

KDOT

# ACQUISITION MANUAL

# Acquisition Manual

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## **1. Introduction**

This manual is for the information and guidance of the Acquisition Agent also known as Negotiators of the Department of Transportation Bureau of Right of Way. The manual briefly outlines the policies and procedures the Acquisition Agent shall follow in order to secure uniformity in the various phases of right of way acquisition. The Acquisition Agent is one of the principle contacts between the Kansas Department of Transportation (KDOT) and the public. Impressions made by the Acquisition Agent are important to good public relations.

The manual should be carefully studied and reviewed by the Acquisition Agent with his or her supervisor to eliminate any misunderstanding of instructions and should be available for use as a constant reference.

The Acquisition Section is under the supervision of the Chief Acquisition Officer. The Acquisition Section is responsible for the acquisition of all right of way and easements necessary for new construction, maintenance sites, roadside parks, etc., by purchase or condemnation.

For the purposes of this manual, the “Acquisition Agent” and “Negotiator” are considered to be one and the same.

## **2. Contracting for Acquisition**

The Chief Acquisition Officer may elect to contract for the acquisition of right of way for a project when there are insufficient staff personnel to perform the work within a reasonable time; when a consultant report is needed for use in a condemnation case; or, when the unusual character of the work requires expertise not available on staff. Procedures outlining contracting for acquisition services for the Bureau of Right of Way are contained in the document “Guidelines for Consultant Services”.

### **2.1. Qualifications of the Fee Negotiator**

Fee Negotiators, a.k.a, Acquisition Consultants, a.k.a. Acquisition Fee Agents, shall have no less than one year experience in right of way or easement acquisitions for highway or utility purposes or no less than two years experience in real estate sales, property management, title work, land survey work, or work in a similar field. The consultant may include staff with less experience than indicated provided the Chief Acquisition Officer approves said personnel and the consultant has a project manager directly training and supervising the trainee. Other exceptions can be made at the discretion of the Chief Acquisition Officer. The Chief Acquisition Officer or designee should require candidates to furnish a resume detailing their education, training, and experience in land acquisition or other related fields.

The Chief Acquisition Officer shall establish and maintain an approved list of contract Negotiators. The Chief Acquisition Officer shall take positive steps to include on the approved list, all qualified contract Negotiators who wish to be considered for KDOT contracts, regardless of contractor's geographic location, race, color, religion, sex, or natural origin.

A Negotiator may be removed from the eligibility list if a general review by the Chief Acquisition Officer shows the service of the Negotiator is unsatisfactory, or failure by the Negotiator to execute the work with due diligence.

### **3. Conduct of an Acquisition Agent**

Whenever interviewing property owners, particularly when negotiating, a number of guidelines should be followed:

1. The Acquisition Agent shall always keep in mind that he/she is an employee of the public and the owner with whom he/she is negotiating is a part of that public. The landowner should be treated with courtesy and respect at all times.
2. In the initial meeting with the owner, the Negotiator's first impression to the owner is important. A neat, conservative appearance and friendly manner will go a long way in making the first impression a good one.

Acquisition Agents will encounter cases when the landowner is upset about the right of way acquisition or the landowner has numerous concerns and/or the landowner is upset or unhappy with the state's offer. In these situations, the Acquisition Agent is encouraged to listen first to the landowner before trying to explain or defend the appraisal. Attempts to counter the landowner's concerns before the Acquisition Agent has earned the landowner's trust will only entrench the landowner deeper into their position. The Acquisition Agent should instead, try to understand the landowner's concern or reasoning for their dissatisfaction. The Acquisition Agent should politely ask questions relating to the landowner's concerns in an effort to problem solve. Once the landowner has vented their concerns they will be more receptive to an explanation of the state's offer or KDOT's position regarding the effects of the project on their property. In extreme cases, the Acquisition Agent may have a goal to ultimately end the negotiations with an impasse with the landowner feeling good about the Acquisition Agent. This can be an outstanding outcome.

3. Follow-up is important. Keeping commitments to follow-up regarding a landowner question or request will give the Acquisition Agent credibility. Failure to do so will cause the landowner to lose confidence in the Acquisition Agent.
4. High-pressure sales tactics have no place in KDOT right of way negotiations, and should be avoided at all times.

5. An Acquisition Agent shall never use the threat of condemnation, even by inference, to effect a settlement.
6. Acquisition Agents will firmly keep in mind that insofar as he/she is concerned, every appraisal, every offer, and every settlement is a confidential matter between the Bureau of Right of Way and each property owner.
7. When an owner questions the terms of another landowner's settlement with a neighbor, the Negotiator is well advised to courteously reply that such would be contrary to department policy and reiterate that all offers are based on carefully prepared valuations which provide for equal treatment for all owners.
8. The Negotiator will guard against indiscriminate remarks that can be misunderstood. It is best for the Negotiator to hold conversation relative to the offer, a discussion of the physical effects of construction on the property, and the compensation offered.
9. The Negotiator should avoid discussions on politics, religion, or other matters that tend to become argumentative. This is not to say that pleasant conversation should be avoided as it is a distinct asset in the effort to reach an agreement, a good rapport with the property owner is very important in negotiations.
10. The Acquisition Agent should carry out his negotiations as expeditiously as possible without actually, or appearing to be, rushing the property owner. It is important that long delays between contacts be avoided. The Acquisition Agent should be available between scheduled appointments in case the owner wishes to contact him/her. Do not expect the property owner to make the next move. Do not force initiative on the part of the owner in making arrangements for conferences or in undertaking steps necessary to conclude the negotiations.
11. Acquisition Agents shall not engage in any negative conversation about the appraisal or the appraiser with the landowner, the general public, or other KDOT and State of Kansas personnel.

#### **4. Policy and Definitions**

##### **4.1. Notice to Owner**

As soon as feasible, the owner shall be notified of KDOT's interest in acquiring the real property and KDOT's obligation to secure an appraisal\*. This information is provided to the owner in the KDOT brochure "*Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges*", which will be given to the owner by the appraiser and offered to the owner by the Acquisition Agent.

\*Note that provisions under Waiver of Appraisal guidelines provide for certain exceptions.

## **4.2. Appraisal**

Before the initiation of negotiations the real property to be acquired shall be appraised\* and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

\*Note that provisions under Waiver of Appraisal guidelines provide for certain exceptions.

## **4.3. Waiver of Appraisal**

An appraisal is not required if the owner is donating the property and releases KDOT from this obligation or KDOT determines that an appraisal is unnecessary because the value problem is uncomplicated and the fair market value is estimated at \$10,000 or less.

## **4.4. Prompt Offer of Just Compensation**

Before the initiation of negotiations, KDOT shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property. Promptly thereafter, KDOT shall make a Written Offer to the real property owner to acquire the property. At no time shall the Negotiator offer less than what was established as just compensation for the real property by the Review appraiser.

## **4.5. Time to Consider Offer**

The property owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase. KDOT shall consider the owner's presentation.

## **4.6. Donation of Property**

An owner may, after being fully informed by KDOT of the right to receive just compensation for the property, donate the property or any part or interest in the property to KDOT. KDOT is responsible for assuring that an appraisal of the property is obtained unless the property owner releases KDOT from this obligation.

The property owner must sign D.O.T. Form No. 1724 "Donation of Right of Way", stating that it was understood the owner can be paid the just compensation but wishes to donate the necessary right of way. In the event an appraisal is not performed on a transaction involving a donation, the property owner must sign R/W Form No. 7, "Waiver of Appraisal"

#### **4.6.1 Donations Prior to Environmental Approval**

Following 23 USC Sect. 323 (d) Any document executed as a part of such donation prior to the approval of an environmental document shall clearly indicate that:

- All alternatives to a proposed alignment will be studied and considered pursuant to such Act;
- Acquisition of property under this section shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and
- Any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if required, and completion of the environmental document.

#### **4.7. Summary Statement**

Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, referred to as Offer Letter, which shall include:

- A statement of the amount offered as just compensation. In case of a partial acquisition, the compensation for damages, if any, to the remaining real property shall be separately stated.
- A description and location identification of the real property and the interest in the real property to be acquired.
- An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

#### **4.8. Coercive Action**

KDOT shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid to the property owner.

In no instance is condemnation ever to be used as a threat.

#### **4.9. Separation of Responsibilities**

The Bureau of Right of Way will not assign the negotiations for acquisition of a property to the same agent who made the appraisal or reviewed the appraisal of the subject property, except the agency may permit the same agent to both value and negotiate the acquisition when the value of the acquisition is \$10,000 or less and the appraisal is uncomplicated in nature.

