



Real Property **ACQUISITION** Handbook

How the U.S. General Services
Administration Acquires Real Property
for Programs and Projects



GSA Public Buildings Service

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Federal programs designed to benefit the public may result in the acquisition of private property and sometimes in the displacement of people from their residences, places of business or farms.

The Fifth Amendment to the United States Constitution provides that private property may not be taken for public use without the payment of just compensation. To provide uniform and equitable treatment of persons whose property is acquired for public use, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amended it in 1987. The law is commonly referred to as the Uniform Act. Implementing regulations for the Uniform Act are issued by the Department of Transportation and can be found in part 24 of title 49 of the Code of Federal Regulations. All Federal, state and local government agencies, as well as others receiving Federal financial assistance for public programs and projects that require the acquisition of real property, must comply with the policies and provisions set forth in the Uniform Act.

The acquisition itself does not need to be Federally funded for the Uniform Act to apply. If Federal funds are used in any phase of the program or project, the rules and regulations of the Uniform Act apply.

The Uniform Act requires acquiring agencies to make “every reasonable effort to acquire expeditiously real property by negotiation.” 42 U.S.C. § 4651. The objective is to encourage agreements with property owners to minimize litigation and promote public confidence in Federal and federally assisted land acquisition programs.

This brochure explains the rights of an owner of real property to be acquired for a federally funded program or project. An accompanying brochure, entitled “Relocation Handbook,” explains the rights and benefits of a displaced person under the Federal Relocation Assistance Program.

Common Terms Used in Acquiring Real Property

ACQUISITION

Acquisition is the process of gaining ownership or control of real property (real estate) or an interest in real property.

AGENCY

An agency can be a governmental organization (Federal, state or local), a nongovernmental organization (such as a utility company), or a private person, using Federal financial assistance for a program or project that acquires real property or displaces a person. (All references to “Agency” in this brochure refer to the U.S. General Services Administration (GSA).)

APPRAISAL

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

CONDEMNATION

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

EASEMENT

An easement is an interest in real property that affords a person the right to make limited use of another person’s real property. An easement may be exclusive or non-exclusive and may be perpetual or expressly limited in duration. Examples of easements are (1) a right-of-way, (2) a right of entry for a stated purpose, (3) a right to the support of land and buildings, (4) a right of light and air, (5) a right to place or keep utilities on another person’s property, (6) a right to the perpetual maintenance of drainage structures, (7) a right to allow reconstruction of a driveway during construction, and (8) a right to do some act that would otherwise constitute a nuisance.



“The Fifth Amendment of the Constitution states that private property shall not be taken for public use without the payment of just compensation.”

Common Terms Used in Acquiring Real Property

EMINENT DOMAIN

Eminent domain is the right of the government to take private property for public use. In the United States, just compensation must be paid for private property acquired in connection with federally funded programs or projects.

FAIR MARKET VALUE

Fair market value is the price on the date of valuation that a property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

INTEREST

An interest is a right, title or legal share in something. People who share in the ownership of real property have an interest in the property.

INVERSE CONDEMNATION

Inverse condemnation is a term used to describe a situation in which the government takes private property but fails to pay the compensation required by the Fifth Amendment to the U.S. Constitution. To be compensated, the owner must then sue the government.

JUST COMPENSATION

Just compensation is the price an agency must pay to acquire real property. An agency official must make the estimate of just compensation to be offered for the property, which amount may not be less than the amount established in the approved appraisal report as the fair market value for the property. If the owner and GSA cannot agree on the amount of just compensation, the amount will be determined in court.

LIEN

A lien is a legal claim of one person upon the property of another person to secure the payment of a debt or the satisfaction of an obligation. Examples include mortgages, mechanics' liens and tax liens. As a general rule, liens must be paid in full when the property is sold.

MARKET VALUE

Market value is the sales price that a willing and informed buyer would pay in cash to a willing and informed seller for a particular property.

