

# Chapter 10

## Acquisition of Real Property





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**Introduction**

Chapter 10: Acquisition & Relocation provides a review of the policies, regulations and laws applicable to property acquisition undertaken as part of a Community Development Block Grant (CDBG) project. The use of real property (land and buildings) is governed by 24 CFR 570.505. The use of personal property (equipment and property other than real property) is governed by 24 CFR 85.32.

The Grantee must obtain all land, rights-of-ways and easements necessary for carrying out the project prior to bidding the project. The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) are applicable to the purchase of real property and permanent easements for CDBG assisted projects, even if local funds are used for the acquisition. Please see [HUD Handbook 1378: Tenant Assistance Relocation and Real Property Acquisition](#).

CDBG funds may be used to pay for the cost of property identification, appraisals, legal fees, recording fees, and other costs necessary for the acquisition of real property. Real property is defined as land, including any improvements to and structures located on the land, excluding any movable equipment.

**Property Management & Disposition**

Federal requirements concerning property are organized according to ownership, use, and disposition. The Grantee's property management system must provide for accurate records, the conduct of regular inventory, adequate control and proper sales procedures.

1. Property can only be acquired with CDBG funds for a specific and approved purpose.
2. The use of the property must continue for the approved purpose, generally for as long as needed, and for a *minimum* of five years following the date of the project closeout.
3. For real property acquired or improved in whole or in part with CDBG funds in excess of \$25,000, the Grantee cannot change the use or planned use of the property, including the beneficiaries of such use, without providing affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:
  - The use of new property meets a national objective and is not a building for the general conduct of government; or
  - The contemplated new use is deemed appropriate, after consultation with affected citizens, but will not meet a national objective. In this case, the Grantee must reimburse the CDBG program for the amount of the current fair market value of the property, less the value attributable to any non-CDBG portion of the acquisition or improvements.
4. The Grantee must control the use of the property in accordance with its intended purpose and take adequate steps to prevent damage or loss.

5. In all cases, the net proceeds from the sale of property acquired with CDBG funding are considered program income and must be reported to the West Virginia Development Office (WVDO).

### Acquisition as a National Objective

Acquisition may qualify under each of HUD's three national objectives – benefit to low and moderate income individuals (LMI), slum and blight, or urgent need. The national objective is based upon the actual end use of the property, as follows:

#### Benefit to Low and Moderate Income (LMI)

- **Area Benefit Category:** If the real property acquired will be used for an activity that benefits the residents of a primarily residential area and at least 51 percent of those residents are of low and moderate income.
- **Limited Clientele Category:** If the real property acquired will be used for an activity that benefits a specific group of people, at least 51 percent of whom are LMI persons.
- **Housing:** If the property will be used for to develop housing to be occupied for LMI individuals.
- **Jobs:** If the economic development project will create or retain permanent jobs and at least 51 percent of those jobs will benefit LMI individuals.

#### Slum and Blight

- **Slum and Blighted Area:** If the property is in an area designated by the state as a slum or blighted area, and the property will be used to address on or more of the conditions which contributed to the deterioration of the area. Specific details are outlined in 24 CFR 570.483(b)(4)(D).
- **Spot Basis:** If the property is located outside a designated slum or blighted area and the acquisition is required for clearance which will eliminate specific conditions of blight or physical decay on a spot basis.

#### Urgent Need

- Acquisition may qualify under the Urgent Need national objective if the acquisition is part of an activity designed to alleviate existing conditions that pose a serious and immediate threat to health and welfare, and are of recent origin and for which no other source of funds exists. Note that the threshold for this category is difficult to achieve and is not widely used.

**Uniform Relocation and Real Property Acquisition Policies Act (URA)**

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) are applicable to the purchase of real property and all permanent easements. Review the following documents for additional information:

- [HUD Handbook 1378: Tenant Assistance Relocation and Real Property Acquisition](#)
- [When a Public Agency Acquires Your Property](#)

If CDBG assistance is used in any part of the project, the URA will govern the acquisition of real property for the activity, and any resulting displacement, even if local funds were used to pay the acquisition costs.

**Timing of Acquisition**

The timing of an acquisition can also make it subject to the URA. Acquisition that takes place on or after the date of submission of a CDBG application to fund an activity on that property is subject to the URA, unless the Grantee shows that the acquisition was unrelated to the proposed activity. Also, an acquisition that took place before the date of submission of the application can be subject to the URA if the acquisition is intended to support a subsequent CDBG activity.