To ensure no possible conflict of interest between the personal or family interest of a Negotiator and the interest of persons with whom such an employee transacts business for KDOT, the Negotiator should not accept an assignment nor should the supervisor knowingly assign the Negotiator to a tract where there is a possibility of a conflict of interest.

The Negotiator shall not attempt to influence or coerce an appraiser or review appraiser regarding any valuation or other aspect of an appraisal or appraisal waiver.

#### **4.10. Delivery of Check**

After a successful negotiation for acquisition of a property either by a Negotiator or legal counsel, payment for said property should not be delivered in person by those who have negotiated, appraised, acted as Review appraiser, or attorney negotiating a settlement. In limited circumstances, it may be necessary for an Acquisition Agent to deliver payment. In these circumstances, the Agent will require the owner to sign and date a receipt of payment.

#### **4.11. Interest to be Acquired**

It should be understood that although the acquisition of Fee Title is definitely preferred by KDOT, in some cases the owner may request KDOT to acquire something less than Fee. The Negotiator should make the owner aware that a Warranty Deed for highway purposes conveys a Fee Title unless the owner specifically requests a Permanent Easement. KDOT is in the primary business of building and maintaining roads and, in accomplishing this objective, is interested in acquiring right of way necessary for the construction, preservation, and protection of the highway facilities. In some cases the purchase of less than Fee Title may be acceptable.

If a questionable title situation presents itself during negotiations, the problem should be referred to the Chief Acquisition Officer. If a revision in title interest is deemed appropriate and necessary, new contracts and a revised appraisal, if necessary, shall be prepared to show the new interest to be acquired.

#### **4.12. Permanent and Temporary Easements**

Permanent easements may be obtained outside the proposed highway right of way lines to cover the construction and/or installation of appurtenant highway facilities of a permanent nature. Installation of any outfall storm sewer, rip-rapping of stream channel, or channel changes are examples where frequent future entry for maintenance or reconstruction purposes outside of the highway right of way would necessitate a permanent easement.

Temporary easements may be obtained for such things as detour roads, removal of remainders of improvements situated partially on acquired right of way, sloping lawns extending beyond the proposed highway right of way lines, reconstruction of driveways, or channel changes (requiring infrequent or no future maintenance), etc., where the specified use is essential to complete construction of the proposed improvement. Generally, the temporary easements will automatically expire 90 days after completion of the project for which they were acquired. Some temporary easements will carry a stipulation that the easement will be released in a specified number of years or upon completion of the project. The Negotiator should read each easement very carefully to ascertain which type of expiration it carries.

#### **4.13. Real Property (Buildings, Structures, and Improvements)**

When fee-owned improvements are involved, just compensation for improvements adversely affected by the acquisition or deemed to be a part of the real property to be acquired will be determined by appraisal procedures. The established amount of just compensation will be paid to the owner of the land provided that such improvements are owned in their entirety by the landowner. The appraisal will usually mention the items that have been included as real property.

When acquiring any interest in real property, KDOT shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvements of a tenant-owner who has the right or obligation to remove the improvements at the expiration of the lease term.

#### **4.14. Personal Property**

Personal property generally can be defined as movable items, that is, those not permanently affixed to, and a part of, real property. In deciding whether or not an object is personal property or real property, the following should be considered: the manner in which it is affixed; the intention of the party who made the improvement (that is to leave permanently or to remove at some time); and the purpose for which the premises are used. Generally, but with some exceptions, items remain personal property if they can be removed without serious injury either to the real estate or to the item itself.

From time to time the Negotiator will be faced with the problem of deciding whether or not an item or fixture is personal property or real property and whether or not the item or fixture will be acquired by KDOT. The Negotiator must check the appraisal for the fixture or improvement to see whether the item(s) has been included in the appraisal and the approved amount of just compensation. If the item was included in the approved offer of just compensation, then it is policy that it cannot be retained by the owner without approval and possible deductions (retention value).

#### **4.15. Revised Offers**

In the event a revised appraisal review is performed resulting in a change in the offer of just compensation, a Revised Offer Letter shall be delivered to the landowner. A Revised Offer Letter is not necessary when a tract is purchased by means of a negotiated Administrative Settlement or when verbal offers are made in the negotiation process. A Revised Offer Letter is only necessary when a Revised Appraisal Review has been completed.

#### **4.16. Uneconomic Remnant**

During the process of negotiating, the Negotiator may have to acquire a tract that leaves the owner with an unusable or uneconomic remnant. An uneconomic remnant is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner. KDOT shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. The Review Appraiser and the Operations Assistant to the Chief of Right of Way shall have authority to determine that the remnant is uneconomic on behalf of KDOT.

The appraiser may express his or her opinion, as to whether or not a remnant is uneconomic, in the appraisal report. The Review Appraiser shall examine the appraiser's report and make a determination whether or not an uneconomic remnant exists.

When there is an uneconomic remnant, the Review Appraiser shall establish two estimates of just compensation, one including purchasing the uneconomic remnant and one not.

When this condition exists, the Acquisition Agent should pay close attention to the Review Appraiser's report and shall present two separate Offer Letters. One offer to acquire the tract including the uneconomic remnant is made and one offer without the uneconomic remnant should be made.

Once the owner has given the Acquisition Agent his verbal agreement for the purchase of this remnant, the Acquisition Agent should make a request for new and/or revised purchase documents. The request is provided to the Bureau of Right of Way Engineering Section for the preparation of a Legal Description for the remnant and will be designated with the letter "U". After the purchase papers have been executed, the Acquisition Agent shall make a request to the Engineering Section that the plans be changed to reflect the acquisition of the uneconomic remnant "U".

The Acquisition Agent may encounter situations where the offer that has been presented to the landowner does not identify an uneconomic remnant but the landowner believes an uneconomic remnant exists. In these situations the Acquisition Agent should get as much information from the landowner as possible including all of the reasons the landowner believes an uneconomic remnant exists. Additional information presented by the landowner or obtained by the Acquisition Agent subsequent to the appraisal may need to be considered. The Acquisition Agent should forward this information to the Chief Acquisition Officer. The Acquisition Agent should not give the landowner his/her opinion as the information will need to be assessed by the Review Appraiser, Chief Appraiser, or Operations Assistant to the Bureau Chief.

#### **4.17. Administrative Settlements**

Occasionally it is in the public's best interest to accomplish a settlement in excess of the Review Appraiser's established just compensation determination. Such settlements are broadly defined as Administrative Settlements due to the fact that they are the result of an administrative decision. An Administrative Settlement requires an authorized Agency official to approve the settlement as being "reasonable, prudent, and in the public's best interest." In all instances of Administrative Settlements, caution, discretion, and proper judgment should be applied.

A practice of agreeing to settlements above the established just compensation merely because an owner "holds out" is discouraged, as this type of practice would soon become public knowledge and there would be but few negotiated agreements by the right of way Negotiator on the basis of just compensation.

An Administrative Settlement is exactly what it is labeled and is beyond the appraisal and review process that has produced fair market value upon which just compensation is based. However, the Administrative Settlement can consider factors utilized in the appraisal process in the determination of fair market value and just compensation, and should consider items omitted from the appraisal process and all other available information including other appraisals, additional estimates or bids, recent court awards, estimated trial costs and risk, valuation problems, etc.

The justification for all Administrative Settlements should be documented in writing by the responsible Agency authority on the appropriate form with attachments as necessary. Documentation should be well written so that internal KDOT officials as well as external parties understand why additional taxpayer dollars were provided and allowed. The responsible party is encouraged to consult with the Negotiator, Appraiser/Reviewer, Chief Appraiser, Chief Acquisition Officer or the Operations Assistant to the Chief of Right of Way.

The following outlines the responsible parties authorized amounts and official approvals:

<u>RESPONSIBLE PARTY</u>	<u>AUTHORIZED AMOUNT</u>
Acquisition Consultant	\$500 or less
Acquisition Consultant Project Manager	*\$5,000 or less
Right of Way Agent	\$5,000 or less
Chief Acquisition Officer, Operations Assistant, or Chief of Right of Way	Over \$5,000

\*The Chief Acquisition Officer, Operations Assistant, or Chief of Right of Way may consider the experience and qualifications of the consulting firm and may choose to limit the authorized amount given to the Acquisition Consultant Project Manager as they deem appropriate.

