

## **CHAPTER FIVE**

## **ACQUISITION**

### **1. OVERVIEW**

- A. **UNIFORM ACT** – The acquisition, rehabilitation or demolition of any real property associated with a NHTF-funded project must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. Sect. 4601 et seq.), hereafter called the "Uniform Act" or "URA", and the HUD implementing regulations (49 CFR Part 24).
  - 1. The Uniform Act applies:
    - a. Regardless of whether the actual acquisition is being paid from local or NHTF dollars;
    - b. To any acquisition which takes place on or after the date of submission of a NHTF application to fund an activity on that property unless the Grantee shows that the acquisition was clearly unrelated to the proposed NHTF funded activity; and
    - c. Any acquisition that took place before the date of submission of the application can be subject to the Uniform Act if that acquisition was intended to support a later NHTF activity.
  - 2. All Grantees must either establish that they own the real property necessary for their project, or they will need to acquire that property by following specific federally mandated procedures. The term "property" when used in this context refers to any kind of permanent interest in real property: fee title, permanent easements, long-term leases (50 year or more), and temporary easements.
  - 3. Before starting acquisition activities, Grantees should review HUD Handbook 1378 to obtain a better idea of the process, individual procedures to be followed, and recordkeeping requirements.
  - 4. Grantees should not assume that acquisition is not required until all city or county records have been searched. The results of this search must be documented in the Real Property Acquisition file.

### **2. GENERAL ACQUISITION REQUIREMENTS**

- A. For the purposes of this handbook, "property to be acquired" refers to any kind of permanent interest such as fee simple title, land contracts, permanent easements, long-term leases (50 years or more), and rights-of-way. Temporary easements are subject to all of the same rules as other forms of acquisition. However, if a temporary easement exclusively benefits the property owner,

the URA does not apply. Grantees should also be aware that all methods of acquisition (e.g., purchase, donation, or partial donation) are covered by the URA.

1. Acquisition rules must be followed whenever:
  - a. The grantee undertakes the purchase of property directly;
  - b. The grantee hires an agent, private developer, etc. to act on their behalf; and
- B. HUD Handbook 1378, Chapter 5, recently updated, is a resource available for acquisition information and is available at HUD's web site:

<http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm>

The URA regulations can also be downloaded from HUD's website at:

<http://www.hud.gov/offices/cpd/library/relocation/lawsandregs/finalrule/>

- C. The first step grantees should consider before undertaking any acquisition is a title search to determine the legal owner of the property.
- D. Grantees must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts. Refer to Chapter 7 for detailed guidance.
- E. Acquisitions can be divided into two types of transactions: voluntary and involuntary. It is critical that grantees understand the differences between the two types of sales to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary sales. The key difference between the two types of acquisition is that when a voluntary sale occurs, there can be no threat of eminent domain.
  1. Regardless of the form of acquisition used, it is strongly recommended that the grantee maintain a log of contacts with the owner in the acquisition file.
- F. The use of Federal funds may not be originally anticipated during the conceptual phase or at the beginning of a project. Therefore, grantees should proceed with caution if Federal resources could be introduced later in the project. Acquisition activities are subject to the URA if there is intent to acquire property for a Federal or Federally-assisted project at any point during the course of a project.

### **3. VOLUNTARY ACQUISITION**

- A. The URA recognizes three general types of purchases as potentially voluntary. Generally they are:
  1. Purchases in which persons are acting on behalf of an agency with the power of eminent domain but the community states in writing it will not to use this power.

Example: The grantee has identified parcel(s), but it will not use its powers to obtain the property through condemnation. The buyer must inform the seller of this fact in writing

and – if the offer is not accepted – be prepared to look for another property. The property will not be taken using the condemnation process.

2. Purchases where the agency or person does not have the power of eminent domain.

Example: A developer without the power of eminent domain is looking for properties suitable for purchase, rehabilitation, and resale. All their negotiations must be conducted in accordance with the rules for voluntary acquisition.

