

CHAPTER VI: ACQUISITION, DISPLACEMENT & RELOCATION

OVERVIEW

This chapter explains the procedures that grantees must follow if their CDBG project involves the need to acquire property that is presently owned by a person or entity other than the grantee, or if it involves the need to displace persons, e.g. require them to move and relocate, whether permanently or temporarily.

For the purpose of this manual, acquisition refers to any instance in which property, whether developed or not, must be bought (or is donated) from a private person in order to carry out a CDBG project.

Displacement refers to the fact that the grantee is obligated to provide monetary assistance in finding replacement housing and must pay certain expenses for any property owner or tenant who is forced to move as a result of property being acquired for a project that is assisted with CDBG funds.

Displacement of individuals is particularly expensive and difficult. It is strongly recommended that the grantee **not** undertake any project that involves the displacement of individuals, even temporarily. If such a situation arises, work with the CDBG office and proceed with caution.

FEDERAL & STATE LAWS

Federal Law

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601-38), 24 CFR Part 42 and 49 CFR Part 24 apply to any acquisition of real property that is carried out as part of a project assisted by CDBG funds. The laws and regulations require that persons or businesses displaced, as a result of federal or federally assisted projects are given all appropriate assistance and benefits and that owners of real property are offered just compensation for the property.

Section 104 (d) of the Housing and Community Development Act of 1974, as amended (Barney Frank Amendment) (24 CFR Part 570) requires the replacement of low/moderate income housing units that are demolished or converted to another use, and are no longer available to low/moderate income persons at affordable rents. It also contains complex provisions for optional relocation assistance to certain low and moderate income persons affected by the HUD assisted activity.

GRANTEE RESPONSIBILITIES

ACQUISITION RESPONSIBILITIES

The following steps must be followed when grantees acquire real property and the acquisition does not require an individual to move from the property.

- a. Determine whether each particular acquisition is governed by Title III of the Uniform Act.

The Uniform Act does not apply to all real property acquisition. Exceptions to the acquisition provisions of the Uniform Act include instances where the property is acquired through a voluntary proposal submitted by the owner in response to a public invitation or the real property is already in the possession of a state or federal agency.

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If the acquisition provisions of the Uniform Act are not applicable, the grantee will prepare a “Notice of Exemption” to be included in the project file. The notice includes a description of the parcel to be acquired and the criteria by which the locality determined that the Uniform Act does not apply. If the property is acquired by voluntary sale of the owner, documentation must be provided that shows it is a voluntary action of the property owner.

b. Provide Preliminary Notice to the Property Owner of Interest in Acquiring the Property.

The Notice must be delivered in person or sent by registered mail to the property owner. The Notice should include:

1. Information about the activity for which the property will be used;
2. Indication that the notice is not a notice to vacate the property; and
3. A description of the procedures the grantee will use if it should decide to attempt to acquire the property.

It is suggested that the grantee should also provide the owner with a copy of HUD’s information booklet “When a Public Agency Acquires Your Property” or its equivalent. A copy is included at the end of this chapter.

b. Obtain Property Appraisal to Determine Fair Market Value.

The public agency must offer the owner just compensation for his/her property. The owner must be compensated at no less than the fair market value. Although law requires only one appraisal, HUD suggests that two appraisals are preferred, especially in instances where the property is valued at more than \$25,000.

The property owner must be invited to accompany the appraiser(s). The appraiser(s) should make telephone contact with the owner and should make every attempt to find a mutually convenient time to perform the appraisal(s). It should be noted in the appraisal report when and how the owner was invited and whether or not the owner accompanied the appraiser.

Contracting for appraisal services must be done in accordance with HUD handbook 1376.1 – Relocation and Real Property Acquisition. (Contact GOED for further information).

The appraisal(s) should be reviewed by a qualified, independent appraiser. The Review of Appraisal should include notes of the reasons for concurrence or disagreement with the determination of fair market value.

c. Determine Just Compensation for the Property

Based on the appraisals, the grantee establishes the just compensation for the property. The establishment of just compensation is an official act of the city or county. It must be signed by an elected official or by a staff member authorized in writing to establish the just compensation.

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d. Make a Written Offer to the Owner.

The grantee should submit a written offer to the property owner as soon as possible following the "Preliminary Notice of Interest in Acquiring the Property." The offer should include:

1. The amount of just compensation established by the grantee.
2. An invitation to meet with the owner to discuss the offer.
3. An estimate of any incidental costs related to the transfer of the property for which the owner will be reimbursed by the unit of government.
4. A willingness to review any materials provided by the owner that might result in modifications of the grantees' initial offer.
5. A statement of the basis for the "Determination of Just Compensation."

e. Review Any Additional Materials Related To Determination of the Purchase Price.