The Acquisition Agent, Acquisition Consultant, or Project Manager is encouraged to make recommendations to the Chief Acquisition Officer in the event they believe there is justification for a settlement beyond their authority.

#### **4.18. Payment Before Possession**

The Acquisition Agent is responsible for informing the seller that vacation of the premises, or surrender of physical possession, is not required until the owner has been paid the full amount of the agreed purchase price or the amount awarded by the court appointed appraisers has been deposited in District Court and made available in the case of condemnation. The owner is not required to surrender physical possession nor move personal property from the right of way prior to 90 days after the delivery of the 90-Day Guarantee letter nor prior to the expiration of the 30-Day Notice to Vacate-

The owner may waive his/her right to full payment, to the 90-day possession or to the 30-day notice through the terms of the Right of Way Contract. When the seller

agrees to give KDOT the right of physical possession before receiving final payment, the owner will be required to vacate the property on the date agreed per the contract terms. No such contract should be accepted until the Negotiator is confident the owner is fully aware of the rights being waived and the Negotiator has documented the files accordingly.

The Settlement and Release in Full of All Claims, DOT Form 1718 for the tenant will not require the tenant to surrender physical possession of the premises by a certain time unless the fee owner has either signed a Right of Way Contract or KDOT has acquired the interest of the fee owner through condemnation.

#### **4.19. Incidental Expenses**

The owner of real property shall be reimbursed for all reasonable expenses he or she incurred including but not limited to the following:

- Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of real property, and similar expenses incidental to conveying the real property to KDOT. However, KDOT is not required to pay costs solely required to perfect the owner's title to the real property.
- Penalty costs and other charges for prepayment of any pre-existing recorded mortgages entered into in good faith, encumbering the real property.

Whenever feasible, KDOT shall pay these costs directly to the company or organization involved so the owner will not have to pay such costs and then seek reimbursement from KDOT.

### **5. The Right of Way Acquisition Process**

Preparation is the key to successful negotiating. The Negotiator, after receiving an assignment, should carefully and systematically prepare effective negotiations with the property owners. They should become familiar with all the data and information available to them including but not limited to the complete set of plans, strip map, cross sections if necessary, appraisals, review appraisals, comparable sales data, certificates of title, aerial photos, maps of the project area, etc. The Negotiator should have knowledge of the type of business that is being conducted on the property.

Before the initiation of negotiations, KDOT shall establish an amount that it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. Promptly thereafter, KDOT should make a written offer to the property owner for the full amount believed to be just compensation.

## **5.1. Prior to Contact with Owners**

### **5.1.1. Environmental Clearance**

Right of way negotiations with landowners will not begin unless an Environmental Clearance is complete. However, advanced acquisitions may take place prior to environmental clearances provided proper authority has approved said advanced acquisition.

### **5.1.2. Assignment of the Acquisition Agent**

Persons assigned to a project for the purpose of conducting negotiations shall be staff employees of KDOT, cooperating governmental units, or fee Negotiators.

The employment of fee Negotiators shall be by written contract with the approval of the Chief of the Bureau of Right of Way.

The Acquisition Agent will receive his/her assignment from the Chief Acquisition Officer, Operations Assistant to the Chief of Right of Way, or the Property Manager. The assignment should include the following:

- Assignment due date;
- Plans and ownership strip map;
- Appraisals and Review Appraisals indicating the just compensation for the right of way to be acquired and all damages to the remainder, considering both the landowner and tenant;
- Legal descriptions and Certificates of Title for each tract;
- Purchase documents needed to complete the acquisition of all tracts on the project.

After the initial assignment of the Acquisition Agent to a project is made, the Acquisition Agent will continue on the assignment until the negotiations are completed or accepted for condemnation.

### **5.1.3. Comparing Descriptions with Right of Way Plans**

The Acquisition Agent must be thoroughly familiar with the method used by KDOT for describing the limits of the property to be acquired, so that he/she can check the description(s) to determine if it corresponds with what is shown on the plans and with what is written on the Right of Way Contracts. Comparing the limits shown on the Right of Way plans to the legal

description(s) should be done prior to contacting the property owner. This is done to insure the accuracy of the descriptions and project plans and to insure we are purchasing the correct parcel of ground. The Acquisition Agent should be able to explain the right of way description on the plans to the landowner.

For both full and partial acquisitions, the Acquisition Agent should check the Section, Township, and Range, the County, and Subdivision, if any, as shown in the contract against the plans and title information.

#### **5.1.4. Design and Construction Features**

The Acquisition Agent should be prepared to discuss with intelligence and understanding certain highway construction and design features that may affect the valuation and/or usage of the acquired and remaining property. This discussion will give the property owner a complete picture by words, maps, profiles, etc. of the road or highway to be constructed, the necessity, and the advantages of having the new road or highway. Special attention should be made to changes in access or entrances that have been eliminated. Other items to be aware of are:

- Access limitation and control to be imposed.
- Existing and proposed means of ingress and egress.
- Frontage roads to be provided, if any.
- Elevations of the facility in relation to the existing terrain.
- Cuts and fills, if any.
- Driveways - existing and proposed.
- Fencing - owner or KDOT responsibility for erection and maintenance and type.
- Easements required for construction, channel changes, or for other uses.
- Changes in drainage patterns, if any.
- Any other unusual features.

Complete knowledge, truthfulness, full disclosure, and discussion of all facts relative to construction and design features are a must and will do much to instill in the property owner a justifiable feeling of confidence and trust in the Acquisition Agent and KDOT.

#### **5.1.5. Certificates of Title**

It is the responsibility of the Acquisition Agent to check the Certificates of Title prior to negotiation proceedings to verify that there has not been any recent activity in regards to the transfer of the title.

The Acquisition Agent should pay close attention to any activity in regard to new ownership or new liens. Also the Acquisition Agent should check on any taxes that may be due or may have been satisfied.

### **5.1.6. Study Appraisals**

It is essential that the Acquisition Agent carefully studies the appraisal and appraisal review and that he/she is fully acquainted with all comparable sales data that are used in the appraisals. This should include making an inspection of all sales used for the project. The Acquisition Agent should be fully knowledgeable of all sales, comparable or not, that have occurred in the area. The Acquisition Agent should diligently study the project plans and be able to interpret them correctly in any and all ways that may affect the properties for which they are negotiating. Only after thorough and complete preparation should the Acquisition Agent make any attempt to contact any of the assigned property owners.

After studying the appraisal, the plans, and the project tract, should the Acquisition Agent feel that the amount to be offered is not equitable to the owner or to KDOT, he/she should discuss the matter with the Chief Acquisition Officer prior to contacting the property owner.

### **5.1.7. Inspect Prior to Contact**

Acquisition Agents need to understand the affects of the right of way acquisition on the property prior to presenting the state's offer to purchase the right of way. By viewing the property the Acquisition Agent can become familiar with characteristics of the property, such as: the use, location, and lay of the land. This practice will prepare the Acquisition Agent for presenting the state's offer, enhance the Acquisition Agent's credibility, and help build a basis for meaningful discussions with the landowner.

The Acquisition Agent should study the right of way plans against what the Acquisition Agent views in the field. The Acquisition Agent should specifically look for changes in access, improvements and/or signs that may be affected, and for personal property which may be located in the proposed right of way. The Acquisition Agent can better discuss these issues with the landowner after a firsthand viewing.

Whether the Offer Letter is presented in person or by certified mail, it is a good practice to give the landowner a courtesy call to inform them of the Acquisition Agent's intent to walk the frontage of their property. In the event the Acquisition Agent anticipates the need to get onto the landowners' property, permission should always be obtained first.

It may not always be practical and time may not always permit an Acquisition Agent to view the property before the initial meeting or prior to mailing the Offer Letter. In this case the Acquisition Agent should ask the landowner if they could walk the property together before presenting the offer. In the event

the Acquisition Agent notices that an appraisal problem exists, such as a missed cost to cure item, the Acquisition Agent can avoid embarrassment and could choose to make a graceful retreat from presenting the offer.

It is the duty of the Negotiator to interpret the right of way plans and legal descriptions, title information, the appraisal (market value), as well as contract provisions to the owner in an objective, impartial, and sincere fashion. It is obvious that to accomplish this, the Negotiator must be thoroughly familiar with each phase of the right of way process.

## **5.2. Acquisition by Mail**

Acquisition by mail is considered to be a viable alternative to presenting the state's offer to purchase right of way in person.

