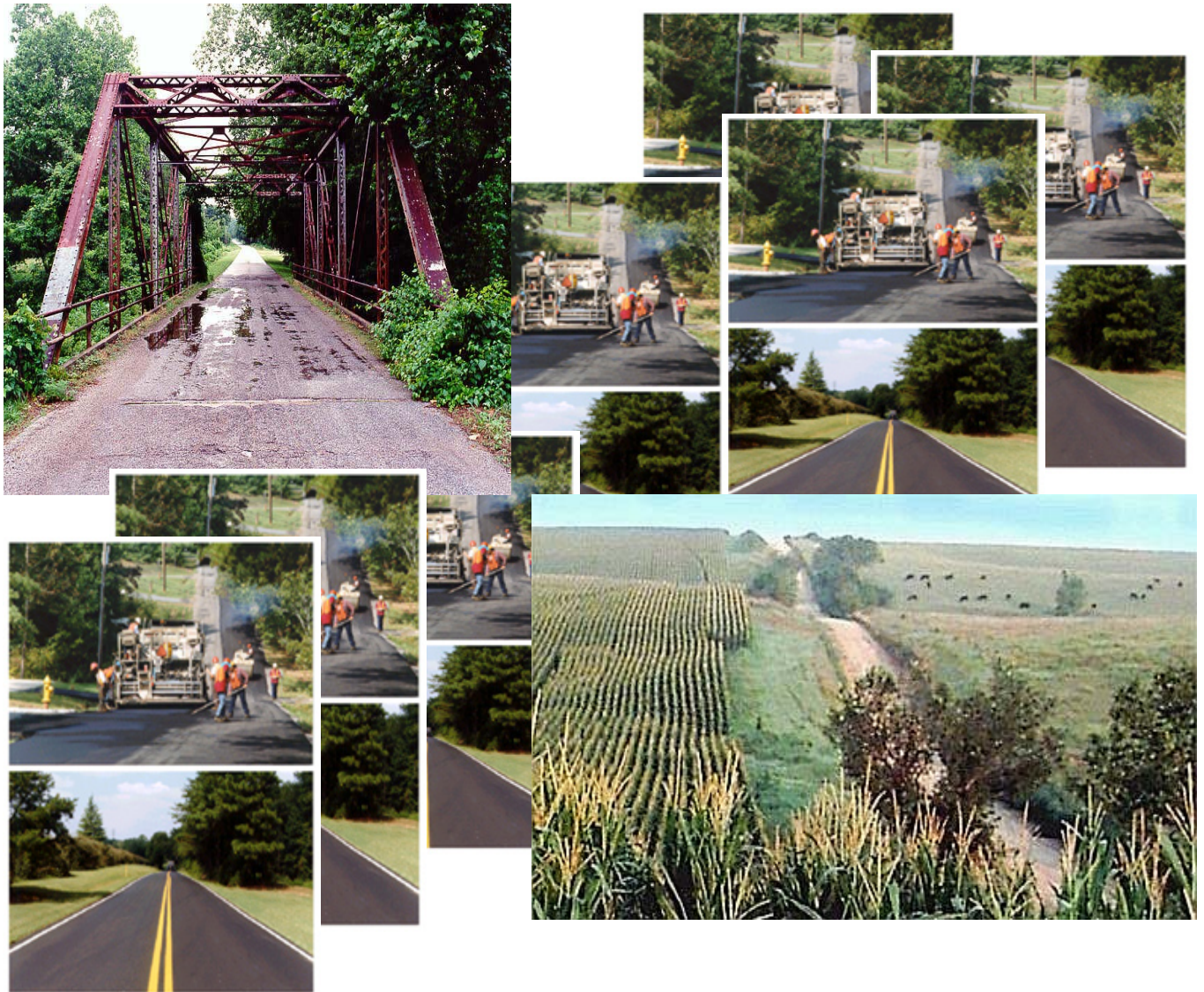


# RIGHT OF WAY ACQUISITION GUIDE FOR LOCAL PUBLIC AGENCIES



**Prepared by the Nebraska Department of Roads  
Right of Way Division**

For distribution to all Nebraska Political Subdivisions

**First edition: June 2004**

(Replaces "Instructions for Acquiring Right of Way on Federal Aid Projects")

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## ATTACHMENTS: BLANK FORMS

### Property Valuation

DOCUMENT NAME	ATTACHMENT NUMBER
Basic Data Report	PV-1
Compensation Estimate Report	PV-2
Short Form Appraisal Report	PV-3
Type of Valuation Report Required	PV-4
Request For Proposal, Appraisal	PV-5
Appraisal Services Specifications	PV-6
Appraisal Services Contract	PV-7

## **ATTACHMENTS: BLANK FORMS (Continued)**

### **Review of Property Valuation**

<b>DOCUMENT NAME</b>	<b>ATTACHMENT NUMBER</b>
Review Form	<a href="#">RPV-1</a>
Request For Proposal, Review	<a href="#">RPV-2</a>
Appraisal Review Specifications	<a href="#">RPV-3</a>
Appraisal Review Services Contract	<a href="#">RPV-4</a>

### **Acquisition of Property**

<b>DOCUMENT NAME</b>	<b>ATTACHMENT NUMBER</b>
Brochure	<a href="#">AP-1</a>
Donation Form	<a href="#">AP-2</a>
ROW Contract	<a href="#">AP-3</a>
Total Acquisition Contract	<a href="#">AP-4</a>
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Permanent Easement Contract	<a href="#">AP-6</a>
Easement Deed	<a href="#">AP-7</a>
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Checklist for ROW Certificates	<a href="#">AP-20</a>

## **ATTACHMENTS: COMPLETED SAMPLES**

### **Property Valuation**

<b>DOCUMENT NAME</b>	<b>ATTACHMENT NUMBER</b>
Basic Data Report	<a href="#">PV-1S</a>
Compensation Estimate Report	<a href="#">PV-2S</a>
Short Form Appraisal Report	<a href="#">PV-3S</a>
Request For Proposal, Appraisal	<a href="#">PV-5S</a>

## **ATTACHMENTS: COMPLETED SAMPLES** (Continued)

### **Acquisition of Property**

<b>DOCUMENT NAME</b>	<b>ATTACHMENT NUMBER</b>
ROW Contract	<a href="#">AP-3S</a>
Warranty Deed	<a href="#">AP-5S</a>
Leasehold Contract	<a href="#">AP-9S</a>
Information Letter	<a href="#">AP-10S</a>
Call Report	<a href="#">AP-12S</a>
Administrative Settlement Report	<a href="#">AP-14S</a>
Condemnation Report	<a href="#">AP-17S</a>
ROW Certificate	<a href="#">AP-18S</a>



## AN IMPORTANT BEGINNING

This instructional manual has been prepared to aid you, the Local Public Agency (LPA), in the step-by-step acquisition of right of way needed for your publicly funded project, and if need be, the relocation of any person, business, or other entity.

