

CHAPTER D:

ACQUISITION OF PROPERTY

D.1 GLOSSARY

ACQUISITION

Acquisition is the purchase, donation or partial donation of real property.

APPRAISAL

An *appraisal* is a written statement independently and impartially prepared 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.

DONATIONS

Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation, based on an appraisal of the real property, from making a gift or donation of real property or any part thereof or any interest therein, or of any compensation paid therefore to the agency (city/county). The agency (city/county) is responsible for assuring that an appraisal of the real property is obtained unless the owner(s) release the agency from such obligation.

FAIR MARKET VALUE

Fair Market Value is the price real property will bring in a competitive market under conditions requisite to a fair sale, which would result from negotiations between a buyer and seller, each acting prudently and wisely, and without pressure or undue influence.

JUST COMPENSATION

Just Compensation is a fair and reasonable payment being not less than fair market value.

REVIEW OF APPRAISALS

A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions. It must include a recommendation of fair market value of the subject property.

STANDARDS OF APPRAISAL

The format and level of documentation of an appraisal depends upon the complexity of an appraisal.

D.2 ACQUISITION OF REAL PROPERTY

D.2.a Background

This chapter includes the sequence of events to move those projects which require acquisition, in a timely and cost-effective manner.

All property acquired by a governmental entity for any activity that is funded, in whole or in part, with CDBG funds is subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 as amended (URA).

For any project in which CDBG dollars are going to be used that takes place on private property, the Uniform Act applies. If the proposed work/project takes place on State, County or Municipal land, then appropriate written permission must be secured before the project can be bid.

D.2.b Expanded Coverage

Under URA statutory changes and the rule at 49 C.F.R. Part 24, all persons (families, individuals, businesses, non-profit organizations, and farms) displaced (forced to move permanently) on or after April 2, 1989 as a direct result of rehabilitation, demolition, or acquisition (privately undertaken or public) for a HUD-assisted project are entitled to relocation payments and other assistance under the URA. Even a person forced to move before HUD approval of a project may be determined to have been displaced "for the HUD-assisted project."

Grantees must also meet the Section 104(d) of the Housing and Community Development Act requirements when applicable. For Tennessee's CDBG projects, this is typically when relocation assistance is provided to residents who are displaced by the projects. The grantee is responsible for ensuring whether or not Section 104(d) applies to a specific project. More information on Section 104(d) can be found at: https://www.hud.gov/program_offices/comm_planning/affordablehousing/training/web/relocation/section104d.

D.2.c Purpose

The purpose of this chapter is to ensure that:

1. The rules which pertain to the acquisition of real property with federal funds are followed;
2. The owners of real property to be acquired are treated: fairly, consistently, and without intimidation, thus minimizing litigation and congestion in the courts and promoting public confidence in federally assisted land acquisition; and
3. Persons displaced as a result of the project are treated fairly, consistently, and equitably so that each person will not suffer disproportionate injuries as a result of projects designed to benefit the public as a whole.

NOTE: *Before a CDBG project can proceed, all acquisition activities on each parcel for the project must be completed and appropriately recorded.*

Each property owner must be properly informed of his/her rights, as required by law, and grantees must be able to document that this was done. Furthermore, each property owner is entitled to the payment of just compensation for his/her land, even if he or she is a direct beneficiary of the project.

Before requiring the property owner to surrender possession of the real property, the agreed purchase price must be paid to the owner; in the case of condemnation, deposit with the court, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property.

The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase.

NOTE: *FOLLOW THE PROPER PROCEDURES. CITY/COUNTY INSURANCE MAY NOT PROTECT AGAINST DAMAGE CLAIMS IF THE COMMUNITY IS SUED AND THE CORRECT PROCEDURES HAVE NOT BEEN FOLLOWED.*

D.2.d One for One Replacement Unit Requirement

Under this rule, all occupied and vacant, habitable low/moderate income dwelling units which are demolished or converted to a use other than low/moderate income dwelling units, as a direct result of activities assisted under the CDBG program, must be replaced with a like number of low/moderate income dwelling units. Substandard, but still habitable units that have been demolished or converted to non-residential uses must be replaced under this provision; however, more seriously deteriorated units that are deteriorated to the point of being uninhabitable and have been demolished or converted to non-residential uses do not require replacement. See 24 C.F.R. § 42.375.