The Acquisition Agent should view or inspect the project prior to mailing the state's offer to purchase right of way. This inspection should include viewing each tract acquisition and making sure that the project right of way plans are understood in relation to each individual property. The Acquisition Agent should be able to note any adverse impacts to the property and should pay particular attention to changes in access. In addition, the Acquisition Agent should be familiar with each appraisal, review the Certificate of Title, and be comfortable with the offer of just compensation before mailing the offer.

To the greatest extent possible, the decision to present the offer by mail is at the discretion of each Acquisition Agent and under ongoing approval by the Chief Acquisition Officer. A tract will not be considered for acquisition by mail if the acquisition involves a residential or business relocation.

The Acquisition Agent is encouraged to anticipate cases where acquisition by mail may not be suitable. Tracts with complicated compensation issues and properties that are impacted greatly by the project, such as, acquisitions involving damages to the remainder, land severance, and uneconomic remnants, may not be good candidates for acquisition by mail. In such cases the Acquisition Agent should consider presenting the offer in person.

In no case will the Acquisition Agent continue negotiations by mail if the property owner indicates he/she wants to be contacted in person by the Acquisition Agent.

It is recommended the Offer Letter include a cover letter explaining the purpose of the project, such as, adding shoulders, widening or adding driving lanes, etc. The letter should explain fully the items that are being considered in the offer and ways the project impacts the property. The approximate timetable of the construction activities should be given. The letter should state that if the Negotiator does not hear from the landowner in a reasonable length of time, the Negotiator will contact the landowner.

### 5.3. Appointment Scheduling

To the greatest extent possible, an Acquisition Agent will be allowed to establish the manner in which he or she schedules appointments with landowners. Each Acquisition Agent is encouraged to establish practices that help them achieve successful results provided the Acquisition Agent's methods are consistent with the values and goals of this agency.

The first contact with the landowner may be either by phone or by mail. Meeting with landowners without appointments is not a good practice. As long as the Acquisition Agent does not short-cut the steps necessary to prepare himself/herself prior to presenting the offer, the Acquisition Agent may choose to make the initial contact by mail or by phone and may choose to use different approaches depending on the nature of the acquisition. A good practice is to send landowners an introductory letter, which not only introduces the Acquisition Agent but also informs the landowner of the Acquisition Agent's intent to look at the property prior to contacting them again for an appointment. Another good practice is to phone the landowner, make the introductions, get permission to view the property, and ask them if they prefer to meet to have the offer presented, or have the offer sent to them.

Prioritize appointments under these general guidelines:

- The Acquisition Agent should give first priority to the residential or business relocation tracts. Prioritizing these tracts is warranted due to the length of time that it sometimes takes for the relocation process. Additionally, it is the policy of this agency for the Acquisition Agent and the Relocation Agent to present the Offer Letter and the relocation supplement together. This is done so that the landowner has all information regarding the acquisition and relocation presented at one time and they are aware of the full package of compensation and benefits KDOT has to offer.
- Attention should be directed to those tracts which may have encumbered ownership and from a title clearing standpoint appear to present problems involving probate, guardianship, etc., which, from experience, will take considerable time to process and clear. It is important that the Negotiator concentrate on those tracts at the outset of the project negotiation process and that his/her immediate supervisor knows of the problems that might arise. If the acquisition of encumbered ownership tracts is not pursued diligently throughout the project acquisition process, the invariable result will be an incomplete acquired right of way project when the scheduled completion date is reached and the proposed Construction Project Letting Date may have to be changed.

## 5.4. Steps in Negotiating

### 5.4.1. Making the First Contact

KDOT shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation, and explain the acquisition policies and procedures, including payment of incidental expenses. In the event the landowner can not be reached by phone, the Offer Letter should be sent by CERTIFIED MAIL to the landowner's last known address.

When making the first contact in person it is good practice for the Negotiator to:

- Ask the property owner if they have received the brochure "Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges" from the appraiser. Ask the property owners if they have questions regarding the brochure.
- Verify the title certificate information with the landowner.
- Verify if there is any personal property in the proposed right of way.
- Verify if there are any private underground improvements such as private utility lines or irrigation lines.
- Explain the scope of the project work and the impact of the acquisition on the landowner's property. Encourage the owners to ask questions. Be a good listener and through conversation, develop a common ground of interest, confidence, and trust. It is quite possible that a view of the property with the plans may be necessary to clear up some of the questions raised by the owner. The Negotiator should reiterate the questions and objections that the property owner has raised. By a simple rereading of the owner's concerns and pausing to ask the owner if each statement does, in fact, represent their concern, the Acquisition Agent will undoubtedly elicit a great deal of information into the real cause of the owner's concerns.
- After reviewing the project scope and impact to the property, the Acquisition Agent should present the State's Offer Letter in a professional manner.
- If the landowner identifies problems or concerns regarding the offer of just compensation, the proposed project or the impact of the acquisition/proposed project on his/her property, the Acquisition Agent should ask enough questions to understand the landowner's concerns.

Asking questions and showing an understanding of the landowner's concerns will build trust. Landowners who have serious objections will not care how much the Acquisition Agent knows nor will he/she care how good the agency thinks the appraisal is until the Acquisition Agent has built trust. The Acquisition Agent should begin problem solving after gaining credibility with the landowner.

- After the Acquisition Agent has established a dialog with the landowner the Acquisition Agent can distinguish which landowner concerns are reasonable and legitimate. Resolving all issues is part of the problem solving process the Acquisition Agent must engage.
- The Acquisition Agent should be prepared to continue the problem solving process after the offer is presented and throughout the negotiating process. Legitimate and reasonable landowner concerns regarding the offer of just compensation or regarding some elements of the proposed right of way acquisition can and should be addressed by the Acquisition Agent as part of the ongoing problem solving process. Whenever evidence from any source reveals that items of value have been overlooked, it is essential that they be fully considered and the owner be fully compensated.

NOTE: Each contact with the landowner must be documented on acquisition Negotiation Notes. Important elements addressed above should be summarized in the Negotiators' Notes, D.O.T. Form 1792.

#### **5.4.2. Purchase by Negotiation**

The experienced Negotiator is able to recognize the proper time to close the purchase of right of way. Usually such recognition is made from observation of the owner's reception to the acquisition presentation or from the manner and nature of the owner's comments. At this point the Negotiator will ask if the owner would like to sign the purchase papers, and if an agreement is reached, the necessary papers will be prepared and signed as soon as possible.

Once the offer has been made there are, in general, three possibilities in the way of owner reaction: agreement, disagreement, or the owner may need more time before committing with no special issues raised.

- If there is agreement, the Negotiator should do the following:
  1. Make arrangements to execute the purchase documents. Or if the papers are already complete, present the contract and other documents for the owner to read. Go over each item carefully to be sure that all provisions are fully understood and agreed upon. All items of damage must be listed with the total amount paid on the contract.

2. After the documents are signed, explain that KDOT will assist in obtaining all necessary releases and other auxiliary documents. Explain procedures and inform the owner that he/she should not hesitate to call for any additional information.
- An owner may refuse KDOT's offer on the grounds the offer of just compensation is inadequate or due to issues the landowner has regarding the proposed project design such as access to the remaining property. If the owner indicates that KDOT's offer is not acceptable, further discussion will be in order. If the owner asks about condemnation, a reasonable and objective explanation of the law protecting both the owners' rights and those of KDOT is explained by the Negotiator. Landowner's opinions and comments made during negotiations should be noted in the Negotiation Notes.
  - The Acquisition Agent should begin the problem solving process through inquiry as noted in this manual. Information gained from the landowner may be valid and reasonable and may lead either to a Revised Review, Administrative Settlement or revision in some element of the plan design\*.

\*NOTE: Plan revisions are under the supervision of the Engineering Assistant to the Chief of Right of Way. The Acquisition Agent should contact the Bureau of Design for approval of a plan change. Once this approval is received, the Acquisition Agent will make a form request for a plan change to the Engineering .

- After establishing a dialog with the landowner the Acquisition Agent can explain KDOT's position on issues and can respond to landowner concerns. Points can be made, such as, the need for the improvements and that the proposed highway improvements are based on exhaustive engineering studies in determining the design which does the least possible private injury with the greatest overall public good. Through open dialog the Acquisition Agent can explain the basis of the offer of just compensation including the comparable sales in the area that form the basis for establishing land and improvement values.
- Landowner issues such as counter offers based on the assumption that KDOT would want to avoid spending a greater amount on going through the process of litigation can be addressed by open and candid dialog. After the Acquisition Agent has established some basis of open and honest communication, the Acquisition Agent can better address those situations where the landowner makes a substantially higher counter offer without substantiating support. If the Acquisition Agent has been affective in his/her efforts to establish credibility with the landowner, the Negotiator can then reiterate the facts pertinent to the property's valuation and

extensive experience of the appraisers. Information regarding basic land values, supported by comparable sales, as well as the “highest and best use” of the property can and should be discussed with the landowner. Informing the landowner that KDOT’s offer represents “just compensation” will carry more credibility with the landowner after the Acquisition Agent has let the landowner vent his concerns.

