

6.0 RIGHT OF WAY



6.0 Right of Way

6.1 Introduction

This chapter is focused on the beginning of the right of way process. Right of way activities begin before any actual construction or fieldwork is started. Like any other project, success with right of way usually depends on planning. This chapter will discuss the following topics:

- roles
- planning and lead time
- federal funding guidelines
- records and parcel files
- contracting work and agreements
- qualifications of right of way personnel, and
- minimum value purchases.

6.1.1 Roles and Responsibilities

Local, State and Federal Agencies all have a roles in an LPA project.

6.1.1.1 Federal Highway Administration

Acquiring right of way for a public project often requires several partners. A project may require a cooperative effort involving the LPA, KDOT and Federal Highway Administration (FHWA). KDOT and FHWA currently have the agreement that KDOT oversees the acquisition of right of way on projects receiving federal funds for compliance with federal acquisition and relocation guidelines.

FHWA has reviewed and approved KDOT's right of way processes for compliance with federal laws and regulations. Therefore, it is to the benefit of the LPA to model their right of way processes on KDOT policies. The LPA must be in compliance with both state and federal laws and regulations.

6.1.1.2 KDOT

In order for a project to receive state and federal funding, there are a multitude of laws and regulations to which the LPA must adhere. One of KDOT's primary functions is to advise the LPA concerning right of way acquisition so that the federal funding is not jeopardized. KDOT right of way manuals are available upon request to assist the LPA in the acquisition of right of way. Additionally, the KDOT Local Liaison is a member of BLP staff specializing in right of way acquisition and is available as a resource.

An LPA may develop a written policy and procedure manuals for right of way acquisition. Any written policy and procedure manuals for right of way acquisition developed by the LPA will be subject to KDOT and FHWA review *prior* to use on a federal-aid project.

6.1.1.3 FHWA and KDOT

KDOT has a responsibility to monitor right of way acquisitions done by a LPA when federal or state funds are participating in a project on the behalf of KDOT and FHWA. One of KDOT's objectives when monitoring a project is to assist the LPA to secure the benefit of the federal or state funding they have requested.

The areas to be monitored include management, design, appraisal, acquisition, relocation assistance, title and closing, condemnation and property management. If, during the course of monitoring the right of way acquisition, KDOT becomes aware of potential problems, the potential problems will be pointed out to the LPA and alternatives to remedy the problems will be discussed. The LPA can utilize KDOT's suggestions or develop their own resolutions. Ultimately the LPA is responsible for maintaining eligibility for any state and federal funding participating in the project.

Yearly FHWA will identify seven local projects in the state of Kansas that are federally funded in any phase and for which right of way was acquired for a review of the LPA's right of way files. One project is selected out of each of the six KDOT Districts and an additional project is selected out of either the Wichita (WAMPO) or Kansas City (MARC) MPO area. The LPA will be notified in writing if their project is selected for review and a time for review will be scheduled. The LPA will make available their staff that was involved in the acquisition for the project. Failure to provide proper documentation to support the fact state and federal guidelines were followed in the acquisition of right of way could jeopardize funding for that project.

6.1.1.4 LPA's Responsibility

The LPA is responsible for acquiring the necessary right of way for the construction and maintenance of the proposed facility in accordance with all applicable federal and state laws and regulations. The LPA must consider not only right of way acquired in fee simple, but also permanent easements (slopes, drainage, etc.), temporary easements (construction, borrow, etc.), licenses and any other agreements required for the entering on or use of land or property rights for construction and maintenance activities commonly referred to as a "Right of Entry".

The LPA may or may not choose to involve federal funds in the acquisition of right of way. If the LPA is utilizing federal funds in *any* portion of the project (not just right of way) all requirements of Code of Federal Regulations (CFR) Title 49 Part 24, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs", also known as "***The Uniform Act***" apply to the acquisition of right of way. KDOT's Local Liaison is available to assist the LPA with compliance with The Uniform Act, however compliance with The Uniform Act is the responsibility of the LPA.

After the required right of way for a project has been acquired and cleared for construction, the LPA ***must*** certify compliance with all applicable laws and regulations by submitting a "Certification of Right of Way", KDOT Form Number 1306. Failure to comply with this submission will jeopardize the LPA's funding requests and may delay the letting of a project. If no right of way was acquired for the project, the LPA must still submit a completed Form Number 1306. Any required field can be marked with a "0".

6.1.2 Planning / Lead Time

One of the most significant challenges in acquiring right of way is the LPA is dependent on factors over which they may have little or no control. Delays may be encountered from property owners, title companies and the court system, just to mention a few. Because of the potential for time delays KDOT recommends scheduling plenty of lead time for the acquisition of right of way.

The following is a sample schedule for 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 complex projects will require more time. Not provided are estimates for Relocation Assistance, as these types of parcels can only be estimated on a case by case basis. Relocation Assistance will require significant time, and KDOTs Local Liaison in the Bureau of Local Projects is available to help the LPA estimate the time needed.

Layout & Legal - Preparation of the right of way plans, plats, legal descriptions and title reports.

4 Months

Appraisal and Appraisal Review - Time to prepare and review appraisals.

4 Months

Negotiations – Notice of Proposed Public Improvement and Authorization to Acquire (per KSA 26-518) Negotiator making contact, securing signatures on contract, and closing transaction.

7 Months

Condemnation - Preparation of Condemnation notice, requesting selection of commissioners, making service, and making payments. Filing necessary notices required publications and property owner mailings.

6 Months

TOTAL - 21 Months

6.1.3 Federal Funding Eligibility

23 CFR 710.203, 710.307 and 710.309 requires that costs for appraisal, negotiation and condemnation *will not* be eligible for federal funding *without prior authorization from the FHWA* to proceed with the activity. This authorization request is made through BLP. Costs incurred prior to the appraisal phase such as right of way estimates, title work, preliminary survey and plat and description preparation may be eligible for federal participation and reimbursement as a preliminary engineering activity or as an incidental right of way expense only if the costs are incurred after authorization.

Costs eligible for reimbursement include: real property acquisition, incidental costs of the acquisition, pro rata taxes and/or special assessments, permanent and temporary easements, damages to remainder of real property, court awards and cost of tenant-owned improvements, uneconomic remnants, and construction in exchange for donation. All documents relating to acquisition of the right of way must be available for inspection. Plans, contracts, deeds, appraisals, options, vouchers, correspondence and all other documents and papers must carry the federal-aid project number for identification.

6.1.4 Records/Parcel Files

The LPA must maintain a separate parcel file for each acquisition of real property and all the people displaced (see discussion of Parcel--What Is It? in Miscellaneous Topics). LPA records must be sufficient to demonstrate compliance with all applicable laws and requirements and be available for inspection by KDOT, FHWA and possibly other divisions of state and federal government. The LPA must retain records for at least three years after the final payment of any phase of the project.

Provided below is a list of the minimum records needed to be retain.

- All Correspondence
- Title Documents
- Design Summary Information and Plat
- Appraisals and Review Appraisals
- Agency Approval to Make Offers
- Written Offer Letter
- Negotiator's Notes
- Administrative Settlement (if used)
- Copy Signed Contracts
- Conveyance and Closing Documents
- Proof of Payment to Landowners/Tenants
- Relocation Forms
- Relocation Agent's Notes
- Condemnation Documents (if used)
- Right of Way Record Checklist (see Form Q in Appendix B - Forms).
- Proof of Payment to Landowner(s) and Tenant(s)

6.1.5 Contracting Work/Intergovernmental Agreements

If the LPA does not have sufficient internal staff necessary to complete the necessary right of way functions they may contract with a private contractor or with other governmental agencies. When the LPA contracts with outside resources, they should allow additional coordination time in the overall schedule for right of way acquisition.

6.1.6 Contracting Work

If an LPA hires an outside resource to perform a right of way function, KDOT's Local Liaison maintains a list of consulting firms as a reference. These services should be contracted for in compliance with the applicable requirements for contracting with private contractors, fee appraisers or other specialists. KDOT provides the list of consultants for informational purposes only, and does not warrant the services supplied by consultants..