NEGOTIATION

Negotiation is the act of discussing an issue between two or more parties with competing interests with an aim of coming to an agreement. It is the process by which GSA and the seller of property seek to reach an amicable agreement over the terms and conditions of the sale of property. An offer may be made for the purchase of property in person or by mail, and the offer is discussed with the owner.

PERSON

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

PERSONAL PROPERTY

In general, personal property is property that can be moved. It is not permanently attached to, nor a part of, the real property. Personal property is not to be included and valued in appraising real property.

PROGRAM OR PROJECT

A program or project is any activity or series of activities undertaken by an agency where Federal financial assistance is used in any phase of the activity.

UNECONOMIC REMNANT

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 agency has determined has little or no value or utility to the owner.

WAIVER VALUATION

The valuation process used and product produced when the agency determines that an appraisal is not required. A waiver valuation may be used for relatively low-value, non-complex acquisitions. A waiver valuation is prepared instead of an appraisal.

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Property Appraisal and the Determination of Just Compensation

PROPERTY APPRAISAL

The U.S. General Services Administration (GSA) determines the specific property to be acquired for a public program or project after the project has been planned and the government requirements have been established.

If a property, or a portion of it, needs to be acquired, the primary owner will be notified as soon as possible of:

- (1) GSA's interest in acquiring the property;
- (2) GSA's obligation to obtain any necessary appraisals; and
- (3) Any other useful information.

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

An appraiser will contact the property owner to make an appointment to inspect his or her property. The appraiser is responsible for determining the initial fair market value of the property. GSA will have a review appraiser analyze the appraisal report and recommend whether or not the agency should accept the report. The accepted appraisal report will become the basis for the agency's offer of just compensation for the property. The property owner, or a representative designated by the property owner, will be invited to accompany the appraiser when the appraiser inspects the property. The property owner, or his or

her representative, may point out any unusual or hidden features of the property that the appraiser might overlook. At this time, the property owner should advise the appraiser if any of these conditions exist:

- Other persons who have an ownership or other interest in the property, whether or not of record;
- Tenants on the property;
- Items of real or personal property located on the property that belong to another person; or
- Presence of hazardous materials, underground storage or utilities.

This is the owner's opportunity to tell the appraiser about anything relevant to the property's valuation, including other properties in the area that have sold recently.

The appraiser will inspect the property and note its physical characteristics. He or she will review sales of properties similar to the subject property to compare the facts of those sales with the facts about the property. The appraiser will analyze all elements that affect value.

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

The appraisal report will describe the property, and GSA will determine a value based on the condition of the property as of the day the

appraiser last inspected it compared with other similar properties that have sold.

Once the appraisal of fair market value is complete, a review appraiser from GSA will review the report to confirm that all applicable appraisal standards and requirements have been met. The GSA review appraiser will then determine the amount of just compensation to be offered for the real property. This amount will never be less than the fair market value established by the approved appraisal.

If GSA is acquiring only a portion of the property, there may be damages or ancillary benefits to the remaining property. Any allowable damages or benefits will be reflected in the offer of just compensation. GSA will prepare a written offer of just compensation for the property owner when negotiations begin.

BUILDINGS, STRUCTURES AND OTHER IMPROVEMENTS

Sometimes, buildings, structures or other improvements are located on the property to be acquired. If they are determined to be real

property, GSA must offer to acquire at least an equal interest in all buildings, structures or other improvements located on the real property to be acquired if they must be removed or if they will be adversely affected by the use to which the real property will be put. This includes any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration or earlier termination of the lease term, as discussed in greater detail immediately below.

JUST COMPENSATION

TENANT-OWNED IMPROVEMENTS

Sometimes, a tenant leases real property and builds or adds improvements for his or her own use. Frequently, the tenant has the right or obligation to remove the improvements at the expiration or earlier termination of the lease term. If, under state law, the improvements would be considered to be real property, GSA must treat the improvements as real property and make an offer to the tenant-owner to acquire these improvements as though they were real

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Property Appraisal and the Determination of Just Compensation

these improvements as though they were real property. To be paid for these improvements, the tenant-owner must assign, transfer and release to GSA all of the tenant-owner's right, title and interest in the improvements. In addition, the owner of the real property on which the improvements are located must relinquish all interest he or she has in the improvements.