- The Acquisition Agent should continue the problem solving process until all issues are resolved or until an impasse has clearly been reached. In the event an impasse is reached, the Acquisition Agent should ask if the landowner is familiar with the eminent domain process. The Acquisition Agent should present any information pertaining to condemnation respectfully and without threat. The process should be explained as another avenue for the landowner to be fairly compensated. The landowner should be made aware that the eminent domain process would not address plan revision issues but only the “before and after value” of the property.
- In the event the landowner is noncommittal after the first contact by the Acquisition Agent, the Acquisition Agent should continue to make as many follow-up calls as necessary to either resolve all issues and acquire the tract or make sufficient landowner contacts to document that an impasse has been reached.

### **5.4.3. Closing Salesmanship**

It is not the purpose of this section to provide instruction in the art of salesmanship. The Acquisition Agent should closely observe the reactions of the owners during negotiations, review in their own minds the probable reason for success or failure in obtaining agreements from the owners, and adapt their techniques from the lessons learned.

The main objective of the Negotiator is to sign the owner when the first opportunity presents itself. When there are special sentimental attachments to a property, the owner may be extremely distressed at the thought of losing it, be patient and sympathetic but firm. Try to point out the greater good for the greater number of people in providing a safer highway.

Generally it is appropriate to make another call after the offer has been refused. Repetition is a sound sales approach. The Acquisition Agent should respect the landowner’s point of view even if they don’t agree with it. Answer questions from the previous call, present new available facts and data, and re-emphasize the strongest points previously used. Keep reviewing the offer and how the figure was computed. Impress upon the property owner that this is an offer of just compensation based upon sound valuation procedures and the law.

There is no set pattern or formula for effecting closure. Rather, each transaction differs, just as property owners, their reactions, and environments differ. It is for this reason that negotiation is basically a person-to-person process requiring personal contact and the skillful application of individual judgment to each negotiation.

#### **5.4.4. Other Issues**

Occasionally, an owner will request that the Acquisition Agent give him/her a copy of KDOT's appraisal. An appraisal can be given to a landowner or the landowner's attorney or designated representative if approved by the Chief Appraiser or the Operations Assistant to the Chief of Right of Way. Instead of immediately sharing the appraisal, the Acquisition Agent may first want to point out the comparable sales or data used to establish the unit values and ask the owner if he/she has any additional sales or data that should be considered. While the Negotiator should always use care and discretion in discussing individual items or damages, it is permissible to disclose some sales information to the owner without any special permission from the Chief Appraiser, Chief Acquisition Officer, or Operations Assistant to the Bureau Chief of Right of Way.

Occasionally, the owner may ask advice about the use of an attorney to represent them during negotiations. The Negotiator must remain neutral to any such questions, informing the owner that while KDOT always makes it possible to complete the transaction without an attorney, the decision must be entirely the owner's.

### **6. Notification to Relocation Assistance Section**

Any time there is personal property located in the proposed right of way or easements, the Negotiator should complete and deliver an R/W Form No. 5 "Tract Vacation Information" immediately after the offer has been presented to the property owner. The R/W Form No. 5 will be completed and submitted to the appropriate KDOT staff whether the landowner or a tenant owns the personal property.

The R/W Form No. 5 serves as an important internal document used to inform the Bureau of Right of Way's Relocation Section that the negotiations with the landowner have been initiated. This is important because the Relocation Agent assigned to the tract cannot submit a 90-day notice to move the personal property until the Offer Letter has been provided to the landowner.

When the Negotiator completes the purchase of a tract, a R/W Form No. 5 will be completed and forwarded to the appropriate KDOT staff along with all properly executed documents.

If a landowner has a question relating to a relocation issue, the Acquisition Agent should refer or forward the inquiry to the Relocation Assistance Section.

## **7. Real Property Improvements**

When acquiring any interest in real property KDOT shall offer to acquire at least an equal interest in all building structures or other improvements located upon the real property acquired, that:

1. KDOT requires to be removed; or,
2. KDOT determines will be adversely affected by the use to which such real property will be put.

This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

### **7.1. Tenant Owned Buildings and Leasehold Interests**

Tenant owned improvements and leasehold interests are included in the just compensation established by the Review Appraiser.

Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property if owned by the tenant.

Just compensation for a tenant-owned improvement is the amount by which the improvement(s) contribute(s) to the Fair Market Value of the Real Property being acquired or the Fair Market Value of the improvement(s) for removal from the land (Salvage Value), whichever is greater. Just compensation for tenant owned improvements will be established through the appraisal process.

No payment shall be made to a tenant-owner for any real property improvement unless:

- The tenant-owner, in consideration for the payment, assigns, transfers, and releases to KDOT all of the tenant-owner's rights, title, and interest in the improvement. The tenant releases his/her interest by executing a DOT Form No. 1718 "Settlement and Release in Full of All Claims".
- The owner of the real property on which the improvement is located disclaims all interest in the improvement. A DOT Form No. 1718 "Settlement and Release in Full of all Claims" is used to disclaim the landowner's interest in the improvement.

- The payment does not result in the duplication of any compensation otherwise authorized by law.

During the negotiation process it is normal practice to advise the various owners of the distribution made by the appraiser. This is done on DOT Form No. 1726 “Offer Letter”. The landowner’s Offer Letter should identify tenant owned improvements not included in the landowner’s offer. The written offer for the leasehold interest (improvements) is made on R/W Form No. 1 “Offer Letter”. When the interests are complex, the Chief Acquisition Officer should be contacted.

Any tenant has the right to reject payment for improvements as outlined above and obtain payment for such property interest through Eminent Domain proceedings.

In the event negotiations for the new right of way are unsuccessful and the matter must be settled in a court of law, KDOT may condemn the owner and not the tenant provided all fee owners have signed the Settlement and Release in Full of All Claims. In a case such as this, it is a good practice for the Acquisition Agent to consult the Chief Acquisition Officer. (Additionally, it may be a rare situation where the landowner would be willing to sign a Settlement and Release in Full of All Claims in the event the landowner was going to condemnation.) If a settlement can be reached with the landowner but a settlement cannot be reached with the tenant for a tenant owned improvement, the Acquisition Agent should consult with the Chief Acquisition Officer for direction.

## **7.2. Retention and Removal of Improvements**

In an agreed settlement, the owner may have the option to retain and remove the improvements/buildings from the area being acquired, thereby facilitating clearance of the right of way. Owners may retain their buildings for a salvage value. The salvage value is referred to as the retention value. In some instances it may be possible to waive the payment of the retention value to aid in the negotiation process. Retention values will be furnished to the Negotiator by the Property Manager or the Chief Acquisition Officer.

If a landowner is considering retaining the buildings, the Negotiator should inform them of the general removal requirements, so the owner can make an informed decision. These requirements can be provided by the Property Manager or the Chief Acquisition Officer.

If a landowner retains their buildings, the retention value should be deducted on the Right of Way Contract and Payment Voucher. Owner retention may be formulated by a Performance Bond agreement. This agreement will document the requirements the owner must fulfill to retain the improvement. The owner is required to remove buildings from the right of way within a time period established by the Property Management Section. The property owner is also responsible to clear the area of all debris and reclaim the site at the owner’s expense.

### **7.3. Performance Bond**

If the owner elects to retain buildings, he/she will post a cashier's check as a performance bond assuring removal of the buildings and debris by the date agreed upon in the "Performance Bond" DOT Form No. 1881. In some instances the performance bond amount may be deducted from the landowner's proceeds. The Property Management Section or administrative personnel will determine the amount of the bond. The cashier's check should be submitted to the Property Management Section or the appropriate administrative authority within the Bureau of Right of Way.

After removing all buildings and debris, the owner is instructed to request an inspection of the site by the Property Manager or their designee. If removal has been adequate, the Property Manager will refund the deposit posted as the performance bond.

If the area is not adequately cleared of buildings and debris according to the Performance Bond, the owner will be advised, and if corrective measures are not taken, the performance bond will be forfeited.

