

## CHAPTER 10 – PROPERTY ACQUISITION

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<b>Task #1      Review Laws, Regulations and Process Flow Chart</b>
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### Laws and Regulations

- Uniform Relocation and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 USC 4601 et seq.)
- Title 49 of the Code of Federal Regulations Part 24, as amended, is the government-wide regulation that implements the URA
- Section 104(d) of the Housing and Community Development Act provides minimum requirements for federally funded programs or projects when units that are part of a community's low-income housing supply are demolished or converted to a use other than low- or moderate-income dwellings.
- Relocation Assistance Act (LB254, March 27, 1989), RRS of Nebraska
- For additional information and HUD Handbook 1378, which provides policy and guidance on implementing the URA, see <http://www.hud.gov/relocation>
- For additional information and brochures for business relocation see [www.hud.gov](http://www.hud.gov), in the search box type in 1041 cpd; 1043 cpd.
- For complete URA Federal Register site, see <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-6.pdf>
- Process Flow Chart (Attachment 1)

The objectives of the URA are (1) to ensure owners of real property to be acquired for a CDBG-assisted projects are treated fairly and consistently, encourage and expedite acquisition by agreements with such owners, minimize litigation; and (2) to ensure that persons displaced from their homes or places of business as a result of CDBG-assisted activities are treated consistently and equitably so that they do not suffer disproportionate injury as the result of a project designed for the benefit of the public as a whole.

The URA and the government-wide rule implementing the URA (49 CFR Part 24) applies to all federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacement caused by rehabilitation and demolition activities. If CDBG assistance is used in any part of the project, the URA would govern the acquisition of real property for the activity and any resulting displacement, even if local funds were used to pay the acquisition costs. Private persons, corporations or businesses that acquire property or displace persons for a CDBG assisted project are subject to the URA.

Under the URA all persons (defined as any individual, family, partnership, corporation, or association) displaced (moves from real property or moves his/her personal property from the real property) as a direct result of acquisition, rehabilitation or demolition for a CDBG-assisted project are entitled to relocation payments and other assistance under the URA. CDBG grantees have the responsibility to minimize displacement that results from CDBG funded projects. The timing of an acquisition can also make it subject to the URA. Acquisition that takes place on or after the date of submission of a CDBG application to fund an activity on that property is subject to the URA, unless the Grantee shows that the acquisition was unrelated to the proposed activity. Also, an acquisition that took place before the date of submission of the application can be subject to the URA if the Department determines that the acquisition was intended to support a subsequent CDBG activity.

The URA provisions apply when acquiring full fee title, fee title subject to retention of a life estate or a life use, long-term leases (including leases with options for extensions) of 50 years or more, and to permanent or temporary easements necessary for the project. However, the Agency may apply these regulations to any less-than-full-fee acquisition that, in its judgment, should be covered. Acquisition requirements do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.

The relocation assistance provisions are applicable to tenants that must move as a result of an acquisition, such tenants are considered displaced persons. However, acquisition provisions do not apply to:

1) Acquisitions that meet all of the following conditions:

- No specific site or property needs to be acquired and several properties could be acquired for project purposes, although the Agency may limit its search for alternative sites to a general geographic area (not to be construed to be a small, limited area). Where an agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly.
- The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
- The Agency will not acquire the property because negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- The Agency will inform the owner in writing of what it believes to be the market value of the property. (Appraisals are not required but Agencies must have some reasonable basis

for their determination of market value. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.)

- If tenants are displaced, the tenants are provided relocation assistance.
- 2) Programs or projects undertaken by an Agency or person that does not have the authority to acquire property by eminent domain, provided that such Agency or person shall:
- Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and
  - Inform the owner in writing of what it believes to be the market value of the property. (Appraisals are not required but Agencies must have some reasonable basis for their determination of market value. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.)
  - If tenants are displaced, the tenants are provided relocation assistance.
- 3) The acquisition of real property from a Federal Agency, State, or State Agency, if the Agency desiring to make the purchase does not have authority to acquire the property through condemnation.

The enactment of the Relocation Assistance Act on March 27, 1989 brought Nebraska law into compliance with the federal government-wide rule. This chapter does not address this statute because it essentially mirrors the federal law and the interpretation of state law is considered to be a local matter.

