



## Ohio Administrative Code Rule 5501:2-5-06 Real property acquisition.

Effective: December 16, 2019

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### (A) Applicability of acquisition requirements:

(1) Programs and projects receiving federal financial assistance. The requirements of this rule apply to any acquisition of real property for programs and projects where there is federal or state financial assistance in any part of project costs or any acquisition of real property under Chapter 163. of the Revised Code except for the acquisitions described in paragraphs (A)(1)(a) to (A)(1)(d) of this rule. The relocation assistance provisions in this rule are applicable to any tenants that must move as a result of an acquisition described in paragraphs (A)(1)(a) to (A)(1)(d) of this rule. Such tenants are considered displaced persons. (see paragraph (B)(9) of rule 5501:2-5-01 of the Administrative Code)

(a) The requirements of this rule do not apply to acquisitions that meet all of the following conditions in paragraphs (A)(1)(a)(i) to (A)(1)(a)(iv) of this rule:

(i) No specific site or property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area. Where an agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly.

(ii) 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.

(iii) The agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.

(iv) The agency will inform the owner in writing of what it believes to be the market value of the property.

(b) Acquisitions for programs or projects undertaken by an agency or person that receives federal financial assistance but does not have authority to acquire property by eminent domain, provided that



such agency or person shall:

(i) 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

(ii) Inform the owner in writing of what it believes to be the market value of the property.

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

(d) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(2) Less-than-full-fee interest in real property.

(a) The provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is fifty years or more; and to the acquisition of permanent and/or temporary easements necessary for the project. However, the agency may apply these regulations to any less-than-full-fee acquisition that, in its judgment, should be covered.

(b) 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.

(3) Federally-assisted and state-assisted projects.

For projects receiving federal or state financial assistance, the provisions of paragraphs (B), (C), (D) and (E) of this rule apply.

(B) Basic acquisition policies



(1) Expeditious acquisition: The agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(2) Notice to owner: As soon as feasible, the agency shall notify the owner in writing of the agency's interest in acquiring the real property and the basic protections provided to the owner by law and this rule. (see paragraph (C) of rule 5501:2-5-02 of the Administrative Code)

(3) Appraisal, waiver thereof, and invitation to owner:

(a) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in paragraph (B)(3)(b) of this rule, and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(b) An appraisal is not required if:

(i) The owner is donating the property and releases the agency from its obligation to appraise the property; or

(ii) The agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at ten thousand dollars or less, based on a review of available data.

(a) When an appraisal is determined to be unnecessary, the agency shall prepare a waiver valuation. Persons preparing or reviewing a waiver valuation are precluded from complying with standard rules 1, 2, 3 and 4 of the "Uniform Standards of Professional Appraisal Practice" (USPAP), as in effect in the current -edition, as promulgated by the "Appraisal Standards Board" of the Appraisal Foundation, which can be found at <http://www.uspap.org>

(b) The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

(4) Establishment and offer of just compensation: Before the initiation of negotiations, the agency



shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An agency official must establish the amount believed to be just compensation (see paragraph (D) of this rule). Promptly thereafter, the agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(5) Summary statement: Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(a) 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.

(b) A description and location identification of the real property and the interest in the real property to be acquired.

(c) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(6) Basic negotiation procedures: The agency shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with paragraph (F) of this rule. 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 modification in the proposed terms and conditions of the purchase. The agency shall consider the owner's presentation.

(7) Updating offer of just compensation: 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 agency 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 agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(8) Coercive action: The agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(9) Administrative settlement: The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. A written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. Relocation payments are not an acquisition cost and cannot be used to support an administrative settlement in whole or in part.

(10) Payment before taking possession: Before requiring the owner to surrender possession of the real property, the agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(11) Uneconomic remnant: If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project (see paragraph (B)(28) of rule 5501:2-5-01 of the Administrative Code).

(12) Inverse condemnation: If the agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.



(13) Fair rental: If the agency permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by the agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

(14) Conflict of interest

(a) The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the agency. Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

(b) 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.

(c) An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is ten thousand dollars, or less.

(C) Criteria for appraisals

(1) Appraisal requirements: This rule sets forth the requirements for real property acquisition appraisals. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the uniform standards of professional appraisal practice (USPAP). The agency may have appraisal requirements that supplement these requirements, including, to the extent appropriate, the uniform appraisal standards for federal land acquisition (UASFLA).

(a) The agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem.



(b) The agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs. The agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect uspap and to the extent appropriate, the uasfla. All appraisals shall reflect established and commonly accepted appraisal practice, and as a minimum, complies with the definition of appraisal in paragraph (B)(3) of rule 5501:2-5-01 of the Administrative Code and the five following requirements:

(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a five year sales history of the property.

(ii) All relevant and reliable approaches to value consistent with established appraisal practices including published appraisal practices of the lead agency. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.

(iii) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(2) Influence of the project on just compensation: The appraiser shall disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be



acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(3) Owner retention of improvements.: If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined in paragraph (B)(25) of rule 5501:2-5-01 of the Administrative Code) of the retained improvement.

(4) Qualifications of appraisers and review appraisers:

(a) The agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the agency to be qualified.

(b) If the agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be state licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 - 3355). Contract appraisers and review appraisers must also be pre-approved by the Ohio department of transportation before the acquiring agency may enter into a contract for services.

(D) Review of appraisals: the agency shall have an appraisal review process and, at a minimum:

(1) A qualified review appraiser (see paragraphs (C)(4)(a) and (C)(4)(b) of this rule shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in paragraph (B)(3) of rule 5501:2-5-01 of the Administrative Code, appraisal requirements found in paragraph (C) of this rule and other applicable requirements, including, to the extent appropriate, the uasfla, and support the appraiser's opinion of value. The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as recommended (as the basis for the establishment of the amount





believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted.

(2) If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with paragraph (C) of this rule to support a recommended (or approved) value.

(3) The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition.

(E) Acquisition of tenant-owned improvements

(1) Acquisition of improvements: when acquiring any interest in real property, the agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(2) Improvements considered to be real property: any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this paragraph.

(3) Appraisal and establishment of just compensation for tenant-owned improvements: just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined in paragraph (B)(25) of rule 5501:2-5-01 of the Administrative Code.)



(4) Special conditions for tenant owned improvements: no payment shall be made to a tenant-owner for any real property improvements unless:

(a) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the agency all of the tenant-owner's right, title, and interest in the improvement; and

(b) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(c) The payment does not result in the duplication of any compensation otherwise authorized by law.

(5) Alternative compensation: nothing in this paragraph shall be construed to deprive the tenant-owner of any right to reject payment under this rule and to obtain payment for such property interests in accordance with other applicable law.

(F) Expenses incidental to transfer of title to the 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 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; and

(b) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(c) 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.

(2) Whenever feasible, the agency shall pay these costs directly so that the owner will not have to



pay such costs and then seek reimbursement from the agency.

(G) 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:

(1) The final judgment of the court is that the agency cannot acquire the real property by condemnation; or

(2) The condemnation proceeding is abandoned by the agency other than under an agreed-upon settlement; or

(3) 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.

(H) Donations: an owner whose real property is being acquired may, after being fully informed by the agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the agency as such owner shall determine. The agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the agency from such obligation, except as provided in paragraph (B)(3)(b) of this rule.