

# Right-of-Way Acquisition Guide

*for  
Local Public Agencies*



*Prepared by*  
**the Nebraska Department of Roads  
Right-of-Way Division**

*For distribution to all Nebraska Political Subdivisions*

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## ATTACHMENTS: BLANK FORMS

DOCUMENT NAME	ATTACHMENT NUMBER
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### Preparations Before Acquisition

	PDF	Doc
Right of Way Acquisition Process Checklist	<a href="#">PA-1</a>	<a href="#">PA-1</a>
Report of Title	<a href="#">PA-2</a>	<a href="#">PA-2</a>
Donation Request Letter	<a href="#">PA-3</a>	<a href="#">PA-3</a>
ROW Cost Estimate Worksheet	<a href="#">PA-4</a>	<a href="#">PA-4</a>
Checklist for ROW Certificates	<a href="#">PA-5</a>	<a href="#">PA-5</a>

### Property Valuation

Basic Data Report	<a href="#">PV-1</a>	<a href="#">PV-1</a>
Compensation Estimate Report	<a href="#">PV-2</a>	<a href="#">PV-2</a>
Type of Valuation Report Required	<a href="#">PV-4</a>	<a href="#">PV-4</a>
Request For Proposal, Appraisal	<a href="#">PV-5</a>	<a href="#">PV-5</a>
Appraisal Services Specifications	<a href="#">PV-6</a>	<a href="#">PV-6</a>
Appraisal Services Contract	<a href="#">PV-7</a>	<a href="#">PV-7</a>
Fence Estimate	<a href="#">PV-8</a>	<a href="#">PV-8</a>

### Review of Property Valuation

Review Form	<a href="#">RPV-1</a>	<a href="#">RPV-1</a>
Request For Proposal, Review	<a href="#">RPV-2</a>	<a href="#">RPV-2</a>
Appraisal Review Specifications	<a href="#">RPV-3</a>	<a href="#">RPV-3</a>
Appraisal Review Services Contract	<a href="#">RPV-4</a>	<a href="#">RPV-4</a>
Just Compensation Form	<a href="#">RPV-5</a>	<a href="#">RPV-5</a>

## ATTACHMENTS: BLANK FORMS, continued

### Acquisition of Property

DOCUMENT NAME	ATTACHMENT NUMBER	
	PDF	Doc
Brochure	<a href="#">AP-1</a>	<a href="#">AP-1</a>
Donation Form	<a href="#">AP-2</a>	<a href="#">AP-2</a>
ROW Contract	<a href="#">AP-3</a>	<a href="#">AP-3</a>
Total Acquisition Contract	<a href="#">AP-4</a>	<a href="#">AP-4</a>
Warranty Deed	<a href="#">AP-5</a>	<a href="#">AP-5</a>
Permanent Easement Contract	<a href="#">AP-6</a>	<a href="#">AP-6</a>
Easement Deed	<a href="#">AP-7</a>	<a href="#">AP-7</a>
Temporary Easement Contract	<a href="#">AP-8</a>	<a href="#">AP-8</a>
Leasehold Interest Contract	<a href="#">AP-9</a>	<a href="#">AP-9</a>
Informational Letter	<a href="#">AP-10</a>	<a href="#">AP-10</a>
Call Report	<a href="#">AP-12</a>	<a href="#">AP-12</a>
Buyer/Seller Instructions	<a href="#">AP-13</a>	<a href="#">AP-13</a>
Administrative Settlement	<a href="#">AP-14</a>	<a href="#">AP-14</a>
Certificate of Negotiator	<a href="#">AP-15</a>	<a href="#">AP-15</a>
Eminent Domain Procedures	<a href="#">AP-16</a>	<a href="#">AP-16</a>
Condemnation Report	<a href="#">AP-17</a>	<a href="#">AP-17</a>
ROW Certificate	<a href="#">AP-18</a>	<a href="#">AP-18</a>
ROW Certificate (NO Acquisitions)	<a href="#">AP-19</a>	<a href="#">AP-19</a>
Request for Proposal, Acquisition	<a href="#">AP-20</a>	<a href="#">AP-20</a>
Acquisition Services Specifications	<a href="#">AP-21</a>	<a href="#">AP-21</a>
Acquisition Services Contract	<a href="#">AP-22</a>	<a href="#">AP-22</a>
Federal Aid Reimbursement Request Form	<a href="#">AP-23</a>	<a href="#">AP-23</a>
Request for Proposal, Relocation Services – Hourly	<a href="#">R1-Hourly</a>	<a href="#">R1-Hourly</a>
Request for Proposal, Relocation Services – Lump Sum	<a href="#">R2-Lump Sum</a>	<a href="#">R2-Lump Sum</a>
Relocation Assistance Services Specifications – Hourly	<a href="#">R3-Hourly</a>	<a href="#">R3-Hourly</a>
Relocation Assistance Services Specifications – Lump Sum	<a href="#">R4-Lump Sum</a>	<a href="#">R4-Lump Sum</a>
Relocation Assistance Services Contract – Hourly	<a href="#">R5-Hourly</a>	<a href="#">R5-Hourly</a>
Relocation Assistance Services Contract – Lump Sum	<a href="#">R6-Lump Sum</a>	<a href="#">R6-Lump Sum</a>

## ATTACHMENTS: COMPLETED SAMPLES

### Preparations Before Acquisition

Report of Title	PA-2S
ROW Cost Estimate Worksheet	PA-4S

### Property Valuation

Basic Data Report	PV-1S
Compensation Estimate Report	PV-2S
Request For Proposal, Appraisal	PV-5S
Fencing Form Compensation Estimate	PV-8S

### Acquisition of Property

ROW Contract	AP-3S
Warranty Deed	AP-5S
Leasehold Contract	AP-9S
Information Letter	AP-10S
Call Report	AP-12S
Administrative Settlement Report	AP-14S
Condemnation Report	AP-17S
ROW Certificate	AP-18S

# PREFACE

## An Important Beginning

This instructional guide is an overview of the right of way process and has been prepared to aid you, the Local Public Agency (LPA), in the step-by-step acquisition of right of way needed for your publicly funded project, and if need be, the relocation of any person, business, or other entity.

These guidelines must be followed at all times, regardless of funding. The main goal is for you NOT to lose or jeopardize federal-aid funding, as administered by and received through the Nebraska Department of Roads (NDOR).

All Local Public Agencies must have a federally approved Right of Way Manual and if not, the LPA must use the Nebraska Department of Roads (NDOR) Right of Way Acquisition Guide for Local Public Agencies and NDOR's complete Right of Way Manual which can be located at the following link: <http://www.roads.nebraska.gov/business-center/row/>

The law governing acquisition and relocation on federally assisted projects is Public Law 91-646; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly called the Uniform Act. More importantly, the procedures to comply with this Act can be found in 49 CFR Part 24. It is these procedures which must be met, and their adherence is required by the Act. You can see details at [www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate).

The Uniform Act applies whenever any federal dollars are used in any phase of a project, such as planning, environmental assessment, right of way, or construction. **The Uniform Act and 49 CFR Part 24 must be followed even if there is NO federal funding in the right of way phase. However, you must also adhere to the requirements of Nebraska law as well. If you follow the NDOR Right-of-Way Manual, you will comply with both.**

The end result of your right of way activities is to present to NDOR, a ROW Certificate that certifies you have complied with the Uniform Act requirements and that your project is ready for construction. If the documentation you submit supports your ROW Certificate, you will be given authorization to proceed with the construction phase.

The LPA shall take appropriate measures to carry out the provision of the Uniform Act in a manner that minimizes fraud, waste, and abuse.

In the "Attachment Section" of this manual you will find all of the blank forms you will need. Some of the forms which are not self-explanatory have completed versions in the "Sample Section" for your review. All forms are available in both the printed version of the manual and on our website: <http://www.roads.nebraska.gov/business-center/row/>

If you are unclear on how to proceed with a project, or if you just have questions, contact our LPA/ROW Coordinator before you begin right of way activities. This coordinator is also available anytime throughout your project at (402) 479-4490 or by writing to the address below.

