



Purchase of Right of Way by Counties and Cities

Texas Department of Transportation
Right of Way Division

INTRODUCTION

By this time, you are probably aware that at least a portion of your property is required to improve the highway or public road system in your community. The purpose of this brochure is, briefly, to explain your rights as a citizen, the procedure followed in purchasing your property and, hopefully, answer some of the questions that may be in your mind. This brochure is offered for general information purposes only; it is not a document of law, rule or regulation. For some highways, the State of Texas, acting directly through the Texas Department of Transportation, is responsible for the purchase of right of way. On others, cities and counties purchase right of way and conduct all negotiations with property owners. This brochure is concerned only with highways or public roads for which counties and cities are responsible for the purchase of rights of way. All of your questions may not be answered in this brochure, but perhaps the answers to a few will enable you to have a better understanding of the overall process. Later you will have an opportunity to discuss your individual case with the agency responsible for acquiring your property. On the last page of this brochure you will find the name, telephone number and address of the agency responsible for purchasing your property.

**PERHAPS THE FIRST QUESTION IS:
WHY DOES THE GOVERNMENT HAVE THE RIGHT
TO ACQUIRE PRIVATE PROPERTY?**

Our successful existence in a democracy requires the development of public services to improve our way of life. We would be greatly handicapped without lands upon which to carry out the activities of government; there would be no lands for public schools, highways, public hospitals or other facilities necessary for our society. In short, a government cannot provide services to its citizens without the right to acquire land.

OK, BUT WHY IS MY PROPERTY NEEDED?

You may have amended a meeting or public hearing where the need and methods of project development were discussed. One purpose of these meetings is to inform citizens of the systematic approach used to assess engineering conditions, beneficial and adverse social, economic, environmental and other effects. Projects are not arbitrarily selected. They are the result of cooperative efforts with the proper local agencies, the study of alternatives and a balanced consideration of the need for safe and efficient public transportation. You may be sure that this process was followed on the particular project which involves your property.

Under our form of government, the rights of the individual are of paramount importance. Our laws guarantee these individual rights for all of us. However, our laws also recognize another principle, namely, the public good, which sometimes makes it necessary to resolve a

difficult matter such as public acquisition of private property in favor of the majority for the good of all. Every effort is made to reach a fair and equitable agreement in the acquisition of all right of way needed for public transportation purposes.

It is sincerely hoped that when a highway project route and design have finally been determined all citizens will agree that fair and equitable consideration has been given to the property owners involved and that the selected route is in the best interest of the general public.

The remainder of this brochure is designed to answer questions common to most property owners. If you have other questions, the agency responsible for purchasing your property is always ready to discuss your situation and try to solve any problems.

WHEN WILL I KNOW SOMETHING DEFINITE?

You will be contacted by an authorized representative of the local acquiring agency. This contact for negotiation purposes, however, must be delayed until all preliminary requirements for project development have been completed. In some instances, the time between the date you may have heard of a proposed project until you are contacted may seem unreasonable; however, every effort is made to expedite the various planning, engineering, environmental, public hearing and approval steps so that purchase of the right of way can begin at the earliest possible date.

HOW MUCH WILL I GET?

You will, of course, want to know how much you will receive for your property. As a property owner you have the constitutionally guaranteed right to receive just compensation for the property which will be purchased from you. Even though you have the right to receive such compensation, you may make a gift or donation of all or part of the property being acquired if you wish to do so. Where payment is to be made, the real property will be appraised to determine just compensation. If you elect to donate all of your property prior to the time an appraisal is made, no appraisal will be made unless you desire one to be made. A thorough investigation of your property will be made to determine its value in accordance with State law. You or your designated representative will be given an opportunity to accompany the individual evaluating your property during the inspection of your property. Your cooperation will greatly aid in insuring that nothing is overlooked which ought to be included in the appraisal of your property. At the earliest possible time, you will be provided a written offer in the total amount determined to be just compensation for your property. You will also be advised in the written offer concerning the option of retaining any building or other improvements located on the land needed for right of way. ³ Your decision regarding the offer for your property needs to be made at the earliest possible time so that the completion of the acquisition process is not delayed. You can appreciate the fact that there is a definite time frame required for every aspect of the highway or transportation project that involves your property.

WHAT DOES DONATION OF RIGHT OF WAY MEAN?

The donation or gift of all or a portion of your property that is needed for right of way is an option that you have. Obviously, the public funds that are saved if property is donated can be utilized for construction and/or other purposes. Donations can also help to expedite the letting of construction contracts and lead to an earlier completion of the project. In situations where remaining property will be greatly increased in value by the construction of the highway or other transportation facility, the donation of right of way may be to your advantage as a property owner by making your property more suitable for timely development. There are undoubtedly other good and valid reasons for consideration to be given to the possibility of donation or the acceptance of reduced consideration.

WHAT ABOUT DAMAGES?

In many cases, highway construction will enhance rather than damage the remaining property. When only a portion of your property is taken for public use, every effort is made to compensate you adequately and fairly -- not only for the part taken but also for any damage if the loss of this portion reduces the value of the part you have remaining. The amount established for damages, if any, will be separately stated and will also be included in the total offer made to you by the acquiring agency.

CAN MY HOUSE BE MOVED?

Arrangements usually can be made for you to keep your house or buildings and move to another location. Since each case is different, it is best that you discuss this with an authorized representative of the acquiring agency.

