Appraisal-** must be developed by a state certified residential or general appraiser and must be reviewed by a second appraiser
- **Standard Appraisal-** must be developed by a state certified residential or general appraiser and must be reviewed by a second appraiser

ALL Valuation documents must be signed by an agency representative to establish approval of just compensation.

Fee Appraisers must be on MoDOT's Roster

VALUATION FORMATS

Waiver Valuation/Payment Estimate-

May be developed by non-appraisers

- The acquisition is simple and \$10,000 or less, plus fence re-establishment costs
- Land value is easily determined
- Only nominal structural improvements are acquired,
- Only nominal access rights are acquired
- Other than fence, costs to cure cannot make the total compensation exceed **\$10,000**
- There are no apparent damages to the remainder – other than simple easements and creation of nominal uneconomic remnants.

VALUATION FORMATS

Value Finding Appraisal-

Must be developed by a state-certified residential or general appraiser

Use of the Value Finding Appraisal Format is allowed when:

- The acquisition is simple
- Fair market value can adequately be estimated by the sales comparison approach with only minor adjustments
- Damage to the remainder can be measured by the cost to cure or is consequential damage not exceeding \$10,000 per element of damage
- Damages due to simple strip permanent or temporary easements and cost to cure items when valued by a reliable cost manual or contractors' estimate are not subject to the \$10,000 damage limit in this format.
- The highest and best use is the present use and is not materially affected by the acquisition. Change in highest and best use resulting from a nominal uneconomic remnant is allowed in this format.

Use of the Value Finding Appraisal Format is not allowed:

- When there is consequential damage exceeding \$10,000 to a structural improvement.
- When residences are to be acquired, unless authorized by a policy waiver from the Right of Way Section of Design.

VALUATION FORMATS

Standard Appraisal-

Must be developed by a state-certified residential or general appraiser

Use of the Standard Appraisal Format is required when:

- The appraisal problems are judged complex
- The highest and best use of a property as improved is different than the highest and best use as if vacant
- Residential or other major improvements are acquired, unless use of the URAR appraisal is specified.
- There is a change in the highest and best use after the acquisition.

VALUATION, CONTINUED

Once again, if a property owner is not willing to donate, the acquisition must be valued.

Each parcel must be valued independently, and a specific report or document must be prepared for each parcel. Property owners must be provided a copy of this document when offers are presented.

- Mutually agreed-upon deals, without valuation
= **Uniform Act VIOLATION**
- Use of minimum/nominal payments, without valuation
= **Uniform Act VIOLATION**

NOTE: Minimum payments may be allowable, but the figure must be determined to be not less than the actual value of the land or property rights to be acquired.

MAKING OFFERS

Property owners must promptly be provided with a written offer letter presenting the amount of approved just compensation for the acquisition.

- In-person presentation is preferable to cold mailing; good communication can reduce negotiation time
- Offers not presented in person **must** be sent via certified mail with return receipt; this establishes the notification period should condemnation be required.
- Owners must be presented with a copy of a brochure explaining the acquisition process.
- Owners must be provided a copy of the valuation document and plat or plansheet.
- Owners who agree to donate must sign a letter acknowledging that they are waiving their right to compensation.

Contract negotiators must be on MoDOT's Roster.

NEGOTIATION TIPS

- It's a good idea for negotiators to become notaries public; this allows for quick execution of documents when property owners are prepared to sign.
- It's a good idea to physically meet with owners, go over the plans and valuation document, and address questions whenever feasible, rather than conducting communication at a distance.
- It's a good idea to be prepared for counter-offers and have a plan for reaching settlements across the project, to ensure fairness. Neighbors talk!
- It's a good idea to be prepared for possible condemnation. Some property owners will refuse to cooperate regardless of the fairness of the offer amount. Sponsors must now be prepared to file condemnation by the date specified on the scheduling tool, or cancel the project.
- It's a good idea to ask about the presence of tenants when the occupancy of a property is unclear. Additional acquisition of interests may become necessary.

OTHER NEGOTIATION INFO

- Negotiations shall be conducted by someone other than the appraiser or reviewing appraiser of the real property to be acquired, except that the acquiring agency may permit the same person to value and negotiate an acquisition where the value is based on a Waiver Valuation, or is less than \$10,000.
- All negotiations shall be conducted in such a manner as to eliminate any coercion of an owner into reaching agreement.
- No owner shall be required to surrender possession of real property before the acquiring agency pays the agreed purchase price, or deposits the amount of a Commissioner's award with the court for the benefit of the owner.
- All negotiated settlements must include a written Justification for Administrative Settlement signed by an agency official.
- Sponsors are responsible for reporting payments to owners for real estate purchases to the Internal Revenue Service.

OTHER NEGOTIATION INFO

The owners of property acquired for a project will be reimbursed for the following expenses they necessarily incurred for the transfer.