Nebraska Dept. of Roads  
ROW Division  
LPA Right of Way Coordinator  
P.O. Box 94759  
Lincoln, NE 68509-9983

**To begin this process, open the Right of Way Process Checklist now [\(Attachment PA-1\)](#)**

## **Scheduling Your Project**

One of the most significant challenges in acquiring right of way is that we are dependent on factors over which we may have little or no control. Delays may be encountered from property owners and their legal counsel, title companies and the court system, just to mention a few. If it becomes necessary to revise the right of way plans on your project, this can also extend the negotiation period with property owners. Should you or your staff have other duties in addition to your project right of way assignments, time management becomes an even larger problem. We believe the only reasonable answer to these time management problems is to provide you with enough lead time to succeed.

The following is a schedule estimate of right of way activities for an average project such as a widening job containing ten parcels or so. Some time frames for functions may overlap, and larger or more complex projects will require much more time. We have not provided estimates for Relocation Assistance, as the time necessary for these types of parcels can only be estimated on a case by case basis. Please remember, Relocation Assistance will require significant time, and your LPA Right of Way Coordinator is available to help you estimate the time you will need.

**It is imperative the LPA not begin any right-of-way acquisition functions until FHWA authorizes the project if federal funds will be utilized in the right-of-way phase of the project. Failure to receive federal authorization will jeopardize federal funding for right-of-way activities.**

### **Layout and Legal – 4 months**

Right of way survey, title reports, preparation of right of way plans, plats, legal descriptions, preparation of the right of way estimate, preparation of acquisition contracts and related documents. The right of way plans and right of way estimate must be submitted to NDOR for review and approval before you can begin appraisals on each of the project's tracts. This phase will take additional time for late submittal to NDOR or for any subsequent revisions to the right of way plans.

### **Appraisal and Appraisal Review – 4 months**

Time to prepare the appraisals and complete the appraisal reviews. Once these documents are completed they must be submitted to NDOR for review and approval before negotiations with property owners can begin. This phase will take additional time for late submittal to NDOR or for any subsequent revisions to the right of way plans.

### **Negotiations – 7 months**

Time for the negotiator to make contact with land owner, work with the owner, negotiate settlements, secure signatures on contracts, and either close the transactions or prepare the files for condemnation. Also, time for compliance with Uniform Procedure for Acquiring Private Property for Public Use Act, Neb. Rev. Stat. Section 25-2501 et seq.

**Condemnation – 6 months**

Preparation of file for Attorney, review of file, preparation of petition for Appointment of Appraisers and other necessary documents, serving notice to landowners, scheduling and holding hearings, Board deliberation, payment of award to court.

**Total Acquisition Schedule – 21 Months**

## **An Important Definition**

The Right of Way Acquisition Guide for Local Public Agencies (LPA) defines “Employee” as follows:

1. Any elected LPA Officer.
2. Any person who works for the LPA for wages.

Any individual who receives an IRS W-2 Form from the LPA meets this definition.

# PREPARATIONS BEFORE ACQUISITION

## General

There are numerous steps that need to be taken during the initial planning of a project. These include, but are not limited to: development of your need, public involvement, environmental assessment, and applying for federal-aid. The steps to start the acquisition process are the completion of your property Title Research, the completion and NDOR approval of your Right of Way Plans and the Right of Way Preliminary Cost Estimate.

## Title Research

Ownership information is needed for developing right of way plans, in the valuation of the property, and in the acquisition of the property. The most logical time to obtain this information is prior to or concurrent with the development of the right of way plans.

A thorough examination of the county records shall be made for each tract by a Registered Abstractor or other qualified persons to determine ownership, including any liens or mortgages. Your research should include all ownership transactions for the last five years. A document similar to [\(Attachment PA-2\)](#) shall be used to verify ownerships.

Because ownership in a property may change during the period that a project is being developed, it is essential that the ownership status of the properties along a project be rechecked both at the appraisal stage, and before negotiating for the property rights needed for your project.

## ROW Plans

The preparation of ROW plans will begin after completion of the ROW survey and Title Research. A right of way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It not only serves as the basis for the appraisal, but also helps property owners understand why and how their properties are being affected.

In order for the ROW plans to be approved, they must contain information in sufficient quantity and detail so that the following conclusions can be reached upon completion of the review and approval:

1. That due diligence was exercised when the existing ROW was established on the plans. This is to ensure that federal dollars are not being used to acquire existing public ROW, and that the landowners are being justly compensated for any land that is rightfully theirs.
2. That the existing public ROW available is adequate to construct, operate, and maintain the facility, and if not a sufficient amount of new ROW and/or easements are being acquired to fulfill this need without being excessive.
3. That all structures and improvements that are being impacted by the project, either physically or by proximity, are accurately shown on the ROW plans.
4. That any structures or improvements that could warrant compensation due to their proximity to the project are accurately shown on the ROW plans. This is to ensure that any damages

to items that are close to the project, but are not being acquired, have been correctly assessed.

5. Any items that are included in or affected by the appraisal are adequately represented on the plans.
6. That all public sidewalks and curb ramps will be within public ROW and/or permanent easements.
7. That any possible uneconomic remnants can be identified.
8. That the ownership and boundaries of each tract can be easily located.

To facilitate the ROW plan review process, the ROW plans submitted to the NDOR should be of a sufficient scale and quality so that all pertinent details can be easily distinguished, and must include the following:

- North Arrow
- Section, Township, Range.
- Section Lines, and any subdivision lines of the section ( $\frac{1}{4}$ ,  $\frac{1}{16}$ , etc.) as needed.
- Section Corners,  $\frac{1}{4}$  Corners,  $\frac{1}{16}$  Corners as needed with Station and Offset.
- Lot Lines.
- Existing ROW.
- Existing Easements.
- Street Names.
- Property Lines shown and identified as such.
- Tract Numbers.
- Owner's Names, Ownership Type, and legal description for each tract (i.e. Lot, Block, Subdivision, Quarter Section, etc.)
- Project Centerline.
- Existing Topography.
- New construction items (pavement edges, curbs, sidewalks, drainage structures, driveways, etc.)
- Limits of Construction (separate lines for both permanent and temporary items).
- New ROW and Easements.
- Station and Offsets at each ROW line/Property line intersection, Easement line/Property line intersection, and each turn point in the ROW or easement line.
- Areas of new ROW and easements to be purchased, and areas that have previously been designated as public ROW for each tract. (This information can be in tabular form on a separate plan sheet.)

- All topography items that are within the area of ROW acquisition or within 100 feet of the centerline are to be shown on the plans. Additional topography items outside of these areas should also be shown if they affect the value of the acquisition. Topography items to be shown include objects such as: homes, buildings, underground cisterns/septic tanks, permanent yard and farm appliances, sidewalks, paved or unpaved driveways, trees/hedges/shelterbelts, waterlines/steams/lakes, fences, or above and below ground utilities.
- Aerial photos can also be shown on the ROW plans to assist in our review.

A complete set of the most current construction plans, including cross sections, should be included with the ROW plan submittal.

## **Preliminary Determinations of Property Donations**

If you wish to determine if any property tracts will be donated on your project, a Donation Letter ([Attachment PA-3](#)) must be sent to each property owner after the ROW plans have been completed.

## **ROW Cost Estimates**

You must prepare a right of way estimate for every project unless all of the property tracts will be donated without any compensation. This document should include an estimate of the value of the takings, any damage costs, incidental costs (such as appraisal fees, negotiator fees, title fees, etc.), relocation expenses, possible condemnation costs, and demolition fees. ([Attachment PA-4](#))

## **Submit for Approval Now**

The right of way plans must be submitted to NDOR for review and approval. Also, the preliminary cost estimate or letters from property owners indicating willingness to donate must be submitted for review and approval before authorization to begin appraisals or authorization to complete the donations will be given.

# ACQUISITION OF DONATED PROPERTY

The LPA, being acutely aware of the property owner's right to just compensation, and having explained that right to the owner, both verbally and by way of the acquisition brochure, can ask the owner to donate their property rights. If agreeable, this will eliminate the need for any type of property valuation. The owner may donate for no compensation, compensation for fencing only, or in exchange for certain beneficial construction features.

If the property owner has indicated their desire to donate the needed property with no compensation for any other items, you may proceed to acquire the property, by filling out the donation form ([Attachment AP-2](#)) with the property owner. If payments are being made for fencing or other compensable items (a partial donation), a valuation document must be completed on the tract. If the donation is being made in exchange for special construction features, a valuation document must be prepared as well as a construction cost estimate to be sure that both parties understand the costs. **Prior** to agreeing to any construction features, it is necessary for the right-of-way agent to seek approval from appropriate engineering design personnel to ensure that the desired feature is constructible and that it will not adversely affect the project or its scheduling.

## Preparation of Donation Documents

### 1. For a Donation without Compensation

- a. Brochure ([Attachment AP-1](#))
- b. Donation Form ([Attachment AP-2](#))
- c. Warranty Deed ([Attachment AP-5](#)), Sample ([Attachment AP-5S](#))
- d. Easement Deed ([Attachment AP-7](#))
- e. Temporary Easement Contract ([Attachment AP-8](#))

### 2. For a Donation with fencing compensation or other construction feature

- a. Brochure ([Attachment AP-1](#))
- b. Donation Form ([Attachment AP-2](#))
- c. Fencing Compensation Estimate Form ([Attachment PV-8](#)) if fencing is being paid for. Sample ([Attachment PV-8S](#)). The Fencing Estimate must be completed by a qualified LPA employee as noted in the Property Valuation Section. The Agency's ROW Manager or highest appointed or elected official will then review and approve the document, thereby establishing just compensation on the tract.
- d. ROW Contracts: For Partial Taking "In Fee Simple" or Total Acquisition ([Attachment AP-3](#)), Sample ([Attachment AP-3S](#))
  - (1) Describe in remarks section any construction features agreed to with the owner as an incentive to donate the property
- e. Warranty Deed ([Attachment AP-5](#)), Sample ([Attachment AP-5S](#))

- f. Permanent Easement Contract ([Attachment AP-6](#))
- g. Easement Deed ([Attachment AP-7](#))
- h. Temporary Easement Contract ([Attachment AP-8](#))
- i. Mortgage release, if applicable.
- j. Leasehold or Tenant Contract, if applicable ([Attachment AP-9](#))  
*Sample* ([Attachment AP-9S](#))

Once these documents have been prepared you are ready to begin negotiating with the property owners. You may now proceed to the [Negotiation Process, page 7-1](#).

# PROPERTY VALUATION

## Just Compensation

The U.S. Constitution and the State of Nebraska Constitution require that a property owner be paid “just compensation” whenever the government acquires private property for public use. The Uniform Act requires that an “approved appraisal” be used to develop an amount the agency believes to be just compensation. It is the LPA’s responsibility to set just compensation on each property tract being acquired by completing a Just Compensation Form ([Attachment RPV-5](#)) after the Appraisal and Appraisal Review has been completed. The amount offered to the property owner must be at least the amount of the approved appraisal.

No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review, or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project, receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the LPA.

Part of the appraisal process is to identify any tenants of the property, determine their type and length of lease, establish the amount of their leasehold interest, and identify and value any tenant owned improvements. The tenant shall be offered this determination of just compensation. (See [Tenants Rights, page 7-6](#))

## The Appraisal Requirement

The appraisal, with its review and approval by the acquiring agency, is the cornerstone on which the entire effort is built to provide the property owner with just compensation. The Uniform Act requires the property be appraised and reviewed before an acquiring agency begins negotiations to acquire it, and the amount of the approved appraisal must be the basis of the offer of just compensation. All project appraisals and review appraisals must be submitted to NDOR for review and approval before your agency will receive authorization to begin negotiations.

However, in cases of low-value, non-complex acquisitions, the Uniform Act gives the lead agency (FHWA which is represented by NDOR) the authority to develop procedures for waiving the appraisal requirement, in favor of simpler valuation methods. This valuation document is known as a “Compensation Estimate” and is described below.

## Valuation/Appraisal Standards and Reports

Formal, written valuation reports are required for each parcel of land to be acquired or damaged. You will use the right of way cost estimate to determine the type of valuation document you will need. The three types of reports to be discussed, starting with the simplest, are the “Compensation Estimate”, the “Short Form” Appraisal, and a “Before and After” Narrative Appraisal.

## 1. “Compensation Estimate”

### a. Who Can Prepare It?

1. Appraisers who are currently on the NDOR Approved Appraiser List <http://www.roads.nebraska.gov/business-center/row/> and approved for the scope of practice. Instructions for hiring an appraiser can be found under Appraiser Selection.
2. Qualified employees of any LPA knowledgeable of land values in the area of the subject property and have adequate experience to enable them to determine the effects of the acquisition may complete Compensation Estimates on uncomplicated acquisitions when the Preliminary Estimate indicates a value of \$2,500 or less, not including fencing. LPA employees will be deemed qualified after successful completion of FHWA Course, “Real Estate Acquisition Under the Uniform Act: An Overview” and NDOR’s, “Local Public Agency Right of Way Training Course”.
3. Qualified LPA employees who have demonstrated competency in preparing Compensation Estimates in the past may complete Compensation Estimates when the Preliminary Estimate indicates a value of \$10,000 or less, exclusive of fence relocation and/or construction based on the current NDOR approved fencing schedule.
4. NDOR Right of Way Appraisal Staff. LPAs may contract with NDOR for appraisal services on an actual cost basis when NDOR has available staff.

NDOR’s approved LPA Compensation Estimate List will be a continually updated document that will identify approved LPA personnel who are deemed qualified to complete Compensation Estimates for their agency. This listing can be located on-line at <http://www.dor.state.ne.us/roway/pdfs/lpa/comp-est-list.pdf>.

### b. When Do You Use It?

A “Compensation Estimate” can be used for an uncomplicated acquisition, where only the part taken needs to be valued. Total compensation must not exceed \$10,000.00, exclusive of fence relocation and/or construction based on the current NDOR approved fencing schedule (<http://www.nebraskatransportation.org/roway/pdfs/fence.pdf>). Damages must be nominal or simple “cost to cure” items supported by written contractor’s estimates. A “Basic Data Report” shall be researched and completed first, establishing the land prices for the area. NDOR’s standard format may be used when preparing this data report ([Attachment PV-1](#)) and the actual valuation report ([Attachment PV-2](#)). Completed samples of these two forms, for viewing, are ([Attachment PV-1S](#)) and ([Attachment PV-2S](#)).

The report must contain the following elements:

1. Project and parcel numbers.
2. Owner’s names and property addresses, as revealed in the public records.

3. The scope of work necessary to produce a credible report.
4. Description, location and area of property to be acquired.
5. Photos of part acquired.
6. Determination of value of property being acquired, broken down as to land and improvements, and the basis thereof.
7. Data supporting “cost to cure” items.
8. Effective date of valuation, preparer/appraiser signature, and certification.
9. The waiver of appraisal provision eliminates the requirement to offer the owner or representative an opportunity to accompany the appraiser. However, if the need arises for the owner to be contacted, a log of meetings with the property owner and/or his or her representative should be included with the report. If the appraiser is the first contact of the owner, the brochure “Right of Way Acquisition and Your Property” should be given and noted in the log.

## 2. “Short Form” Appraisal

### a. Who Can Prepare It?

1. Appraisers who are currently on the NDOR Approved Appraiser List (<http://www.roads.nebraska.gov/business-center/row/>) and are approved for the scope of practice. If the cost of the ROW acquisition for the tract is estimated to exceed \$25,000 select an Appraiser under the All Appraisals column. Instructions for hiring an appraiser can be found under Appraiser Selection.

In hiring an appraiser for this type of appraisal, be sure to specify your desire for a “Short Form”, rather than a “Before and After” appraisal. The cost difference can be substantial.

2. Qualified employees of any LPA maintaining a section or staff trained and assigned to provide the Right of Way function. Qualified shall mean meeting the same requirements as an appraiser to be included on the NDOR Approved Appraiser List and itemized as follows:
  - Generally knowledgeable of land values in the area of the appraisal assignment.
  - Have adequate experience in Eminent Domain Appraisal Assignments to enable them to determine the effects of the acquisition on the property being appraised.
  - Shall hold one of the following appraisal credentials from the Nebraska Real Property Appraiser Board: Appraisal license, certified residential or certified general certificate.
  - Shall appraise only what is allowed by their scope of practice.
  - Shall have been previously pre-qualified with their name placed upon the Department’s roster of qualified appraisers.
  - Be knowledgeable of the requirements set forth in the Nebraska Department of Roads Right of Way Manual as approved by the Federal Highway Administration.

3. NDOR Right of Way Appraisal Staff. LPAs may contract with NDOR for appraisal services on an actual cost basis when NDOR has available staff.

b. When Do You Use It?

A “Short Form” appraisal may be used for an uncomplicated, whole or partial acquisition where the highest and best use of the property is its present use and not changed by the acquisition, and where compensation is anticipated to exceed \$10,000.00 exclusive of fence relocation and/or fence reconstruction. Only one approach, usually the sales comparison method, is applicable. Damages must be nominal or of the “cost to cure” type.

### 3. “Before and After” Appraisal

a. Who Can Do It?

1. Appraisers from NDOR’s approved appraiser list (<http://www.roads.nebraska.gov/business-center/row/>) who are approved for the scope of practice may prepare a Before and After Appraisal.
2. Qualified employees of any LPA maintaining a section or staff trained and assigned to provide the Right of Way function. Qualified shall mean meeting the same requirements as an appraiser to be included on the NDOR Approved Appraiser List and itemized as follows:
  - Generally knowledgeable of land values in the area of the appraisal assignment.
  - Have adequate experience in Eminent Domain Appraisal Assignments to enable them to determine the effects of the acquisition on the property being appraised.
  - Shall hold one of the following appraisal credentials from the Nebraska Real Property Appraiser Board: Appraisal license, certified residential or certified general certificate.
  - Shall appraise only what is allowed by their scope of practice.
  - Shall have been previously pre-qualified with their name placed upon the Department’s roster of qualified appraisers.
  - Be knowledgeable of the requirements set forth in the Nebraska Department of Roads Right of Way Manual as approved by the Federal Highway Administration.
3. NDOR Right of Way Appraisal Staff. LPAs may contract with NDOR for appraisal services on an actual cost basis when NDOR has available staff.

b. When Do You Use It?

A “Before and After” appraisal is a detailed report used for all complex appraisal problems, whether the acquisition is of the whole property or only partial. The report should include an appropriate analysis of the highest and best use of the property. Special attention and support must be given when that use is in transition or if a

change will occur as a result of the acquisition. Also to be analyzed should be severance damages, special benefits, and special purpose properties.

In certain instances, a detailed appraisal may include the findings of a special report, researched and written by someone with expertise in that area, other than the appraiser. Such a report could involve, but is not limited to, aspects of the property, such as zoning and permits, machinery or equipment on the property, mineral rights, or forestation.

## Appraiser Selection

1. The appraiser shall be selected by the LPA. **All fee appraisers must be selected from NDOR's Approved Appraiser List and be approved for the scope of practice required (<http://www.roads.nebraska.gov/business-center/row/>).** **Anything other than 1-4 family residential appraisals must be completed by a Certified General Appraiser.**
2. When the LPA selects NDOR's Appraisal Staff to complete project appraisals, an estimate will be provided to the LPAs for the project cost. The LPA will then enter into an agreement with NDOR for the appraisal services on an actual cost basis.

The LPA shall review the Cost Estimate ([Attachment PA-4](#)) on each tract and complete the "Type of Valuation Report Required" memo ([Attachment PV-4](#)) noting which type of valuation report is appropriate for each tract. The LPA shall send the appraiser(s) a Request for Appraisal Proposal letter ([Attachment PV-5](#)), ([Attachment PV-5S](#)) asking for their estimate of cost for each tract from your "Type of Valuation Report Required" memo, their expected completion date, and also a scheduled payment for their possible court testimony. With this letter the LPA will also send the Appraisal Services Specifications, [Attachment PV-6](#), which explains the project and estimate details. Upon acceptance, the LPA shall then enter into an Appraisal Services Contract using ([Attachment PV-7](#)).

If the LPA feels the nature of the appraisal process is unusually complex or high in value, the LPA must send out requests for proposals to three or more Appraisers.

## Conflict of Interest

No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being valued that would in any way conflict with the preparation or review of the valuation report. Appraiser compensation for making a valuation report shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has valued except that the acquiring agency may permit the same person to both value and, after the report is reviewed, negotiate an acquisition where the value of the acquisition is \$10,000.00 or less.

# REVIEW OF PROPERTY VALUATION

Every valuation report shall be reviewed by a qualified review appraiser. The Uniform Act requires that the offer of just compensation may not be less than the LPA's "approved valuation". The valuation report becomes "approved" through the valuation review process. However, the valuation does not become "the LPA's approved offer of just compensation" until after it has been signed by an appropriate agency official (see below under **Determination of Just Compensation**).

Federal regulations require that all appraisals must be reviewed. The qualified review appraiser shall examine all valuation reports to assure that they meet the applicable requirements of the LPA, to ensure they follow sound appraisal principles, and to check for any necessary corrections or revisions, prior to acceptance. The reviewer shall document the findings using ([Attachment RPV-1](#)).

## Duties of a Reviewer

### 1. For "Compensation Estimate"

- a. Ensure consistency among valuations on a project wide basis.
- b. See that the LPA's specifications were followed.
- c. Ensure accuracy of data, adequate documentation, and appropriately supported conclusions.

### 2. For "Short Form" and "Before and After" Appraisals

- a. All items listed under Compensation Estimate.
- b. Inspect the appraised property and the comparable sales.
- c. See that all appraisal principles and techniques were followed in accordance with state and federal requirements.
- d. Ensure that consideration is given to all compensable items, damages, and benefits, and that compensation is NOT included for items deemed non-compensable by state law.
- e. Verify or establish fair market value for the acquisition of real property and damages, if any, to the remaining property.

## Who Can Review?

Appraisers who are currently on the NDOR Approved Appraiser List (<http://www.roads.nebraska.gov/business-center/row/>) and are approved to review valuation documents. Instructions for hiring a review appraiser can be found under Appraiser Selection.

LPAs maintaining a section or staff trained and assigned to provide the Right of Way function shall assign their best qualified appraiser to perform appraisal review duties as needed. This person will be empowered to review and establish just compensation on “Compensation Estimates” and “Short Form Appraisals” of less than \$50,000.00. A credentialed LPA staff Appraiser, operating within their scope of practice, is not limited as to the dollar amount but should avoid a conflict of interest in the negotiation process.

If the LPA does not have a Right of Way staff, all Compensation Estimates prepared by the LPA will be reviewed and approved by the NDOR Right of Way Office.

All “Short Form Appraisals” and all “Before and After Appraisals” shall be reviewed by a qualified consultant review appraiser. As with appraisers, a reviewer must be chosen from the NDOR Approved Review Appraiser list (<http://www.roads.nebraska.gov/business-center/row/>). The method for hiring a review appraiser is the same as for hiring an appraiser, except you will use the Request For Review Proposal letter, ([Attachment RPV-2](#)), Appraisal Review Specifications, ([Attachment RPV-3](#)) and the Appraisal Review Services Contract, ([Attachment RPV-4](#)).

If the LPA has contracted with NDOR to complete the “Short Form Appraisals” or the “Before and After Appraisals”, NDOR’s Right of Way Appraisal Staff will also complete the Appraisal Review of each document.

## **Deficient Valuations/Appraisals**

If the valuation report is deficient, the reviewer should return the report to the appraiser for correction, with the deficiencies noted.

However, there are instances when the reviewer discovers minor errors (small math errors, misspellings, typographical errors, etc.) in a report. In those cases the small changes can be made by the reviewer without returning the report to the appraiser. All such changes should be initialed and dated by the reviewer. It is good practice for the reviewer to send a copy of the changes to the appraiser in the event an update is needed later.

If acceptable corrections or revisions to a report cannot be obtained from the appraiser, AND the reviewer is unable to approve the report, AND the LPA determines it is impractical to obtain an additional report, THEN the reviewer may develop appraisal documentation, either independently or by reference to acceptable relevant information developed by others, to support an approved or recommended value.