**Objectives of the URA**

The URA applies to all federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacement caused by rehabilitation and demolition activities. There are two main objectives of the URA:

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

**Applicability of the URA**

The URA covers the attainment of real property for a federally assisted program or project. This includes permanent interests, as well as permanent easements necessary for the project.

Under the URA, all persons (defined as any individual, family, partnership, corporation, or association) displaced (moved from real property or moved personal property from the real property) as a direct result of acquisition, rehabilitation or demolition for a CDBG-assisted project are entitled to relocation payments and other assistance under the URA. CDBG Grantees have the responsibility to minimize displacement that results from CDBG funded projects.

Note that private persons, corporations or businesses that acquire property or displace persons for a CDBG assisted project are subject to the URA. For example, if CDBG funds are used for infrastructure at an economic development site, the acquisition of land may be subject to the URA even when purchased by a private entity.

### **Leases Subject to the URA**

Leases of more than 15 years in duration are also subject to the URA. Leases may be reviewed for duration, cost, and compliance with the URA to determine whether the lease is reasonable when compared to acquisition.

### **Relocation Assistance Provisions**

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

1. Acquisitions by an entity that has the power of eminent domain and meets all of the following conditions:
  - No specific site or property needs to be acquired and several properties could be acquired for project purposes, although the Grantee may limit its search for alternative sites to a general geographic area (not to be construed to be a small, limited area).
  - The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
  - The Grantee will not acquire the property through eminent domain because negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
  - The Grantee will inform the owner in writing of what it believes to be the market value of the property.
  - If tenants are displaced, the tenants are provided relocation assistance. Documents verifying the Grantee will not use eminent domain and fair market value of the property are copied to the project file. Handbook 1378; Appendix 31.
2. Programs or projects undertaken by a Grantee or person that does not have the authority to acquire property by eminent domain, provided that such Grantee or person shall:
  - Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and
  - Inform the owner in writing of what it believes to be the market value of the property. Appraisals are not required but Grantees must have some reasonable basis for their determination of market value.
  - If tenants are displaced, the tenants are provided relocation assistance.

3. The acquisition of real property from a federal agency, state, or state agency, if the Grantee desiring to make the purchase does not have authority to acquire the property through condemnation.

### Recommended Acquisition Procedures Under the URA

The Grantee, and attorney as appropriate, should determine property acquisition needs and identify the particular properties to be obtained in the earliest project planning stages. Acquisition of property, regardless of the type of interest acquired or funding source(s), apart from acquisition procedures and proper documentation could result in costly errors and delays.

The following steps are recommended to ensure compliance with the URA:

1. Review applicable laws and regulations
2. Determine properties to be acquired
3. Determine ownership of properties to be acquired
4. Establish a file for each property to be acquired
5. Notify owner of interest in acquiring the real property
6. Obtain appraisal(s) for each property or establish fair market value
7. Establish and offer just compensation
8. Complete acquisitions or pursue other options
9. Procedures for donations

#### 1. Review Applicable Laws and Regulations

- Uniform Relocation and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 USC 4601 et seq.).
- Title 49 of the Code of Federal Regulations Part 24, as amended, is the government-wide regulation that implements the URA.
- Section 104(d) of the Housing and Community Development Act provides minimum requirements for federally funded programs or projects when units of low-income housing are demolished or converted to other uses.

For additional information and HUD Handbook 1378, which provides policy and guidance on implementing the URA, see [www.hud.gov/relocation](http://www.hud.gov/relocation).

#### 2. Determine Properties to be Acquired

Land acquisition requirements may not be readily apparent; however, many public projects, such as water and sewer improvements or sidewalk construction may need to acquire small parcels, easements or rights-of-way.

Regardless of the timeline, property acquisition in a CDBG project must follow acquisition procedures. Proper planning is needed to avoid unnecessary delays.

### 3. Determine Ownership

Conduct a title search as the first step in determining ownership of properties to be acquired. In the case of public improvement activities, verify that the property to be improved is in the public domain as some rights-of-way are privately owned.

#### *Common Deficiencies*

- Undertaking public improvement projects without properly acquiring the necessary easements or rights-of-way.