- **Property Transfer Costs:** Recording fees, transfer taxes and similar expenses incidental to conveying the property. (Normally paid directly)
- **Proration of Taxes:** 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 property purchased by the agency. The pro rata portion of taxes will cover the full number of months remaining in the calendar year after payment is received by the owner for the property.
Mortgage Penalties: Owners will be reimbursed for actual penalty costs for prepayment of a pre-existing mortgage entered into in good faith and filed of record. These costs will be reimbursed when the property is acquired in its entirety or the acquisition is of such magnitude that the remainder will not provide collateral for the mortgage and/or the mortgagee legally requires penalty costs for prepayment of the mortgage
- **Appeal for Expense Eligibility:** Property owners may file a written appeal with the agency if they believe that the agency has failed to properly consider their application for reimbursement of expenses incidental to the transfer of title.

CONDEMNATION CONSIDERATIONS

- Owners must be provided at least 60 days' notice of their rights under Missouri law prior to filing condemnation.
- An offer must be held open for 30 days prior to filing condemnation. Revisions to offers (such as when plans are altered) start a new "clock."
- Certified mail receipts may be used for establishing these dates when this correspondence is mailed.
- Although the law does allow for conditional clearances, MoDOT only approves them in exceptional circumstances. Sponsors should be mindful of deadlines when planning for possible condemnation.
- 50-year owners and owners affected by close project proximity may fall under the Heritage and Homestead provisions of Missouri Eminent Domain law. Consider this when attempting to reach settlements.

ACQUISITION DOCUMENTATION

Each parcel file must contain the following documentation:

- Recorded conveyance documents
- Detailed Negotiator's Report/log
- Title/proof of ownership
- Copies of offer letters, 60-day notices, donation letters, and any other correspondence
- Appraisal or other valuation document
- Any applicable agreements
- Justification for Administrative Settlement
- Proof of Payment to owner prior to sponsor possession

NEGOTIATOR REPORTS

A record of negotiations for each parcel shall be maintained by the negotiator and become a permanent part of the parcel file. This document allows a reviewer or auditor to re-construct the interaction between the agency and the owner in order to ensure Uniform Act compliance.

- List all materials provided to the property owner in addition to the offer of just compensation letter.
- List the amount of approved just compensation and the square footage/area of the acquisition.
- Document all conversation, questions posed by owners and the ensuing resolution, and the final result of negotiation.
- Administrative settlements are not considered new offers.
- BE SPECIFIC AND DETAILED. Attach a word document or equivalent to the pre-printed form when necessary.

RELOCATION

RELOCATION ASSISTANCE

The Uniform Act and Missouri law are very specific with regard to relocation assistance procedures. If you believe that your project may involve total or partial relocation, including displacement of personal property, please contact your MoDOT RW liaison as early as possible to develop a relocation plan.

Generally speaking:

- Acquisition payments and relocation payments must be handled separately.
- FHWA does not allow for “global settlements.”
- Expenses to be reimbursed must be actual, reasonable, and necessary.
- Sponsors must have legal and physical possession of property needed for a project prior to applying for a right of way clearance. Please allow for adequate relocatee notification time when developing a project schedule.

FINAL STEPS

CLEARANCE CERTIFICATION

Prior to authorization to advertise the physical construction for bids, sponsors shall submit a Right of Way Clearance Certification Statement.

This document is required for all federally assisted projects (federal funds participation in either right of way or construction), but only if any right of way acquisition was necessary.

- Publish on agency letterhead
- READ the document and ensure that the correct options are selected
- Free deed= donated parcels
- Must list voided parcels
- Must have legal and physical possession of all parcels
- Must accompany parcel files for MoDOT staff review

PARTIAL/CONDITIONAL CLEARANCES

They exist, but pretend they don't. MoDOT as a rule does not approve partial or conditional clearance requests unless exceptional circumstances exist.

- In conjunction with such a request, sponsors must provide a compelling statement of public interest in support of the action.
- Authority to Advertise will not be granted until all parcels are clear.

FIVE YEAR RULE

If realty rights were acquired more than 5 years prior to the first request for federal funds, the local agency shall submit a statement certifying that no new realty rights are needed and the dates the existing realty rights were acquired.

If the realty rights were acquired less than 5 years prior to the first request for federal funds, the acquisition must have occurred within the parameters of the Uniform Act in order for any portion of the project to receive federal funds.

If the project sponsor does not need to acquire property rights, and / or holds fee title or adequate easements on property necessary for the project; the sponsor will be in one of two categories depending on the date when that latest parcel on the project was acquired:

- 1. The last parcel acquired was more than five (5) years prior to the first obligation of federal funds for the current project.**
- 2. One or all of the parcels were acquired within the last five (5) years prior to federal funds obligation.**

THANK YOU

Please feel free to ask
questions.