## **Valuation/Appraisal Update**

Sometimes it is necessary to update a valuation report or appraisal, or even complete a totally new one. A common reason for this would be if there has been a significant delay (one year or more) between the date of the report and the conclusion of the transaction. Another reason would be if the information presented by the owner caused a substantial change in the scope of the report, or if there is a material change in the character or condition of the property. Anytime a valuation report or appraisal is updated, it must be reviewed again and approved by the designated agency official.

If the information presented by the owner, or a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the LPA shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the LPA shall promptly reestablish just compensation and offer that amount to the owner in writing.

## **Valuation Approvals**

The completed valuation documents and Just Compensation Forms for every tract on your project must be submitted to NDOR for approval. NDOR will review the documents and upon approval, will authorize your agency to begin negotiations with the property owners.

## **Determination of Just Compensation**

The Local Public Agency must determine Just Compensation on each tract. The LPA shall empower an elected or appointed official (such as Chairperson of the County Board of Supervisors, Chairperson of the County Commissioners, City Manager, or Mayor) to review the appraisals, appraisal reviews and set the Just Compensation on each project tract. Just Compensation cannot be for less than the reviewed appraisal amount. Each project right of way file must include a Just Compensation Form ([Attachment RVP-5](#)).

# ACQUISITION OF VALUED PROPERTY

The property has now been valued, the report has been reviewed, and the amount of compensation due the owner (and tenant) has been determined. You are almost ready to begin negotiations with the property owner.

But first, you need to prepare all of the informational papers required to be given to the property owner, and the documents needed to be signed by the owner. Here is a list of what needs to be given to the owners at the first meeting to present your offer (the start of negotiations) and the expenses the Local Public Agency will incur when acquiring title to the property.

## Preparation of Purchase Documents

1. Copy of the valuation documents for owner.
2. Copy of the Project Report for owner, when sales aren't included in the appraisal.
3. Copy of the Review for owner.
4. Informational Letter including the appropriate plan sheet(s) applicable to the ownership. [\(Attachment AP-10\)](#), *Sample* [\(Attachment AP-10S\)](#)
5. ROW Contracts: For Partial Taking "In Fee Simple" [\(Attachment AP-3\)](#), *Sample* [\(Attachment AP-3S\)](#) or Total Acquisition [\(Attachment AP-4\)](#)
6. Warranty Deed [\(Attachment AP-5\)](#), *Sample* [\(Attachment AP-5S\)](#) OR, Quitclaim Deed, if owner chooses
7. Permanent Easement Contract, if applicable. [\(Attachment AP-6\)](#)
8. Easement Deed, if applicable. [\(Attachment AP-7\)](#)
9. Temporary Easement Contract, if applicable. [\(Attachment AP-8\)](#)
10. Mortgage release, if applicable.
11. Leasehold or Tenant Contract, if applicable [\(Attachment AP-9\)](#)  
*Sample* [\(Attachment AP-9S\)](#)
12. Administrative Settlement Form, if applicable [\(Attachment AP-14\)](#)  
*Sample* [\(Attachment AP-14S\)](#)
13. Acquisition Brochure [\(Attachment AP-1\)](#)

## Expenses Incidental to Transfer of Title to the Local Public Agency

1. The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

- a) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of real property, and similar expenses incidental to conveying the real property to the agency. However, the LPA is not required to pay costs solely required to perfect the owner's title to the real property.
- b) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property.
- c) The pro rata portion of any prepaid real property taxes which are allocable to the period after the LPA obtains title to the property or effective possession of it, whichever is earlier.

Real estate taxes are due and payable and become a first lien on the property on December 31<sup>st</sup> of each year. In counties having a population of 150,000 or more, the first half of these taxes become delinquent on April 1<sup>st</sup> of the following year and the second half become delinquent on August 1<sup>st</sup>. In the remaining counties, those dates are May 1<sup>st</sup> and September 1<sup>st</sup>. It must be remembered that while the taxes don't become delinquent until the dates mentioned above, they are due and payable and are a first lien on the property on December 31<sup>st</sup> of the preceding year. Therefore, when making inquiry at the appropriate county offices, the question is not what taxes are delinquent, but rather, what taxes are due and payable and are a first lien on the property.

When an LPA is acquiring only a portion of the property (partial taking), there is no need to be concerned with the real estate taxes. This is a risk management decision for the LPAs. The only conceivable circumstance that would cause a problem would be if the LPA left a remainder of such a small value that it would not cover the amount of the taxes. It is reasoned that, under that scenario, the LPA would be acquiring the entire property anyway, and the taxes would be accounted for as described below.

When the entire property is acquired (total taking), the real estate taxes are always accounted for. This is done either by requiring the owner to pay the taxes before the LPA completes the payment or by deducting the amount of taxes that are due and payable and a first lien on the property from the payment to the owner. The LPA then will make payment directly to the county so as to ensure that no tax lien attaches to the property.

Taxes allocable to the year in which the LPA acquires the property have not yet become due and payable and a first lien on the property since they do not do so until December 31<sup>st</sup>. Therefore, there is no need for the LPA to be concerned.

- d) Whenever feasible, the Agency shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

# NEGOTIATION PROCESS

## Who May Negotiate

Any knowledgeable and disinterested employee of the LPA who has successfully completed the FHWA Course, “Real Estate Acquisition Under the Uniform Act: An Overview” and NDOR’s, “Local Public Agency Right of Way Training Course”, or a fee negotiator that is on NDOR’s Approved Acquisition Consultant List (<http://www.roads.nebraska.gov/business-center/row/>) can act as the negotiator.

If an LPA employee is not going to be conducting the negotiations, use the procedures below to solicit and select an acquisition consultant.

## Who Cannot Negotiate?

The Review Appraiser or person that approves any valuation report or established Just Compensation cannot act as the negotiator. The appraiser can act as a negotiator but only if a “Compensation Estimate” was used and the compensation is less than \$10,000.00 and they meet one of the criteria above in “Who May Negotiate”.

## Soliciting Proposals and Selecting Acquisition Consultants

A Request for Proposal will be sent to all Approved Acquisition Consultants from the approved NDOR list. This assures an open competitive process for selecting recipients for these contracted services.

The Request for Proposal (see [Attachment AP-20](#)) shall provide adequate information for the Acquisition Consultants to submit a realistic proposal. This information should include, but not be limited to, Acquisition Services Specifications (see [Attachment AP-21](#)), your anticipated start and finish dates (if known), number of tracts, and the time and date of the proposal opening.

Proposals received shall be held until the prescribed time of opening. At that time, and in the presence of at least one witness, the proposals shall be opened and read aloud. Consideration will be given each proposal, checking for accuracy and responsiveness.

When satisfied that the proposal(s) are acceptable, the LPA determines which Acquisition Consultant will be awarded the contract. This determination is made by evaluating which proposal is most advantageous to the LPA’s program, with price and other factors being considered. After this decision, an agreement is prepared (see [Attachment AP-22](#)) and presented to the Acquisition Consultant for acceptance. When the agreement bearing the Acquisition Consultant’s signature is received, it is executed by the LPA.

## Negotiator Log (Call Reports)

The negotiator shall maintain adequate records of negotiations or other contacts for every parcel. After **each** call the negotiator’s log or Call Report ([Attachment AP-12](#)), *Sample* ([Attachment AP-12S](#)) shall be legibly written in permanent form and completed within a reasonable time after each contact with the property owner or their representative. Information for each contact must include the date and place of contact, parties of interest contacted, offers made (dollar amounts), counteroffers, relevant questions from the owner, list of reasons

settlement could not be reached, and any other pertinent data. The initial Call Report should also indicate that a Right of Way Acquisition Brochure was presented to the property owner. The log or report shall be signed and dated by the negotiator. Upon completion of negotiations, the above records become part of the project parcel file.

When negotiations are unsuccessful and further attempts to negotiate are considered futile, the negotiator's record shall include documentation of the negotiator's recommendations for appropriate future action.

One of the functions of a negotiator's log is to document that negotiations have been conducted in an appropriate manner. Beyond the negotiating arena, LPAs increasingly are being required by courts to demonstrate such compliance. Properly completed, the negotiator's log offers key documentation in these cases.

Sometimes the initial negotiator may not complete the negotiations for a particular parcel. Without a complete record of preceding efforts, subsequent negotiations by a new negotiator will be more difficult and probably more time-consuming. In addition, the record contained in the log may assist in determining the prospects for a successful administrative or legal settlement. This supports the Uniform Act's goals of encouraging and expediting agreements with owners, avoiding litigation, relieving congestion in the courts, assuring consistent treatment for owners in public improvement programs, and promoting public confidence in governments' land acquisition practices.

## **Contacting the Owner**

### **1. Present the Offer in Person**

The LPA should make all reasonable efforts to meet with each property owner individually, or the owner's designated representative, in person. The purpose of this contact is to explain the negotiation process to the property owner as well as the responsibilities of both the LPA and the property owner. This is accomplished by providing the property owner with an acquisition brochure ([Attachment AP-1](#)). The negotiator then shows and explains the ROW plans and how their property is affected, followed by presenting the informational letter and contracts which spells out the property rights needed from the owner and the compensation. This kind of personal contact can be of great importance as the negotiator strives to attain rapport with the property owner, which can help inspire confidence in the acquisition process and the fairness of the offer being made. LPA's shall not hold group meetings when negotiating the purchase.

If all reasonable efforts to make personal contact with an owner fail, or if personal contact is impracticable, for example, such as when an owner lives in another state, the owner may be contacted by mail. In that mailing you would include everything that you would have presented in person.

## 2. Mailing the Offer

This can be an alternative approach for the first contact of the property owner. Sometimes, constraints on manpower and funds make it advisable to affect cost savings and to accelerate the acquisition process. This process allows the initial phase of negotiations to begin with a mailing to the property owner. The packet consists of an introduction letter explaining the acquisition and the offer, the brochure, the ROW plans highlighting the taking, all appraisal documents (*optional*), all contracts and deeds clearly marked where they need to sign and have notarized, other documents needing signing, and a postage paid return envelope.

Within a reasonable period after the mailing (usually a week), you should follow up by telephone. A telephone conversation provides the property owner with a means to obtain answers to questions or an opportunity to exercise the option of setting up an appointment for personal contact. **All requests by property owners for personal contact should be honored.**

When personal contact does occur, the property owner should be able to discuss substantive issues. From this point on, negotiations should follow the normal sequence.

Generally, the mailing approach has resulted in positive experiences. It saves both administrative costs and time on minor claims in which no dispute has arisen over the amount of the offer.

**Note: This process may not be used on parcels where relocation is involved.**

## Completing the Transaction: Donation

### 1. Explain Owner's Right of "Just Compensation"

Usually, the decision by the property owner to donate the property for less than its value has been made prior to the negotiator arriving with the documents. This is why a valuation report hasn't been completed or brought to the owner at the beginning of negotiations. **However**, when an owner is willing to make a donation, that individual or entity retains specific rights that must be respected. For example, you must provide the owner an explanation of the acquisition process, including the right of having your agency appraise the property and to receive an offer of just compensation. Only after receiving such an explanation may the property owner waive these rights and the LPA accept the donation. The explanation should be given in a manner that is non-technical and easily understood.

This is why making sure you have the owner sign the Donation Form ([Attachment AP-2](#)) is so important. It is imperative to demonstrate to NDOR that you have explained this right to the owner.

An LPA may accept a property owner's offer to donate a whole or part of a property in exchange for services or facilities that will benefit that owner. For instance, an LPA may require a narrow strip of land for a street-widening project. The property owner and the LPA may negotiate an agreement that would require the LPA to provide an additional driveway, entrance, or other features in lieu of cash compensation. The LPA should

compare the donated property's value and the cost of additional construction features to ensure that construction costs do not exceed the value of the donated real property.

## 2. No Coercive Action

Negotiations must be conducted free of any attempt to coerce the property owner into donating their property. For example, the negotiator shall not imply that the owner must donate their property, "or else". These detrimental factors could be things like the LPA withholding the building of certain construction features beneficial to the owner or the project itself. Other threats prohibited are those that imply that the LPA may "do" harmful things such as remove trees or other property features when it is not necessary. Similarly, the use of condemnation as a threat **must** be avoided. **Publicly requesting individual property owners to donate is considered coercive.**

It is acceptable for the LPA to publicly announce they would appreciate donations of right of way for the project provided the LPA also announce the owners have the right to have their property or easements appraised and receive just compensation.

It is not acceptable for LPAs to publicly negotiate for individual tract donations.

## 3. Signing the Documents

If satisfied, the owner then signs the Donation form, the contract(s), the deed(s) if other than just a temporary easement, and any kind of voucher or other internal document that the LPA may need in order to process for payment.

The owner's signatures must be notarized by the negotiator, or if they are not a notary, then by some other notary. The notarization also applies to documents that were mailed.

Upon returning the signed documents to the LPA, the agency head shall then sign the contracts. The deeds shall then be recorded within a reasonable time period but not until after the property owner has been paid.

## 4. Buyer/Seller Situations

When the property owner is buying the property on contract, the seller still has an Interest. Therefore, a slightly different procedure of documents and signing is needed. The instructions for this situation are in [\(Attachment AP-13\)](#).

# Completing the Transaction: Purchase

## 1. Explain the Offer

After the initial presentation of the brochure, the plans, and the offer letter, the negotiator needs to explain the offer of just compensation and how it was arrived at. The negotiator should be willing to show the valuation report to the owner, as a minimum, and should consider giving them their own copies of the valuation report, review, and project report. **(NDOR, as a rule, gives all three of these documents to all owners on all projects.)**

## **2. No Coercive Action**

Negotiations must be conducted free of any attempt to coerce the property owner into reaching an agreement. For example, the negotiator should be careful not to imply that the negotiation, and in particular the offer, is a “take it or leave it” proposition. Similarly, the use of condemnation as a threat must be avoided. Other examples of actions the acquiring agency must avoid include advancing the time of condemnation, deferring negotiations, or delaying the deposit of funds with the court to coerce an agreement with the property owner.

## **3. Owner Opportunity to Consider**

You must give the property owner a reasonable opportunity to consider the offer. For example, thirty days would be considered a reasonable amount of time. This not only provides the owner a chance to thoroughly review and evaluate the offer (including the opportunity to obtain professional advice or assistance), it eliminates any appearance of coercion. It also provides a chance for the owner to present material they believe is relevant to determining the property’s value, and to suggest modifications to the proposed terms and conditions of the purchase. You must consider the owner’s presentation.

## **4. Signing the Documents**

If satisfied, the owner then signs the contract(s), the deed(s) if other than just a temporary easement, and any kind of voucher or other internal document that the LPA may need in order to process for payment.

The owner’s signatures must be notarized by the negotiator, or if they are not a notary, then by some other notary. The notarization also applies to documents that were mailed.

Upon returning the signed documents to the LPA, the agency head shall then sign the contracts. The deeds shall then be recorded within a reasonable time period but not until after the property owner has been paid.

## **5. Buyer/Seller Situations**

When the property owner is buying the property on contract, the seller still has an Interest. Therefore, a slightly different procedure of documents and signing is needed. The instructions for this situation are in [\(Attachment AP-13\)](#).

## **6. Administrative Settlement**

A reasonable effort must be made by the negotiator to induce the owner to sign for the offer presented to them. However, when the owner refuses to sign, or presents a counter offer, it is sometimes in the public interest to accomplish a settlement in excess of the established just compensation. Such a settlement is called an Administrative Settlement because it is not an admission on the LPA’s part that there is a need to raise

the offer of just compensation, but rather, is the result of an administrative decision. In all instances, caution, discretion, and proper judgment shall be applied at all times. The Administrative Settlement has long been a part of the FHWA regulations.

The LPA can consider factors utilized in the appraisal process and, likewise, factors omitted from it. Some of these factors could be the time span between the appraisal completion and the offer, other appraisals, additional estimates or bids, valuation problems, recent court awards, or the contrast between an increase vs. the estimated trial cost.

