



ACQUISITION

**Real Property Acquisition
For Kansas Highways,
Roads, Streets and Bridges**







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BUREAU OF RIGHT OF WAY
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INTRODUCTION

Government programs designed to benefit the public as a whole often result in acquisition of private property and, sometimes, in the displacement of people from their residences, businesses or farms. Acquisition of this kind has long been recognized as a right of government and is known as the power of eminent domain. The Fifth Amendment of the Constitution states that private property shall not be taken for public use without just compensation.

To provide uniform and equitable treatment for persons whose property is acquired for public use, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amended it in 1987. This law, called the Uniform Act, is the foundation for the information discussed in this brochure.

Revised rules for the Uniform Act were published in the Federal Register on January 4, 2005. The rules are reprinted each year in the Code of Federal Regulations (CFR), Title 49, Part 24. All Federal, State and local government agencies, as well as others receiving Federal financial assistance for public programs and projects, that require the acquisition of real property, must comply with the policies and provisions set forth in the Uniform Act and the regulation.

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 explains your rights as an owner of real property to be acquired for a federally or state-funded program or project. The requirements for relocation assistance are explained in a brochure entitled *Relocation, Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program*. Acquisition and relocation information can be found on the Federal Highway Administration Office of Real Estate Services website: www.fhwa.dot.gov/realestate.

IMPORTANT TERMS USED IN THIS BROCHURE

Acquisition

Acquisition is the process of acquiring real property (real estate) or some interest therein.

Agency

A governmental organization (Federal, State or local) that acquires real property or displaces a person.

Appraisal

An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Condemnation

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

Easement

In general, an easement is 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. Examples are: permanent easement for utilities, permanent easement for perpetual maintenance of drainage structures, and temporary easement to allow reconstruction of a driveway during construction.

Eminent Domain

Eminent domain is the right of government to take private property for public use. In the U.S., just compensation must be paid for private property acquired for federally or state funded programs or projects.

Fair Market Value

Fair market value is market value that has been adjusted to reflect constitutional and other legal requirements for public acquisition.

Interest

An interest is 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

Just compensation is the price the Agency must pay to acquire real property. An Agency official must make the estimate of just compensation to be offered to you for the property needed. That amount may not be less than the amount established in the approved appraisal report as the fair market value for your property. If you and the Agency cannot agree on the amount of just compensation to be



paid for the property needed, and it becomes necessary for the Agency to use the condemnation process, the amount determined by the court will be the just compensation for your property.

Lien

A lien is 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.

Market Value

Market value is the sale price that a willing and informed seller and a willing and informed buyer agree to for a particular property.

Negotiation

Negotiation is the process used by the Agency to reach an amicable agreement with a property owner 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. The offer shall not be increased without justification.

Person

A person is an individual, partnership, corporation, or association.

Personal Property

In general, personal property is property that can be moved. It is not permanently attached to, or a part of, the real property. Personal property is not to be included and valued in the appraisal of real property.

Program or Project

A program or project is any activity or series of activities undertaken by the Agency where Federal financial assistance is used in any phase of the activity. Activities addressed in this brochure refer specifically to a highway, road, street or bridge improvement.

Qualified Appraiser

A person who, by education, experience and ability 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 land and the improvements thereon.

Uneconomic Remnant

The portion of an owner's property that remains after the Agency acquires the property needed for a program or project that the Agency determines has little or no value or utility to the owner. The Agency shall offer to purchase the remnant, but the owner may refuse the offer and retain the property.

Waiver Valuation

The term waiver valuation means an administrative process for estimating fair market value for relatively low-value, non-complex acquisitions. A waiver valuation is prepared in lieu of an appraisal.

PROPERTY APPRAISAL

The Agency determines what specific property needs to be acquired for a project after the project has been planned and government requirements have been met. The selected

project location places special emphasis on the highway, road, street or bridge facility which will adequately meet the present and future needs of you, your neighbor, and each citizen of Kansas, as well as those who visit our state, with minimum adverse effects on private property.

If your property, or a portion of it, needs to be acquired, you, the property owner, will be notified as soon as possible of the Agency's interest in acquiring your property; the Agency's obligation to secure any necessary appraisals; and, any other useful information.