### 4. Establish File for Each Acquired Property

The Grantee must establish and maintain a file for each property to be acquired and include copies of all acquisition documents. Files must be kept for at least three years after program closeout. The Acquisition File Checklist (**Attachment 10-2**) identifies the required documents.

#### *Common Deficiencies*

- Separate files not established
- Documentation incomplete
- Copies of documents not included in the project file

#### **Supporting Materials**

Acquisition File Checklist (**Attachment 10-2**)

### 5. Notify Owner of Interest

As soon as possible, the Grantee must notify the owner in writing of its interest in acquiring the real property and the basic protections provided to the owner by law. This general information notice (and any applicable HUD relocation notice) should be personally served or sent by certified or registered first-class mail with return receipt requested. If hand delivered, receipt should be signed and dated by the property owner. The notice should be on the Grantee's letterhead, and should contain a confirmation of receipt signature line. A copy of this notice must also be sent to any tenants in residence.

The notice should contain information about the Grantee's land acquisition policies, or the HUD brochure, "When a Public Agency Acquires Your Property." If the recipient does not read or understand English, the Grantee must provide translation and assistance. **Each notice must indicate the name and telephone number of a person who may be contacted for further information.**

#### *Common Deficiencies*

- Delay in notifying owners (and tenants) of the Grantee's interest.
- Absence of HUD informational brochure or written statement of land acquisition procedures.
- Copies of acquisition documents not included in the project file.



### Supporting Materials

- Sample General Information Notices and Relocation Notices, see HUD Handbook 1378 at [www.hud.gov/relocation](http://www.hud.gov/relocation)
- General Information Brochure: [When a Public Agency Acquires Your Property](#)

## 6. Obtain Appraisals or Establish Fair Market Value

Before the initiation of negotiations, the real property to be acquired shall be appraised, except as provided in 49 CFR 24.102(c)(2) and noted below. The property owner or the owner's designee must be given the opportunity to accompany the appraiser during the appraiser's inspection of the property.

The appraiser should have no interest in the property or be related to or in business with anyone having an interest in the property to be acquired. The Grantee should adhere to adopted procurement procedures, request statements of qualifications from a number of appraisers, review those qualifications, and employ only professional and reputable appraisers.

The Grantee will then execute a professional services contract with an independent appraiser. The contract must specify the content requirements for the appraisal. Before the appraisal is undertaken, the Grantee or the appraiser selected must formally invite the property owner to accompany the appraiser during inspection of the property. This notice must be in writing and a copy placed in the property acquisition file.

### Review Appraisal

A minimum of one appraisal is required; however, if the project is potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or where property values are high, it is recommended that two independent appraisals be conducted.

**EXCEPTIONS:** An appraisal is not required if:

- The owner is donating the property and releases the Grantee from its obligation to appraise the property or the Grantee determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less (up to \$25,000 maximum if no Conflict of Interest is determined), based on a review of available data.
- In the event the acquisition is **voluntary** (no threat of eminent domain), there is no requirement for an appraisal but **fair market value** does need to be established and the owner informed in writing by a reputable source.
- **When an appraisal is determined to be unnecessary, the Grantee must still establish fair market value and an amount believed to be just compensation to offer the property owner(s), and the offer must be made in writing.** This valuation of fair market value may be determined by a person with knowledge of the real estate market in the project area, such as a real estate broker, banker or other recognized authority.

- The valuation should be signed and dated and include a brief description of the property, the estimated value of the property, and a description of the reviewer's qualifications for making the determination. This document must be made part of the acquisition records. The cost of this review should be nominal and may also be provided free of charge.

### **Common Deficiencies**

- Failure to use a competitive process to select the appraiser
- Failure to execute a professional service contract in compliance with CDBG regulations
- Failure to secure an independent appraisal
- Failure to invite property owner to accompany appraiser during property inspection
- Failure to review appraisals
- Failure to establish and maintain supporting documents
- Failure to notify owner in writing of fair market value and no threat of eminent domain in the case of voluntary acquisition

### **Supporting Materials**

- Sample Appraisal Agreement, HUD Handbook 1378 - [www.hud.gov/relocation](http://www.hud.gov/relocation)
- Sample Invitation to Accompany an Appraiser (**Attachment 10-3**)
- Sample Review of Appraisal (**Attachment 10-4**)

## **7. Establish and Offer Just Compensation**

Prior to initiating negotiations, the Grantee must establish an amount of just compensation for the real property. This amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The Grantee must establish the amount believed to be just compensation and make a written offer to the owner to acquire the property for this amount.