Consistency and fairness to the Nebraska taxpayer and all property owners, especially those on the project who have already accepted the initial offer, should be considered when making Administrative Settlements. The practice of agreeing to settlements above the established just compensation, merely because a property owner “holds out,” is strongly discouraged. These increases would soon become common knowledge and there would be but few future agreements by the negotiator based on just compensation.

In making a counter offer, the owner may request certain construction items as a condition for settlement. Many of these items would often mitigate at least some of the damages which were originally in the LPA’s offer. In order to avoid a double payment that would include both the cost of the construction item and damages mitigated by those items, acceptance must be carefully weighed and be based on the elimination of the damages that are mitigated by the construction items. Attempts are sometimes made by the owner to obtain agreement on construction items by first proposing only one item and after obtaining approval, following up with others in similar fashion. This type of counter offer on a piece meal basis should be avoided. It is best to give consideration only to complete counter offers and remain noncommittal on requests for construction items until all conditions of the counter offer are definitely stated.

Once an agreement has been reached, signing the documents is the same as mentioned above. The LPA simply needs to write in “Administrative Settlement” on the contracts, the amount, and change the total. This would also be done on the LPA’s voucher or other payment document.

The LPA head or other authority prepares a written justification ([Attachment AP-14](#)), *Sample* ([Attachment AP-14S](#)) of the available information that supports such a settlement, and that they approve it as being reasonable, prudent, and in the public interest. The extent of the written explanation is a judgmental determination and should be consistent with the circumstances and the amount of money involved. You shall maintain appropriate documentation in the parcel file to support this action.

FHWA may or may not participate in the cost of additional payment, depending on the reasonableness of the settlement. They **will not** participate if a settlement report, as described above, is not prepared and in the file.

## Tenants Rights

When an LPA acquires a property that is tenant occupied, you must consider not only the tenant’s leasehold interest, but also their tenant owned improvements (if any) as well.

## 1. Leasehold Interest

If a tenant's lease is more than month-to-month and is market advantageous, the appraiser will establish a fair market value for the loss of that lease. This amount will then be offered to the tenant as just compensation.

However, usually for tenants of longer than month-to-month with no market advantage, a simple minimum payment, decided on by the LPA, (NDOR pays \$25.00) shall be offered to acquire their leasehold interest.

## 2. Tenant Owned Improvements

It is clearly the intention of the Uniform Act that tenant-owners of buildings, structures, or other improvements be given status equal to owners and are thus entitled to an offer of just compensation.

The offer for a tenant owned improvement should be based on the amount that the improvement contributes to the fair market value of the whole property, or its removal value, whichever is greater. Removal value is the same as salvage value.

## 3. Signing the Contract

The Leasehold Contract ([Attachment AP-9](#)), *Sample* ([Attachment AP-9S](#)), is set up to write in the amount of the tenants interest and also write in and describe the owned improvements, if applicable. If the tenant is agreeable, their signature and a notarization is all that's required.

However, if the tenant isn't willing to sign, there is the possibility of increasing the amount as an Administrative Settlement, but very sparingly, unless there is a high valued tenant owned improvement.

Condemnation applies to tenants as well as owners. If an agreement cannot be reached, the next step is to turn the tenant's case over to your legal counsel for filing of condemnation proceedings, either right along with the owner or by themselves if the owner signed.

## Certificate of Negotiator

The final step for the negotiator, before they turn in each property owner's case file, is to fill out the Certificate of Negotiator ([Attachment AP-15](#)). The negotiator is stating that they have no present or future interest in the acquired property and that all negotiations were conducted fairly.

## Condemnation: the LPA's Right of Eminent Domain

If negotiations have failed and an administrative settlement is not successful, it may be necessary to acquire the property rights by exercising the LPA's power of eminent domain. At this point, the negotiator shall give the owner a copy of the Eminent Domain Procedure ([Attachment AP-16](#)), update their working file, and turn the acquisition over to legal counsel to institute condemnation proceedings.

In Nebraska, the law provides the property owner (and tenant) a hearing in County Court before a board of “appraisers” who have been appointed by the court. The owner (and tenant), and/or their legal counsel, and the counsel for the LPA are permitted to present information to the appraisers along with a viewing of the property.

Once the appraisers make their determination by completing the Award of Appraisers, the LPA’s attorney must immediately prepare the Condemnation Report ([Attachment AP-17](#)) which includes the recommendation of the attorney and the LPA regarding whether to appeal the award to the District Court. (see [District Court Section, page 12-1](#)). Since the statute only provides 30 days to appeal the award, the Condemnation Report must be submitted to the NDOR LPA/ROW Coordinator in a timely manner so the LPA’s decision may be reviewed by NDOR within the statutory time period. If the Condemnation Report is not submitted in a timely manner so a proper decision regarding whether or not to appeal can be made, the federal participation will be limited to the amount of the LPA’s Valuation Document.

After a condemnation has been filed, but before the hearing date arrives, a legal settlement can be made between the LPA’s legal counsel and the property owner and/or their attorney. The LPA’s file must be documented whenever a legal settlement is made, and the rationale for the settlement set forth in writing.

## **Right of Way Certificate**

Prior to advertising for construction bids for the project, the acquiring agency must prepare a Right-of-Way Certificate ([Attachment AP-18](#)), *Sample* ([Attachment AP-18S](#)). This certification states that the properties needed for construction of the project have been obtained, they are clear of any utilities and structures which must be moved, plus persons or businesses displaced by the project have been relocated. Essentially, the certification must include a statement that the LPA has complied with Uniform Act requirements and that the project is ready for construction.

If your project has **no new right of way** to acquire, then you need to complete and send a different ROW Certificate ([Attachment AP-19](#)).

The ROW Certificate should be sent to your NDOR Coordinator. Also, the LPA needs to send copies of all the required documents generated during the acquisition process for review of adherence to the Uniform Act. A checklist of the documents needed to be sent can be found in ([Attachment PA-5](#)). Following acceptance of your certificate, you will receive authorization to advertise for bids to construct your project.

## **Payment Before Possession**

Under the Uniform Act, no owner may be required to surrender possession of real property before payment is made; whether it is based on the LPA’s approved valuation report, an amount negotiated after the LPA initiates condemnation proceedings, or the amount awarded by the board of appraisers.

# RELOCATION ASSISTANCE

Sometimes land needed for a public project is occupied. In such instances, it may be necessary to displace the occupants, who may include individuals, families, businesses, farms, or even nonprofit organizations. The Uniform Act and U.S. DOT/FHWA regulations prescribe certain benefits and protections for persons displaced by public projects funded, at least in part, with federal money. Nebraska State Law covering Relocation Assistance, which closely follows the Uniform Act, needs to be followed even if there is no federal funding in any aspect of your project. You can see Nebraska Rules and Regulations at the NDOR website. (<http://www.roads.nebraska.gov/business-center/row/>)

Among other benefits, the Uniform Act provides relocation payments that include moving expenses and certain supplements for increased costs at a replacement location. In addition, the Act provides protections for displaced persons such as requiring the availability of replacement housing, minimum standards for such housing, and requirements for notices and informational materials. Also, the Act entitles displaced persons to certain "advisory services" to help them move successfully.

Any person that qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act. Also, any person should know about their right to appeal. (See [Appealable Actions, Section 9-1.](#))

## Relocation Planning

An LPA's main responsibility in dealing with relocation assistance, early on in your project development, is to identify possible entities who will be required to move and will qualify for assistance. Then, be aware of the time it may take to accomplish those relocations, and build that time into your schedule. You are then ready to hire a relocation consultant and start coordinating your acquisition activities.

## Relocation Consultant Process

### 1. Selecting the Contracting Method – Lump Sum or Hourly

Relocation Assistance is complicated, with a myriad of rules and regulations. Only a qualified and experienced relocation expert is able to handle these situations. **Therefore, the LPA shall contract with a Relocation Assistance consultant from the approved NDOR list.** (<http://www.roads.nebraska.gov/business-center/row/>).

Because of the many different types of displacement and the various benefit options available to those being displaced, many Relocation Consultants may be reluctant to respond to a Request for Proposal that is in a Lump Sum format. The LPA may need to check with Relocation Consultants to determine the likelihood of being able to secure responses to such a request. This format is best used when the displacements on the project are small in number and uncomplicated.