These guidelines should be followed at all times, regardless of funding. The main goal is for you NOT to lose or jeopardize Federal-aid funding, as administered by and received through the Nebraska Department of Roads (NDOR).

The law governing acquisition and relocation on federally assisted projects is Public Law 91-646; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly called just the Uniform Act. You can see details at [www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate).

The Uniform Act applies whenever federal dollars are used in any phase of a project, such as planning, environmental assessment, right of way, or construction. **The Uniform Act must be followed even if there is NO federal funding in the right of way phase.**

The end result of your right of way activities is to present to NDOR, a ROW Certificate that certifies you have complied with the Uniform Act requirements and that your project is ready for construction. If the documentation you submit supports your ROW Certificate, you will be given authorization to proceed with the construction phase.

In the "Attachment Section" of this manual you will find all of the blank forms you will need. Some of the forms which are not self-explanatory have completed versions in the "Sample Section" for your review. All forms are available in both the printed version of the manual and on our website: [www.dor.state.ne.us/roway](http://www.dor.state.ne.us/roway) (Click on 'Local Public Agencies' in left column, then on LPA Manual.)

If you are unclear on how to proceed with a project, or if you just have questions, contact our LPA/ROW Coordinator before you begin right of way activities. This coordinator is also available anytime throughout your project at (402) 479-4490 or by writing to the address below.

Nebraska Dept. of Roads  
Right of Way Division  
LPA Coordinator  
P.O. Box 94759  
Lincoln, NE 68509-9983

# **PREPARATIONS BEFORE ACQUISITION**

## **General**

There are numerous steps that need to be taken during the initial planning of a project. These include, but are not limited to: development of your need, public involvement, environmental assessment, and applying for Federal-aid. The steps that bring you ready to start acquiring property are the completion of your property Title Research and the completion, submittal to NDOR, and approval of your Right of Way Plans.

## **Title Research**

Ownership information is needed for developing right of way plans, in the valuation of the property, and in the acquisition of the property. The most logical time to obtain this information is prior to or concurrent with the development of the right of way plans.

A thorough examination of the county records shall be made for each tract to determine ownership, including any liens or mortgages. Your research should include all ownership transactions for the last five years.

Ownership records are subject to change at any time during the period that a project is being developed, right up to the contact of the owner, by the right of way negotiator, with the LPA's offer. Because of the possibility of change and for the sake of accuracy in ownership records, it is essential that the ownership status of the properties along a project be rechecked at the appraisal stage and again before negotiating for the property rights needed for your project.

## **ROW Plans**

The preparation of the right of way plans will begin following completion of the preliminary survey. Your plans should include the following: owner's names, tract numbers, legal descriptions, land lines and property lines, section corners and ties to the corners, stations and offsets at each property line and turn point, project centerline, new right of way and easements, area of the tract to be purchased less that portion previously designated as public right of way, limits of construction, width of new roadway, grade changes, and any other design or construction details as warranted.

Also included should be topography items that affect the transaction such as: buildings, underground cisterns/septic tanks, permanent yard and farm appliances, sidewalks, paved or unpaved driveways, trees/hedges/shelterbelts, waterlines/streams/lakes, fences, or above and below ground utilities.

A right of way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps property owners understand why and how their properties are being affected.



# **PROPERTY VALUATION**

## **Just Compensation**

The U.S. Constitution and the State of Nebraska Constitution require that a property owner be paid “just compensation” whenever the government acquires private property. The Uniform Act requires that an “approved appraisal” be used to develop an amount the agency believes to be just compensation. The amount offered to the property owner must be at least the amount of the approved appraisal.

Part of the appraisal process is to identify any tenants of the property, determine their type and length of lease, establish the amount of their leasehold interest, and identify and value any tenant owned improvements. The tenant shall be offered this determination of just compensation. Tenants, their rights and eligibility, will be discussed in full later on in the chapter headed “Acquisition of Property (Negotiations).”

## **The Appraisal Requirement**

The appraisal, with its review and approval by the acquiring agency, is the cornerstone on which is built the entire effort to provide the property owner with just compensation. The Uniform Act requires the property be appraised and reviewed before an acquiring agency begins negotiations to acquire it, and the amount of the approved appraisal is the basis of the offer of just compensation.

However, in cases of low-value, non-complex acquisitions, the Uniform Act gives the lead agency (which is FHWA) the authority to develop procedures for waiving the appraisal requirement, in favor of simpler valuation methods. The rest of this section will describe the various property valuation methods and requirements needed to be followed for your projects.

## **Donations**

The LPA, being acutely aware of the property owner’s right to just compensation, and having explained that right to the owner, both verbally and by way of the acquisition brochure, can ask the owner to donate their property rights. If agreeable, this will eliminate the need for any type of property valuation. The owner may donate for no compensation, or in exchange for certain beneficial construction features.

If the property owner has indicated their desire to donate the needed property, then you may skip the rest of the discussion of Property Valuation and proceed directly to the Acquisition section.

## **Valuation/Appraisal Standards and Reports**

Formal, written valuation reports are required for each parcel of land to be acquired or damaged. The three types of reports to be discussed, starting with the simplest, are the “Compensation Estimate”, the “Short Form” Appraisal, and a “Before and After” Narrative Appraisal.

## 1. “Compensation Estimate”

### a. When Do You Use It?

A “Compensation Estimate” can be used for an uncomplicated acquisition, where only the part taken needs to be valued. Total compensation must not exceed \$10,000.00, exclusive of fence relocation and/or construction based on the current NDOR approved fencing schedule ([Current Fence Schedule](#)). Damages must be nominal or simple “cost to cure” items supported by written contractor’s estimates. A “Basic Data Report” shall be researched and completed first, establishing the land prices for the area. NDOR’s standard format may be used when preparing this data report ([Attachment PV-1](#)) and the actual valuation report ([Attachment PV-2](#)). *Completed samples of these two forms, for viewing, are ([Attachment PV-1S](#)) and ([Attachment PV-2S](#)). Throughout the rest of this guide, not all attachments will have a corresponding sample, due to the simplicity of that attachment.*

The report must contain the following elements:

1. Project and parcel numbers.
2. Owner’s names and property addresses, as revealed in the public records.
3. Description, location and area of property to be acquired.
4. Photos of part acquired.
5. Determination of value of property being acquired, broken down as to land and improvements, and the basis thereof.
6. Data supporting “cost to cure” items.
7. Effective date of valuation, preparer/appraiser signature, and certification.
8. (Optional): Description of “Offer to Owner to Accompany Appraiser”.

### b. Who Can Prepare It?

1. Salaried employees of any LPA who are knowledgeable of land values in the area of the subject property and who have adequate experience to enable them to determine the effects of the acquisition.  
Some examples of these would be:
  - a. County highway superintendent
  - b. County assessor
  - c. City attorney
  - d. NRD manager
2. Certified appraisers who are currently on the [NDOR Approved Appraiser List \(www.dor.state.ne.us/roway\)](#). Instructions for hiring an appraiser can be found later in the Appraiser Selection.

Be sure to specify to the appraiser that you only need a minimum payment type valuation report.

## 2. “Short Form” Appraisal

### a. When Do You Use It?

A “Short Form” appraisal may be used for an uncomplicated, whole or partial acquisition where the highest and best use of the property is its present use and not changed by the acquisition, and where compensation is anticipated to exceed \$10,000.00 exclusive of fence relocation and/or fence reconstruction. Only one approach, usually the sales comparison method, is applicable. Damages must be nominal or of the “cost to cure” type. Again, the land price analysis in the Basic Data Report ([Attachment PV-1](#)) must be completed first. NDOR’s standard appraisal form ([Attachment PV-3](#)) may be used, as appropriate, when preparing a “Short Form” appraisal report. See a sample at ([Attachment PV-3S](#)).

The “Short Form” appraisal must contain all of the elements listed for a “Compensation Estimate” above, plus the following:

1. Statement of assumptions and limiting conditions.
2. Purpose of appraisal and property rights appraised.
3. Five year sales history.
4. Description of property including highest and best use, area, neighborhood, site and improvement data, photos of property affected, maps, plats and plans.
5. Indication of comparable sales and direct comparison to subject property and complete comparable sales analysis.
6. Explanation of acquisition damages and benefits.
7. Description of “Offer to Owner to Accompany Appraiser”, and results.

### b. Who Can Prepare It?

1. Provided the estimated compensation is less than \$50,000.00, any salaried employee of any LPA who has appraisal credentials, has knowledge of “highest and best use” and comparable sales, and feels qualified to handle the particular assignment.
2. Certified appraisers who are currently on the [NDOR Approved Appraiser List \(www.dor.state.ne.us/roway\)](#). Instructions for hiring an appraiser can be found later in the Appraiser Selection paragraphs.

In hiring an appraiser for this type of appraisal, be sure to specify your desire for a “Short Form”, rather than a “Before and After”, appraisal. The cost difference can be substantial.

c. Owner Accompaniment

The Uniform Act requires that a property owner be given the opportunity to accompany the appraiser during the property inspection for a “Short Form” appraisal. The purpose of this requirement is to ensure that the owner has the opportunity to advise the appraiser of features of the property that might impact the valuation. It also allows the owner to indicate features of the property that might not be obvious, such as the location of underground structures, wells, septic systems, storage tanks, and utilities.

An invitation to accompany the appraiser can be verbal or in writing. The appraiser should document this step in their file. If the owner declines the offer, that too should be documented.

d. Uneconomic Remnants

Sometimes, the partial acquisition of a larger parcel of land leaves an area which appears to be unusable. If the appraiser determines that this area has no value on its own, it is referred to as an “uneconomic remnant” and the LPA **must** offer to buy it, based on the review appraiser’s valuation of it as a part of the whole.

The owner need not sell such a remnant, so the appraisal and offer should express both options (to buy just what is needed and to buy the remnant also). If the owner declines both offers and condemnation is needed, the offer without the option to buy the remnant would be the one presented to the court.

**3. “Before and After” Appraisal**

a. When Do You Use It?

A “Before and After” appraisal is a detailed report used for all complex appraisal problems, whether the acquisition is of the whole property or only partial. The report should include an appropriate analysis of the highest and best use of the property, especially when that use is in transition or if a change will occur as a result of the acquisition. Also to be analyzed should be severance damages, special benefits, and special purpose properties.

In certain instances, a detailed appraisal may include the findings of a special report, researched and written by someone with expertise in that area, other than the appraiser. Such a report could involve aspects of the property such as zoning and permits, machinery or equipment on the property, mineral rights, or forestation.

The suggested format for a “Before and After” appraisal report is as follows:

1. Letter of transmittal.
2. Salient facts:
  - a. Project number
  - b. Tract number
  - c. Property address
  - d. Recorded ownership
  - e. Legal description
  - f. Tenant and lease data
  - g. Highest and best use (before and after)
  - h. Zoning
  - i. Tax and assessment history
  - j. Sales history
  - k. Purpose of appraisal
  - l. Function of appraisal
3. Log of meetings with the property owner.
4. Property description:
  - a. Land (size, shape, topography, utilities, soil conditions, etc.)
  - b. Improvements (size, age, condition, number of rooms, etc.)
5. Land valuation.
6. Value of whole property before taking:
  - a. Cost approach
  - b. Sales comparison approach
  - c. Income capitalization approach
  - d. Correlation
7. Description and effect of taking.
8. Value of part taken.
9. Value of remainder before taking.
10. Value of remainder after taking:
  - a. Cost approach
  - b. Sales comparison approach
  - c. Income capitalization approach
  - d. Correlation
11. Damages.
12. Summary of breakdown of taking damages.
13. Leasehold interests.
14. Addenda
  - a. Property plat
  - b. Floor plans
  - c. Photos
  - d. Sales and rental data (if not in basic data report)
  - e. Sales map (if not in basic data report)
  - f. Appraiser’s certificate

The above is intended as a guide and all items may or may not be necessary at all times. Other times, supplemental data or headings may be required.

b. Who Can Do It?

Only a certified appraiser from [NDOR's approved appraiser list \(www.dor.state.ne.us/roway\)](http://www.dor.state.ne.us/roway) can be hired to complete a standard "Before and After" appraisal.

A second appraisal, from someone else on the list, may be necessary if it is a complicated issue or if damages are hard to assess.

c. Owner Accompaniment

The Uniform Act requires that a property owner be given the opportunity to accompany the appraiser during the property inspection for a "Before and After" appraisal. The purpose of this requirement is to ensure that the owner has the opportunity to advise the appraiser of features of the property that might impact the valuation. It also allows the owner to indicate features of the property that might not be obvious, such as the location of underground structures, wells, septic systems, storage tanks, and utilities.

An invitation to accompany the appraiser can be verbal or in writing. The appraiser should document this step in their file. If the owner declines the offer, that too should be documented.

d. Uneconomic Remnants

Same as explained in item d. of "Short Form Appraisal".

## Appraiser Selection

The appraiser shall be selected by the LPA. It shall be their determination whether to use a qualified salaried employee of the LPA, or to retain the services of a qualified "Fee Appraiser".

**All hired appraisers must be selected from [NDOR's Approved Appraiser List \(www.dor.state.ne.us/roway\)](http://www.dor.state.ne.us/roway).**

The LPA shall review each tract on the project and fill out a "Type of Valuation Report Required" memo ([Attachment PV-4](#)) estimating which type of valuation report is appropriate for each tract. If you decide to hire a fee appraiser, and the appraisal needs are easy, you can simply choose one [appraiser from the list. http://www.dor.state.ne.us/roway](http://www.dor.state.ne.us/roway). You shall send the appraiser a Request for Appraisal Proposal letter ([Attachment PV-5](#)), ([Attachment PV-5S](#)) asking for their estimate of cost for each tract from your "Type of Valuation Report Required" memo, their expected completion date, and also a scheduled payment for their possible court testimony. With this letter you will also send the Appraisal Services Specifications, [Attachment PV-6](#), which explains the project and estimate details. Upon acceptance, you shall then enter into an Appraisal Services Contract, using ([Attachment PV-7](#)).

If you feel the nature of the appraisal process is unusually complex or high in value, then it is a good idea to send out several Request for Proposals, letting them know that they are in competition for the low bid.

## **Conflict of Interest**

No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being valued that would in any way conflict with the preparation or review of the valuation report. Compensation for making a valuation report shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has valued except that the acquiring agency may permit the same person to both value and, after the report is reviewed, negotiate an acquisition where the value of the acquisition is \$10,000.00 or less.



# REVIEW OF PROPERTY VALUATION

Every type of valuation report needs to be reviewed. The Uniform Act requires that the offer of just compensation be not less than the LPA's "approved valuation". The valuation report becomes "approved" through the valuation review process.

Federal regulations require that LPAs have an appraisal review process. The qualified review appraiser shall examine all valuation reports to assure that they meet the applicable requirements of the LPA, to see that they follow sound appraisal principles, and to check for any necessary corrections or revisions, prior to acceptance. The reviewer shall document his findings using [\(Attachment RPV-1\)](#).

## Duties of a Reviewer

### 1. For "Compensation Estimate"

- a. Ensure consistency among valuations on a project wide basis.
- b. See that the LPA's specifications were followed.
- c. Ensure accuracy of data, adequate documentation, and appropriately supported conclusions.

### 2. For "Short Form" and "Before and After" Appraisals

- a. All of the above, plus the following.
- b. Inspect the appraised property and the comparable sales.
- c. See that all appraisal principles and techniques were followed in accordance with state and federal requirements.
- d. Ensure that consideration is given to all compensable items, damages, and benefits, and that compensation is NOT included for items deemed non-compensable by state law.
- e. Verify or establish fair market value for the acquisition, for partial acquisitions, for real property, and for damages, if any, to the remaining property.

## Who Can Review?

LPAs NOT maintaining a Right of Way Section or staff shall empower their highest ranking elected or appointed official (such as Chairperson of the County Board of Supervisors, Chairperson of the County Commissioners, City Manager, or Mayor) to approve "Compensation Estimates" only.

LPAs maintaining a section or staff trained and assigned to provide the Right of Way function shall assign their best qualified appraiser to perform appraisal review duties as needed. This person will be empowered to review and establish just compensation on “Compensation Estimates” and “Short Form Appraisals” of less than \$50,000.00.

All “Short Form Appraisals” above \$50,000.00 and all “Before and After Appraisals” shall be reviewed by a qualified consultant review appraiser. As with appraisers, a reviewer must be chosen from the [NDOR Approved Review Appraiser list \(www.dor.state.ne.us/roway\)](http://www.dor.state.ne.us/roway). The method for hiring a review appraiser is the same as for hiring an appraiser, except you will use the Request For Review Proposal letter, ([Attachment RPV-2](#)), Appraisal Review Specifications, ([Attachment RPV-3](#)) and the Appraisal Review Services Contract, ([Attachment RPV-4](#)).

## **Deficient Valuations/Appraisals**

If the valuation report is deficient, the reviewer should return the report to the appraiser for correction, with the deficiencies noted.

However, there are instances when the reviewer discovers minor errors (small math errors, misspellings, typographical errors, etc.) in a report. In those cases, the small changes can be made by the reviewer without returning the report to the appraiser. All such changes should be initialed and dated by the reviewer. It is good practice for the reviewer to send a copy of the changes to the appraiser in the event an update is needed later.

If acceptable corrections or revisions to a report cannot be obtained from the appraiser, AND the reviewer is unable to approve the report, AND the LPA determines it is impractical to obtain an additional report, THEN the reviewer may develop appraisal documentation, either independently or by reference to acceptable relevant information developed by others, to support an approved or recommended value.

## **Valuation/Appraisal Update**

Sometimes it is necessary to update a valuation report or appraisal, or even complete a totally new one. A common reason for this would be if there has been a significant delay (one year or more) between the date of the report and the start of negotiations. Another reason would be if the information presented by the owner changed, or if there is a material change in the character or condition of the property.

## ACQUISITION OF PROPERTY (NEGOTIATIONS)

The property has now been valued, the report has been reviewed, and the amount of compensation due the owner (and tenant) has been determined. You are almost ready to begin negotiations with the property owner.

But first, you need to prepare all of the informational papers required to be given to the property owner, and the documents needed to be signed by the owner. Here is a list of what needs to be given to the owners at the first meeting to present your offer, (the start of negotiations). **Please note that only the brochure is mandatory for each tract of land. Your use of the other documents will depend on each tract's particular ROW situation.**

### Preparing the Documents

#### 1. For a Donation (See negotiating instructions in a later paragraph.)

- a. Brochure ([Attachment AP-1](#))
- b. Donation Form ([Attachment AP-2](#))
- c. ROW Contracts: For Partial Taking "In Fee Simple" or Total Acquisition ([Attachment AP-3](#)) OR ([Attachment AP-4](#)) Sample ([Attachment AP-3S](#))
  1. Warranty Deed ([Attachment AP-5](#)), Sample ([Attachment AP-5S](#))
  2. OR, Quitclaim Deed, if owner chooses.
- d. Permanent Easement Contract ([Attachment AP-6](#))
  1. Easement Deed ([Attachment AP-7](#))
- e. Temporary Easement Contract ([Attachment AP-8](#))
- f. Mortgage release, if applicable.
- g. Leasehold or Tenant Contract, if applicable ([Attachment AP-9](#))  
Sample ([Attachment AP-9S](#))

#### 2. For a Purchase (See negotiating instructions in a later paragraph.)

- a. Copy of the appraisal or valuation report for owner. (optional)
- b. Copy of the Project Report for owner, when sales aren't included in the appraisal. (optional)
- c. Copy of the Review for owner. (optional)
- d. Informational Letter ([Attachment AP-10](#)), Sample ([Attachment AP-10S](#))
- e. All of the donation list, except Donation Form.

## Who Can Negotiate?

Any knowledgeable and disinterested employee of the LPA, except for the review appraiser, would be satisfactory to act as the negotiator. If needed, the appraiser can negotiate only if a "Compensation Estimate" was used and the compensation is less than \$10,000.00. If an outside "fee negotiator" is employed, they must be on [NDOR's Approved Acquisition Consultant List](http://www.ndor.state.ne.us/roway). [A contract to hire a consultant is included in \(Attachment AP-11\)](http://www.dor.state.ne.us/roway).

## Negotiator Log (Call Reports)

The negotiator shall maintain adequate records of negotiations or other contacts for every parcel. Therefore, the negotiator needs to enter into every visit or phone call with this knowledge and take what steps are necessary in order to recall the details when they write their report. After **each** call the negotiator's log or Call Report [\(Attachment AP-12\)](#), *Sample* [\(Attachment AP-12S\)](#) shall be written in permanent form and completed within a reasonable time after each contact with the property owner or their representative. Information for each contact shall include the date and place of contact, parties of interest contacted, offers made (dollar amounts), counteroffers, relevant questions from the owner, list of reasons settlement could not be reached, and any other pertinent data. The log or report shall be signed and dated by the negotiator. Upon completion of negotiations, the above records become part of the project parcel file.

When negotiations are unsuccessful and further attempts to negotiate are considered futile, the negotiator's record shall include documentation of the negotiator's recommendations for appropriate future action.

One of the functions of a negotiator's log is to document that negotiations have been conducted in an appropriate manner. Beyond the negotiating arena, LPAs increasingly are being required by courts to demonstrate such compliance. Properly completed, the negotiator's log offers key documentation in these cases.

Sometimes the initial negotiator may not complete the negotiations for a particular parcel. Without a complete record of preceding efforts, subsequent negotiations by a new negotiator will be more difficult and probably more time-consuming. In addition, the record contained in the log may assist in determining the prospects for a successful administrative or legal settlement. This supports the Uniform Act's goals of encouraging and expediting agreements with owners, avoiding litigation, relieving congestion in the courts, assuring consistent treatment for owners in public improvement programs, and promoting public confidence in governments' land acquisition practices.

## Contacting the Owner

### 1. Present the Offer in Person

The LPA should make all reasonable efforts to meet with each property owner, or the owner's designated representative, in person. The purpose of this contact is to explain the negotiation process to the property owner as well as the responsibilities of both the LPA and the property owner. One way to accomplish this is to provide the property owner with an acquisition brochure, mentioned before. The negotiator then shows and explains the ROW plans and how their property is affected, followed by presenting the offer letter which spells out the property rights needed from the owner and the compensation. This kind of personal contact can be of great importance as the negotiator strives to attain rapport with the property owner, which can help inspire confidence in the acquisition process and the fairness of the offer being made.

If all reasonable efforts to make personal contact with an owner fail, or if personal contact is impracticable, for example, such as when an owner lives in another state, the owner may be contacted by mail. In that mailing you would include everything that you would have presented in person.

### 2. Mailing the Offer

This can be an alternative approach for the first contact of the property owner. Sometimes, constraints on manpower and funds make it advisable to affect cost savings and to accelerate the acquisition process. This process allows the initial phase of negotiations to begin with a mailing to the property owner. The packet consists of an introduction letter explaining the acquisition and the offer, the brochure, the ROW plans highlighting the taking, (all appraisal documents, if a purchase: *optional*), all contracts and deeds clearly marked where they need to sign and have notarized, other documents needing signing, and a postage paid return envelope.

Within a reasonable period after the mailing (usually a week), you should follow up by telephone. A telephone conversation provides the property owner with a means to obtain answers to questions or an opportunity to exercise the option of setting up an appointment for personal contact. **All requests by property owners for personal contact should be honored.**

When personal contact does occur, the property owner should be able to discuss substantive issues, having had the offer in hand for several weeks. From this point on negotiations should follow the normal sequence.

Generally, the mailing approach has resulted in positive experiences. It saves both administrative costs and time on minor claims in which no dispute has arisen over the amount of the offer. The owner signs the contracts in a timely manner which enables the agency to focus negotiation efforts on other parcels.

**Note: This process may not be used on parcels where relocation is involved.**

## Completing the Transaction: Donation

### 1. Explain Owner's Right of "Just Compensation"

Usually, the decision by the property owner to donate the property for less than its value has been made prior to the negotiator arriving with the documents. This is why a valuation report hasn't been completed or brought to the owner at negotiations. **However**, when an owner is willing to make a donation, that individual or entity retains specific rights that must be respected. For example, you must provide the owner an explanation of the acquisition process, including the right of having your agency appraise the property and to receive an offer of just compensation. Only after receiving such an explanation may the property owner waive these rights and the LPA accept the donation. The explanation should be given in a manner that is non-technical and easily understood.

This is why making sure you have the owner sign the Donation Form is so important. It proves to NDOR, who is monitoring and controlling your federal aid, that you have explained this right to the owner.

An LPA may accept a property owner's offer to donate a whole or part of a property in exchange for services or facilities that will benefit that owner. For instance, an LPA may require a narrow strip of land for a street-widening project. The property owner and the LPA may negotiate an agreement that would require the LPA to provide an additional driveway, entrance, or other features in lieu of cash compensation. The LPA should compare the donated property's value and the cost of additional construction features to ensure that construction costs do not exceed the value of the donated real property.

### 2. No Coercive Action

Negotiations must be conducted free of any attempt to coerce the property owner into donating their property. For example, the negotiator shall not imply that the owner must donate their property, "or else". These detrimental factors could be things like the LPA withholding the building of certain construction features beneficial to the owner or the project itself. Other threats prohibited are those that imply that the LPA may "do" harmful things such as remove trees or other property features when it is not necessary. Similarly, the use of condemnation as a threat **must** be avoided.

### **3. Signing the Documents**

If satisfied, the owner then signs the Donation form, the contract(s), the deed(s) if other than just a temporary easement, and any kind of voucher or other internal document that the LPA may need in order to process for payment.

The owner's signatures must be notarized by the negotiator, or if they are not a notary, then by some other notary. The notarization also applies to documents that were mailed.

Upon returning the signed documents to the LPA, the agency head shall then sign the contracts and deeds, thereby completing the transaction. The deeds shall then be recorded within a reasonable time period.