Based on discussions with the owner and material supplied by the owner, the grantee may determine that the original appraisal requires updating or may request a new appraisal. If subsequent updating or a new appraisal justifies a higher rate of compensation, the grantee should immediately establish a new offer price and submit the new offer in writing as described in (d) above.

f. Make Payment

If the grantee and the property owner arrive at a mutually agreed upon purchase price, the grantee must make payment to the owner before requiring the owner to surrender possession of the property. Following payment the grantee can take possession of the land and proceed with the CDBG project.

2. Condemnation Proceedings

If the grantee and owner cannot reach agreement on a purchase price and the property must be acquired by the grantee the following steps should be taken:

1. A notice of final offer is given to the owner.

The notice of final offer should be hand delivered or send by registered mail. The notice should include:

- a. The final offer;
- b. An invitation to discuss again the basis of the final offer; and
- c. An anticipated date on the grantee intends to begin condemnation proceedings.

The owner should receive the notice at least seven (7) days before the date provided for the commencement of condemnation.

2. Initiate Condemnation Proceedings.

On the date provided in the notice of final offer, the grantee shall begin condemnation proceedings in accordance with State laws governing the exercise of the power of eminent domain by counties and municipalities as provided for in Nevada Revised Statutes Chapter 37.

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OTHER ACQUISITION CONSIDERATIONS

1. Uneconomic Remnant

If the grantee acquires only a portion of the owner's parcel and the remaining portion(s) has little or no utility or economic value, the grantee must offer to acquire the "uneconomic remnant" as part of the total acquisition offer.

2. Tenant Owned Improvements

The grantee must offer just compensation for any improvements on acquired property. Just compensation can be determined as:

1. The amount that improvement adds to the total value of the real property.
2. The depreciated replacement cost of the improvement; or
3. The salvage value of the improvement.

3. Owner Retention of Improvements

If the owner chooses to remove any improvements that have been included in the fair market appraisal of the property, the grantee may subtract the salvage value of the removed improvement from the purchase offer. For example, if a property value includes a utility shed that the owner removes from the property upon public acquisition, the offer to the owner may be decreased from the appraised property value by the salvage value of the shed.

4. Payment in Excess of Just Compensation

If the grantee offers more to the owner than the appraisal value, a justification should be provided in the acquisition file. If the justification appears unreasonable, GOED may determine the excess payment is an ineligible cost under the CDBG program. The purpose of this provision is to discourage windfall profits from the sale of properties for use in publicly assisted projects.

5. Maintain Acquisition File for Each Property

In addition to the above procedural steps, the grantee will be responsible for maintaining files and documentation on each property acquired. The file should include, at least the following items:

- 1) Description of the property and reasons for acquisition
- 2) Preliminary Notice of Interest in Acquiring Property
- 3) Appraiser Contracts
- 4) Invitation to Owner to Accompany Appraiser(s)
- 5) Copy of the Appraisal(s)
- 6) Review of Appraisal Report(s)
- 7) Official Offer of Just Compensation
- 8) Records of any Negotiations with the Owner
- 9) Copy of any Material Supplied by Owner to Determine Just Compensation
- 10) Final Offer
- 11) Notice of Initiation of Condemnation (if applicable)

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- 12) Evidence of Payment
- 13) Copy of the Deed and Settlement Costs
- 14) Copy of Agreement(s) for Compensation of Related Improvements
- 15) Justification of Excess Payment (if applicable)

Acquisition of real property should not be considered if it involves the displacement of individuals.

RELOCATION RESPONSIBILITIES

If a project assisted by CDBG funds requires the displacement of individuals, it is likely the project cannot be completed due to the cost of relocating the individuals.

The grantee is required to give notice that the tenant must relocate and the notice must include information concerning the assistance that must be given to the tenant.

An individual is considered to be displaced if they move as a direct result of the conversion of a dwelling unit to another use or the dwelling unit is demolished in connection with an assisted activity. Either HUD or GOED may determine that an individual was displaced in connection with an assisted activity even if the individual moved prior to the notice to relocate was given.

If a CDBG funded project or a proposed project appears that it might require the relocation of an individual, the grantee should contact GOED immediately for guidance on the requirements and a determination.