3. Purchases of property from government agencies (Federal, state, or local) where the grantee does not have the power of eminent domain over the other entity.

Example: A nonprofit organization without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. The nonprofit organization would never be able to purchase it if the Corps is not agreeable to their offer.

4. *To comply with the URA and carry out cost-effective programs, it is strongly recommended that acquisition under NHTF be limited to arms-length, voluntary transactions.*

B. Voluntary acquisition may be the most expeditious method available to a Grantee when property is needed for a project activity that is not site-specific. Projects that require particular sites by their very nature preclude the use of this method of acquisition.

C. Voluntary acquisition must meet **ALL** of the following conditions:

1. No specific site needs to be acquired -- the search may be limited to a general geographic area;

2. The property being acquired is not part of a project area where all or substantially all of the property will be acquired; and

3. The Grantee will not acquire (by condemnation) if negotiations fail and informs the owner of this. The seller must be told in writing that the buyer lacks the power of eminent domain or will not exercise their power of eminent domain to take the property. The Voluntary Acquisition Notice (see AQ-1) must also include an estimate of the property's fair market value in this notice to the seller. This notice will be included as part of the purchase offer and contract of sale which serves as an Addendum to Sales Contract. (See AQ-1A). Tenants must be informed of potential relocation eligibility upon initiation of negotiation.

D. For a development project that intends to acquire multiple properties by voluntary acquisition, the Grantee should advertise/solicit sites for the particular project, for instance using a real estate agent's multiple listing service to identify sites. A general geographic location (e.g., the north side of town) can be included.

E. A formal appraisal which is independent and unbiased is required.

F. Noncompliance with Voluntary Acquisition Requirements. In those cases where a purchase option or contract for an acquisition prior to the issuance of a voluntary acquisition notice informing the seller of their rights as a voluntary acquisition, the grantee must, in writing, provide

the seller the opportunity to withdraw from the existing agreement. After the applicable requirements have been satisfied by the grantee and the seller has been so informed in writing, the seller may elect to void or affirm the original agreement in writing. If the seller voids the original agreement, the grantee can negotiate a new agreement with the seller (AQ-1A) provides a contract addendum to inform the seller of their rights under URA and acknowledge they wish to affirm the original agreement.

#### **4. ACQUISITION FROM ANOTHER PUBLIC AGENCY**

- A. Acquisition between governmental/public agencies is exempt from the Uniform Act, if the acquiring agency does not have condemnation authority over the other agency. The Grantee is simply responsible for documenting that it does not have condemnation authority, and it may then negotiate with the agency from which the property, easement or right of way is needed.

#### **5. DONATIONS**

- A. Donations are a common way that many Grantees acquire property. To be considered a voluntary sale, the Grantee must:
  1. Inform the owner (in writing) of his right to receive just compensation under the Uniform Relocation Act (URA) based on an appraisal of the real property. The owner must waive these rights in a written consent document; and
  2. Assure that an appraisal is obtained unless the owner releases them from such obligation (in writing).

#### **B. PROCEDURES FOR ACQUISITION BY DONATION**

1. Grantees must send donating owners a statement that the Grantee is required by law to offer just compensation to the owner based on an appraisal of the real property which establishes fair market value.
2. Provision must be made for a response from the property owner. It should be equally easy to respond either positively or negatively. They may also provide the opportunity for the owner to release the Grantee from its responsibility for an appraisal.
3. The property owner then signs the consent agreement.

#### **6. TEMPORARY EASEMENTS**

- A. URA regulation require that temporary easements required for a project be protected as an acquisition of property unless the acquisition of the temporary easements is exclusively for the benefit of the property owner. 49 CFR 24.101(c)(2) states that, “the provisions of this subpart 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 acquisition of temporary easements which do not satisfy the exception provided in 49 CFR 24.101(c)(2) above remain subject to the regulatory requirements whether completed

as a voluntary acquisition as outline above or as an involuntary acquisition shown in the following section.

## **7. INVOLUNTARY ACQUISITION**

### **A. BASIC REQUIREMENTS OF INVOLUNTARY ACQUISITION:**

1. Appraise the real property, inviting the owner to accompany the appraiser, except when:
  - a. The owner is donating the property and releases the locality from the obligation to appraise the property.
  - b. The acquisition is simple and to the best knowledge available to the Grantee, the fair market value is less than \$10,000. The basis for this determination must be well documented.
2. Establish just compensation for property in an amount not less than appraised fair market value. For tenant-owned improvements, just compensation shall be the greater of:
  - a. The contributory (enhancement) value of the improvement; or
  - b. Its salvage value.
3. Review the appraisal at the local level to determine the adequacy and soundness of the appraiser's opinion of fair market value.
4. Offer just compensation for property in writing before initiating negotiations. Include summary statement of basis for determination of just compensation.
5. Make reasonable efforts to acquire property expeditiously by negotiation. Do not take any coercive action to induce an agreement on the purchase price.
6. Do not require the transfer of possession of property until compensation is made available to owner.
7. Pay all costs incidental to the acquisition, including recording fees, mortgage prepayment penalties and prepaid property taxes.
8. If occupant is permitted to remain on the property on a short-term basis after acquisition, the rent shall not exceed the fair market rent for such occupancy.
9. If tenants occupy the property, they must be informed of potential relocation eligibility upon initiation of negotiation.

### **B. PROCEDURES**

1. Notify all property owners as soon as possible of the Grantee interest in acquiring the property and the owner's basis rights (See AQ-3 Preliminary Acquisition Notice). A brochure "When a Public Agency Acquires Your Property" (AQ-4) has been published by HUD in Spanish and English editions. Copies of this publication are available from

THDA.

2. Determine if an appraisal is needed. This determination must be based on whether the two exceptions mentioned in A.1 apply. If there is no need for an appraisal, then proceed with step 5.
3. Obtain an unbiased and independent appraisal.
  - a. An independent appraiser must be selected.
    - i. The Grantee shall establish criteria for appraiser qualifications, assuring that they are consistent with the level of difficulty of the appraisal assignment and the Uniform Standards of Appraisal Practice. If the Grantee uses a contract appraiser, he or she must be State licensed or certified in accordance with the title XI of the Financial
    - ii. No appraiser (or review appraiser) shall have any direct or indirect interest in the property to be appraised.
    - iii. No one may act as a negotiator for real property that he has appraised if the value of the property exceeds \$2,000.
  - b. A minimum of one appraisal is required. However, if the project is potentially controversial (e.g., as with an unwilling seller) or where property values are high, it is recommended that two independent appraisals be conducted.
  - c. The Grantee or the appraiser selected must formally invite the property owner to accompany the appraiser during the inspection of the property prior to the appraisal. This notice should be in writing and a copy placed in the property acquisition file. (See AQ-5 Invitation to Accompany an Appraiser).
    - i. Appraisals that are detailed and consistent with established, commonly accepted practices shall be prepared for all acquisitions except for those which, by virtue of their low value and/or simplicity, do not require an in-depth analysis. Nationally recognized appraisal standards shall be used, including the Uniform Appraisal Standards for Federal Land Acquisition to the extent feasible. Minimum requirements for an appraisal as listed at Section 24.103(a)(1)-(6) of the HUD implementing regulations.
4. *Have the appraisal reviewed.*
  - a. This review must be conducted by a qualified review appraiser with no direct or indirect interest in the property who will assure that the appraisal meets applicable requirements and seek corrections or revisions to the appraisal as necessary. The review appraiser cannot be the same person who appraised the property.
  - b. The review appraiser may develop appraisal documentation (in accordance with HUD regulations) to support a recommended value IF he is unable to approve the appraisal submitted as an adequate basis for establishing just compensation,

AND, it is not practical to obtain an additional appraisal.