<b>Task #2      Determine What Properties Will Be Acquired</b>
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The grantee, with its engineer or attorney as appropriate, should review every proposed activity to determine property acquisition needs and identify the particular properties to be obtained. Activities such as street widening, water and sewer improvements, or sidewalk construction do not have an obvious property acquisition requirement, but there is often a need to acquire easements or rights-of-way.

**Common Deficiencies**

- Acquisition of property (regardless of the type of interest acquired or funding source used) without following acquisition procedures

<b>Task #3      Determine Ownership Of Properties To Be Acquired</b>
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Conduct title search as the first step in determining ownership of properties to be acquired. In the case of public improvement activities, be sure to verify that the property to be improved is in the public domain. Sometimes rights-of-way are privately owned.

#### **Common Deficiencies**

- Undertaking public improvements without properly acquiring necessary easements or rights-of-way

### **Task #4 Establish A File For Each Property To Be Acquired**

The grantee must establish and maintain a file for each property to be acquired and include copies of all acquisition documents. Files must be kept for at least four years after program closeout. The Acquisition File Checklist (Attachment 2) identifies the required file elements.

#### **Common Deficiencies**

- Separate files not established
- Documentation incomplete

#### **Supporting Materials**

- Acquisition File Checklist (Attachment 2)

### **Task #5 Notify Owner Of Interest In Acquiring The Real Property**

As soon as feasible, the Agency (political subdivision, instrumentality or person which has the authority to acquire property with or without the power of eminent domain) shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law. This general information notice and any applicable HUD relocation notice should be personally served or sent by certified or registered first-class mail with return receipt requested. If it is hand delivered, receipt should be signed and dated by the property owner. A copy of this notice must also be sent to any tenants in residence. The notice should contain information about the grantee's land acquisition policies. If the recipient does not read or understand English, the grantee must provide translations and assistance. Each notice must indicate the name and telephone number of a person who may be contacted for further information.

#### **Common Deficiencies**

- Waiting too long in the acquisition process before notifying owners/tenants of the grantee's interest
- Absence of HUD informational brochure or written statement of land acquisition procedures

### **Supporting Materials**

- Sample General Information Notices and Relocation Notices, see HUD Handbook 1378 @ <http://www.hud.gov/relocation>
- General Information Brochure(s), see <http://www.hud.gov/offices/cpd/library/relocation/publications/index.cfm>

<b>Task #6      Obtain Appraisal(s) For Each Property</b>
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Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in 24.102(c)(2) and noted below. The property owner, or the owner's designated representative, shall be given the opportunity to accompany the appraiser during the appraiser's inspection of the property. The appraiser should have no interest in the property or be related to or in business with anyone having an interest in the property to be acquired. The appraiser should be reputable and professional. The grantee should adhere to adopted procurement procedures, request statements of qualifications from a number of appraisers, review those qualifications, and employ only qualified appraisers. A minimum of one appraisal is required; however, if the project is potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or where property values are high, it is recommended that two independent appraisals be conducted.

The grantee will then execute a professional services contract with an independent appraiser. The contract must specify the content requirements for the appraisal.

Before the appraisal is undertaken, the grantee or the appraiser selected must formally invite the property owner to accompany the appraiser during inspection of the property. This notice must be in writing and a copy placed in the property acquisition file.

Once the appraisal has been prepared and submitted to the grantee, a qualified staff appraiser or an independent fee review appraiser must review it. The review must be written and should focus on determining the adequacy of the appraiser's supporting data, and the soundness of the appraiser's opinion of fair market value. The review appraiser should be required to visit appraised property. The reviewer must set forth in written form a recommendation as to the fair market value of the property. If the review appraiser disagrees with the fair market value of the original appraisal, the grantee can use the review appraiser's recommended fair market value if the review appraiser prepares an appraisal report to support the recommended fair market value or the grantee may secure an additional appraisal and review.

