

**TRANSPORTATION DEVELOPMENT DIVISION  
RIGHT OF WAY BUREAU**

**LOCAL PUBLIC AGENCY MANUAL**



Federal and State laws prohibit employment and/or public accommodation discrimination on the basis of age, color, creed, disability, gender, national origin, pregnancy, race, religion, sex, sexual orientation or veteran's status. If you believe you have been discriminated against, please contact the Iowa Civil Rights Commission at 800-457-4416, or the Iowa Department of Transportation's Affirmative Action Officer. If you need accommodations because of a disability to access the Iowa Department of Transportation's services, contact the agency's Affirmative Action Officer at 800-262-0003.

June 3, 2024 is the effective date of the Final Rule for 49 CFR Part 24, the regulations that implement the Uniform Act. This manual has been updated to reflect this most recent federal guidance.

## Introduction

### For Local Public Agency Federal/State-Aid Projects

This instructional manual has been prepared to help Local Public Agencies (LPAs) in the development of their right of way programs. The Iowa Department of Transportation (Iowa DOT) is responsible for providing advisory and oversight functions to LPAs, with a goal of providing guidance that enables right of way to be acquired in a manner that does not jeopardize federal funding for projects.

The flow chart of the right of way process on the following page shows the major steps involved.

**Note: To avoid jeopardizing Federal or State funding eligibility, these procedures must be followed if there is or will be Federal or State financial assistance in any phase of the project or program even if there is no Federal or State funding in the right of way acquisition.**

### State and Federal Laws

Iowa laws relating to highways and acquisition are addressed in the following Iowa Code Chapters:

- 6A
- 6B
- 28E
- 306
- 306A
- 306B
- 306C
- 313
- 316

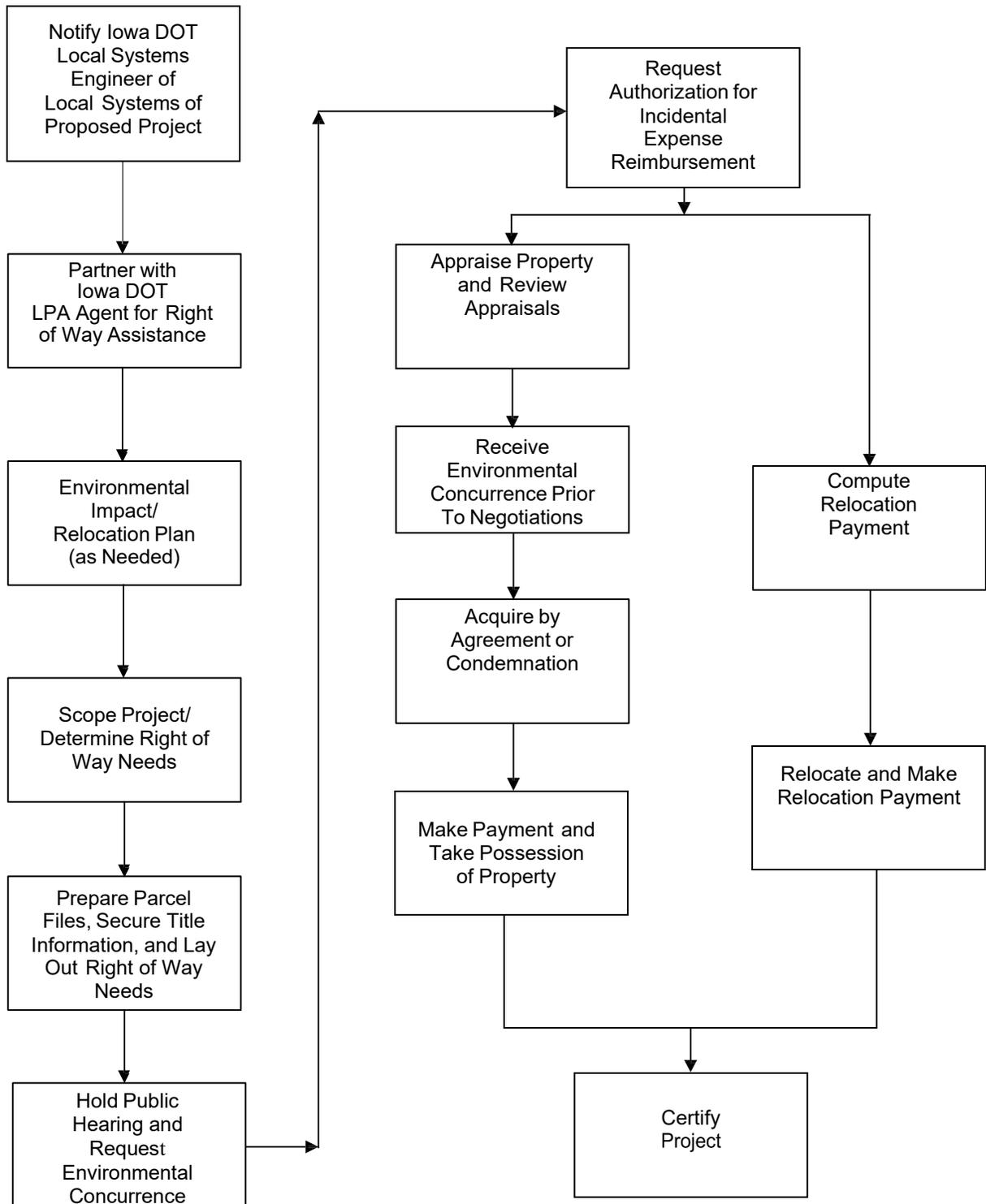
They are also addressed in 761 Iowa Administrative Code 111.