6.1.7 Intergovernmental Agreements

KDOT may be available to assist the LPA with the right of way acquisition for their project as workload permits. KDOT's assistance may be provided in appraisal, appraisal review, acquisition, relocation, condemnation, property management, and other miscellaneous tasks such as preparing plans, estimates, and title documents. U. In addition, other neighboring local agencies may also be an option for additional right of way resources, for example, neighboring city or county staff.

To hire KDOT staff, the LPA must submit a written request to KDOT's Local Liaison in BLP specifying the function with which they are requesting help. They must also ask for information pertinent to the scope of the requested function as well as the projected completion schedule.

If KDOT staff is available to complete the assignment within the requested time frame, KDOT will prepare a cost estimate for the LPA. KDOT will then prepare an Intergovernmental Agreement outlining the functions KDOT will perform for the LPA along with the estimated costs. The LPA will be responsible for all actual costs incurred. Sample copies of Intergovernmental Agreements may be obtained from KDOT's Local Liaison.

6.1.8 Qualification of Right of Way Personnel

The LPA should have qualified personnel supplying the necessary right of way services. Provided are minimum qualifications for persons performing right of way program functions. There are right of way functions for which no qualifications have been provided, including property management, land

plat and description preparation, and condemnation and project management. If you find you require any of these services, or others, consult with the KDOT Local Liaison for assistance in determining the necessary qualifications. Additionally, KDOT's Local Liaison maintains a list of persons who provide services for appraising, review appraising, negotiating and relocation assistance. KDOT does not make recommendations from this list.

Appraisers must

- Have successfully completed technical appraisal training and have experience in appraising the type of property to be appraised. When in doubt, a sample appraisal can be requested.
- Have previous experience preparing appraisals for eminent domain right of way acquisition.
- Be a certified or licensed appraiser.

Review Appraisers must

- Possess the ability to logically analyze the appraiser's approach to value and recognize deficiencies in the appraisal report.
- Be certified or licensed appraiser.

NOTE: Should you decide to utilize the services of a fee review appraiser your agency retains the responsibility to approve the amount believed to be just compensation.

Negotiators must

- Have documented experience in performing acquisitions which complies with the requirements of the Uniform Act or be a full-time employee of the LPA or the DOT.
- Be familiar with the requirements of the Uniform Act.
- Demonstrate the ability to understand appraisals and appraisal reviews.
- Know how to research courthouse records and understand legal title.
- Demonstrate the ability to interpret right-of-way plans.
- Possess effective communication skills.

Relocation Assistance Agents must

- Have documented experience in performing relocation assistance which complies with the requirements of the Uniform Act.
- Sufficient right of way knowledge in other disciplines to work within a team.

6.1.9 Minimum Value Purchase

When the cost of securing the right of way for a parcel approaches or exceeds the value of the acquisition itself, the procedure for acquiring right of way may have become disproportionate and cumbersome. Minimum value purchase procedures have been developed in an effort to reduce cost and time necessary to acquire less complex parcel acquisitions.

Minimal value purchases are uncomplicated acquisitions estimated not to exceed \$10,000 in value, excluding agriculture fence and crops. Minimal value purchases allow for waiving the requirement that an appraisal be used to determine just compensation. An administrative estimate, called an “Estimate of Just Compensation”, is used to establish the amount to be offered as just compensation. The format for an estimate of just compensation is described in Chapter Two, Valuation Process section of this manual. If a negotiated agreement is not reached with the property owner and condemnation is necessary, it would benefit the LPA to have an appraisal made of the property. FHWA has approved the use of minimal value purchases on federally funded projects. By following the compensation estimate process as defined in this manual, the LPA should be in compliance with state and federal guidelines.