**EXCEPTIONS:** An appraisal is not required if: the owner is donating the property and releases the Agency from its obligation to appraise the property or the Agency determines that an appraisal is unnecessary because the valuation problem **is uncomplicated and** the anticipated value of the proposed acquisition is estimated at \$10,000 (**up to \$25,000 maximum if no Conflict of Interest is determined**), based on a review of available data. When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation (valuation process and product produced). The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation. An

Agency official must still establish an amount believed to be just compensation to offer the property owner(s).

### **Common Deficiencies**

- Failure to use a competitive process to select the appraiser
- Failure to execute a professional service contract in compliance with CDBG regulations
- Failure to secure an independent appraisal
- Failure to invite property owner to accompany appraiser during property inspection
- Failure to review appraisals

### **Supporting Materials**

- Sample Appraisal Agreement, HUD Handbook 1378 @ <http://www.hud.gov/relocation>
- Sample Invitation to Accompany an Appraiser (Attachment 3)
- Sample Review of Appraisal (Attachment 4)

<b>Task #7      Establish and Offer Just Compensation</b>
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Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. This amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation (24.104). Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. Along with the initial written purchase offer, the owner shall be given a written Statement of the Basis for the Offer of Just Compensation. In addition to the amount of just compensation, the offer must specify the date on which negotiation for the sale of the property will begin, which may or may not be the same date as the written offer. As with all notices, its receipt must be documented. If the property is occupied, the grantee must issue a general information notice to the tenants describing the grantee's general relocation policies. For more detail on relocation procedures, see Chapter 11 - Relocation.

The written Statement of the Basis for Just Compensation must include:

- A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
- A description and location identification of the real property and the interest in the real property to be acquired (e.g., fee simple, easement, etc.)
- An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other

separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. See 24.2(a)(27).

### **Basic Negotiation Procedures**

The Agency shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses (24.106). 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. (In order to satisfy this requirement, Agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.) The Agency shall consider the owner's presentation. Documentation of negotiation proceedings should be placed in the project acquisition file.

### **Common Deficiencies**

- Failure to notify owners on a return receipt requested basis or to secure documentation of receipt if hand-delivered
- Inadequate documentation

### **Supporting Materials**

- Sample Statement of the Basis for the Offer of Just Compensation (Attachment 5)
- Sample Written Offer to Purchase (Attachment 6)

<b>Task #8      Complete Acquisition, Condemn Property Or Decide Not To Acquire</b>
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Depending upon whether the Agency and the property owner can reach an agreement on an acquisition price, the Agency will either complete the acquisition process, initiate condemnation proceedings, or decide not to acquire the property.

### **Willing Seller**

Following successful negotiations, a contract of sale must be prepared and executed and transfer documents secured. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When CDBG funds pay for or participate in acquisition costs,

a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement.

Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner. The Agency must also reimburse the owner for recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property and similar expenses incidental to conveying the real property to the Agency (however, the Agency is not required to pay costs solely required to perfect the owner's title to the real property), penalty cost or other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering real property, and the pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it whichever is earlier. At the conclusion of the settlement, the grantee must provide the owner with a Statement of Settlement Costs that identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or other person handling the transaction. A receipt for purchase price must be secured by the grantee. Whenever feasible these costs should be paid directly by the grantee rather than as a reimbursement to the owner.

### **Condemnation Proceedings**

Condemnation is the legal process by which a fee simple title to property is acquired through the process of eminent domain. The initial steps involved in condemnation are the same as those in purchases except instead of arriving at a voluntary purchase, the entity must acquire the property by filing condemnation against the property owner because a mutually agreed upon price cannot be determined.

The following steps are required to acquire property through eminent domain:

1. Formally terminate negotiations in writing
2. File condemnation suit with appropriate court in accordance with State law
3. Deposit, as directed by the court, the amount of court-determined just compensation in an escrow account
4. Proceed with payment to the property owner in accordance with court instruction

### **Decide Not To Acquire**

If the Agency decides not to acquire the property at any time after informing the property owner of their interest, it must notify the owner and all tenants in residence in writing of its intention not to acquire the property. Any person moving from the property thereafter will not be eligible for relocation payments and assistance. This notice should be sent within 10 days of the grantee's determination not to acquire.