### **4. Buyer/Seller Situations**

When the property owner is buying the property on contract, the seller still has an Interest. Therefore, a slightly different procedure of documents and signing is needed. The instructions for this situation are in [\(Attachment AP-13\)](#).

## **Completing the Transaction: Purchase**

### **1. Explain the Offer**

After the initial presentation of the brochure, the plans, and the offer letter, the negotiator needs to explain the offer of just compensation and how it was arrived at. The negotiator should be willing to show the valuation report to the owner, as a minimum, and should consider giving them their own copies of the valuation report, review, and project report. **(NDOR, as a rule, gives all three of these documents to all owners on all projects.)**

### **2. No Coercive Action**

Negotiations must be conducted free of any attempt to coerce the property owner into reaching an agreement. For example, the negotiator should be careful not to imply that the negotiation, and in particular the offer, is a "take it or leave it" proposition. Similarly, the use of condemnation as a threat must be avoided. Other examples of actions the acquiring agency must avoid include advancing the time of condemnation, deferring negotiations, or delaying the deposit of funds with the court to coerce an agreement with the property owner.

### **3. Owner Opportunity to Consider**

You must give the property owner a reasonable opportunity to consider the offer. This not only provides the owner a chance to thoroughly review and evaluate the offer (including the opportunity to obtain professional advice or assistance), it eliminates any appearance of coercion. It also provides a chance for the owner to present material they believe is relevant to determining the property's value, and to suggest modifications to the proposed terms and conditions of the purchase. You must consider the owner's presentation.



#### **4. Signing the Documents**

If satisfied, the owner then signs the contract(s), the deed(s) if other than just a temporary easement, and any kind of voucher or other internal document that the LPA may need in order to process for payment.

The owner's signatures must be notarized by the negotiator, or if they are not a notary, then by some other notary. The notarization also applies to documents that were mailed.

Upon returning the signed documents to the LPA, the agency head shall then sign the contracts and deeds, thereby completing the transaction. The deeds shall then be recorded within a reasonable time period.

#### **5. Buyer/Seller Situations**

When the property owner is buying the property on contract, the seller still has an Interest. Therefore, a slightly different procedure of documents and signing is needed. The instructions for this situation are in [\(Attachment AP-13\)](#).

#### **6. Administrative Settlement**

A reasonable effort must be made by the negotiator to induce the owner to sign for the offer presented to them. However, when the owner refuses to sign, or presents a counteroffer, it is sometimes in the public interest to accomplish a settlement in excess of the established just compensation. Such a settlement is called an Administrative Settlement because it is not an admission on the LPA's part that there is a need to raise the offer of just compensation, but rather, is the result of an administrative decision. In all instances, caution, discretion, and proper judgment shall be applied at all times. The Administrative Settlement has long been a part of the FHWA regulations.

The LPA can consider factors utilized in the appraisal process and, likewise, factors omitted from it. Some of these factors could be the time span between the appraisal completion and the offer, other appraisals, additional estimates or bids, valuation problems, recent court awards, or the contrast between an increase vs. the estimated trial cost.

Consistency and fairness to the Nebraska taxpayer and all property owners, especially those on the project who have already accepted the initial offer, should be considered when making Administrative Settlements. The practice of agreeing to settlements above the established just compensation, merely because a property owner "holds out," is strongly discouraged. These increases would soon become common knowledge and there would be but few future agreements by the negotiator based on just compensation.

In making a counteroffer, the owner may request certain construction items as a condition for settlement. Many of these items would often mitigate at least some of the damages which were originally in the LPA's offer. In order to avoid a double payment that would include both the cost of the construction item and damages mitigated by those items, acceptance must be carefully weighed and be based on the elimination of the damages that are mitigated by the construction items. Attempts are sometimes made by the owner to obtain agreement on construction items by first proposing only one item and after obtaining approval, following up with others in similar fashion. This type of counteroffer on a piece meal basis should be avoided. It is best to give consideration only to complete counteroffers and remain noncommittal on requests for construction items until all conditions of the counteroffer are definitely stated.

Once an agreement has been reached, signing the documents is still basically the same as mentioned before. The LPA simply needs to write in "Administrative Settlement" on the contracts, the amount, and change the total. This would also be done on the LPA's voucher or other payment document.

The LPA head or other authority prepares a written justification ([Attachment AP-14](#)), *Sample* ([Attachment AP-14S](#)) of the available information that supports such a settlement, and that they approve it as being reasonable, prudent, and in the public interest. The extent of the written explanation is a judgmental determination and should be consistent with the circumstances and the amount of money involved. You shall maintain appropriate documentation in the parcel file to support this action.

FHWA may or may not participate in the cost of additional payment, depending on the reasonableness of the settlement. They **will not** participate if a settlement report, as described above, is not prepared and in the file.

## Tenant Rights

When an LPA acquires a property that is tenant occupied, you must consider not only the tenant's leasehold interest, but also their real property interests as well.

### 1. Leasehold Interest

If a tenant's lease is more than month-to-month and is market advantageous, the appraiser will establish a fair market value for the loss of that lease. This amount will then be offered to the tenant as just compensation.

However, usually for tenants of longer than month-to-month with no market advantage, a simple minimum payment, decided on by the LPA, (NDOR pays \$25.00) shall be offered to acquire their leasehold interest.

### 2. Tenant Owned Improvements

It is clearly the intention of the Uniform Act that tenant-owners of buildings, structures, or other improvements be given status equal to owners and are thus entitled to an offer of just compensation.

The offer for a tenant owned improvement should be based on the amount that the improvement contributes to the fair market value of the whole property, or its removal value, whichever is greater. Removal value is the same as salvage value.

### **3. Signing the Contract**

The Leasehold Contract ([Attachment AP-9](#)), *Sample* ([Attachment AP-9S](#)), is set up to write in the amount of the tenants interest and also write in and describe the owned improvements, if applicable. If the tenant is agreeable, their signature and a notarization is all that's required.

However, if the tenant isn't willing to sign, there is the possibility of increasing the amount as an Administrative Settlement, but very sparingly, unless there is a high valued tenant owned improvement.

Condemnation applies to tenants as well as owners. If an agreement cannot be reached, the next step is to turn the tenant's case over to your legal counsel for filing of condemnation proceedings, either right along with the owner or by themselves if the owner signed.

## **Certificate of Negotiator**

The final step for the negotiator, before they turn in each property owner's case file, is to fill out the Certificate of Negotiator ([Attachment AP-15](#)). The negotiator is stating that they have no present or future interest in the acquired property and that all negotiations were conducted fairly.