In the case of a tenant improvement, the measure of just compensation is the amount the improvement contributes to the fair market value of the whole property, or its value for removal from the property (salvage value), whichever amount is greater. A tenant-owner may reject payment for the tenant improvements and obtain payment for his or her property interests in accordance with other applicable law. GSA is not authorized to pay for tenant-owned improvements if such payment would result in the duplication of any compensation otherwise authorized by law. If state law considers the tenant-owned improvements

to be personal property, then the tenant may be reimbursed for moving them under the relocation assistance provision.

GSA will personally contact a tenant who has made any such improvements to explain the procedures to be followed. Any payments must be made in accordance with applicable Federal and state laws and regulations. The Uniform Act requires that all rental property to be acquired must be appraised, but it also authorizes waiving that requirement for low-value acquisitions.

The regulations authorize an agency to waive the appraisal requirement under certain circumstances. If an owner elects to donate his or her real property and releases GSA from the obligation to obtain an appraisal, or if GSA believes acquisition of the real property is uncomplicated and a review of available data supports a fair market value likely to be \$10,000 or less, GSA may prepare a waiver valuation, rather than an appraisal, to estimate the property's fair market value.

EXCEPTIONS TO THE APPRAISAL REQUIREMENTS

If GSA believes acquisition of the real property is uncomplicated and a review of available data supports a fair market value likely to be greater than \$10,000, but less than \$25,000, GSA may prepare a waiver valuation, rather than an appraisal, to estimate the real property's fair market value, if the agency offers the property owner the option of having the agency appraise the property. If the owner elects to have GSA appraise the property, an appraisal must be obtained.



Negotiations

THE WRITTEN OFFER

After GSA approves the offer of just compensation, the agency will begin negotiations with the property owner, or his or her designated representative, by delivering the written offer of just compensation for the purchase of the real property. Whenever possible, the offer will be delivered in person by a GSA representative; otherwise, the offer will be mailed and followed up by a personal visit or phone call. All owners of the property with known addresses will be contacted, unless they collectively have designated one person to represent their interests. An agency representative will discuss the agency's offer to purchase the property, including the basis for the offer of just compensation and the agency's acquisition policies and procedures.

Along with the initial written purchase offer, GSA must give the owner a written summary statement of the basis for the offer of just compensation, which must include, at a minimum, the following information:

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



The offer may list items of real property that the owner may elect to retain and remove from the property and the retention values associated with the individual items. If the owner decides to retain any or all of these items, the offer will be reduced by the value of the items retained. The owner will be responsible for removing the items from the property in a timely manner. GSA may elect to withhold a portion of the remaining offer until the retained items are removed from the property. Any separately held ownership interest in the property, such as tenant-owned improvements, will be identified by GSA. GSA may negotiate individually with each person who holds a separate ownership interest in the property, or it may negotiate with the primary owner and prepare a check payable jointly to all owners.

Negotiations

GSA will give the owner a reasonable amount of time to consider the written offer and to ask questions or seek clarification of anything that is not understood. If the owner of the property believes that all relevant materials were not considered during the appraisal, he or she may present such information at this time. The owner also may request modifications to the proposed terms and conditions of the purchase and sale. GSA will consider any reasonable requests.

“ GSA may not take any action to force an owner to accept its offer. ”

PARTIAL ACQUISITION

In some cases, GSA will not need to acquire all of the owner's property. GSA usually will purchase only what it needs. If GSA intends to acquire only a portion of the property, the agency must state the amount to be paid for the part to be acquired. In addition, an amount will be stated separately for damages, if any, to the portion of the property to be retained by the property owner. If GSA determines that the remainder property will have little or no value or use to the owner, GSA will consider this remainder to be an uneconomic remnant and

will offer to purchase it. The owner will then have the option of accepting the purchase offer for the uneconomic remnant or keeping the property.