### **Common Deficiencies**

- Failure to provide a written statement of settlement costs
- Failure to provide a written Notice of Intent Not to Acquire

### **Supporting Materials**

- Sample Notice of Intent Not to Acquire (Attachment 7)

<b>Task #9      Special Procedures For Donation</b>
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The procedure to be followed for donations is somewhat different from the normal acquisition process. If a property is to be donated, the grantee should send a General Information Notice and secure an appraisal or waiver thereof. The grantee must then prepare a Statement of the Basis for the Offer of Just Compensation (Attachment 5). An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine.

The Agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in 24.102(c)(2). The purpose of the appraisal waiver provision is to provide a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions. However, the Agency must have a reasonable basis for the “waiver valuation” and an Agency official must still establish an amount believed to be just compensation to offer the property owner.

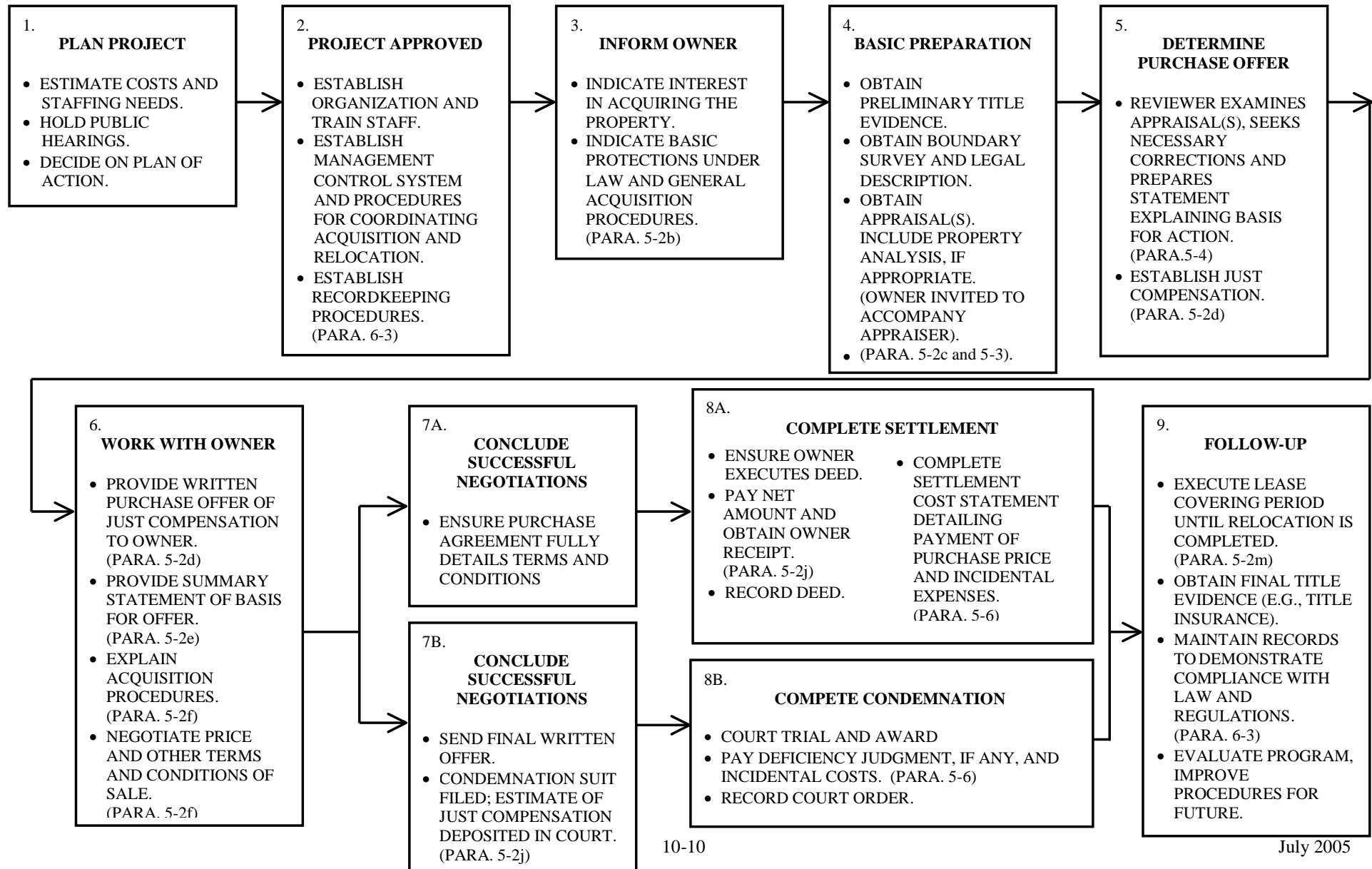
If donations are being made by the elderly, very poor, functionally illiterate or non-English speaking persons, the grantee should take special care to document the efforts made to insure the owner-occupant understood their rights in order to demonstrate the owner was not persuaded or coerced into the decision.