Federal statutory requirements for right of way programs are contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (referred to as the Uniform Act). Regulations implementing the requirements of the Uniform Act are contained in 49 Code of Federal Regulations (CFR) 24, entitled “Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.”

Title 23 of the United States Code (USC) pertains to highways and covers other regulations from the Federal Highway Administration (FHWA).

State law and implementing regulations do not distinguish between Federal-aid and non-Federal-aid right of way projects. The Uniform Act applies if there is federal funding—**or if the use of federal funds is anticipated**—in any phase of project costs. The Iowa DOT and LPAs acquiring property or causing displacements from real property must comply with the Uniform Act and implementing regulations to receive funds from a federal grant, contract, or agreement. Compliance by LPAs is found as a stipulation of the funding agreement for each project.

# Right of Way Process Flow Chart



# Chapter 1 General Guidelines

## 1.1 Purpose

The purpose of this chapter is to provide general guidelines to consider when planning right of way activities for Federal-aid and State-aid projects. This chapter discusses the roles of various partners in right of way projects and provides a detailed description of all the elements of project procedure, including who must oversee and authorize the steps of the process.

## 1.2 Roles and Responsibilities

The Iowa DOT has a stake in right of way projects, so it is necessary to explore everyone's roles and responsibilities.

### 1.2.1 Involving a Federal Partner

Acquiring right of way for a public project often requires several partners. A project may require a cooperative effort involving the LPA at the local level, the Iowa DOT at the state level, and the FHWA at the federal level. The Iowa DOT has already developed a partnership with the FHWA for the benefit of all parties. This partnership has evolved to the point where the FHWA holds the Iowa DOT responsible for ensuring that the right of way on all federally funded street and road projects in Iowa is acquired in accordance with federal guidelines.

The FHWA has reviewed the Iowa DOT right of way processes to ensure compliance with federal laws and regulations. Therefore, if right of way processes are developed in compliance with Iowa DOT policies, compliance with state and federal requirements is automatic.

### 1.2.2 Guidance

In order for a project to receive state and federal funding, there are a multitude of laws and regulations that necessitate compliance. One of the Iowa DOT's primary functions is to help ensure that federal funding is not jeopardized as a result of right of way activities. In other words, the Iowa DOT explains not only what should be done, but also what should not be done. For example, the following procedures from any of the Iowa DOT right of way manuals provides correct direction and limits future problems. **Should an LPA elect to develop its own manual, please be aware that it is subject to Iowa DOT and FHWA review and acceptance prior to use on a Federal-aid project.**

A given project determines the extent of communication necessary, but when in doubt, it is best to contact an LPA coordinator for direction and guidance.

### 1.2.3 Monitoring

The primary objective of monitoring is to ensure that requested Federal or State funding is not jeopardized.

The areas to be monitored include management, design, appraisal, acquisition, relocation assistance, title and closing, condemnation, and property management. Not all projects include all of these disciplines.

Should monitoring discover areas that require attention, these potential problems are identified and alternative solutions offered. The LPA may use suggestions provided by the Iowa DOT or develop their own resolutions, provided all partners agree.

### 1.2.4 The Responsibilities of an LPA

An LPA is responsible for acquiring the necessary right of way for the construction and maintenance of the proposed project in accordance with all applicable federal and state laws and regulations. It must consider not only right of way acquired in fee simple, but also permanent easements (slopes, drainage, etc.); temporary easements (construction, borrow, etc.); licenses; and any other agreements required for entering onto or using land or property rights for construction and maintenance activities.

An LPA may or may not choose to involve federal funds in their right of way efforts. If Federal or State funds are used in any portion of the project, all requirements of the Uniform Act apply. The LPA coordinator is available to provide guidance, but the LPA is ultimately responsible for compliance. The agency is expected to certify compliance with all applicable laws and regulations. Failure to comply jeopardizes funding requests.

### 1.3 Planning and Lead Time

The following is an estimate of right of way activities for an average project. Time frames for functions may overlap, and complex projects require more time. Estimates for relocation assistance have not been provided, as these types of parcels can only be estimated on a case-by-case basis. Relocation assistance requires significant time, and an LPA coordinator is available to help estimate the time needed.

#### 1.3.1 Estimated Time Frames for an Average Project

---

Layout and legal: Preparation of the right of way plans, plats, legal descriptions, and title reports.....4 Months

Appraisal and appraisal review: Time to prepare and review appraisals.....4 Months

Negotiations: Notice of proposed public improvement and to acquire (per IC § 6B.2A). Negotiator makes contact, secures signatures on purchase agreement, and closes transaction.....7 Months

Condemnation: Prepare condemnation notice, request selection of commissioners, serve notices as required, and make payments. File necessary notices, required publications, and send property owner mailings.....6 Months

---

Total .....21 Months

---

### 1.4 Federal Funding Guidelines

23 USC requires costs for appraisal, negotiation, and condemnation that are not eligible for federal funding without prior authorization from the FHWA to proceed with the activity. This

authorization request is made through the Iowa DOT's Administering Office. Costs incurred prior to the appraisal phase, such as right of way estimates, title work, preliminary survey and plat, and description preparation may be eligible for federal participation and reimbursement as a preliminary engineering activity—or as an incidental right of way expense—only if the authorization to proceed is received from the FHWA prior to commencing work.

Costs eligible for reimbursement include, but are not limited to, real property acquisition, incidental costs of the acquisition, pro rata taxes and/or special assessments, permanent and temporary easements, damages to remainder of real property, court awards and costs of tenant-owned improvements, uneconomic remnants, and construction in exchange for donation. All documents relating to acquisition of the right of way must be available for inspection. Plans, agreements, deeds, appraisals, options, vouchers, correspondence, and all other documents must carry the Federal-aid project number for identification.