AGREEMENT BETWEEN THE PROPERTY OWNER AND GSA

If the property owner reaches an agreement with GSA on the terms and conditions of the offer, the owner will be asked to sign a purchase and sale agreement, an easement or some form of deed that GSA has prepared, as applicable. The owner's signature will affirm that the owner and the agency are in agreement concerning the terms and conditions of the acquisition of the property.

If the owner does not reach an agreement with GSA, the agency may suggest mediation as a means of coming to an agreement. If, after making every reasonable effort to acquire the property by negotiation, GSA reasonably believes that an agreement cannot be reached, it will initiate condemnation proceedings.

GSA may not take any action to force an owner to accept its offer. Prohibited actions include:

- Advancing the time of condemnation;
- Deferring negotiations;
- Deferring condemnation;
- Delaying the deposit of funds with the court for the owner's use once condemnation is initiated; or
- Taking any other coercive action designed to force an agreement on the price to be paid for the property.

PAYMENT

The next step in the acquisition process is payment for the property. As soon as all of the necessary paperwork is completed for transferring title to the property, GSA will pay off any liens against the property and pay the remaining equity to the property owner. The owner's incidental expenses also will be paid or reimbursed. Incidental expenses are reasonable expenses that the owner necessarily incurred as a result of transferring title to GSA, such as:

- Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses necessary to convey title to the property to GSA. GSA is not required to pay costs to perfect the owner's title, or to assure that the title to the real property is entirely without defect.
- Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.
- The pro rata share of any prepaid real property taxes that can be allocated to the period after GSA obtains title to the property or effective possession of it, whichever is earlier.

If possible, GSA will pay these costs directly to the property owner to eliminate claim reimbursement.

POSSESSION

GSA may not take possession of the real property until:

- The owner has been paid the agreed-upon purchase price, or
- In the case of condemnation, GSA has deposited with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of the property, or the amount of the court award of compensation in the condemnation proceeding for the property.

If GSA takes possession while persons still occupy the property, all persons lawfully occupying the property must receive a written notice to move at least 90 days in advance of the required date to move.

A lawful occupant of a residence cannot be required to move until at least 90 days after a comparable replacement dwelling has been made available for occupancy. Only in unusual circumstances, such as when continued occupancy would constitute a substantial danger to the health or safety of the occupants, may occupants of the property be required to vacate on less than 90 days advance written notice.

A Relocation Counselor will be appointed and made available to all occupants to explain their rights, respond to any questions and process all claims for reimbursement under the Uniform Act.

Settlement and Condemnation

SETTLEMENT

GSA will make every reasonable effort to reach an agreement with the property owner during negotiations. The owner may provide additional information and make reasonable counteroffers and proposals for GSA to consider. When it is in the public interest, GSA may use this information as a basis for an administrative settlement, as appropriate.

CONDEMNATION

If an agreement cannot be reached, GSA may acquire the property by exercising its power of eminent domain by instituting formal condemnation proceedings with the appropriate Federal court.

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LITIGATION EXPENSES

Normally, GSA does not reimburse a property owner for expenses he or she incurs as a result of condemnation proceedings. However, GSA will reimburse a property owner for any reasonable expenses, including reasonable attorney, appraisal and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- The court determines that GSA cannot acquire the real property by condemnation;
- GSA abandons the condemnation proceeding other than under an agreed-upon settlement; or
- The property owner files an inverse condemnation action and the court renders a judgment in favor of the owner or the agency settles the case.



Project Contacts

This information is provided to assist you in understanding the requirements that GSA must meet, as well as the property owner's rights and obligations. If you have any questions, please contact the project representative:

Site Acquisition Contact

Name:

Phone Number:

Email:

Mailing Address:



United States General Services Administration
Office of Leasing
Center for Site Acquisition and Relocation
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GSA Public Buildings Service