NOTE: *If the project is to be placed on state, county or city right-of-way, then a letter giving permission to use that right-of-way must be on file.*

D.3 ACQUISITION OF DILAPIDATED DWELLING AND VOLUNTARY RELOCATION

D.3.a Overview

If the community is acquiring a dilapidated structure and relocating the homeowner (either to the same site or another) refer to Chapter E: Relocation. The first letter you will send the homeowner will be a general information letter with the Preliminary Acquisition Notice (Exhibit D-1). Next, inform the property owner(s) of their rights and provide documentation.

Once the property owner has been informed you may then:

1. Ask for a donation of the property, or
2. If the owner will not donate, then:
 - a. Offer to pay just compensation based on fair market value determined by appraisals.
 - b. If the owner will not donate, negotiate with the property owner(s) (within limits).
 - c. If the owner(s) will not negotiate, the community may go to court to condemn the property.

The easiest and most cost-effective way to acquire property is through donations. However, each property owner(s) is entitled to just compensation for his/her property even if he or she is a direct beneficiary of the project. The property required for the project may be entirely acquired by donations, or any combinations of the preceding step.

D.3.b Outline of the Acquisition Process

1. Project Funds Released-Determine land to be acquired
2. Basic Preparation: Consult with City/County Attorney and Engineer to obtain property legal descriptions, maps and surveys.
3. Inform the Owners(s): Mail the “Preliminary Acquisition Notice” (Exhibit D-1) and Donation form- “Waiver of Rights and Benefits” (Exhibit D-3)
4. Request Donations: (If owner(s) donate, STOP, go to Step 9)
5. Select Appraiser and Review Appraiser Qualifications: Request Qualifications.
6. Determine the Purchase Offer: Invite the property owner(s) to accompany the appraiser using the document “Invitation to Accompany the Appraiser” (Exhibit D-4)

7. Perform the appraisal (The Appraisal Report).
8. Perform Appraisal Review (Exhibit D-6)
9. Establish Just Compensation: “Written Statement of Just Compensation”.
10. Work with Owner(s): Owners(s) could: donate now; or accept just compensation, or counter-offer, or refuse all offers.
11. Successful Negotiations: Sign a “Purchase Agreement”; and sign a contract for the sale.
12. Complete the Settlement: Execute the deal including a “Statement of Settlement Costs”.
13. If Property is condemned: The City/County Attorney files the paperwork with the courts, Escrow is deposited in an escrow account.
14. Final Follow-up: Obtain the Title.

D.4 THE ACQUISITION PROCESS

D.4.a After Project Funds Are Released

Determine who will be responsible for coordination of acquisition/relocation activities. Next, establish recordkeeping procedures for each parcel of property according to this manual. Include copies of all documents in the files. Attach a checklist inside the file and keep it current throughout the process. An attorney should be utilized to finalize the legal documentation.

D.4.b Basic Preparation

Determine the parcels to be acquired are all consistent with the scope of the project and with the preliminary engineering plans, surveys and maps. Obtain preliminary title evidence, boundary surveys and legal descriptions. Verify clear and accurate titles. Prepare a map describing the project and showing the proposed acquisitions. Take this map to each property owner or show it at public meetings when asking for donations.

D.4.c Inform the Owner(s)

Send the property owner(s) the following documents by certified mail or hand delivery. Obtain and file a signed receipt for them.

- Send a "Preliminary Acquisition Notice" to each property owner (Exhibit C-1). This indicates an interest in acquiring the property or an easement. It is important to note that it is not a notice to vacate nor does it establish eligibility for relocation payments or assistance. Give the name and phone number of the person to be contacted for further information.
- Send the booklet, When a Public Agency Acquires Your Property (Exhibit C-2). Grantees may make photocopies of the booklet to give to each property owner if the supply is inadequate.
- Send a copy of the Donation Form to each property owner - "Waiver of Rights and Benefits of the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970" (Exhibit C-3). Once the property owner(s) has been informed of his rights through the preceding documents, he may waive his right to an appraisal of his property and the payment of just compensation for his property. He is entitled to an appraisal(s) and payment, but he may waive these rights.