### **Common Deficiencies**

- Failure to secure Appraisal Waiver for donation
- Failure to prepare Waiver Valuation
- Failure to identify tenant-occupied property and properly notify tenants of their benefits as required by the URA

**Acquisition Process Under the URA\***

\* UNIFORM RELOCATION ACT RULES  
EFFECTIVE 4/2/89 (HUD)



## **ATTACHMENT 2**

### **ACQUISITION FILE CHECKLIST**

DOCUMENTS TO BE MAINTAINED IN ACQUISITION FILES. A SEPARATE FILE SHOULD BE ESTABLISHED FOR EACH PROPERTY ACQUIRED.

- 1. Title Search/Clearance of Title
- 2. General Notice of Interest in Acquiring Real Property
- 3. Evidence of Invitation to Accompany Appraiser
- 4. Appraisal Report or Waiver Valuation, Including Donations
- 5. Review Appraisal Report
- 6. Written Statement of Just Compensation and
- 7. Written Offer to Purchase and Evidence of Receipt
- 8. Contract of Sale
- 9. Statement of Incidental Costs
- 10. Receipt for Purchase Price and Copies of Cancelled Checks
- 11. If Donation, Waiver of Relocation Benefits, Not Applicable to Tenants
- 12. If Acquisition Terminated, Notice of Intent Not to Acquire
- 13. If Condemnation, Evidence of Court Deposit of Fair Market Value
- 14. If Condemnation, Court Resolution

**ATTACHMENT 3**

**SAMPLE**

**INVITATION TO ACCOMPANY APPRAISER**

Date

Name  
Address

Dear \_\_\_\_\_.

I have been requested by the City of \_\_\_\_\_ to prepare an appraisal of your property on \_\_\_\_\_ . I will visit the property \_\_\_\_\_. If you wish to accompany me, please phone me at \_\_\_\_\_ to arrange a mutually convenient time.

Sincerely,

Name  
Title

cc: City of \_\_\_\_\_

**SAMPLE**

**REVIEW OF APPRAISAL**

After reviewing the appraiser's supporting data and documentation, it is my recommendation that the \$XXX,XXX.XX established as a fair market value for the purchase of Lot 8, Square 6, Palmer Extension is sound and accurate. The appraiser's report is complete and the methods utilized conform to recognized appraisal practices.

The appraisal report documents the determination of fair market value through:

A. Cost Approach

The appraiser estimated the value of the land through the search for vacant land sales. S/he compared land sales with six recent land sales, then adjusted for time and points of difference. In addition, replacement costs for a new living area based on the actual square footage of the area were estimated at a standard rate. Deprecation based on age and observed conditions were subtracted from this total. All mathematical computations are accurate and were reached using sound judgment.

B. Market Data Approach

The appraiser searched for the sale of sixteen properties of which three were comparable to subject property. The Factual Data report is accurate. The sales were adjusted for points of difference.

The qualifications of the appraiser are excellent. Accurate maps and photographs are included in the report.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature of Review Appraiser

\_\_\_\_\_  
Address

\_\_\_\_\_  
(\_\_\_\_\_) Telephone Number

**ATTACHMENT 5**

**SAMPLE  
STATEMENT OF THE BASIS FOR THE OFFER OF JUST COMPENSATION**

**Description and Location of Property**

The City of \_\_\_\_\_ proposes to purchase land and improvements on \_\_\_\_\_ Avenue (Lot \_\_\_\_\_ Square \_\_\_\_\_) from owner at \_\_\_\_\_.