## 1.5 Environmental and Public Involvement Requirements

Federal-aid projects require securing applicable environmental approvals. State and federal funding requires public involvement when right of way acquisition is necessary. Details, outlines, flow charts, and step-by-step procedures involving environmental and public involvement are available in the Federal-Aid Project Development Guide for Local Public Agencies provided by the Iowa DOT Local Systems Bureau.

## 1.6 Contracting Work and Intergovernmental Agreements

If private consultants are hired to perform a right of way function, these services should be contracted in compliance with the applicable requirements for contracting with private contractors, fee appraisers, or other specialists.

IC 28E permits state and local governments to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies and to cooperate in other ways to mutual advantage.

## 1.7 Qualifications of Right of Way Personnel

Provided is a brief overview of minimum qualifications for staffing state or federally funded projects.

Appraisers must:

- Have successfully completed technical appraisal training and have experience in appraising the type of property to be appraised. When in doubt, a sample appraisal should be requested;
- Have previous experience in preparing appraisals for eminent domain right of way acquisition; and
- If a detailed appraisal is required and a consultant is used, the consultant must be an Iowa-certified appraiser if the project is federally funded or if the land is to be acquired in the name of the state of Iowa.

Review appraisers must:

- At a minimum, have the qualifications listed above for appraisers;
- Possess the ability to logically analyze the appraiser's approach to value and recognize deficiencies in the appraisal report; and
- Be certified, if a certified appraiser is required.

Please note that should the services of a fee review appraiser be used, the agency retains the responsibility to approve the amount believed to be just compensation.

Negotiators must:

- Possess a current Iowa real estate license, or be a full-time employee of the LPA or the Iowa DOT, or otherwise be exempted from the requirements of IAC 543B; and
- Be familiar with federal and/or state acquisition requirements.

Relocation assistance agents must:

- Have documented experience in performing relocation assistance that complies with the applicable state and/or federal requirements; and
- Have sufficient right of way knowledge.

## 1.8 Authorization for Right of Way Activities

To ensure federal funding is not jeopardized, no actual negotiations with property owners may begin before a written notice of FHWA environmental concurrence is issued. This approval is provided by the Iowa DOT's Location and Environment Bureau (LEB). However, in some instances, preliminary right of way work may begin prior to the receipt of this concurrence, with proper FHWA approval (see Chapter 2 Early Acquisitions).

Preliminary appraisal work may begin as long as there are no owner contacts made by the appraiser prior to public notice and involvement. After public involvement begins, an [Initial Right of Way Contact Letter](#) is sent to the owner explaining that an appraiser will be contacting them soon.

## Chapter 2 Early Acquisitions

### 2.1 Purpose

The purpose of this chapter is to provide an overview of parcels that may be acquired before the overall right of way activities for a project begin. There are two main types of early acquisitions: hardship acquisitions and protective buying. These situations are uncommon and should be used only when absolutely necessary.

### 2.2 Approvals and Considerations

An early acquisition is the acquisition of right of way before the final environmental document is approved or before the environmental concurrence for a project has been approved. Neither hardship nor protective buying acquisitions may be approved before:

- Public notice has been given of the preferred location of the facility; or
- Public involvement and notification requirements have been met.

Prior approval is needed for early acquisitions, even if there is no federal funding in the right of way. When federal funds are involved in any part of the project, all applicable federal and state regulations must be followed during the acquisition of the parcels. To request approval to proceed with an early acquisition, follow the process shown in the Iowa DOT's Instructional Memorandums to Local Public Agencies, I.M. 3.600, [Attachment C](#), Early Right-of-Way Acquisition Process Flowchart.

Care must be taken to ensure that the final project design is not changed or influenced as the result of an early acquisition. If the early acquisition of a parcel is approved but the right of way is ultimately not needed for the project, the agency is responsible for the total cost of the acquisition.

Please note that if the property is acquired prior to receiving federal authorization, the costs incurred are not eligible for federal participation. However, the value of the property may still be eligible for use in match purposes. Please consult an administering office or LPA coordinator for further details.

## 2.3 Hardship Acquisitions

Hardship acquisitions usually occur when a property owner makes a written request to the LPA for acquisition of the property in advance of the normal time scheduled for acquisition due to some hardship. The hardship acquisition request made to the Iowa DOT by the LPA must include the estimated cost of the acquisition, relocation and incidental costs, and supporting documentation.

Justifications must include reasons why the project causes a condition for the owner that is different from or disproportionate to the inconvenience suffered by the majority of those in the project area. Also, a statement is necessary indicating that reasonable alternatives are not open to the property owner that would relieve the situation without acquiring the property at this time.

## 2.4 Protective Buying

Protective buying is purchasing property in advance of the project to preserve a preferred or essential location for the proposed project. Requests to the Iowa DOT for protective buying must include the estimated cost of the acquisition. An agency must give reasons why the request should be considered: for example, the costly development or physical alteration of a property is impending; a zoning change is occurring which adds substantial costs to the parcel acquisition; or a reconstruction of improvements damaged by fire or natural disaster is imminent.

# Chapter 3 Parcels and Parcel Files

## 3.1 Purpose

The purpose of this chapter is to provide an overview of items and processes to consider while planning the right of way activities for a project. This chapter defines the right of way parcel and examines the documentation required in a right of way parcel file.

### 3.2 The Elements of a Parcel

A parcel may be described as a tract or tracts of land, an improvement, or a legal property right owned by a single entity or multiple entities and operated as a single unit. All or part of the larger unit may be required for highway right of way or may be damaged by highway construction or maintenance.

There are three tests used to determine what constitutes a parcel: unity of use, proximity, and unity of ownership. Unity of use is not limited to the existing use: it is also the highest and best use to which the property may be put. Proximity is not limited to tracts abutting each other but extends to tracts within proximity of each other such that a larger parcel is still a practical economic unit. Unity of ownership may or may not prove indicative of what makes up a parcel.

### 3.3 Title Search

There must be an examination of the county records and a report of title (aka Report of Liens) requested for each parcel to determine the owner of the property, including mortgage holders and other interested parties. This report is used to determine the status of title for merchantable title for the required land to be obtained. The report is also used as an information source for describing land and identifying all persons or entities with an interest in and/or authority to contract for deed and/or release real estate interests. These reports are saved and serve as the foundation of the parcel file.

Refer to the Iowa DOT's [DESIGN MANUAL](#) for more information regarding parcels and title search requirements.

### 3.4 Parcel Files

An agency needs to maintain a separate parcel file for each acquisition of real property and all people displaced. There must be records that sufficiently demonstrate compliance with applicable laws and requirements and that are available for inspection by the Iowa DOT, FHWA, and possibly other divisions of state and federal government. Records need to be retained for at least three years after the final payment of any phase of the project.

Below is a list of the minimum records to be retained in each Parcel File. Also see [Parcel Checklist](#) for reference.

- Report of Liens/Title Documents
- Legal Descriptions/Plat(s) (prepared and certified by an Iowa-licensed land surveyor)
- Valuation: Appraisal and Review Appraisal OR Appraisal Waiver
- Administrative Determination of Just Compensation
- Relocation forms
- Relocation Agent's Record of Contact
- Written offer and "Statement of Owners' Rights"
- Donation Form
- Negotiator's Record of Contact
- Administrative Settlement (if applicable)
- Condemnation documents (if applicable)

- Copy of signed purchase agreement
- Title Opinion (if applicable)
- Proof of Payment (copy of check)
- Copy of recorded conveyance document (Deed or Easement)
- Closing Statement (if applicable)
- All correspondence

Thorough documentation of the right of way process within the Parcel File ensures transparency and safeguards State and Federal funding by maintaining compliance with the Uniform Act.

## Chapter 4 The Valuation Process

### 4.1 Purpose

This chapter serves as a brief description of the valuation process. When an LPA receives authorization from FHWA to acquire right of way for a project, the valuation process is the next step. The foundation of any right of way acquisition and the fundamental responsibility of every acquiring agency is to ensure just compensation has been offered for all interests in the property rights to be acquired. The valuation process provides documented assurance that just compensation has been considered.

The first decision an agency needs to make during the valuation process is whether to obtain an appraisal or use the waiver valuation. An LPA coordinator is available to aid in making this determination. Care should be taken to ensure the decisions are made in compliance with all state and federal criteria on this subject to avoid conflicts that may adversely affect federal funding eligibility for the project.

### 4.2 Appraisal Waiver

The appraisal waiver process determines fair market value using an [Appraisal Waiver](#) form. Unlike an appraisal report, the waiver is a simplified document intended for straightforward, uncomplicated acquisitions. It is used when the need for a formal appraisal report is waived because the estimated compensation to the property owner does not exceed the threshold established in the rule manual titled [“Section II Uniform Manual, Real Property Acquisition and Relocation Assistance.”](#)

The Appraisal Waiver is not an appraisal; therefore, the Uniform Act appraisal requirements and USPAP standards do not apply. It should be prepared by someone other than an appraiser, but the individual must be knowledgeable about general market values in the project area. In addition, administrative approval must be applied by an employee or official of the acquiring agency who is not the person who prepared the Appraisal Waiver.

For more information on appraisal waiver use or procedures, please refer to the Iowa DOT's [ACQUISITION AND RELOCATION MANUAL](#).

### 4.3 Appraisal Report and Review

Prior to the selection of an appraiser, each parcel to be acquired must be reviewed to determine the complexity of the valuation problem and the desired appraisal format. There are

three appraisal report formats that satisfy Iowa DOT and FHWA standards: value finding, residential, and detailed narrative. The appraiser is expected to use the most appropriate format. The format and level of documentation in an appraisal depends on the complexity of the appraisal problem.

All appraisals require review by a qualified review appraiser. The person performing the appraisal review function must be thoroughly familiar with the eminent domain requirements under the law. No appraisal review may be performed by the appraiser who made the appraisal of market value.

Note: IC § 6B.45 requires that the acquiring agency mail to all owners of the property the approved appraisal in its entirety no less than 10 days prior to being contacted by the agency.

For a detailed discussion and further information, please see the Iowa DOT's [APPRAISAL MANUAL](#).

#### 4.4 Agency Establishment of Just Compensation

IC § 6B.54(3) requires the acquiring agency to establish an opinion of just compensation and offer the full amount believed to represent just compensation. This responsibility cannot be transferred to a consultant or contractor.

Whether just compensation is determined by an appraisal report or through the appraisal waiver process, each parcel file must include a documented determination of the approved amount, signed by an official of the acquiring agency. To meet this requirement, an [Administrative Determination of Just Compensation](#) form, signed by an agency official, should be included in the right-of-way documentation for each parcel.

#### 4.5 Donations

IC § 6B.54(9) and 23 USC § 323 provide that a person whose real property is acquired in connection with a Federal-aid highway project may offer a gift or donation of such property, or any part thereof, or of all or part of the just compensation paid for the property, to a federal agency, a state or a state agency, or to a political subdivision of a state, as determined by that person. **Such donation may only occur after the person has been fully informed of their right to receive just compensation for acquisition of the property.**

NOTE: The property may still require valuation should an LPA wish to use the value of the donated land for project match purposes. Consult with an LPA coordinator regarding individual situations.