## **Condemnation: the LPA's Right of Eminent Domain**

If negotiations have failed and an administrative settlement is not successful, it may be necessary to acquire the property rights by exercising the LPA's power of eminent domain. At this point, the negotiator shall give the owner a copy of the Eminent Domain Procedure ([Attachment AP-16](#)), update their working file, and turn the acquisition over to legal counsel to institute condemnation proceedings.

In Nebraska, the law provides the property owner (and tenant) a hearing in County Court before a board of "appraisers" who have been appointed by the court. The owner (and tenant), and/or their legal counsel, and the counsel for the LPA are permitted to present information to the appraisers along with a viewing of the property. These two things form the basis of the appraisers' eventual award of just compensation. Once the appraisers make their determination, the owner and the LPA may each accept or reject the award. If either party rejects it, they then appeal to District Court. Upon completion of the process, the LPA shall report the award findings using the Condemnation Report ([Attachment AP-17](#)), *Sample* ([Attachment AP-17S](#)).

After a condemnation has been filed, but before the hearing date arrives, a legal settlement can be made between the LPA's legal counsel and the property owner and/or their attorney. The LPA's file must be documented whenever a legal settlement is made, and the rational for the settlement set forth in writing.

## Right of Way Certificate

Prior to advertising for construction bids for the project, the acquiring agency must prepare a Right-of-Way Certificate ([Attachment AP-18](#)), *Sample* ([Attachment AP-18S](#)). This certification states that the properties needed for construction of the project have been obtained, they are clear of any utilities and structures which must be moved, plus persons or businesses displaced by the project have been relocated. Essentially, the certification must include a statement that the LPA has complied with Uniform Act requirements and that the project is ready for construction.

If your project has **no new right of way** to acquire, then you need to complete and send a different ROW Certificate ([Attachment AP-19](#)).

The ROW Certificate should be sent to the NDOR LPA/ROW Coordinator. Along with this, the LPA needs to send copies of all the required documents generated during the acquisition process for review of adherence to the Uniform Act. A checklist of the documents needed to be sent can be found in ([Attachment AP-20](#)). Following acceptance of your certificate, you will receive authorization to advertise for bids to construct your project.

## Payment Before Possession

Under the Uniform Act, no owner may be required to surrender possession of real property before payment is made; whether it is based on the LPA's approved valuation report, an amount negotiated after the LPA initiates condemnation proceedings, or the amount awarded by the board of appraisers.

# RELOCATION ASSISTANCE

Sometimes land needed for a public project is occupied. In such instances, it may be necessary to displace the occupants, who may include individuals, families, businesses, farms, or even non-profit organizations. The Uniform Act and U.S. DOT/FHWA regulations prescribe certain benefits and protections for persons displaced by public projects funded, at least in part, with Federal money. Nebraska State Law covering Relocation Assistance, which closely follows the Uniform Act, needs to be followed even if there is no federal funding in any aspect of your project. You can see Nebraska Rules and Regulations at the NDOR website. ([www.dor.state.ne.us/roway](http://www.dor.state.ne.us/roway))

Among other benefits, the Uniform Act provides relocation payments that include moving expenses and certain supplements for increased costs at a replacement location. In addition, the Act provides protections for displaced persons such as requiring the availability of replacement housing, minimum standards for such housing, and requirements for notices and informational materials. Also, the Act entitles displaced persons to certain "advisory services" to help them move successfully.

Relocation Assistance is complicated, with a myriad of rules and regulations. Only a qualified and experienced relocation expert is able to handle these situations. **Therefore**, the LPA shall contract with a Relocation Assistance consultant from the approved NDOR list.

## Relocation Planning

An LPA's main responsibility in dealing with relocation assistance, early on in your project development, is to identify possible entities who will be required to move and will qualify for assistance. Then, be aware of the time it may take to accomplish those relocations, and build that time into your schedule. You are then ready to hire a relocation consultant and start coordinating your acquisition activities.

## Notices to Displacees

### 1. General Information Notice

This notice is to be provided to potential displaced persons at an early stage of the project. One common approach is to hand out an informational brochure at the public hearings for the project. The purpose of the notice is to provide a general description of the LPA's relocation program, including benefits, responsibilities and protection. You may request these brochures from the NDOR LPA/ROW Coordinator.

### 2. Notice of Relocation Eligibility

This letter will be presented, by the relocation consultant, to those persons who are definitely being displaced. Beforehand, the relocation consultant will have done a study to determine the amount and extent of the person's benefits. The notice will be given at the same time, or right after, a written offer is made to the property owner for acquisition of their property.

### **3. 90-Day Notice**

Under the Uniform Act, all agencies are required to give persons relocating a written notice that they have a minimum of 90 days before they would be required to move. The relocation consultant also presents this letter, usually at the same time as the previous notice.

## **Relocation Assistance Payments**

### **1. Residential Displacements**

The relocation consultant will do a study to determine what benefits the displaced persons qualify for and to what extent.

#### **a. Moving and Related Expenses**

This includes payment for the actual cost to move personal property. A displaced person may use a commercial mover and be reimbursed the actual cost, or they can move the items themselves and be paid based on a schedule. ([Residential Moving Cost Schedule](#))

#### **b. Replacement Housing Payments**

A payment for the difference, if any, between the actual acquisition price (or rent) of a comparable replacement dwelling and the acquisition price (or rent) of the dwelling from which the occupant is being displaced. Additionally, increased mortgage interest costs and selected incidental expenses (settlement costs) also may be eligible.

### **2. Mobile Homes**

Mobile homes often present one of the more difficult situations with which displacing agencies must cope. In a mobile home situation, there is a separation between the dwelling and the site it occupies. For example, one may own a mobile home but rent its site or vice versa. Therefore, you will need to decide whether to acquire or move the mobile home.

### **3. Business, Farms, and Non-Profit Organization Displacements**

The relocation consultant will do a study to determine which of the following payments these entities qualify for, and to what extent.

- a. Actual moving and related expenses.
- b. Reestablishment expenses, up to \$10,000.00.
- c. Searching costs, up to \$1,000.00.
- d. Fixed payment "In Lieu" of moving expenses, between \$1,000.00 and \$20,000.00.

### **Advisory Services**

Relocation payments alone often are not enough to minimize the hardship of a move necessitated by a public project, and ensure a successful move to a replacement location. Another key element is relocation advisory services. These services provide displaced persons with information, counseling, advice, and encouragement and often require repeated and intense personal contact.



## **ASSESSMENTS AGAINST ACQUIRED PROPERTIES**

When Federal funds participate in a project, an LPA may not levy a special assessment, solely against those properties experiencing acquisitions for the public improvement, for the primary purpose of recovering the compensation paid for the real property. This recapture of compensation would constitute a form of forced donation, which is coercive and thus not permitted under the Uniform Act.