It is a single-family residential unit, which conforms to zoning, present use, surrounding land use, and area trends.

**Purpose of Purchase**

The City of \_\_\_\_\_ intends to use the whole parcel for the construction of a library building adjacent to the Eden Park Community Center Library.

**Improvements**

It is a one-story single-family residence of wood frame construction with concrete foundation, stucco siding, a tar and gravel roof and aluminum gutters and downspouts.

It contains a living room, kitchen, center hall, two bedrooms and one bath.

Interior finish is hardwood floors, except linoleum in kitchen and bathroom; sheetrock walls and ceilings.

The kitchen has counters and painted wood cabinets. There are no built-in appliances.

Heat is gas-fired, forced air from Atlas, 120,000 BTU furnace.

The house is 25 years old. The design is good. Maintenance is poor.

**Declaration of Offer**

Based on the two appraisals, the City of \_\_\_\_\_ hereby makes you an offer in the amount of \$\_\_\_\_\_ for the purchase of your property. This offer is for the fair market value of your property and does not include any considerations of decrease of increase in value attributable to the project for which it is being acquired. It reflects no relocation payments which the owner/tenant may be entitled to receive under the Department of Housing and Urban Development Regulations.

**Definition of Fair Market Value**

“Fair Market Value is the highest price estimated in terms of money which the property would bring if exposed for sale in the open market, allowing a reasonable time in which to find a purchaser buying with knowledge of all the uses and purposes for which it is adapted and for which it is capable of being used.”

**Appraisal Techniques**

Two major techniques, cost approach and market data approach, were utilized to determine the fair market value of this property.

**Cost Approach**

**Land:**

To estimate the value of the land, as if unimproved, the market searched for vacant land sales, which might throw some light on the value of the subject land.

**Estimated Replacement Cost:**

To estimate the cost of replacing the home minus depreciation based on age and observed condition, 20%

Total by Cost Approach \$ \_\_\_\_\_

**Market Data**

To estimate the value of the property by this approach, the market was searched for sales of properties in the area, which might throw some light on the value of the subject property by comparison. After adjusting these sales, approximately six comparable properties, for time and points of difference, the indicated value of the subject property, by comparison is \$ \_\_\_\_\_ - \$ \_\_\_\_\_.

\_\_\_\_\_  
Signature of Authorizing official

\_\_\_\_\_  
DATE

**SAMPLE**

**WRITTEN OFFER TO PURCHASE**

Date

Name  
Address

Dear \_\_\_\_\_.

This will introduce to you \_\_\_\_\_, who represents the City of \_\_\_\_\_, in the capacity of Right-of-Way Agent and who will discuss with you the acquisition by the City Government of the property, which our records indicate is owned by \_\_\_\_\_. This property is required for the construction of the proposed \_\_\_\_\_.

We have had the property appraised by a competent and unbiased free appraiser and this report has been thoroughly analyzed by a competent review appraisal analyst and found to be well supported. Based on the appraisal and review, the City hereby makes you a firm offer in the amount of \$\_\_\_\_\_ for the purchase of your property. Relocation benefits to which you may be entitled are in addition to the acquisition price of your property.

We feel that the above offer is most equitable and we urge your favorable consideration and acceptance of it. If this meets with our approval, the Department's representative has prepared (conveyance document) and will assist in any way convenient to you in finalizing the acquisition. Negotiations for the purchase of your property begin \_\_\_\_\_.

Thank you very much for your cooperation and favorable consideration of the offer.

Very truly yours,

\_\_\_\_\_  
Mayor

Enclosure: Statement of Basis for the Offer of Just Compensation

**SAMPLE**

**NOTICE OF INTENT NOT TO AQUIRE**

Date

Name  
Address

Dear \_\_\_\_\_.

The City of \_\_\_\_\_ has determined not to acquire your \_\_\_\_\_  
*(address)*

property. Any person moving from the premises from the date of this notice will not be eligible for relocation payments or benefits.

Sincerely,

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

cc: (tenant)