## Chapter 5 The Acquisition Process

### 5.1 Purpose

The purpose of this chapter is to outline the property acquisition process, which differs significantly from typical market negotiations. Unlike the open market, where each party protects its own interests, public acquisition requires agencies to ensure that all property owners and stakeholders receive the rights and benefits to which they are entitled. Because acquisition involves direct personal contact with individuals affected by a project, it is one of

the most sensitive aspects of an agency's work. At the same time, agencies must complete acquisitions promptly to keep public improvement projects on schedule.

## 5.2 Good Faith Negotiations

IC § 6B.2A(1)(f) requires that the acquiring agency negotiate in good faith and present each owner with a statement of rights prepared by the Iowa attorney general. The "Landowners' Statement of Rights" should be a part of a packet that is always provided to every property owner.

The acquiring agency, working primarily through its acquisition agent or negotiator, should make every reasonable effort to reach a timely agreement with the property owner. The owner must be given adequate opportunity to review the offer and engage in negotiations without any form of coercion. If an agreement cannot be reached, the agency will proceed with condemnation.

## 5.3 Written Offer of Just Compensation

Owners and tenants are entitled to written offers reflecting the agency's approved estimate of fair and just compensation. Owners and tenants are also entitled to notices informing them of when they are required to move from the property.

Should an agency subsequently approve a different amount estimating fair and just compensation, a revised offer must be provided to the owner and/or tenant.

## 5.4 Administrative Settlement

An agency may determine that it is in the public's best interest to make a negotiated settlement with the owner for more than the approved appraisal amount if new valuation or the extent of damage information is presented. A revised offer must be made and presented to the owner in writing for consideration. So that the agency's files may include proper documentation, a written report called an Administrative Settlement needs to present documentation pertaining to why this settlement is in the public's best interest.

Administrative Settlements should describe the acquisition, state the offer of just compensation and proposed negotiated settlement, introduce information which supports the settlement, and request approval from the proper authority. The settlement may also include information concerning recent court awards for similar types of property, the property owner's appraisal data, an estimate of trial cost, or an opinion of legal counsel. The settlement must be approved by an officer of the agency (but not the negotiator) who has responsibility for the right of way acquisition. The person approving the settlement must be able to judge the risk/benefit issues of a potential court action.

## 5.5 Record of Contacts (aka Negotiator's Log)

The acquisition agent or negotiator must complete the Acquisition Record of Contacts form with a detailed written report of every contact made - or attempted - with the property owner or tenant, whether in person or by phone. Maintaining a thorough log of conversations and interactions is essential for successful property acquisition. It provides an accurate record of communications, helping to prevent misunderstandings, avoid repeated discussions, and

ensure negotiations are conducted appropriately.

Courts increasingly require agencies to demonstrate compliance with proper negotiation procedures. A well-documented log serves as key evidence in these cases. The log also assists in evaluating prospects for administrative or legal settlement, supporting the Uniform Act's goals of expediting agreements, avoiding litigation, reducing court congestion, ensuring consistent treatment of property owners, and promoting public confidence in government acquisition practices.

### 5.5.1 Content and Format

The negotiator must maintain permanent, timely records for every parcel. Each entry should include:

- Date and location of contact
- Parties involved
- Offers and counteroffers (with dollar amounts)
- Reasons settlement could not be reached
- Any other pertinent information

The Record of Contacts form must be signed and dated by the assigned negotiator. Upon completion of negotiations, the record becomes part of the parcel file. If negotiations fail and further attempts are futile, the record should include the negotiator's recommendations for future action.

For more information on the negotiation process and forms, please refer to the Iowa DOT's [ACQUISITION AND RELOCATION MANUAL](#).

## Chapter 6 Relocation Assistance

### 6.1 Purpose

The purpose of this chapter is to outline the rights and benefits entitled to those who are displaced by right of way projects and who require assistance in relocating. These rights are clearly laid forth in relevant sections of the Iowa Administrative Code and Code of Federal Regulations.

### 6.2 Rights and Benefits

IC § 6B.42 requires all acquiring agencies to provide relocation assistance benefits to all eligible persons on all projects. Rights and entitlements of individuals, families, businesses, farms, and nonprofit organizations displaced by Federal-aid projects are defined by and discussed in 49 CFR 24. State relocation requirements for all other projects acquired under the threat of eminent domain are provided in IC 316. Acquiring agencies must comply with 761 IAC 111 and the [Uniform Manual - Real Property Acquisition and Relocation Assistance](#).

Generally, any person required to move because they occupy property being acquired becomes eligible for relocation assistance and reimbursement of moving costs on the date negotiations begin. These payments cover the expense of moving personal property to a location outside the right of way. Additionally, residential displacees who meet minimum

occupancy requirements may qualify for Replacement Housing Payments (RHPs) to help offset the increased cost of obtaining comparable replacement housing.

Remember, no person lawfully occupying real property is required to move from a dwelling, business, or farm operation without at least a 90-day written notice of the date by which the move is required from the acquiring agency (see IC § 6B.54(4)). When the landowner's residence, dwelling house, outbuildings (if the residence or dwelling house is also acquired), orchard, or garden are condemned and the owner appeals the condemnation to district court, they may not be required to move until the compensation has been finally determined and paid (see IC § 6B.26). Because timely right of way acquisition is critical to project success, relocatees should be addressed as early as possible.

Acquiring agencies are required to provide an appeal process for displaced persons that disagree with the acquiring agencies actions, as described in 761 IAC 111.6.