NOTE: *Make sure to document in the individual file that each owner has received the "Preliminary Acquisition Notice" (Exhibit C-1) and the booklet, When a Public Agency Acquires Your Property (Exhibit C-2).*

You may also find the HUD Acquisition and Relocation site helpful:

<https://www.hudexchange.info/programs/relocation/>

D.4.d Request Donations

Approach each property owner and request that they donate the land under consideration for acquisition (Exhibit D-3). The owner(s) must understand that he is entitled to an appraisal. The payment of just compensation is based on the "fair market value" of his property. However, the property owner(s) may waive his rights and benefits and make his donation without an appraisal or offer of just compensation.

If the owner(s) agrees to donate his property – **Go to Step 9.**

If the owner(s) declines to donate his property – **Go to Step 5.**

D.4.e Select Appraiser

To perform a proper evaluation of the properties the grantee intends to acquire, select and contract with an independent appraiser. Requests for statements of qualifications from several appraisers should be sent. To meet minimum qualifications, the appraiser must:

- a. Have no interest in the property, nor be related to, nor in business with anyone having an interest, or an apparent interest, in the property to be acquired;
- b. Be qualified, reputable, and professional;
- c. Belong to a professional organization that has a code of ethics; and
- d. Have previous experience in doing similar types of appraisals as will be required by the project.

The city/county must execute a professional services contract with the selected appraiser. The contract must require that race, color, religion or ethnic characteristics of a neighborhood shall not be considered in estimating the value of residential property. The property owner(s) must be invited to accompany the appraiser during the inspection of the property. This must be done in writing with documentation, see (Exhibit D-4) as an example.

D.4.f Determine Purchase Offer

A. First Appraisal:

If property is not donated, then the fair market value of the property must be established through an appraisal. An appraisal is performed on each parcel to be acquired. It should be done in standard form, degree and detail of analysis consistent with the complexity of the appraisal problem. The appraiser must determine a precise fair market value and state this value in writing. Easements can be evaluated on a short form (Exhibit D-5) or equivalent which summarizes the complete documentation that the appraiser must have on file. See 49 C.F.R. § 24.103.

NOTE: *A property owner may choose to have an appraisal done, then donate the property. This is because they are simply curious about the value, or they may want it for income tax purposes.*

B. Review Appraisal:

Each appraisal, regardless of value, must be reviewed. If the appraisal is complex, the review should be done by another appraiser; however, if it is simple and of low value, the review appraisal may be done by an independent qualified person. See 49 C.F.R. § 24.104.

- The review appraiser must visit the property and should invite the property owner(s) to be present. The review report must be written, signed and dated.
- The reviewer's recommendation of the property's fair market value must be stated in writing.

C. Just Compensation:

Following a review of the appraisal, just compensation must be established. The amount offered for just compensation cannot be less the appraised value of the property

Grantees must prepare a written "Statement of the Basis for the Determination of Just Compensation", to be provided to the property owner(s). See 49 C.F.R. 24.102.

This statement must include:

- A legal description and location identification of the property;
- Interest to be acquired (e.g., fee simple, easement, etc.);
- An inventory identifying the building, structures, fixtures, etc. which are considered to be part of the real property;
- The amount of the offer and a statement to the effect that this offer is:
 - The full amount believed by the community to be just compensation,
 - Not less than the fair market value of the property,
- Disregard as to any increase or decrease in the fair market value attributable to projects for which the property will be acquired, and does not include any consideration or allowance for relocation costs;
- A definition of fair market value;
- A brief explanation of the principal appraisal techniques used in appraising the property;
- Any purchase option agreement (should be attached); and
- A statement apportioning the just compensation between the actual piece to be acquired and an amount representing damages to the remaining portion, if only a part of the parcel is to be acquired. If an "uneconomic remnant" is left, this should be purchased also.