### **7.4. Fixture Retention**

If an owner is insistent on retaining appurtenances such as: fans, light fixtures, cabinets, etc., the Property Manager, through the Chief Acquisition Officer, should be consulted to determine the value of said item and this amount may be deducted from the payment. A notation will be made in the contract that retention is limited to that item and the owner will not damage any other part of the building in a manner to adversely affect its resale potential, or create a public nuisance or a condition which may lead to vandalism. Where it is obvious that retention cannot be accomplished without resulting in undesirable conditions, the owner's request will be firmly denied after explanation.

### **7.5. Inform Property Management**

Upon purchase of a tract with improvements, the Negotiator must complete R/W 205 form, "Disposition of Improvements". This completed form should be submitted with the executed purchase documents. If a tract with improvements is unsuccessfully negotiated, the Negotiator should complete R/W 205 and submit the form with the condemnation package.

R/W 205 forms are forwarded to the Property Management Section. The Property Manager uses the information provided on the R/W 205 to facilitate the clearing of the right of way and to inform KDOT District Personnel of any particulars regarding the landowner's or tenant's intentions to retain the item or abandon the improvements.

Although this agency does not encourage the rental of buildings, if an owner or tenant makes an inquiry on rental of buildings after the normal 90-Day Guarantee expires, the Negotiator will inform the Chief Acquisition Officer of the owner's request to rent the buildings for a short period of time.

The rent shall not exceed the fair market value for short term occupancy and will be determined by the Property Management Section. Any extensions in time of the rental period will be handled directly between the former property owner or tenant and the Property Management Section and any such request will be in writing.

#### **7.6. Retention of Improvements Without Performance Bond or Retention Value**

Negotiations with landowners commonly include the landowner's desire to retain an improvement located in the proposed right of way or easement and for which the Property Management Section has established no retention value or performance bond. These situations usually involve items such as trees, landscaping, or fencing. Depending on the circumstances, the landowner may be able to retain and move these items provided the Acquisition Agent follows the following general guidelines:

- The Acquisition Agent should seek input from the Chief Acquisition Officer or Property Manager, as necessary, to insure the safe and expeditious removal of the improvement.
- A retention value should be established or the Contract for Conveyance of Real Estate by Warranty Deed should note that the retention is part of the agreement.
- If the Property Manager does not require a performance bond, the Acquisition Agent should establish a removal date for the improvement in the contract. The Acquisition Agent should check with KDOT Utility Section to insure that the improvement, left in place, will not interfere with any utility relocation. The Acquisition Agent should seek the advice of the Chief Acquisition Officer or Property Manager, as necessary, to establish the removal date.
- The contract should include language that acknowledges KDOT or its contractor may remove or dispose of the item if said item is not removed by the established date.
- The Acquisition Agent will submit a R/W 205 to inform others of the landowner's intent to retain the item.

#### **8. Negotiation Notes**

Immediately after each and every contact with a property owner, his lessee, or the representative of either, in person or by telephone or letter, the Negotiator should make a record of the contact on DOT Form No. 1792 "Right Of Way Acquisition and Negotiation Notes". The notes need to include such items as the date, time of day, place

of contact, persons present and the principle items discussed. Offers made, counter offers, reasons settlement could not be made, and occurrences or comments, if any, characterizing the particular contact need also be noted.

The first page of the notes includes title information. It is very important the title information is accurately completed. The owner of record should be listed along with their address and telephone number(s). In addition, an explanation of complicated ownerships and discrepancies must be noted and explained if applicable. Mortgages, liens, etc. must also be identified in this section of the notes. Liens or satisfaction of liens which are recorded subsequent to the title work should be noted as to the book and page and a copy of the recorded document should be attached. Mortgage holders must also be listed with address, telephone numbers and contact information if available. In the event the mortgage release is waived, the notes must accurately and sufficiently describe why the mortgage release is not required. See Mortgage Release section of this manual for criteria that must be met to waive a mortgage release.

In making the report, the Negotiator should avoid general statements such as: “wants more money”; “objects to engineering”; “disagrees with land values”. The notes should explain the owner’s basis for objection, such as a sale not reported by the appraisers, a particular item on the plans, etc.

It is very important to note in detail such items as: where the plans were explained; features of the plans which were noted; questions asked or statements made relating to the plans; checking the effects of the acquisition on the ground; viewing the entire acquisition, etc.

All questions from the property owners should be answered and that response needs to be included in the Negotiator’s notes. If a question cannot be answered, the notes should reflect the question which could not be answered. After the question is researched the notes should be updated to identify the answer and the contact to the owner.

Request by the owner for changes in plans and the Negotiator’s reply to such requests should be noted. We do not make any promises or imply that we will be able to get a change made. The Negotiator is not to make any firm commitments regarding a requested change until a design change request is completed and a decision is received. If later commitments are made to change the plans, the Negotiator should wait for the changes to be made prior to the owners signing purchase documents. Many times requested design changes alters the legal descriptions resulting in the need for revised legal descriptions and appraisal reviews. For more information see “Design Changes”.

It must be remembered that the Negotiator’s notes must be in sufficient detail to demonstrate compliance with this manual. In addition, the negotiation notes are one of the most useful documents reviewed when questions arise during construction, which may be several years later. Negotiation notes are included in documentation provided to the Office of Chief Counsel for the condemnation process. These notes provide the

Attorney all pertinent information regarding what has occurred and what has been discussed during the negotiation process.

## **9. Resolving Difficulties in Locating Owners**

Every effort must be made to contact the property owner or owners. The appraisal should provide contact information. If the owners cannot immediately be located, the Negotiator can check with the County Treasurer to see if an address is available for tax notification. In addition the Negotiator could contact neighbors, friends or relatives to obtain the owner's address or telephone number.

If it is not possible or practical to contact the property owners within a specific time, the Negotiator should send the written offer and explanation of the taking by certified mail with a return receipt to the last known address. This also applies to owners living out of state.

## **10. Revisions in Just Compensation**

The Negotiator will exercise care to protect the interest of the property owner who may be uninformed or inexperienced in right of way real estate transactions and in some cases uninformed as to real estate values. The Negotiator will find, in some cases, factors affecting the after condition of the property or the estimate of just compensation that was overlooked by the appraiser. This should be called to the attention of the Chief Acquisition Officer. Determinations will then be made to decide if a revised review or administrative settlement is necessary. For further information please refer to the section titled "Administrative Settlements".

KDOT will consider the owner's private appraisal, recommendations, and information relevant to establishing compensation.

A "Revised Offer Letter" DOT Form 1726 is required to be presented to the landowner only if a Revised Appraisal Review has been completed. This must be documented in the record prepared by the Negotiator.

## **11. Design Changes**

When the owner has suggestions having merit for design modifications affecting the property, the Negotiator will contact the Chief Acquisition Officer. The Chief Acquisition Officer will then evaluate the proposal and if appropriate, the Chief Acquisition Officer and/or the Negotiator should discuss the request with the Bureau of Design. The Bureau of Design will make the necessary changes, if valid, after receiving a formal request from the Engineering Assistant to the Chief of Right of Way of the change. The Negotiator is not to make any firm commitment or sign purchase documents until a decision is received.

The Bureau of Right of Way's procedures provide that the Chief Appraiser receives all design changes. The Chief Appraiser will determine if such changes will affect the amount of just compensation. Good communication between the Acquisition Agent and the Chief Appraiser or the Review Appraiser can facilitate the necessary adjustments in the offer of just compensation. If the changes are determined to change the just compensation, a Revised Appraisal Review will be prepared.

## **12. Certificate of Title**

In many instances the Certificate of Title recites only the name of an individual holding the title. If there is a spouse, both signatures must be included on the Deed even though the name of the spouse may not appear on the Certificate of Title. This would also apply if the property were involved in an estate. All interested parties and spouses are required to sign the documents. An individual is designated by (a) single person, (b) widow, (c) widower, etc. If minors have an interest in the property to be acquired, the Negotiator will furnish details of their interest to the Chief Acquisition Officer and request instructions in preparation of necessary documents.