- c. The review appraiser shall set forth in a signed statement a certification of the recommended value of the property that identifies appraisal reports reviewed and explains the basis for the recommended value. If there are damages or benefits to any remaining property, these shall also be identified.
- 5. Establish and Offer Just Compensation. This amount cannot be less than the review appraiser's recommended fair market value, and is usually the same. A prompt, written offer to acquire for this amount (AQ-6 Offer to Purchase) must then be sent to the owner. A written "Statement of Basis for Just Compensation" (AQ-7) must accompany this offer.
- 6. Negotiate with the owner, or his representative.
  - a. Discuss the offer and acquisition policies and procedures including the payment of incidental expenses as provided for in Section 24.106 of the HUD implementing regulations.
  - b. Give the owner an opportunity to evaluate the offer and, if he chooses, to present any material that he feels is relevant and/or make a counter-offer.
  - c. Consider any counter-offer and either accept it, obtain a new appraisal (usually only recommended if significant time has passed since the original appraisal), institute condemnation proceedings, or decide not to acquire the property.
  - d. Maintain full documentation of negotiation proceedings in the project acquisition file.
    - i. **NOTE:** Condemnation can be substantially more expensive than negotiation, particularly if the property owner is an elderly or infirm individual to whom juries tend to be very generous. The Grantee is required to pay the amount established by the court. It is advisable to try to avoid condemnation and secure a successful acquisition by negotiation when at all possible.
- 7. *Prepare, execute and record the contract of sale.* Before taking possession of the property, the Grantee must pay the agreed-upon purchase price to the owner. (See AQ-8 Offer of Sale of Land).
- 8. At the conclusion of settlement, the Grantee must provide the owner with a Statement of Settlement Costs (HUD-1) 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 person handling the transaction. A receipt for purchase price must be secured by the Contractor locality. All title/deed transfer documents must also be on file.
- 9. *If the local entity decides not to acquire* the property, it must notify the owner and all tenants in writing by registered mail, return receipt requested, of its intention not to acquire the property and that any person moving from the property thereafter will not be eligible for relocation payments and assistance. This notice must be sent within 10 days of the Grantee's determination not to acquire. (See AQ-10 Notice of

Intent not to Acquire).

## **8. ACQUISITION AND LEAD-BASED PAINT REGULATIONS**

**A. ACQUISITION WITHOUT REHABILITATION** – Prior to the closing, the following steps must be followed for the acquisition of a vacant unit:

1. A visual inspection must be conducted to identify any deteriorated paint.
2. Deteriorated paint must be tested or presumed to be lead-based paint.
3. Deteriorated paint must be stabilized.
4. The unit must undergo clearance testing after paint stabilization. Clearance must be achieved prior to purchase of the property and occupancy.
  - a. A copy of the clearance form (LBP-6) must accompany the draw request for acquisition funds.

**B. ACQUISITION WITH REHABILITATION** – See *Chapter 9: Lead-Based Paint, Section 3 - Requirements for Rehabilitation Assistance (Subpart J)*.

## **9. RECORD KEEPING REQUIREMENTS**

A. The following documentation must be kept for each property, easement or rights-of-way acquired:

1. Identification of property and property owner(s).
2. Evidence owner was informed on a timely basis about acquisition and his or her rights.
3. Copy of each appraisal report, including the review appraiser's report, and evidence that the owner was invited to accompany each appraiser on appraiser's inspection of property.
4. Copy of written purchase offer and summary statement of the basis for the determination of just compensation and date of delivery to owner.
5. Copy of purchase contract and document(s) conveying property.
6. Copy of settlement statement and evidence that owner received net proceeds due from sale.
7. Copy of any appeal or complaint filed and response.
8. **NOTE:** All notices to the owners and/or tenants should be either sent return receipt requested, or hand delivered and a signed receipt of delivery maintained.

## **10. REPORTING REQUIREMENTS**

- A. The Grantee must complete the Report on Real Property Acquisition Activities (AQ-11). This report should be sent to THDA directly after completion of real property acquisition activities that were paid for with NHTF funds. This must occur prior to start of construction.