



PUBLIC ACQUISITION PROCESS

*Calexico Intermodal
Transportation Center*

THE PUBLIC ACQUISITION PROCESS

PURPOSE

This brochure provides to you, as an individual affected by the acquisition of your property for a public improvement project, a summary of the policies and provisions embodied in Title 42 Chapter 61 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Uniform Relocation Act Amendments of 1987, which will assure that your interests are protected.

INTRODUCTION

All governments have a duty to serve the public welfare. In order to meet this responsibility, it is often necessary for governments to acquire private lands to accommodate public projects. The authority to procure privately owned real property for public use has long been recognized as an inherent power of organized government, known as eminent domain. The constitution provides safeguards against the abuse of this power in the Fifth Amendment, which states, "nor shall private property be taken for public use, without just compensation."

Just compensation is usually defined as payment for the value of the property taken, which takes into account partial takings, damages and benefits to the remaining lands. The guarantee of the Fifth Amendment provided adequate protection of property rights when the constitution was written and the country was predominately rural and undeveloped. In an effort to establish uniform treatment of all people affected by any public projects financed in whole or in part with Federal funds, the U.S. Congress passed the UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 and subsequently the UNIFORM RELOCATION ACT AMENDMENTS of 1987.

Now all Federal agencies and all state and local public agencies acquiring real property with Federal assistance are guided by the policies and provisions set forth in this Act and amendments thereto.

PURPOSE OF Title 42, Chapter 61

The purpose of Chapter 61 is to encourage and expedite acquisition by agreement, to avoid litigation, to assure consistent treatment for owners, and to promote public confidence in the many Federal and federally assisted acquisition programs. Title III applies equally to all property owners regardless of race, color, religion, sex or national origin.

SECTION 4651- UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES

DETERMINATION OF JUST COMPENSATION

An appraisal of your real property is to be made before negotiations are started. (Real property is defined as the rights and interest in land and generally whatever is erected, growing upon, or affixed to, the land.) You, or a representative you designate, must be given an opportunity to accompany the appraiser on his inspection. This provision affords you an opportunity to point out any unusual or hidden features the property may possess.

In preparing the appraisal, the appraiser may not consider an increase or decrease in the value of your property, prior to the date of valuation, which results from the proposed project or the likelihood that your property will be acquired for the project. However, any physical deterioration within your reasonable control will be considered in the valuation of your property.

The completed appraisal(s) must be reviewed by the acquiring agency. Based upon a review of the appraisal, the agency will establish the amount it believes to be the just compensation to be offered for the property.

Under the California Code of Civil Procedure, you may elect to have your property appraised by an independent appraiser who is licensed with the Office of Real Estate Appraisers. The acquiring agency will pay the reasonable costs of this independent appraisal in an amount not exceeding Five Thousand Dollars (\$5,000.00).

NEGOTIATIONS

The acquiring agency must make a prompt offer to purchase the property for the full amount it has determined to be just compensation. At the initiation of negotiations, you must be provided a written statement, which must include the date the appraisal was prepared, the amount offered, a description and location of the property and interest in the property to be acquired, an identification of the buildings, structures and other improvements included in the offer, and an explanation of the basis for determining this amount. In cases where only a part of the property is to be acquired, the statement must separate the amount of compensation to be paid for the property being acquired and the amount (if any) for damages to the remainder. If the acquisition leaves you with an uneconomic remnant, the agency must offer to purchase it. The acquiring agency may not take any action that would coerce you into accepting its offer. Prohibited actions include advancing the time of condemnation, deferring negotiations or condemnation, or postponing the deposit of funds in court for your use. You shall be given reasonable opportunity to consider the offer and present material which you believe is

relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The acquiring agency shall consider your presentation, if any.

POSSESSION

If you must move because your home has been acquired, or if you must relocate your business or farm operation because of the acquisition of your property, you will be given at least 90 days written advance notice of the date by which you are required to move. If you have to move from your home, a decent, safe and sanitary replacement dwelling must be available to you, on a nondiscriminatory basis, prior to your displacement.