The County offices in which the various records are kept are as follows:

### **Register of Deeds**

Deeds  
Contracts  
Mortgages & Mortgage Releases  
Federal Tax Liens  
State Tax Liens  
Easements  
Subordinate Agreements Resolutions  
Assignments  
Affidavits  
Death Certificates  
Tax Orders-Inheritance  
Power of Attorney Agreements  
Pre-Nuptial Agreements

### **County Treasurer's Office**

Real Property Taxes including Special Assessment Taxes

### **Probate Court**

Estates  
Guardianships  
Divorces

### **District Court**

Liens  
Attachments  
Law Suits

Personal Tax Warrants  
Real Property Acquired by previous Condemnation

### **13. Ownership**

In case the owner is deceased and has left a Last Will and Testament, the purchase documents are to be signed by the executor appointed and qualified under the Will, provided he has the power to sell real estate, together with the widow, or widower, if one survives. If the executor of an estate does not have the power to sell real estate, the Agreement must be signed by all devisees under the Will, together with their spouses and the widow or widower, if one survives. In case the owner died intestate (without leaving a Last Will and Testament) the Agreement must be signed by all the heirs involved, all the spouses and the widow or widower, if one survives.

If an owner held the property during his/her lifetime as a tenant with the right of survivorship and is now deceased, the Agreement is to be signed by the survivor only. If there is any question as to who should sign, contact the Chief Acquisition Officer for guidance.

Trustees, guardians, and corporate and municipal officials may execute and sign Agreements in accordance with their authority. As applicable, certified copies of the corporate or municipal resolutions or the court order should be attached to the Agreement.

#### **13.1. Corporations**

Corporations, such as municipal or public utilities, are not in a position to convey warranty deeds. In such cases, a corporation quitclaim deed will be acceptable. The names of companies or corporations should be written exactly as the company is officially designated. For example: not “Inc.” if the name includes the word “Incorporated” or conversely not “Incorporated” if the designated name is “Inc.”

All documents must be signed by officers of the corporation having the power to dispose of real estate, with the corporation acknowledgment and seal affixed, if appropriate.

If there is a question of whether or not the corporation is registered, contact the Secretary of State’s Office for verification.

If the corporation has a mortgage encumbrance, it would follow the same release procedure as required of an individual, DOT Form No. 1721 “Partial Release of Mortgage or Other Lien” or DOT Form No. 1722 “Release of Mortgage or Other Lien”.

## **13.2. Encumbered Ownership**

In the case of an encumbered ownership the following procedures should be followed in a typical situation:

### **13.2.1. Recorded Owner is Deceased**

When pertinent information is not apparent from the recorded documents on file, the Acquisition Agent should question the person he/she has been in contact with to determine whether any titleholders or interest holders are deceased. If one is found to be deceased the Acquisition Agent should immediately proceed to obtain information such as:

- Date of death and was there an estate proceeding.
- Death certificate on file.
- How was the title held.
- Was there a Will; was it probated.
- Name of administrator or executor.
- Name or names of heirs.
- Any other information that can be obtained that the Acquisition Agent feels is important.

Examples of Ownership Problems:

- In case the owner is deceased and left a Last Will and Testament, the Agreement is to be signed by the Executor who has been appointed and approved by Probate Court, if he/she has the power to sell the real estate, together with the widow or widower, if one survives.
- If the Executor of an estate does not have the power to sell the real estate, the Agreement should be signed by all who were bequested under the Will, together with their spouses and the widow or widower, if one survives.
- In case the owner had died intestate (without leaving a Last Will and Testament) all the heirs involved, all spouses, and the widow or widower, if one survives, must sign the Agreement.

- If an owner held the property during his/her lifetime as a tenant with the right of survivorship and is now deceased, the Agreement is to be signed by the survivor only.
- If there is any question concerning who should sign or if there is any information that is needed to close the acquisition, the Negotiator should seek the advice of the Chief Acquisition Officer.

### **13.2.2. Minors or Incompetents**

If the Negotiator discovers that an interest is held by a minor or an incompetent, he/she should ascertain first whether a guardian has been appointed by the courts and secondly, whether such guardian has power to convey land. This information probably should not be obtained from the parties, since many times such sources cannot be relied upon. A check with the Clerk of the District Court should be made, and if possible, a copy of the court document giving the Power of Guardianship should be obtained.

### **13.2.3. Trustees, Guardians, and Corporation and Municipal Officials**

Trustees, Guardians, and Corporation and Municipal Officials may execute and sign Contracts and Agreements in accordance with their authority. As applicable, certified copies of the corporation or municipal resolutions or the court order should be attached to the Contract or Agreement.

### **13.3. Persons in possession**

The Acquisition Agent should determine who is in possession of the premises, and to what extent they have an interest in the property. When there are any questions concerning the tenancy or lease, the Acquisition Agent should consult the Chief Acquisition Officer.

## **14. Mortgage Release**

Mortgages should be noted on the Certificate of Title or during the review of records. If a mortgage appears of record, this should be verified with the landowner at the first contact.

There are two types of mortgage releases. A full release of mortgage is required if the property is to be acquired in its entirety. A partial release of mortgage is required for a strip or partial acquisition.

A mortgage release will not be required on a tract whose total compensation is less than \$10,000.00 and the remainder of the parcel still holds the majority value providing sufficient security to the mortgage holder with the ability to recoup funds to pay off the lien in the event of default or foreclosure and there are no other liens on the property.

Special consideration must be given to cost to cure items which may have the potential to impact the value of the remaining property. For example, at times it is necessary to replace septic systems and lateral lines to clear the right of way. If the septic system is not replaced, the value of the remaining property could be impacted. In this situation it may be appropriate to request a mortgage release. All three criteria described above must be met to waive a mortgage release. In instances where the mortgage release is waived, it is not necessary for the mortgage holder's name to be placed on the Payment Voucher with the name and address of the property owner.

Mortgage and other lien releases are still required on those tracts whose total compensation is more than \$10,000.00 and also on tracts less than \$10,000.00, which do not meet the criteria described above. Exceptions to this policy may be approved based on the situation and associated risks involved.

When it has been determined that a release is necessary, the landowners should be notified. The Negotiator should also make contact with the mortgage company as soon as possible to determine what is required to obtain a mortgage release. The mortgage company may need a legal description of the property being released. Certain mortgage companies may request additional documentation before preparing a release which could take some time to provide. For this reason, contact should be made as soon as possible with landowners that have mortgages on their property.

Some mortgage companies charge a fee for the preparation of the release. In these situations, the Negotiator will submit a voucher to Headquarters requesting payment for the release. Any and all expenses incurred and deemed necessary to get a release or clear title shall be paid by KDOT. The landowner shall not incur any expenses as a result of our acquisition and the obtaining of the release.

In the event a mortgage release is deemed necessary, the name of the mortgage company shall appear on the payment voucher along with the name of the landowner. If there is a mortgage on the property but no mortgage release is necessary, the mortgage company should not be listed on the payment voucher.

Normally the warrant (proceeds check) will be delivered to the landowner and not to the mortgage holder but some exceptions may be necessary. In some cases the mortgage holder will not issue a release until they have received the proceeds check. In this case the proceeds check should be mailed or delivered to the receiver after the Acquisition Agent has obtained written verification that the mortgage release will be delivered by the lender in a timely fashion. Said written verification can be initiated by the Acquisition Agent in a confirmation letter to the mortgage company.

The Acquisition Agent should note all details pertaining to a pending mortgage release in the follow-up section of the Negotiation Notes. The name and direct phone number of any company personnel whom the Acquisition Agent corresponded with should be noted.

The Acquisition Agent is responsible for any follow-up necessary to obtain the mortgage release. The lender should send the release directly to the Acquisition Agent. The Acquisition Agent should then forward the release to the appropriate bureau personnel for recording or for internal filing.

Mortgage releases are not necessary and will not be obtained on Temporary Easements.

The negotiation notes must be updated as identified in the Negotiation Notes section of this manual.

## **15. Payment for Acquisition of Property**

When the purchase of a tract is completed, the landowner is informed that he/she can expect payment for the property within 60 days from the time all documents are submitted to Headquarters for processing. However, he/she should also be informed that a delay of the payment is possible, depending on when the papers can be submitted to the Secretary of Transportation for approval.

## **16. Real Estate Taxes**

Real Estate Taxes need to be current on all property being acquired, whether it is a partial or a total acquisition.

On a partial acquisition, the taxes must be current before a proceeds warrant can be issued.

On a total acquisition, the taxes for all previous years must be paid and current. However the taxes accruing for the current year need to be computed on a pro-rata basis. Taxes should be prorated to the date of the deed and computed by the County Clerk. The time period shall be computed from January 1, until the date of the deed listed on the front side of the deed. This amount should be deducted from the payment voucher and contract total.