Relocation assistance requires an in-depth discussion to adequately cover the material. It is recommended that acquiring agencies work closely with LPA coordinators on relocation assistance matters or retain a consultant with the necessary experience. Please refer to the Iowa DOT's [ACQUISITION AND RELOCATION MANUAL](#) for more information on relocation guidelines.

## **Chapter 7 Closing and Payment**

### **7.1 Purpose**

The purpose of this chapter is to discuss the real estate closing process. The closing process concentrates on transactions where there is a mutual agreement between the owner and acquiring agency. This involves examining the legal title to property, determining what actions must be taken to obtain clear title to the right of way, and working with the owner to complete the transaction. The desired outcome is to secure all the documents necessary to ensure that clear title of the land is conveyed to the LPA.

### **7.2 Title Clearing**

Defending title and responding to disputes is the responsibility of each acquiring agency's legal counsel. Therefore, each LPA should seek advice and approval from their agency's legal counsel in developing title clearing criteria and a risk management program.

### **7.3 Conveyance**

The agency must ensure that all property rights necessary for the construction and maintenance of the project are fully secured. Permanent acquisitions require obtaining all conveyance documents needed to transfer the land rights required for the highway improvement project.

A conveyance document, executed by the seller (grantor), transfers the specified permanent property interests and rights to the buyer (grantee). Every conveyance document must be recorded with the County Recorder in the county where the property is located and must comply with the formatting standards in Iowa Code Section 331.606B.

The rights or interests being acquired determine the appropriate form of conveyance. Additional factors include the type of seller, the seller's relationship to the title, and the nature of the interest being acquired.

For more information regarding conveyance forms and templates, consult the Iowa DOT's [TITLE AND CLOSING MANUAL](#).

## 7.4 Payment

Payment to property owners is a critical part of the closing process. Payment must be timed so that the agency has received title to the property, while ensuring that the owner is not required to surrender possession until payment has been made.

A copy of the issued check should be retained in the parcel file as proof of payment.

## Chapter 8 Condemnation

### 8.1 Purpose

The purpose of this chapter is to discuss condemnation, which is the term used when exercising the power of eminent domain. This power has been reserved to the state, municipalities, political subdivisions, and others by federal and state constitutions and law.

Concern for fair and equitable treatment in acquiring private property for public purposes goes back to the beginnings of the United States. The founding fathers placed a high value on the protection of private property. The United States Constitution expresses this philosophy in the Fifth Amendment: *"No person shall. . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."*

This sentiment is echoed in the Iowa Constitution, which states in Article I, Section 18: *"Private property shall not be taken for public use without just compensation first being made or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken."*

Each LPA should seek advice and approval from their agency's legal counsel in developing the condemnation process to be implemented by the agency.

In addition, Iowa DOT guidelines, authorities, and procedures are outlined in the Iowa DOT's [CONDEMNATION MANUAL](#).

### 8.2 Compensation Commission Hearing

When property rights are acquired through condemnation, the amount of just compensation is determined by county compensation commissioners at a compensation commission hearing. After viewing the property, the commissioners meet at a location specified by the County Sheriff. The property owner(s) and acquiring agency present evidence and arguments to support their claim for the amount of damages that the owner(s) will sustain. Property owners are often represented by legal counsel at this hearing.

After the compensation commission hearing, every party to the condemnation has the right to appeal the compensation commission award to a district court. The parties may decide to settle out of court or request a trial by jury.

NOTE: If the agency intends to claim federal participation in the payment of any money over and above the originally approved offer, the parcel file must be adequately documented to justify all actions taken.

### 8.3 Payment

Unlike a standard closing, payment to property owners following a condemnation hearing (the Compensation Commission award) must be deposited with the County Sheriff. Once the award is deposited, the acquiring agency may take possession of the property, subject to exceptions outlined in Iowa Code Section 6B.26.

### 8.4 Title to Property Condemned

Title to the property passes to the acquiring agency when the award of damages is finally determined and paid. If a condemnation is not appealed, title will pass when the award is deposited with the Sheriff and the thirty (30) day appeal period has passed. If a condemnation is appealed, title will pass when the final award has been determined, through verdict or stipulated agreement, and the warrant is either deposited with the Clerk of Court or mailed directly to the property owners.

## Chapter 9 IRS Tax Reporting

### 9.1 Purpose

The purpose of this chapter is to discuss right of way transactions that are subject the reporting requirements of the IRS.

### 9.2 Who Must File

According to IRS guidelines, the party responsible for closing the real estate transaction is generally required to file Form 1099-S (Proceeds from Real Estate Transactions). Certain transactions are exempt from this requirement, such as sales under \$600, some corporate transfers, and temporary easements. However, the acquiring agency is responsible for filing Form 1099-S for applicable transactions - even when State funds are used for payment (e.g., farm-to-market road projects).

The filer must:

- Report the gross proceeds paid to the seller(s).
- Provide a copy of the 1099-S to the seller(s) by January 31 of the following year.
- File with the IRS by February 28 (paper) or March 31 (electronic).

For more information about IRS Form 1099-S, please visit <https://www.irs.gov/>.

### 9.3 IRS Reporting for Condemnations

Condemnation transactions ARE subject to IRS reporting requirements. The acquiring agency must file Form 1099-S with the IRS and provide a copy to the property owner. Note that a condemnation appeal may delay tax reporting.

For more information on these filing requirements and timelines, contact an LPA Coordinator.

## **Chapter 10 Property Management**

### 10.1 Purpose

The purpose of this chapter is to discuss the details of property management. When federal funds are used in the acquisition of real estate, a federal interest is created. The criteria and exceptions regarding the sale and rental of public assets are discussed in 23 CFR 710(D). For further information concerning of sale and leasing of real estate purchased for project needs, see the Iowa DOT's [PROPERTY MANAGEMENT MANUAL](#).