D.4.e Work with Owner(s)

After the just compensation for the property has been determined, the community is ready to present the offer to the owner(s) with the following:

- A written "Offer to Purchase" must be sent to the owner(s). The offer must specify the date on which negotiation for the sale of the property must begin. This date must be the same date as the written offer. As with all notices, its receipt must be documented.
- A written statement of the "Basis for the Determination of Just Compensation" must be included with the Offer to Purchase.
- A written Notice of Displacement must be issued within 30 days of the date specified for the initiation of negotiation, if the property to be acquired is owner or tenant occupied. Refer to the Chapter E: Relocation for more detail.
- The owner(s) has several choices at this point.
 1. The owner(s) may now decide that he/she wishes to donate the property; if so, go to Step 9.
 2. The owner(s) may accept the just compensation as offered; if so, go to Step 9.
 3. The owner(s) may make a counter offer that requests more money or terms other than those offered as just compensation; if so, go to Step 8.
 4. The owner(s) may refuse or may indicate the refusal of any offer; if so, go to Step 10.

D.4.g Successful Negotiation

With the approval of TNECD, the city/county may accept an owner(s)'s counter offer (which will be higher than the just compensation) on the basis that the cost of condemnation proceedings would be greater than the increase in price requested by the owner(s). Any potential significant delay in the implementation of the project may also provide justification for payment of a larger amount.

NOTE: *If the city/county is negotiating, approval must be obtained from ECD for the amount of just compensation to be paid.*

If the negotiations are successful, the grantee would execute a signed written "Offer to Purchase" and an executed contract for the sale.

D.4h Completing the Settlement

- Sign a written "Offer to Purchase" if the negotiations are successful.
- Execute the deed. This should be done by an attorney.
- Complete a "Statement of Settlement Costs" and give to the owner(s). This identifies all settlement costs regardless of whether they are paid at, before, or after closing and must clearly separate charges paid by the owner(s). If a title or escrow company is used, the standard RESPA form is acceptable.
- Obtain a receipt for the purchase price.
- Pay incidental costs. Grantee must reimburse the owner(s) to the extent deemed "fair and reasonable" for incidental costs associated with the transfer of title (i.e., recording fees, transfer taxes, penalty cost or other charges for prepayment of any pre-existing recorded mortgages and the like).
- Pay the net amount. Present the owner(s) with a check for the agreed purchase price.

D.4.i Condemnation

If it has been determined that condemnation is necessary, the following issues must be addressed:

- An attorney must carry out the condemnation proceedings since it is a legal action.
- A resolution authorizing the proceedings must be passed by the city/county.
- File copies of surveys and maps in the office in which instruments affecting real property in the county are recorded.
- Initiation of proceedings in the circuit court of the county in which the property is located.
- A deposit of the amount determined to be just compensation must be placed in an escrow account with the court.

If condemnation proceedings as outlined above have begun, the grantee must complete the purchase in accordance with the verdict of the court. If the court rules that the property value is greater than the amount placed in escrow, the grantee must pay the deficiency. As with any negotiated sale; the grantee must also pay incidental costs and complete a *Settlement Cost Statement* as described above. The court will provide guidance in completing the settlement.

D.4.j Final Follow-Up

- Obtain Final Title evidence acknowledging the city/county as the owner.
- If the property is occupied, execute a short-term lease with the tenant until relocation can be completed.
- Maintain a record on each piece of property acquired

D.5 ACQUISITION EXHIBIT LIST

- D-1 PRELIMINARY ACQUISITION NOTICE
- D-2 WHEN A PUBLIC AGENCY ACQUIRES YOUR PROPERTY
- D-3 WAIVER OF RIGHTS AND BENEFITS OF THE URA
- D-4 INVITATION TO ACCOMPANY AN APPRAISER
- D-5 SHORT APPRAISAL FORM FOR EASEMENT TAKINGS
- D-6 APPRAISAL REPORT REVIEW
- D-7 NOTICE OF INTENT NOT TO ACQUIRE
- D-8 DISPOSITION OF PROPERTY ACQUIRED WITH SMALL CITIES CDBG FUNDS
- D-9 SITE ACQUISITION REPORT