Special assessments will not be considered on partial acquisition. When a property is a total acquisition the balance of the special assessments will become the responsibility of KDOT.

## **17. I.R.S. W-9 Form**

W-9 Forms should be obtained from all property owners or business entities involved in each transaction. The purpose is two-fold. It is a verification of the SSN and FEIN numbers and is necessary as a 1099 Form must be sent to all property owners.

## **18. Tenant's Release of Damages**

Leasehold interest should be acquired on a "Settlement and Release in Full of All Claims" DOT Form No. 1718. A "Settlement and Release in Full of All Claims" DOT form No. 1718 will be obtained from the owner of the property being acquired. All items must be listed along with amounts paid. If this interest in the property is complicated, it is recommended that the Chief Acquisition Officer be contacted for instructions. See Section 7.1 for more extensive details.

## **19. Agent Remains Neutral**

An owner may ask advice about obtaining an attorney or a real estate broker to represent him/her during negotiations. The Negotiator must remain neutral to any such questions, informing the owner that while KDOT always makes it possible to complete the transaction without an attorney, the choice must rest entirely with the owner. The Negotiator will never recommend an attorney or real estate broker to act as the owner's representative.

## **20. Fencing Policy**

KDOT's fencing policy will be administered as stated in the "KDOT Highway Fencing Policy dated 1/9/02" Fencing plans should accompany Right of Way plans on all access controlled right of way.

## **21. Sign Acquisition**

Signs will be handled per the Bureau of Right of Way Sign Policy:

**21.1.** Off-premise signs will be handled through the Relocation Section.

**21.2.** On-premise Signs

Land owner owned on-premise signs will be treated as costs-to-cure for partial acquisitions and will be acquired as part of the real property improvements on total acquisitions or in cases where there is not sufficient room to reset the sign on the remainder.

Tenant owned on-premise signs will generally be treated as real property. The acquisition process for tenant owned signs, where the tenant has the right or obligation to remove the sign at the expiration of the lease, shall follow procedures set out in Section 7.1 of the Acquisition Manual for Tenant Owned Improvements.

## **22. Functional Replacement of Real Property in Public Ownership**

When publicly owned real property, including land and/or facilities, is to be acquired for a Federal-aid highway project, in lieu of paying the fair market value of the real property, the state may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility. In such cases KDOT will follow procedures and conditions as directed in 23 CFR 710.509.

## **23. Crops in Right of Way**

KDOT's policy is to allow owners and/or tenants to harvest crops in the right of way acquired when possible. This is a normal basis of negotiations. When crops planted prior to acquisition cannot be harvested and are destroyed, they will be compensated for by utilizing KDOT Form No. 1718 (Settlement and Release in Full of All Claims). This form will not be completed at the time of acquisition, but will be done after the remaining crops are harvested. If the project is not immediately constructed, crops planted after purchase by KDOT will not be compensated for if they are unable to be harvested.

## **24. Condemnation Action**

When, in the Negotiator's opinion, certain tracts cannot be successfully negotiated, R/W Form No. 10, "List of Owners and Tenants" will be submitted to the Office of Chief Counsel. This form lists tract numbers, property owners, tenants and interested parties for each tract to be condemned. Along with the list of owners and tenants, the Negotiator must also submit legal descriptions of the parcels to be condemned on disk, copies of updated certificates of title, tract notes, offer letters, appraisals, data book, list of suggested court appointed appraisers, and various correspondence for the tracts to be condemned.

In addition to the above, Headquarters should submit to the Office of Chief Counsel one large and three small sets of project plans with profiles and one project strip map with aerial overlay.

The negotiation process does not stop upon the submission of these documents. The Negotiator should keep in touch with the property owner or attorney and try to reach an agreement unless a clear impasse has been reached.

## **25. Responsibility of Condemnation Activities**

Acquisition by Condemnation is the responsibility of the Office of Chief Counsel who assigns a specific attorney to the case. The Negotiator assists the attorney as requested. When requested, the Negotiator can provide background information.

## **26. Preparation of Petition**

The petition is prepared by the Office of Chief Counsel.

The Bureau of Right of Way may be requested to obtain additional information about persons that might have had an interest in the real estate. The petition is filed in the District Court of the county in which the real estate is located.

## **27. Eminent Domain Procedures**

The Office of Chief Counsel will notify the Construction Engineer by letter as soon as information is available regarding the date, time, and place for the Consideration Hearing and the Appraisers' Hearing. The tracts being condemned should be staked prior to the Consideration Hearing by the construction office. If the Construction Engineer's assistance is required at the hearings, the request is made by letter by the Office of Chief Counsel.

The following procedures are initiated by and completed by the Office of Chief Counsel under the direction of the Chief Counsel. All procedures must be followed in order to have a completed project condemnation.

### **27.1. Venue: K.S.A. 26-501**

Proceedings are brought in the District Court of the county in which the real estate is located.

### **27.2. Petition: K.S.A. 26-502 (Standard Form)**

A petition is completed by the Office of Chief Counsel. The petition shall include allegations of the authority for and the purpose of the taking and a description of each tract of land and the nature of the interest to be acquired. The name of the owners and all lien holders of record and the name of any party in possession will also be included.

### **27.3. Upon Filing the Petition**

The court by order shall set the time for the Consideration Hearing. K.S.A. 26-502 (Standard Form). It will be made sure that the time is set to allow time for publishing the statutory notice. Appointment of guardian ad litem, for minors or incapacitated persons and appointment of attorney under Soldiers and Sailors Civil Relief Act of 1940, as amended, or file Affidavit of Non-Military Services will occur.

#### **27.4. Notice of Consideration Hearing: K.S.A. 26-503 (Standard Form)**

Notification of the Consideration Hearing must be published at least fourteen (14) days before the Hearing. A copy of the Consideration Hearing notice will be sent to the newspaper of general circulation in the county. An Affidavit of Publication will be filed by the newspaper.

A written notice must be mailed at least fourteen (14) days prior to the hearing to each interested party, regular mail is sufficient. The written notice will include a copy of the publication notice and a copy of the petition as it relates to that person's interest.

An affidavit of mailing written notice should be filed with the court (Standard Form).

#### **27.5. Consideration Hearing: K.S.A. 26-504**

If, after reviewing the petition at the Consideration Hearing, the judge finds that the plaintiff has the power of eminent domain and that the acquisition is necessary to lawful corporate purposes of the plaintiff, the judge shall entertain suggestions relating to the appointment of appraisers. The judge will enter an order appointing three appraisers and fixing the time for filing of the appraisers' report. The filing of the report shall not be more than 45 days after the entry of the order.

After the appointment of appraisers, the appraisers will sign an oath. K.S.A. 26-505 (Standard Form). The judge will instruct the appraisers on matters relating to their appointment.

#### **27.6. Appraisers' Hearing Notice: K.S.A. 26-506 (Standard Form)**

Notification of the Appraisers' Hearing must be published at least fourteen (14) days in advance in a newspaper of general circulation in the county. An Affidavit of Publication will be filed by the newspaper.

A written notice of the Appraisers' Hearing will be mailed at least fourteen (14) days in advance to plaintiff and each party named in the petition. Regular mail is sufficient. The written notice will include a copy of the published Appraisers' Hearing Notice.

#### **27.7. Filing of Appraisers' Report: K.S.A. 26-504; 26-505**

The court may extend time for filing the Appraiser's Report. K.S.A. 26-504.

Upon filing, the Clerk of the District Court will:

- Have appraisers check the figures.
- See that report is properly completed.

- Complete Notice of Filing. K.S.A. 26-505 (Standard Form)
- Mail notice within seven (7) days after filing of reports by certified mail.
- File Affidavit of Service of Notice of Filing of Appraisers' Report. (Standard Form)

#### **27.8. After Appraisers' Report is Filed**

The Bureau of Right of Way will obtain a certified copy of the Appraisers' Report from the Office of Chief Counsel. The court will set the appraisers' fees and court costs, K.S.A. 26-505 (Standard Form). The Clerk of the District Court will complete and sign a voucher for total appraisal and a second voucher for appraisers' fees and court cost.

Payment of award, appraisers' fees, guardian ad litem fees and court costs must be made within 30 days from the time of the filing of the Appraisers' Report or the condemnation will be abandoned per K.S.A. 26.507. Payment will be completed by the Office of Chief Counsel.

#### **27.9. Appeal of Award: K.S.A. 26-508**

An appeal of an award is taken by filing a written Notice of Appeal within 30 days after filing of the Appraisers' Report.