An agency encounters two phases in managing property: preconstruction and postconstruction.

### 10.2 Preconstruction and Demolition activities

Incorporating a demolition design that allows for efficient, ongoing maintenance, such as mowing and snow removal, should be considered. Appropriate asbestos abatement, waste removal, and Iowa Department of Natural Resources (DNR) notifications must be scheduled prior to demolition activities.

### 10.3 Postconstruction

This phase covers the disposal of right of way no longer required for a Federal-aid highway project. Authority to sell land may be found in 23 CFR 710(D) and in IC § 306.23. The Iowa DOT and FHWA expect excess land to be disposed of upon completion of the project if a state and/or federal interest is associated with the property.

For information concerning a specific situation consult with an LPA coordinator.

## **Chapter 11 Project Development Certification**

### 11.1 Purpose

This chapter explains the purpose of the [Project Development Certification](#), an essential step in the right of way project process.

### 11.2 Certification Form

Before advertising for construction bids, the acquiring agency must prepare a Project Development Certification. This certification confirms that:

- All properties needed for construction have been acquired.
- The right of way is clear of utilities and structures that must be removed.

- All persons and businesses displaced by the project have been relocated.

The certification must include a statement that the agency has complied with Uniform Act requirements and that the project is ready for construction.

### 11.3 Procedures

A Project Development Certification must be completed by the agency before advertising for construction bids. The certificate must be signed by the agency and submitted to the Iowa DOT by the date specified in the “Critical Path for Project Development Memorandum” included in the Project Development Information Packet.

The Iowa DOT uses this certification to verify that the project is ready to proceed to the letting process. It is the responsibility of the LPA to ensure the accuracy of all information submitted. Inaccurate information can result in serious consequences, including project delays and potential loss of federal funding. The LPA or its designated representative should carefully review the form before submission.

Complete instructions for preparing the Project Development Certification are provided in the Project Development Certification Instructions, available in the Project Development Information Packet, from the Iowa DOT Administering Office for the project, or through an LPA Coordinator.

## **Glossary**

### **A**

#### **Acquisition.**

The process of obtaining right of way by negotiation or eminent domain to construct or support a project.

#### **Agreement.**

A word used to describe a common opinion of two or more people regarding each party's rights and obligations related to the agreement.

#### **Appeal.**

The complaint to an appellate court of an injustice done or error committed by a trial or lower court, whose judgment or decision the appellate court is called on to correct or reverse.

#### **Appraisal.**

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

#### **Appraisal report.**

Any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client upon completion of an assignment.

#### **Appraisal review.**

The process of developing and communicating a credible opinion as to the quality of another's appraiser's work.

#### **Appraisal waiver.**

A document used to determine the value for simple, uncomplicated acquisitions when the need for an appraisal report is waived because compensation to the property owner is estimated to not exceed the amount defined in the rule manual titled "Section II Uniform Manual, Real Property Acquisition and Relocation Assistance."

#### **Appraised value.**

The appraiser's opinions and conclusions resulting from an assignment.

#### **Appraiser.**

A person who performs valuation services competently and in an independent, impartial, and unbiased manner.

#### **Approach to value.**

The three approaches to developing a value opinion: the cost approach, the income capitalization approach, and the sales comparison report.

#### **Approved appraisal.**

The approval of an appraisal by an agency official before it is used by the agency as its just compensation offer.

#### **Asset.**

Items that have value in use or exchange.

**Attorney.**

1. A person who is legally permitted to transact business on another's behalf. 2. A person who advises and represents clients as to legal rights and obligations.

**B**

**Borrow.**

Suitable material from sources outside the roadway prism, used primarily for embankments.

**C**

**Code of Federal Regulations.**

A document that codifies all rules of the executive departments and agencies of the federal government.

**Condemnation.**

1. The process by which property is acquired for public purposes under the power of eminent domain following due process of law and on the payment of just compensation. 2. The act of a federal, state, county, or other government or district or public utility or corporation vested with the right of eminent domain to take private property for public use when a public necessity exists.

**Conveyance.**

A written instrument by which a title, estate, or interest in property is transferred.

**D**

**Damages.**

In condemnation, the loss in value to the remainder property as a result of a partial taking. Generally, it is the difference between the value of the property before the acquisition and the value of the property after the acquisition.

**Deed.**

A written instrument, usually under seal, by which the ownership interests in real estate are transferred from one party to another.

**Displaced person (displacee).**

Any person who permanently moves from the real property or moves his or her personal property from the real property.

**Donation.**

The voluntary conveyance by the owner of private property to public ownership and use without compensation.

**E**

**Early acquisition.**

The acquisition of rights of way in advance of normal acquisitions schedules in order to avoid higher costs later, to assist in hardship cases, or when there is property management potential or other advantage to the acquiring agency.

**Easement.**

A nonpossessory interest held by one person in property of another where the first person is accorded partial use of the property for a specific use. An easement restricts but does not abrogate the fee owner's rights to the use and enjoyment of the property.

**Eminent domain.**

The right or power of public and quasi-public agencies to take private property for public purposes.

**Encumber.**

A charge, claim, liability, or lien attached to real property.

**Estate.**

A right or interest in property.

**F****Fair market value.**

The most probable price which a property should bring in a competitive and open market under conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold, unaffected by special or creative financing or sales granted by anyone associated with the sale.

**Federal Highway Administration.**

A part of the federal Department of Transportation. The agency's mission is to create the world's best transportation system.

**G****Grantee.**

1. One to whom property is conveyed. 2. The buyer.

**Grantor.**

1. One who conveys property. 2. The seller.

**H****I****Improvement.**

A building or other structure permanently attached to the land.

