

**RIGHT OF WAY  
PROCEDURES  
FOR ACQUISITION**



**Negotiations through Acquisition**

**Acquisition Section  
Right of Way Division  
Arkansas Department of Transportation**

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## **PREFACE**

The construction of roads, streets, bridges, interchanges, and rest areas for the public good requires that private property be purchased by the Arkansas Department of Transportation. This information brochure briefly explains the policies and procedures of the Arkansas Department of Transportation in acquiring the necessary right of way for construction.

The information contained herein is intended to better inform the public of the Department's function and service in acquiring the needed right of way. If you are an affected property owner, you may have additional questions not answered by this booklet. The negotiator for the Department will be glad to answer any additional questions you may have.

# RIGHT OF WAY

## POLICIES AND PROCEDURES

Right of way acquisition is used here in its broadest sense as pertaining to the overall activities of the Right of Way Division in acquiring right of way needed for highway construction. The acquisition of right of way necessitates that property owners be contacted by different individuals from the Right of Way Division.



APPRAISERS



NEGOTIATORS

## ESTABLISHING RIGHT OF WAY NEEDS

The location of a proposed highway is selected after full consideration has been given to the social, economic and environmental effects of alternative locations.



After the exact location and design have been selected, a right of way map is developed to show the location of the proposed highway upon the lands affected. This map shows ownership information, areas required for right of way, location of improvements, points of access, and the approximate area of the remaining land of any ownership affected. The Department's Right of Way personnel may have a need at this time to make a preliminary right of way correlation study and to contact property owners. This inspection is for the purpose of making sure that all items affecting value are shown on the map, such as improvements, topography, points of access, etc. In securing the necessary information to complete the right of way map, inspections should be viewed by the property owner as necessary and for his benefit.

## VALUATION OF AFFECTED PROPERTY

The Arkansas Department of Transportation employs qualified real estate appraisers who determine "Just Compensation". Just Compensation is the fair market value of the acquisition area plus damages caused by the acquisition to the remaining property. The appraiser makes a detailed study of real estate transactions in the area to determine prices being paid for similar properties. Property owners are contacted either by mail or in person. The appraiser carefully inspect the land and improvements, considering all items that affect value. From this information the appraiser makes an estimate of the fair market value of the property. These estimates of value are then reviewed and approved by a Reviewing Appraiser to insure accuracy and inclusion of all items that affect value. This reviewed and approved estimate of value is the Arkansas Department of Transportation's offer of just compensation. The Department's appraisal and reviewing process is designed to insure that the fair market value of the property is determined in accordance with standard appraisal principles and required guidelines.



## NON-ECONOMIC PARCELS

In those instances where acquisition for highway purposes results in leaving a non-economic parcel on the property owner's remaining lands, the Department's valuation process will recognize and value the non-economic parcel. The property owner will then be afforded the opportunity to sell this residual to the Department at its appraised value.

## EXCEPTIONS TO APPRAISAL REQUIREMENTS

An appraisal is not required under the following circumstances:

- 1) The property owner elects to donate the property and release the Department from the obligation of performing an appraisal; OR
- 2) The Department determines that the acquisition is uncomplicated and a review of available data supports a fair market value of \$10,000.00 or less.

# ACQUISITION

## Negotiations

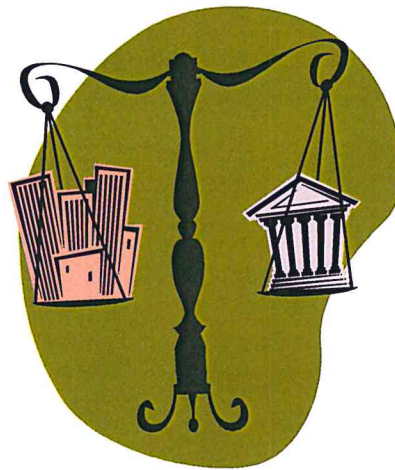


The negotiator for the Arkansas Department of Transportation familiarizes themselves with the job area, market information and valuation of each property prior to beginning negotiations. The negotiator then contacts each property owner, either in person, by mail, or telephone, to explain the acquisition procedure, the appraisal, the right of way maps, and the effect upon the ownership. The property owner is presented with a written offer of the full estimate of just compensation on all state or federally aided projects and a contract to sell the property. On those tracts (all parcels held under one ownership) where the acquisition is \$2,500.00 or less, reasonable requests from property owners for personal contacts will be honored. A written offer summary will be given to the property owner on state or federally aided projects to show the basis for the determination.



## EMINENT DOMAIN

The negotiator has only one offer to make based on the reviewed and approved appraisal or estimate of value. If the offer is accepted, the contract to sell is executed and submitted to the Department for acceptance. At this time a deed is prepared for conveying the property to the Arkansas State Highway Commission and payment is requisitioned from the State Treasury.



Should the property owner elect to refuse the Department's offer with no indicated chance of settlement, the Department's Legal Division is requested to institute condemnation proceedings, which is the legal procedure under the power of eminent domain to obtain possession of the property. The petition of condemnation is filed in the circuit court of the county where the property is located. The Department deposits the amount of its offer of just compensation in the registry of the circuit court and the circuit court will impanel a jury of twelve persons to ascertain the amount of just compensation. The deposit may be withdrawn by the owner without affecting the final determination of just compensation to be decided by the jury.



## OCCUPANCY AFTER CLOSING

No person lawfully occupying real property shall be required to move from a dwelling, business or farm operation without ninety days written notice of the Department's offer and thirty days written notice from the date of payment of the consideration set forth in the contract to sell. If the property owner or tenant is allowed to occupy the real property acquired on a rental basis for a short-term period subject to determination by the Department, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

## IMPROVEMENTS OWNED BY TENANTS

When the Department obtains an interest in 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 highway project will adversely affect them.

The Department is required to pay for property as if it were in a single ownership, and the contributory value of the tenant's improvements will be paid to the tenant. In other words, if a tenant owns a building on land required for public purposes, they will ordinarily be paid either the fair market value which the building contributes to the real property or the fair market value 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 owned. Also, in consideration for payment, the property owner must assign, transfer and release to the Department all his/her rights, title and interest in and to such improvements. No provision of this section deprives the property owner of their rights to reject payment and to obtain payment of just compensation for property interests as otherwise defined by applicable law.



## REIMBURSEMENT OF COSTS

If either of the following conditions exist, the Department must reimburse the property owner for the reasonable costs, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees which they have actually incurred. Such litigation expenses are reimbursable only under these conditions:

- 1) If the Department starts a condemnation action, but the court decides that the Department does not have authority to acquire the property by condemnation;
- 2) If the Department starts a condemnation action and abandons it.

# ACQUISITION

## Property Management

The property manager of the Right of Way Division is responsible for clearing the right of way after the land has been acquired. This function is necessary whether the property owner elects to retain the improvements or elects to leave the improvements to be disposed of by the Department. Clearing of right of way involves sale of improvements at public auction, removal by demolition contract, or including the removal in the road builder's contract. The property manager must see that the proposed right of way is cleared of all improvements.

The property manager will also be in close contact with the owners of the improvements to assist them in clearing the right of way within the time allotted so that highway construction will not be delayed.



# ACQUISITION

## Administrative (Closing Activities)



When the properties needed for construction are acquired by negotiation or condemnation, the Administrative Section of the Right of Way Division handles, facilitates and expedites the processing of the documents needed to transfer the land from the property owner to the Commission. This procedure requires that a Closing Agent secure the signatures of the property owners on a general warranty deed conveying the land to the Commission and make delivery of the payment in full by check to the property owner. The expense of transferring the real property is borne by the Department.

## Expenses Incidental to Transfer of Title to the Department



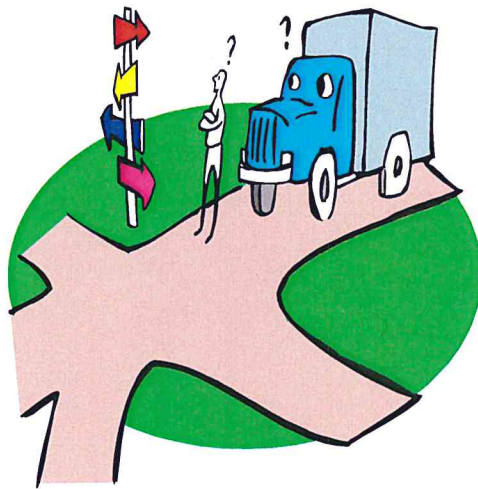
The property owner shall be reimbursed for all reasonable expenses the property owner necessarily incurred for:

- A) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys (when needed and approved by the Department), or legal descriptions of the real property provided to the Department. However, the Department is not required to pay costs solely required to perfect the property owner's title to the real property;
- B) Penalty costs and other charges for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the real property; and
- C) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Department obtains title to the property or effective possession of it, whichever is earlier.

If possible, the Department will pay these costs directly so that the property owner will not need to pay the cost and then claim reimbursement from the Department.

## GENERAL

It must be emphasized and made clear that the foregoing policies and procedures outlined in this brochure include the acquisition of real estate or realty proper such as land, buildings, etc. The Relocation Assistance Program's regulations covering persons that must move from a property as a result of the acquisition are explained in a brochure entitled "Relocation Assistance Program". The Relocation Assistance Program handles relocation assistance pertaining to replacement housing, moving, etc.



Relocation Assistance Program



**ARKANSAS DEPARTMENT OF TRANSPORTATION**

**NOTICE OF NONDISCRIMINATION**

The Arkansas Department of Transportation (Department) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion (not applicable as a protected group under the Federal Motor Carrier Safety Administration Title VI Program), disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in the Department's programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to Joanna P. McFadden Section Head – EEO/DBE (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501)569-2298, (Voice/TTY 711), or the following email address: [joanna.mcfadden@ardot.gov](mailto:joanna.mcfadden@ardot.gov)

Free language assistance for Limited English Proficient individuals is available upon request.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.