For projects with a large number of displacements, the LPA should consider using the Hourly format. With this format the Relocation Consultants are required to bid the project on the number of employees, hours for each employee and hourly cost for each employee with a total cost for the project based upon those factors. If it is necessary, because of unusual and

complex situations that arise unexpectedly, the contract may be easily revised and adjusted to respond to the circumstances.

## 2. Soliciting and Selecting Proposals

A Request for Proposal will be sent to all Approved Relocation Consultants from the approved NDOR list. This assures an open competitive process for selecting recipients for these contracted services.

The Request for Proposal ([Attachment R1-Hourly](#) or [Attachment R2-Lump Sum](#)) shall provide adequate information for the Relocation Consultants to submit a realistic proposal. This information should include, but not be limited to, Relocation Assistance Services Specifications ([Attachment R3-Hourly](#) or [Attachment R4-Lump Sum](#)), your anticipated start and finish dates (if known), number and type of displacements, the time and date of the proposal opening.

Proposals received shall be held until the prescribed time of opening. At that time, and in the presence of at least one witness, the proposals shall be opened and read aloud. Consideration will be given each proposal, checking for accuracy and responsiveness.

When satisfied that the proposal(s) are acceptable, the LPA determines which Relocation Consultant will be awarded the contract. This determination is made by evaluating which proposal is most advantageous to the LPA's program, with price and other factors being considered. After this decision, an agreement is prepared ([Attachment R5-Hourly](#) or [Attachment R6-Lump Sum](#)) and presented to the Relocation Consultant for acceptance. When the agreement bearing the Relocation Consultant's signature is received, it is executed by the LPA.

## Relocation Approvals

All Relocation Benefit Studies completed by the Relocation Assistance Consultant shall also be reviewed and approved by NDOR **before** the amounts are offered to those being displaced. Likewise, all Relocation Assistance Claims submitted by the displacee shall be reviewed and approved by NDOR **before** the amounts are paid.

This way NDOR can certify to the Federal Highway Administration that the Relocation Assistance activities and payments are in accordance with the Uniform Act requirements.

## Appealable Actions

Any aggrieved person may file a written appeal with the LPA in any case in which the person believes the LPA has failed to properly consider the person's application for assistance under the Uniform Act. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a moving expense payment or a relocation payment. The LPA shall consider a written appeal regardless of form.

### §24.10 Appeals

- (a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.
- (b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under §24.106 or §24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.
- (c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.
- (d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.
- (e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.
- (f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.
- (g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review of the Agency decision.
- (h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

**§24.106 Expenses incidental to transfer of title to the Agency.**

- (a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:
  - (1) 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;
  - (2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
  - (3) 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.
- (b) Whenever feasible, the Agency shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

**§24.107 Certain litigation expenses.**

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- (a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation;
- (b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or
- (c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

## **ASSESSMENTS AGAINST ACQUIRED PROPERTIES**

When federal funds participate in a project, an LPA may not levy a special assessment, solely against those property owners from whom acquisitions are made for the public improvement, for the primary purpose of recovering the compensation paid for the real property. This recapture of compensation would constitute a form of forced donation, which is coercive and thus not permitted under the Uniform Act.

However, an LPA may levy an assessment to recapture funds expended for a public improvement, provided the assessment is levied against all properties in the taxation area or in the district being improved and provided it is consistent with applicable local ordinances.

## **ACQUIRING EDUCATIONAL LANDS BY EMINENT DOMAIN**

Any public body that has or hereafter shall be granted by the Legislature the authority to acquire educational lands for public use shall be required to condemn the interest of the state, as trustee for the public schools, in educational lands.

Upon notification to the LPA Office that a tract on a project is owned by Board of Educational Lands and Funds (BELF), the following is done to assist the LPA:

1. Prepare county map showing the project location, project number and county.
2. Secure the NDOR Director's signature and the Governor's signature on a Certificate of Need Document.
3. Obtain from the Local Projects Section the plat exhibit along with the metes and bounds description of the acquisition.

The NDOR LPA Office will provide the LPA with the above completed documents. The LPA must then determine if there is a tenant on the property and if so, acquire an Appraisal and Appraisal Review. In most cases the only tenant interest will be for fencing. A Leasehold Contract will need to be completed and signed by both the tenant and the LPA.

The LPA must then forward all of these documents to their county/city Attorney for action. If the LPA's attorney has questions regarding requirements or procedures, they are referred to the State Attorney General's Office at (402) 479-4611.

Before the acquisition, circumstances can be presented to the Board of Appraisers. Items 1-3 above must be submitted to the Secretary of the Board of Educational Lands and Funds.

# PROPERTY MANAGEMENT

The administration of acquired land and improvements is called property management. It includes activities such as maintenance and protection of the right-of-way, rental or leasing of acquired property, disposal of property no longer needed for the highway, and others discussed later in this section.

When administering acquired land and improvements, you should be guided by the twin goals of serving the public interest and maximizing public benefit. Keeping these goals in mind is helpful when decisions must be made concerning situations in which the rules are not clear-cut or the circumstances are ambiguous. Contact NDOR's Property Management Supervisor at (402) 479-4770 for further information and direction.

## Post-Closeout Functions

A number of functions typically occur after closeout. One of these is the disposal of excess property. After the transportation facility has begun operations, it may become clear that some of the property acquired for the facility is not needed currently and will not be needed in the foreseeable future. The LPA should maintain an inventory of such "excess properties." Excess property may be disposed of but FHWA regulation puts some limitations on the disposal. If the property is sold to a private party, the LPA must charge a minimum of fair market value, although there can be exceptions for social, economic, or environmental purposes.

One special type of disposal involves the disposal of access control, i.e., opening access to a highway facility at a point or points where it has been prohibited. This is a matter with very serious potential implications for the safety and capacity of the highway. **If your agency wishes to dispose of access control, you must seek prior approval from NDOR.**

Another post-closeout function is the leasing of real property. The decision to permit leasing is dependent on the LPA's determination that it will not interfere with the safety of the traveling public or adversely affect the highway's capacity. You must charge fair market value for leases, but, once again, there can be exceptions for social, economic, or environmental purposes.

## DISTRICT COURT

As previously noted, once the county court appraisers make their determination of compensation by completing the Award of Appraisers, the LPA's attorney must immediately prepare the Condemnation Report ([Attachment AP-17](#)) which includes the recommendation of the attorney and the LPA regarding whether to appeal the award to the District Court.

Since the statute only provides 30 days for either the LPA or the property owner to appeal the award, the Condemnation Report must be submitted to the NDOR LPA/ROW Coordinator in a timely manner so the LPA's decision may be reviewed by NDOR within the statutory time period. If the Condemnation Report is not submitted in a timely manner so a proper decision regarding whether or not to appeal can be made, the federal participation will be limited to the amount of the LPA's Valuation Document.

If the decision is to appeal and NDOR concurs, the LPA's attorney files the necessary appeal documents with the District Court. During the time of this filing and the trial date, negotiated settlements can be considered by the LPA with the concurrence of NDOR.

Should the property owner appeal the Award of Appraisers to District Court, negotiated settlements can be considered by the LPA with the concurrence of the NDOR.

If the LPA decides not to appeal and NDOR does not concur with that determination and instead recommends that the LPA appeal the award, the federal participation will be limited to the amount of the LPA's Valuation Document. If the LPA follows the recommendation of NDOR and appeals the award to District Court, settlements can be considered by the LPA with the concurrence of NDOR.

The amount of federal reimbursement eligibility will be either the agreed upon amount of the settlement or the District Court Award.

## FEDERAL REIMBURSEMENT

All requests for right of way reimbursements shall be submitted to the NDOR Project Coordinator. The request should be made on the LPA Right of Way Reimbursement Claim Form ([Attachment AP-23](#)) and all supporting documentation for the payments shall be included with the request for reimbursement if they have not previously been submitted.

NDOR will review these requests and reconcile the amount with the information submitted or by reviewing information presently in our file. Any discrepancies noted will be returned to the LPA for further clarification and re-submittal.

All amounts that have been reconciled will be authorized by the LPA ROW Coordinator for federal reimbursement.