You are not required to surrender possession of your property until:

1. You have been paid the agreed purchase price; or
2. You have been paid an award of viewers, board, commission or similar body, or of a court where law provides for a trial on demand of the acquiring agency or condemnee; or
3. An amount at least equal to the agency's approved appraisal of the value of your property is deposited with the Court for your benefit; or
4. The award resulting from a condemnation proceeding is deposited with the court.

Once the agency has acquired your property, it may decide to rent it, subject to termination on short notice. The amount of rent the agency may charge you, or another tenant, may not exceed the fair rental value of the property to a short-term occupier.

CONDEMNATION

When you cannot reach an agreement of the sale of your property to the acquiring agency, the agency can acquire your property by the exercise of the power of eminent domain. If a situation such as this does occur, the agency must institute formal condemnation proceedings. The acquiring agency may not intentionally force you to begin legal proceedings to prove that your real property has been taken without payment of just compensation.

SECTION 4652 - ACQUISITION OF BUILDINGS, STRUCTURES AND IMPROVEMENTS

SINGLE OWNERSHIP

When a governmental agency obtains an interest in your land, it must acquire at least an equal interest in any buildings located on the acquired land, if these improvements are required to be removed or if the project will adversely affect them.

TENANT - OWNED

The acquiring agency is required to pay for property as if it were in a single ownership, and the contributory value of tenant's improvements will be paid to the tenant. In other words, if you are a tenant who owns a building on land required for public purposes, you will ordinarily be paid either the fair market value which your building contributes to the real property or the fair market of the improvement for removal from the real property, whichever is the greater.

However, no payment can be made unless the owner of the land involved disclaims all interest in the improvements you own. Also, in consideration for payment, you must assign, transfer and release to the acquiring agency all of your right, title and interest in and to such improvements.

No provisions of this section deprives you of your right to reject payment under this Act and to obtain payment of just compensation for your interests as otherwise defined by applicable law. (An attorney would be the best source of information as to which other laws apply in and are best suited to your particular circumstances.)

SECTION 4653 - REIMBURSEMENT OF INCIDENTAL EXPENSES

You are entitled to be reimbursed for fair and reasonable expenses you necessarily incurred for:

1. Recording fees, transfer taxes, and similar expenses incidental to conveying your real property to the acquiring agency. However, the acquiring agency is not required to pay costs solely related to perfecting your title to the property.
2. Penalty cost for prepayment of any pre-existing, recorded mortgage/trust deed, entered into in good faith, encumbering your property.
3. The pro rata portion of real property taxes you have paid which are allocable to the period after title passes to the acquiring agency, or the date of effective possession, whichever is earlier.

These costs will be paid to you as soon as practicable after:

1. The date of payment of the purchase price; or
2. The date of payment of an award of viewers, board, commission or similar body, or of a court where law provides for a trial on demand for the acquiring agency or condemnee; or
3. The date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property.

SECTION 4654- REIMBURSEMENT OF LITIGATION EXPENSES

If any one of the following three conditions exist, the acquiring agency must reimburse you for your reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees which you have actually incurred. Such litigation expenses are reimbursable only under these conditions:

1. If the acquiring agency starts a condemnation action, but the court decides that agency does not have authority to acquire your property by condemnation; or,
2. If the acquiring agency starts a condemnation action and abandons it; or,
3. If you, as owner, successfully maintain an inverse condemnation proceeding. (Inverse condemnation is a legal process by which an owner brings suit against an agency to prove that the agency has taken compensable property rights without payment of just compensation.)

SECTION 4655 - REQUIRED ASSURANCES

Federal funded construction projects will not be approved unless assurances have been received from the acquiring agency that in acquiring your property:

1. The agency will be guided, to the greatest extent practicable under State Law, by the land acquisition policies in Section 4651 and 4652 as explained, and
2. You will be paid or reimbursed for the necessary expenses described in Sections 4653 and 4654.

TITLE VI - CIVIL RIGHTS ACT OF 1964 - NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

All actions taken by an acquiring agency must be in compliance with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, SEC. 601. "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

A FINAL WORD

The acquiring agency realizes that the sale of a home or property to a public agency is often a difficult personal experience. The policies and provisions of Title 42 Chapter 61 of the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs serve to greatly minimize the problems encountered in property transfers. Every effort will be made to reach an amicable settlement with you by offering you as fair a price as you would receive on the open market, and by reimbursing you for your incidental expenses.