WILL I HAVE TIME TO LOOK FOR ANOTHER HOME?

If your home is purchased, you will be paid the full consideration and given ample time to buy another using the proceeds from your sale before moving from your present home. This applies not only to homes but also to all properties where a property owner relocates to a new property or moves retained buildings, fences or other improvements to remaining property. To the greatest extent practicable, you will be given at least 90 days written notice of the day by which you must move.

WILL I HAVE TIME TO FENCE OR DO OTHER WORK ON MY REMAINING PROPERTY?

Every effort will be made to time the offer of purchase sufficiently in advance of construction to allow time for necessary property adjustment work. Examples of property adjustments are the building of fences along the right of way lines, the construction of new watering facilities for stock, the removal of any buildings or other improvements from the right of way area being purchased which an owner wishes to keep and reestablish elsewhere for continued use,

and the adjustment of water lines and similar facilities which are necessary to continued best use of remaining property.

WHAT ABOUT PLANTING OR HARVESTING MY CROPS?

If crops have been planted, the offer to purchase will usually be based on your retaining a right to harvest crops in the ground, with the understanding that after closing the transaction no new crops will be planted. An exception to this procedure is when construction is so imminent as not to allow time for the harvesting of existing crops. In that case, our offer to you will include payment for the existing crops based on the value of such crops at the time of the offer.

WHAT ABOUT MY MORTGAGE?

Like the handling of any other real estate transaction, payments must be made to satisfy outstanding mortgages or liens. If only a portion of your property is being acquired, agreement must be reached with the mortgage or lien agency concerning repayment requirements. If you were selling your property in a private real estate transaction, and part or all of an outstanding mortgage had to be paid, many lending agencies would require a prepayment penalty. Since this sale is being made to the public, most lending agencies, including the Federal Housing Administration, waive this requirement. However, some do not, and you should investigate this matter to determine whether or not such a penalty will have to be paid.

THE G.I. LOAN

The Veterans Administration recognizes that the sale of your property is not of your choosing. Under these circumstances, your GI. loan privileges may be restored and become available for coverage on another property. This action must be initiated by the veteran.

SMALL BUSINESS LOAN

The Small Business Administration administers funds for loans for small businesses. You may wish to contact one of the Small Business Administration offices which are located in Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Harlingen, Houston, Lubbock, Marshall, and San Antonio to determine how to qualify for a loan.

INCOME TAXES

If your property is worth more today than when you bought it, you may be wondering about paying income tax on the difference when you sell to the public. The sale of property for public purposes comes under a class that the Internal Revenue Service designates as "involuntary conversion." It may not be necessary to pay income tax or capital gain tax depending on how you reinvest your profits from the sale to the State. Any payment received for damages also may not be taxable. You, therefore, are urged to contact the Internal Revenue Service Office that serves your area or seek legal advice on these matters.

EMINENT DOMAIN PROCEEDINGS

Although a sincere and comprehensive effort is made to determine the just compensation for the right of way required, including improvements and damages to any remainder, the owner may still not be satisfied and refuse to sell. In other instances, the title to the land needed for right of way may be clouded to the extent that legal proceedings are necessary to effect a transfer of clear title. In these cases, eminent domain proceedings will be initiated by the acquiring agency. Thereafter, the Judge will appoint three disinterested landowners to serve as Special Commissioners to determine the value. A date will be set with the owner notified of the time and place of the hearing. At that time, the Special Commissioners will hear evidence and arrive at an award, which will be filed with the Judge. A deposit in the amount of the award may be made with the Court at which time the acquiring agency will be entitled to take possession of the property involved. After the deposit is made, withdrawal of the award must be authorized by the Court. If either the owner or the acquiring agency is dissatisfied with the amount of the award, objections to the award may be filed within the time prescribed by law and the case subsequently tried in the same manner as other civil cases. The basic issue decided in eminent domain cases is just compensation for the property being acquired.

RELOCATION ASSISTANCE AND BENEFITS

In addition to payment for your property, you may be entitled to additional benefits. If you must move, you may be entitled to both assistance in locating another home or business and financial assistance in the form of moving and related expenses. Such benefits, if any, are handled entirely separate from the acquisition of your property. It is beyond the scope of this brochure to detail specific benefits; however, if you are eligible, you will be provided with a separate relocation assistance brochure. Subsequently your rights and benefits will be fully explained in detail. If the needed right of way is occupied by a home, business or any personal property, **do not move until you have been contacted by a relocation assistance counselor and have established eligibility for possible relocation benefits. Moving prematurely will jeopardize these benefits.**

INCIDENTAL EXPENSES

After the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation as determined through eminent domain proceedings to acquire real property, you will be reimbursed for any fair and reasonable expenses necessarily incurred in transferring title to the property for use by the Texas Department of Transportation. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the Department and (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property. Voluntary

unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. Eligible incidental expenses will be reimbursed by the Texas Department of Transportation upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. You may file a written request for review if you believe that the Department failed to properly determine the eligibility for or the amount of incidental expenses to be reimbursed. There is no standard form on which to request review of a claim; however, it must be filed with the Department's District Office for your area within six months after you are notified of the Department's determination on any claim for reimbursement.

CONCLUSION

It is hoped that the purchase of your property can be accomplished to your satisfaction with a minimum of inconvenience to you. Should you require additional information, the agency responsible for purchasing your property is:

Name of Agency:

Address:

Telephone Number: