



Uniform Relocation Assistance & Real Property Acquisition Acts

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Table of Contents

Uniform Relocation Assistance & Real Property Acquisition Acts	3
Appraisal Procedure	3

Uniform Relocation Assistance & Real Property Acquisition Acts

Reference Number: MTAS-1325

The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970^[1] was enacted for the purpose of providing fair and equitable treatment of persons displaced as a result of federal and federally assisted programs,^[2] as well as consistent treatment of owners during the actual land acquisition.^[3] The provisions of the act are mandatory and apply to any public agency that administers programs supported at least in part by federal funds. The act consists of three subchapters: (1) General Provisions, which defines terms used in the act;^[4] (2) Uniform Relocation Assistance, which is concerned with moving and related expenses, replacement housing payments, relocation assistance advisory services, and the federal share of the cost of such payments and services;^[5] and (3) Uniform Real Property Acquisition Policy, which sets out the procedures to be followed in acquiring real property.^[6]

In 1972, Tennessee enacted the Uniform Relocation Assistance Act of 1972, which generally followed the provisions of the federal act and had the effect of making relocation assistance and land acquisition procedures mandatory for any projects conducted by state agencies or supported by state financial assistance. T.C.A. §§ 13-11-101 *et seq.* The Tennessee act was amended in 1980 to also include any projects by a municipality or a county that received federal or state financial assistance.

Land acquisition procedures are of considerable importance to attorneys representing condemners or condemnees. The federal government has promulgated government wide regulations for real property acquisition,^[7] which have been adopted by reference by such agencies as the Tennessee Valley Authority,^[8] the Environmental Protection Agency,^[9] and the Department of Housing and Urban Development.^[10]

Notes:

[1] 42 U.S.C. §§ 4601 *et seq.*

[2] 42 U.S.C. § 4621.

[3] 42 U.S.C. § 4651.

[4] 42 U.S.C. §§ 4601 through 4604.

[5] 42 U.S.C. §§ 4621 through 4638.

[6] 42 U.S.C. §§ 4651 through 4655.

[7] 49 CFR §§ 24.101 *et seq.*

[8] 18 CFR §§ 1306 *et seq.*

[9] 40 CFR § 4.1.

[10] 24 CFR § 42.1.

Appraisal Procedure

Reference Number: MTAS-1326

Before the acquisition of any tract of property by a public agency subject to the federal and/or state relocation acts, a full appraisal of the tract must be made. The regulations generally require that:

- The property be appraised before the initiation of any negotiations with the property owner;
- The owner or his designated representative be given an opportunity to accompany the appraiser during his inspection of the property;
- The acquiring agency establish the amount it believes to be just compensation before initiating any negotiations with the property owner; and
- The acquiring agency make a written offer to the property owner for the full amount believed to be the just compensation. The written offer must be accompanied by a written summary statement of the offer explaining the amount of the offer, the description of the property being acquired, and an identification of any improvements being acquired.^[11]

The agency must make reasonable efforts to contact the owner to discuss the offer and explain the basis for the offer and the acquisition policies of the agency. The owner must be given a reasonable opportunity to consider the offer and present material the owner believes is relevant to determining the amount of just compensation to which the owner is entitled. The agency must consider the owner's presentation and must update its appraisal if the owner's information or

any material change in the character or the condition of the property indicates the need for a new appraisal or if there has been a significant delay since the time the appraisal was completed. The agency cannot advance the time of condemnation or take any other coercive action to induce a settlement by the owner. ^[12]

The type of appraisal that must be obtained by the agency is determined by the complexity of the appraisal problem. ^[13] The appraisal must conform to minimum standards set by each agency and with commonly accepted appraisal practice if the appraisal does not require an in-depth analysis. ^[14] If an in-depth analysis is required, a detailed appraisal must be performed that conforms to nationally recognized appraisal standards, including, if appropriate, the Uniform Acquisition Standards for Federal Land Acquisition. ^[15] At a minimum a detailed appraisal must include: ^[16]

- The purpose and/or function of the appraisal, a description of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal;
- An accurate description of the physical characteristics of the property (and any remainder if a partial taking will occur), a statement of known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a five-year sales history of the property;
- A description of all relevant and reliable approaches to value used consistent with commonly accepted appraisal practice (market data, income, or replacement cost). If more than one approach is used, there must be an analysis and reconciliation of approaches to value;
- A description of comparable sales, including the parties to the transaction, source and method of financing, and verification by the parties involved;
- A statement of the value of the real property to be acquired, and if a partial taking is proposed, a statement of the damages and benefits, if any, to the remainder; and
- The effective date of the appraisal, signature, and certification of the appraiser.

The appraiser is required, to the extent permitted by applicable law, to disregard any decrease or increase in the fair market value of the property caused by the project for which the property is being acquired or by the likelihood that the property would be acquired for the project, other than due to physical deterioration within the reasonable control of the owner. ^[17]

Once the appraisal is completed, the agency must have the appraisal reviewed by a review appraiser. ^[18] The review appraiser must examine the appraisal to assure that it meets all applicable requirements, and must seek any necessary corrections. The review appraiser then either approves the appraisal or develops a new appraisal consistent with the above requirements.

Before the agency can require the owner to surrender possession of the real property, the owner must be paid the agreed upon purchase price, or if no agreement has been reached, deposit with the court an amount not less than the approved appraisal for the fair market value of the property or the amount of the court's award of compensation in the condemnation action. In exceptional circumstances the agency can obtain a right-of-entry for construction purposes prior to making the payment available to the owner. ^[19]

Although the public agency may not pay less than the approved purchase price, as determined by its review appraiser, it may, under certain circumstances, make an offer of settlement in excess of that amount. In arriving at a determination to make an administrative settlement, the agency should take the following factors into consideration: ^[20]

- The appraiser's opinion of value;
- Any recent court awards for similar type property;
- The estimated trial costs; and
- Valuation problems with the property in question.

The agency is required to reimburse property owners for recording fees, transfer taxes, and similar costs incidental to conveying real property; penalty costs for pre-payment of any pre-existing recorded mortgage, entered into in good faith, encumbering the property; and the pro rata portion of real property taxes paid by the owner that are allocable to a period subsequent to the date of title vesting with the agency or the effective date of possession of the property by the agency, whichever is earlier. ^[21]

The owner is also entitled to be reimbursed for his reasonable expenses, including attorney, appraisal, and engineering fees actually incurred because of a condemnation proceeding if:

- The court determines that the agency cannot acquire the property in question;
- The condemnation case is abandoned by the agency other than under an agreed upon settlement; or
- The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation case or the agency settles such a case. ^[22]

Notes:

[11] 49 CFR § 24.102.

[12] 49 CFR § 24.102.

[13] 49 CFR § 24.103.

[14] 49 CFR § 24.103.

[15] 49 CFR § 24.103.

[16] 49 CFR § 24.103.

[17] 49 CFR § 24.103.

[18] 49 CFR § 24.104.

[19] 49 CFR § 24.102.

[20] 49 CFR § 24.102.

[21] 49 CFR § 24.106.

[22] 49 CFR § 24.107. See T.C.A. §§ 29-16-123(b) and 29-17-812(b) for similar provisions under Tennessee law.

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