When an Agency begins the acquisition process, the first personal contact with you, the property owner, should be no later than during the appraisal of the property.

An appraiser will 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 have a review appraiser study and recommend approval of the appraisal report used to establish the just compensation to be offered to you for the property needed.

You, or a representative that you designate, will be invited to accompany the appraiser when the appraiser inspects your property. You can point out any unusual or hidden features of the property that the appraiser could overlook. At this time, you should advise the appraiser if any of these conditions exist:



- There are other persons who have ownership or interest in the property.
- There are tenants on the property.
- Items of real or personal property that belong to someone else are located on your property.
- The presence of hazardous material, underground storage or utilities.
- There are easements, encumbrances or liens.

This is your opportunity to tell the appraiser about anything relevant to your property, including 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 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.

The appraiser must consider normal depreciation and physical deterioration that has taken place. By law, the appraiser must disregard the influence of the future public project on the value of the property. This requirement may be partially responsible for any difference in the fair market value and market value of your property.

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 inspected it, as compared with other similar properties that have sold.

JUST COMPENSATION

Once the appraisal of fair market value is complete, a review appraiser from the Agency will review the report to ensure that all applicable appraisal standards and requirements are met. When they are, the review appraiser will give the Agency the 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, there may be damages or benefits to your remaining property. Any allowable damages or benefits will be reflected in the just compensation amount. The Agency will prepare a written offer of just compensation for you when negotiations begin.

Buildings, Structures and Improvements

Sometimes buildings, structures, or other improvements are located on the property to be acquired. If they are real property, the Agency must offer to acquire at least an equal interest in them if they must be removed or if the Agency determines that the improvements will be adversely affected by the public program or project.

An improvement will be valued as real property regardless of who owns it.



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 as real property.

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.

If the tenant does not agree with the Agency's offer to acquire the tenant-owned improvements, or if the owner of the real property on which they are located does not disclaim all interest in them, the Agency will initiate condemnation proceedings.

For an improvement, just compensation is 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 amount 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 provision. 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 applicable State laws.

EXCEPTIONS TO THE APPRAISAL REQUIREMENT

The Uniform Act requires that all real property to be acquired must be appraised, but it also authorizes waiving that requirement for low value acquisitions.

Regulations provide that the appraisal may be waived if you elect to donate the property and release the Agency from the obligation of performing an appraisal.

If the Agency believes the acquisition of your property is uncomplicated and a review of available data supports a fair market value likely to be \$10,000 or less, the Agency may prepare a waiver valuation, rather than an appraisal, to estimate your fair market value.

THE WRITTEN OFFER

After the Agency approves the just compensation offer they 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.

An Agency representative will explain Agency acquisition policies and procedures in writing, either by use of this informational brochure, or in person.

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

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

The offer may 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 or require a performance bond until the retained items are removed from the property.

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

The Agency will confirm with you the findings of its title search on the real property to be acquired. At this time, you should make the Agency aware of any additional liens or encumbrances affecting the property; any debts you may owe to the state of Kansas or any state agency or support owed to any individual; and, any other owners or tenants who may have an interest in the real property. Any separately held ownership interests in the property, such as tenant-owned improvements, can then be identified by the Agency.



The Agency may negotiate with each person who holds a separate ownership interest, or, may 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 ask questions or seek 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 be requested. The Agency will consider any reasonable requests that are made during negotiations.

Partial Acquisition

Often the Agency does not need all the property you own. The Agency will usually purchase only what it needs. If a portion of your property is needed, the compensation and measure of



damages will be the difference between the fair market value of your entire property before the acquisition, and the value of your remaining property after the acquisition.

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 have the option of accepting the offer for purchase of the uneconomic remnant or 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 an option to buy, a purchase agreement, an easement, or some form of deed prepared by the Agency. Your signature will affirm that you and the Agency are in agreement concerning the acquisition of the property, including terms and conditions.

If you do not reach an agreement with the Agency because of some important point connected with the acquisition offer, the Agency may suggest mediation as a means of coming to agreement. If the Agency thinks that a settlement cannot be reached, it will initiate condemnation proceedings.

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

- Unnecessarily advancing or deferring the condemnation process.
- Unnecessarily deferring compensation discussions.
- Delaying the deposit of funds with the court for the owners use when condemnation is initiated.
- Any other coercive action designed to force an agreement regarding the price to be paid for the owners property.

Crops

A highway, road, street or bridge project through a rural area often involves crops that have already been planted or land that has been prepared for planting prior to the transferring of title of the property to the Agency. Compensation is normally paid for that portion of the crops or tilled land destroyed by the construction of the project at the time the damage occurs or shortly thereafter. This compensation only applies to the growing season in which the property was acquired. You should contact the Agency if you are unable to harvest your crops before construction begins in order to be compensated for crop damage.

Fencing

Location and timing for replacement fencing may require coordination with a local Agency office.



PAYMENT

The next step in the acquisition process is payment for your property. As soon as all the necessary paperwork is completed for transferring title of the property, the Agency will pay any liens that exist against the property and pay your equity to you or make the check payable to both you and the lienholder. In this case, you and the lienholder will be responsible for the distribution of proceeds. Your incidental expenses will also be paid or reimbursed. Incidental expenses are reasonable expenses incurred as a result of transferring title to the Agency, such as:

- Recording fees and transfer taxes.
- Documentary stamps.
- Evidence of title, however, the Agency is not required to pay costs required solely to perfect your title or to assure that the title to the real property is entirely without defect.
- Surveys and legal descriptions of the real property.
- Other similar expenses necessary to convey the property to the Agency.

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

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, will be reimbursed.

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

POSSESSION

The Agency may not take possession of your property unless:

- You have been paid the agreed purchase price, or
- The Agency has paid the amount of the court award of compensation in the condemnation proceeding.

If the Agency takes possession while persons still occupy the property:

- All persons occupying the property must receive a written notice to move at least 90 days in advance of the required date to move. In this context, the term person includes residential occupants, homeowners, tenants, businesses, 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 available for occupancy. Only in unusual circumstances, such as when continued occupancy would constitute a substantial danger to the health or safety of the occupants, can vacation of the property be required in less than 90 days.

The Agency will offer relocation assistance services to any individual, family, business, non-profit organization or farm displaced by the project for the purpose of locating a suitable replacement property and determining any eligible relocation assistance payments.

After the Agency has provided a 90-day notice and after the Agency has acquired the property, either by purchase or condemnation, the Agency will also provide an occupant with a 30-day notice to vacate the property. In no event will the 90-day period be superseded by the 30-day period. These notices do not apply to vacant land, unless personal property is located on the land acquired.

An occupant of a residence will not be required to move until at least 90 days after a comparable replacement dwelling has been made available.

After the Agency has acquired the property, it may rent said property to a tenant or to you after the 30-day period has expired, if the situation is feasible and appropriate, depending on the available time prior to the approaching construction activities.

You should make the Agency aware of any personal property that will have to be moved. You may be eligible for assistance with the cost of the move.

A separate brochure is available explaining the relocation program in detail.

SETTLEMENT

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 use the information provided as a basis for administrative or 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 District Court in the county where the real property is located.

The Agency will present a petition to the Judge of the District Court, describing the real property needed for the highway, road, street or bridge project. The Judge then sets a date for the hearing which is referred to as the Consideration Hearing. At the Hearing, the Judge must decide if the taking is necessary to the lawful corporate purposes of the Agency.

Under eminent domain laws, the Judge of the District Court will appoint three disinterested residents from the county in which the land is being condemned to appraise the properties and make a determination of just compensation. A date will be set for the Appraisers' Hearing, at which time you will be allowed to present information to the court-appointed appraisers'. After the hearing, the court-appointed appraisers' will file their report of values for each parcel of real property with the Clerk of the District Court. The court-appointed appraisers' are only responsible for making a determination of just compensation and are not authorized to make any design changes in the highway, road, street or bridge project. The court-appointed appraisers' award includes compensation for the property or interests therein, plus all damages.

The Agency will then pay the amount of the court-appointed appraisers' award to the Clerk of the District Court. Once the award has been paid, the court will disburse the money to the property owners at their request, regardless of whether the case is appealed.



If you or the Agency is dissatisfied with the court-appointed appraisers' award determining just compensation, an appeal of the award may be filed with the Clerk of the District Court within 30 days from the date of the court-appointed appraisers' report. The only issue to be determined by the appeal shall be the compensation required by statute.

A trial by a judge or a jury will then be scheduled where, after hearing all facts and arguments, a determination of the award of just compensation for the real property will be made. Should the court or jury award be less than the court-appointed appraisers' award, the property owner must return the difference to the court plus interest. If the court or jury award is more than the court-appointed appraisers' award, the Agency will pay the additional amount plus interest.

Litigation Expense

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

- The court determines that the Agency cannot acquire your property by condemnation.

- The condemnation proceedings are abandoned by the Agency after the court-appointed appraisers' file their report and without an agreed-upon settlement.
- 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.
- Whenever the Agency appeals the court-appointed appraisers' award, and the judge or jury renders a verdict for the property owner in an amount greater than said appraisers' award.

TAXES

Income Taxes

In some cases the amount of just compensation you receive from the purchase or condemnation of the real property needed for highway, road, street or bridge improvements may not be taxable. Relocation payments received will not be taxable. Donations made to the Agency may qualify for federal income tax deductions as charitable contributions if you itemize deductions.

Because of complicated and changing tax laws, you are encouraged to confer with a tax consultant or representative of the Internal Revenue Service. Publication 544, titled *Sales and Dispositions of Assets* and Publication 526, titled *Charitable Contributions*, may be obtained by contacting the Internal Revenue Service, for additional information and use in preparing your tax return.

IRS Real Estate Reporting

The Internal Revenue Service requires the Agency to report all real estate transactions. Because of this requirement, the Agency may request you to complete an IRS Form W-9, titled *Request for Taxpayer Identification Number and Certification*. The Agency may also request you to make a statement detailing the allocation of proceeds identifying yourself and other persons entitled to a portion of the purchase or condemnation amount.

Adjustment of Real Property Taxes

Real property conveyed in fee simple title by warranty deed to the Agency or real property condemned by the Agency will be removed from the county tax rolls. The Agency will notify the county of exempt status; however, if you feel further adjustments in the assessed valuation of your remaining property are warranted, you should contact the appropriate county official.

FINAL WORD

This brochure explains your rights and entitlements as an owner of real property to be acquired for a federally or state-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 *Relocation, Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program*.



Please direct any additional questions about acquisition or relocation assistance, or requests for additional brochures to:

The Kansas Department of Transportation
Bureau of Right of Way
Eisenhower State Office Building
Topeka, Kansas 66603-3754
(785) 296-3501
Toll-free: 1-877-461-6817

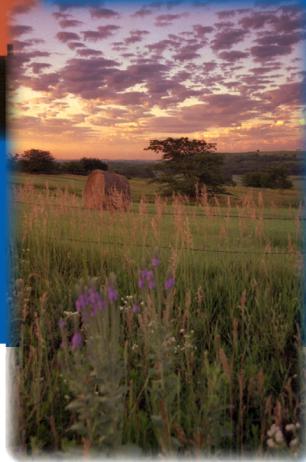
If the acquisition relates to a City or County project, please direct questions or requests for additional brochures to the City or County Agency administering the project.

If you have questions about, or believe you have been discriminated against because of race, color, sex, age, disability or national origin in the acquisition of your property, please contact:

The Kansas Department of Transportation
Office of Civil Rights
Eisenhower State Office Building
Topeka, Kansas 66603-3754
(785) 296-7940



Kansas Department of Transportation
Bureau of Right of Way
1-877-461-6817
www.ksdot.org



**Uniform Relocation Assistance and Real
Property Acquisition Policies Act of 1970
As Amended, Including 49 Code of Federal
Regulations (CFR) Part 24 dated January 2005**



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KANSAS
DEPARTMENT OF TRANSPORTATION
Responsible & Responsive