However, an LPA may levy an assessment to recapture funds expended for a public improvement, provided the assessment is levied against all properties in the taxation area or in the district being improved and provided it is consistent with applicable local ordinances.

## **ACQUIRING EDUCATIONAL LANDS BY EMINENT DOMAIN**

Any public body that has or hereafter shall be granted by the Legislature the authority to acquire educational lands for public use shall be required to condemn the interest of the state, as trustee for the public schools, in educational lands.

Before the acquisition circumstances can be presented to the Board of Appraisers, the following items must be submitted to the Secretary of the Board of Educational Lands and Funds:

1. Offer by condemner for lands to be acquired. (The LPA's valuation document would normally determine the amount of the offer).
2. Application for condemnation.
3. A plat and complete description of the land to be acquired.
4. Leasehold contract signed by the lessee and the LPA.
5. For county boards acquiring land to construct, reconstruct, improve, relocate, or maintain a county road, a certificate that the taking of such land is in the public interest must be obtained from the Governor or NDOR, and be filed in the office of the Board of Educational Lands and Funds.
6. A filing fee must accompany the application.

The Board of Appraisers for BELF condemnations is a special board, appointed by the Governor, made up of a representative from each of the three following groups: (1) a superintendent of a school district offering instruction in grades kindergarten thru twelve, (2) a certified public accountant, and (3) a registered, licensed, certified residential appraiser, or a certified general real estate appraiser. The appraisers serve a six year term.

After the above items have been properly completed and submitted, a representative of the Board of Educational Lands and Funds will inspect and appraise the property listed in the condemnation application. After the appraisal is approved by the Board of Educational Lands and Funds, the appraisal and the offer will both be presented at a hearing before the Board of Appraisers for their consideration. The date of the hearing shall not be less than 10 days from the date of the filing of the application. The Condemner will be notified of the date of the hearing.

The Condemner and the Board of Educational Lands and Funds may present evidence before the Board of Appraisers. The Board shall have the power to administer oaths and subpoena witnesses at the request of either party or on its own motion.

After hearing the evidence, the Board of Appraisers shall make the award and file the same in the office of the Board of Educational Lands and Funds.

Upon payment of the amount of the award by the Condemner, the Secretary of the Board of Educational Lands and Funds will transmit a certified copy of the award to the Condemner for filing in the office of the Register of Deeds in the county or counties where the land is located.

# **PROPERTY MANAGEMENT**

The administration of acquired land and improvements is called property management. It includes activities such as maintenance and protection of the right-of-way, rental or leasing of acquired property, disposal of property no longer needed for the highway, and others discussed later in this section. Many of these activities provide opportunities for an LPA to generate revenue which may be used for highway-related activities.

When administering acquired land and improvements, you should be guided by the twin goals of serving the public interest and maximizing public benefit. Keeping these goals in mind is helpful when decisions must be made concerning situations in which the rules are not clear-cut or the circumstances are ambiguous.

For discussion purposes, we have divided property management activities into those which occur before the project is closed out (financially) and those which occur thereafter.

## **Administration**

Proper administration is a minimum requirement. The administration of acquired property includes a number of procedural activities and the records associated with them. In a very real sense, appropriate records are the backbone of the process.

An essential component of the record-keeping process is the property inventory. It is preferable that the property inventory include a record of all real property and improvements acquired for the project. The LPA should prepare a pre-acquisition inventory covering every parcel to be acquired, including all land, structures, machinery, equipment, and fixtures. In order to document what is present, the inventory should be updated when physical possession of the real property occurs, and periodically thereafter until all improvements have been disposed of. Disposals of improvements should be noted as they occur.

In addition, the LPA should maintain records which provide a proper accounting of expenses and receipts for property leased or rented as well as the disposal of improvements and the payments received.

Another important area involves the maintenance and security of acquired property. The LPA must take measures to insure public safety between acquisition and the completion of the highway. Therefore, it is necessary for the LPA to inspect the property at appropriate intervals. Additional areas of concern include procedures for hiring contractors, the preservation and/or disposal of improvements, and rodent control.

## **Interim Leasing**

If real property is not needed immediately for construction, it may be advantageous for the LPA to rent or lease it. This provides revenue to the project and, often, an extra measure of security. Interim leasing is permissible only when the construction schedule permits. Such properties generally are rented for a short term and the rent charged should be appropriate for short-term occupancy. The Federal share of net income from such leases may be credited to an account and used for Title 23 eligible projects.

Leases should include the following conditions in order to protect the LPA's interests in the property:

- Tenant assurances that the rented property will not be transferred, assigned, or conveyed without approval from the LPA.
- Provisions that allow the lease to be revoked if substandard conditions are not corrected within a specified time frame.
- Provisions requiring the tenant to purchase adequate insurance.
- Provisions allowing inspection of the rental property at specific intervals or on an as-needed basis.
- Provisions assuring that the use of the rental property will not interfere with project activities or the eventual intended use of the highway facility.

Provisions ensuring that those who are not eligible to receive relocation assistance benefits at the initiation of negotiations will not gain eligibility to receive relocation assistance benefits when they are required to move from the rental property.

## Right-of-Way Clearance

If structures, utilities, equipment, or other impediments to construction are present on the property to be acquired, they must be cleared before construction may begin. Clearance may be accomplished in a variety of different ways – as part of the construction contract for building the highway, or through a separate demolition/ removal contract, owner retention and removal, negotiated sale, auction, or other method. An important aspect of clearing the property is the relocation of occupants. As a rule, occupants must be relocated before bids for construction of the highway facility may be advertised.

## Post-Closeout Functions

A number of functions typically occur after closeout. One of these is the disposal of excess property. After the highway has begun operations, it may become clear that some of the property acquired for the highway is not needed currently and will not be needed in the foreseeable future. The LPA should maintain an inventory of such "excess properties." Excess property may be disposed of but FHWA policy puts some limitations on the disposal. If the property is sold to a private party, the LPA must charge a minimum of fair market value, although there can be exceptions for social, economic, or environmental purposes.

One special type of disposal involves the disposal of access control, i.e., opening access to the highway facility at a point or points where it has been prohibited. This is a matter with very serious potential implications for the safety and capacity of the highway. **If your agency wishes to dispose of access control, you must seek prior approval from NDOR.**

Another post-closeout function is the leasing of real property. The decision to permit leasing is dependent on the LPA's determination that it will not interfere with the safety of the traveling public or adversely affect the highway's capacity. You must charge fair market value for leases, but, once again, there can be exceptions for social, economic, or environmental purposes. As with the disposal of excess property, the income from leasing after closeout may be used by the LPA for activities eligible under the federal-aid highway program.