Along with the initial written purchase offer, the owner shall be given a written Statement of the Basis for the Offer of Just Compensation. In addition to the amount of just compensation, the offer must specify the date on which negotiation for the sale of the property will begin, which may or may not be the same date as the written offer. As with all notices, its receipt must be documented. If the property is occupied, the Grantee must issue a general information notice to the tenants describing the Grantee's general relocation policies.

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

- A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
- A description and location identification of the real property and the interest in the real property to be acquired, such as fee simple, easement, etc.
- An identification of the buildings, structures, and other improvements (including removable building equipment and fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, such as a tenant-owned improvement, and indicate that such interest is not covered by this offer.

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Grantee shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. See 49 CFR 24.2(a)(27).

### **Basic Negotiation Procedures**

The Grantee shall make all reasonable efforts to contact the owner or designee and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses (49 CFR 24.106).

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

Grantees must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, but 30 days is a reasonable basis. Regardless of project timeline, property owners must be provided with this opportunity. The Grantee shall consider the owner's presentation. Documentation of negotiation proceedings should be placed in the project acquisition file.

### **Common Deficiencies**

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

### **Supporting Materials**

- Sample Statement of the Basis for the Offer of Just Compensation (**Attachment 10-5**)
- Sample Written Offer to Purchase (**Attachment 10-6**)

## **8. Complete Acquisition or Pursue Other Options**

Depending upon whether the Grantee and the property owner can reach an agreement on an acquisition price, the Grantee will prepare a sales contract and complete the acquisition process, initiate condemnation proceedings, or decide not to acquire the property.

### **Complete the Acquisition Process**

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

The Grantee must pay the agreed purchase price to the owner before the owner surrenders possession of the real property. The Grantee must also reimburse the owner for recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property and similar expenses incidental to conveying the real property to the Grantee. However, the Grantee is not required to pay costs solely required to perfect the owner's title to

the real property, penalty cost or other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering real property, and the pro rata portion of any prepaid real property taxes which are allocable to the period after the Grantee obtains title to the property or effective possession of it whichever is earlier.

The Grantee must provide the owner with a Statement of Settlement Costs that identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner at the conclusion of the settlement. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or other person handling the transaction. A receipt for purchase price must be secured by the Grantee. Whenever feasible these costs should be paid directly by the Grantee rather than as a reimbursement to the owner.

### Condemnation Proceedings

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

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

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

### Decide Not To Acquire

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

### Common Deficiencies

- Failure to provide a written statement of settlement costs
- Failure to provide a written Notice of Intent Not to Acquire
- Failure to provide copies of documents in the project file
- Supporting Materials
- Sample Notice of Intent Not to Acquire (**Attachment 10-7**)

## 9. Procedures for Donation

The procedures for donations differ slightly from the normal acquisition process. If a property is to be donated, the Grantee should send a General Information Notice and secure an appraisal or waiver thereof. The Grantee must then prepare a Statement of the Basis for the Offer of Just Compensation (**Attachment 10-5**).

If donations are being made by the elderly, poor, functionally illiterate or non-English speaking persons, the Grantee should take additional steps to document the efforts made to ensure the owner-occupants understood their rights in order to demonstrate the owner was not persuaded or coerced into the decision.

An owner whose real property is being acquired may, after being informed by the Grantee of the right to receive just compensation for such property, may donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Grantee as such owner shall determine.

The Grantee is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Grantee from such obligation, except as provided in 49 CFR 24.102(c)(2). The purpose of the appraisal waiver provision is to provide a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions. However, the Grantee must have a reasonable basis for the “waiver valuation” and the Grantee must still establish an amount believed to be just compensation to offer the property owner.

#### ***Common Deficiencies***

- Failure to secure Appraisal Waiver for donation
- Failure to prepare Waiver Valuation
- Failure to identify tenant-occupied property and properly notify tenants of their benefits
- Failure to provide copies of documents in the project file

#### ***Supporting Materials***

- HUD Handbook 1378
- [www.tinyurl.com/hudhb1378](http://www.tinyurl.com/hudhb1378)
- [www.fhwa.dot.gov/real\\_estate/uniform\\_act/](http://www.fhwa.dot.gov/real_estate/uniform_act/)