**Incidental expenses.**

Actual and reasonable expenses incurred by the displacee in the purchase of a replacement dwelling and customarily paid by the buyer.

**Instrument.**

Any legal document (e.g., deed, lease, mortgage, will).

**J****Judgment.**

1. A formal decision or determination on a matter or case by a court. 2. In a condemnation case, a decision as to damages suffered by the condemnee.

**Just compensation.**

1. The compensation for property acquired under eminent domain that places a property owner in the same position as before the property is taken. It is usually the fair market value of the property acquired.

**L****Land surveyor.**

A person whose occupation is to establish property boundary lines.

**Lease.**

A contract where the owner transfers the right of possession and use of the real estate for a specified time period and on payment of consideration, usually rent.

**Legal description.**

A method, acceptable in court, that geographically locates property.

**Lessee.**

The party to who a lease is given in return for a consideration, usually rent.

**License.**

A personal privilege to do some act on the land of another.

**Lien.**

A hold or claim that one party has on the property of another (e.g., security for a debt or a charge, judgment, mortgage, tax, etc.).

**Local public agency.**

An organization (e.g., municipality, county) charged with the responsibility for proper administration, planning, and development of a public project.

**M****Mortgage.**

1. A pledge of real property as security for the payment of a debt. 2. A written document by which property is given as security for a debt with the right of redemption.

## **N**

### **Negotiation.**

The primary method used to acquire property. 2. The process by which two or more people resolve differences to reach a mutually acceptable agreement.

### **Negotiator.**

A person who arranges or settles transactions by discussion and mutual agreement.

## **O**

### **Offer.**

An explicit proposal to contract which, if accepted, completes the contract and binds both the party that made the offer and the party accepting the offer to the terms of the contract.

## **P**

### **Parcel.**

A piece of land of any size in one ownership.

### **Partial taking.**

The acquisition of a part of a real estate parcel or a real property interest for public or quasi-public use under eminent domain.

### **Permanent easement.**

1. An easement conveyed in perpetuity. 2. An easement that lasts forever.

### **Personal property.**

1. Property that is movable. 2. Property that is not permanently attached to, or part of, the real estate. 3. Identifiable, tangible objects that are considered by the general public as being "personal"; for example, furnishings, artworks, antiques, gems and jewelry, collectibles, machinery, and equipment. 4. All tangible property that is not classified as real estate.

### **Plat.**

An individual property map that shows property lines and other features (e.g., buildings and topographic elements).

### **Price.**

The amount asked, offered, or paid for a property.

### **Property.**

Anything, real or personal, that is owned.

### **Property line.**

The division between two parcels of land, or between a parcel of land and the street.

### **Property management.**

Administration of property with the objective being to maintain, enhance, or maximize its productivity and value.

### **Proximity damage.**

1. Damage to property arising as a consequence of the nearness or proximity of a project (e.g., highway) to the property. 2. The diminution in property value as a result of the proximity of a highway or other construction project to a property.

**Public use.**

A use benefitting the entire community.

**Q**

**Quasi.**

Having some resemblance, usually by possession of certain attributes.

**R**

**Real estate.**

1. An identified parcel or tract of land, including improvements, if any. 2. The physical land and attachments (e.g., buildings).

**Real property.**

1. The interests, benefits, and rights inherent in the ownership of real estate. 2. The bundle of rights.

**Relocation agent.**

A person who provides relocation advisory services and benefit determinations to people and businesses displaced by a public program or project under the Uniform Act.

**Relocation assistance.**

Advisory and financial aid assistance to residential occupants, businesses, farms, and nonprofit organizations displaced by a public program or project under the Uniform Act.

**Rent.**

The consideration paid for use of the property.

**Replacement housing payments (RHPs).**

There are three basic components of RHPs: purchase supplements, rental assistance, and down payment assistance.

**Restriction.**

The restrictions and prohibitions placed on the property owner from doing certain things relating to the property.

**Right of way.**

1. The right to pass across the lands of another. 2. Land or property, or an interest in land or property for transportation purposes (e.g., roads, public transport, utilities, etc.).

**S**

**Site.**

Land that is ready to be used for a specific purpose.

## **T**

### **Take.**

The acquisition of property.

### **Taking.**

The process of obtaining right of way by negotiation or through eminent domain to construct or support a project.

### **Temporary easement.**

An easement granted for a specific use for a limited time.

### **Tenant.**

One who holds possession of the real estate of another.

### **Title.**

1. The evidence of a person's right to own or possess property. 2. The quality of ownership as determined by a body of facts and events.

### **Title opinion.**

An analysis and interpretation of a title search concerning present ownership, encumbrances, clouds on title, and other infirmities.

### **Title report.**

A report showing the condition of the title before a sale or loan transaction.

### **Title search.**

An investigation of public records and documents to ascertain the history and present status of title to a property, including ownership, liens, charges, encumbrances, and other interests.

## **U**

### **Uneconomic remnant.**

A remainder property of little value or use.

### **Uniform Standards of Professional Appraisal Practice.**

The standards of the appraisal profession, developed for appraisers and users of appraisal services by the Appraisal Standards Board of the Appraisal Foundation.

## **V**

### **Valuation.**

The process of developing a value opinion.

### **Valuation process.**

A systematic procedure to address the client's valuation issue.

### **Valuation services.**

Services pertaining to aspects of property value.

### **Value.**

1. The monetary relationship between properties and those who buy, use, or sell those properties.
2. The monetary worth of the property, good, or service to buyers and sellers at a given time.

## **Z**

### **Zoning.**

Public regulations that control, through police power, the use of real estate.