6.1.10 PROCEDURAL GUIDELINES

The goal of the Uniform Act is to encourage and expedite the acquisition of real property by agreement with the owner, avoid litigation and relieve congestion in the courts, assure fair and equal treatment for all owners, and promote the confidence of the public in land acquisition for public use. In order to achieve that goal certain procedures must be followed when acquiring right of way.

This manual provides a thumbnail sketch of what needs to be done to avoid jeopardizing state and federal funding. The activities are listed in the approximate order in which they should be done. A more detailed Chronological Procedures Checklist is found in the Appendix A-Checklists. Also, a Work Flow Chart is provided at the front of this manual which graphically shows the major steps involved.

- Contact BLP to inform and perform preliminary startup procedures and determine the scope of the project including what, if any, additional right of way will be needed.
- Prepare the parcel files, secure title information, plot existing and proposed right of way lines on construction plans, calculate the acquisition areas, and review access control needs. Estimate the acquisition amount for each parcel to determine the complexity of the valuation issue and the appropriate valuation procedure. One item to be wary of is the presence of hazardous waste and contaminated properties (see discussion of Hazardous Waste/Contaminated Properties in Chapter 8 Miscellaneous Topics).
- Complete the public notification and involvement requirements.
- Request authorization for reimbursement of incidental expenses including, appraisals, from us and FHWA if participation in payment of these right of way expenses is sought.
- Comply with notification requirements per 49 CFR Part 24.5.
- Determine the amount to be offered as just compensation by an appropriate method (appraisal or through the appraisal waiver process).
- Submit information necessary to request authorization to acquire from us and FHWA if state or federal funding participation in right of way is sought.
- Acquire the right of way and close each transaction.

- If relocation is involved, assist all displaced persons (Please note that per K.S.A. 58-3502, all acquiring agencies are required to provide relocation assistance to eligible recipients on all projects.)
- If necessary, complete Condemnation proceedings.
- Certify the project.

A one page guide to much of the right of way process may be found in the Appendix A, Forms in Form H. This form is called the Right of Way Record Check sheet and is a helpful tool in managing the right of way process. At any time in this process, if right of way related issues need to be discussed, contact KDOT's Local Liaison in the Bureau of Local Projects for guidance.

The following information will describe in more detail suggestions on "how" the right of way functions should be performed to comply with federal funding.

- *Title Search*

There must be an examination of the county records, and a title report requested for each parcel to determine the owner of the property, including mortgage holders and other interested parties. This title report is used to determine the status of title so that merchantable title for the land required can be obtained. The report is also used as an information source for describing land and identifying all persons or entities with an interest in and/or the authority to contract for deed and/or release real estate interests. When examining the county records, the report must show a five (5) year sales history of property. Per CFR 49 Part 24.103 (a) (2). If there was a transfer of title within the last five (5) years, this requires the researcher to go beyond this five (5) year window to the previous deed transferring ownership. These records are maintained as a part of the parcel file.

- *Legal Descriptions/Plats*

Legal descriptions and plats must be prepared and certified by a Kansas Registered Land Surveyor. Each plat should show the boundaries of the existing right of way and area of proposed acquisition. Access provisions may also be reflected on the plat.

- *Authorization for Right of Way Activities*

Acquisition of right of way may not begin before a written notice of FHWA Environmental Concurrence is issued. This approval is provided by the KDOT's Office of Environmental Services which is then forwarded onto the Project Manager within BLP. The Project Manager will provide a letter to proceed. In some instances, preliminary right of way work may begin prior to the receipt of this approval, however future changes necessitated by the.... may create revisions causing additional work and expense.

Preliminary appraisal work may begin as long as there are no owner contacts made by the appraiser prior to the public notice/involvement. An initial right of way contact letter may be sent to the owner explaining that an appraiser will be contacting them soon (see Form A in Appendix B-Forms). However, ***no actual negotiations with property owners may begin before environmental concurrence is received.*** The only exception is in the case of advanced acquisitions (see discussion of Advanced Acquisitions in Miscellaneous Topics, Chapter 8).

6.2 The Valuation Process

6.2.1 Introduction

This chapter is intended to serve as a brief description of the Valuation Process. The KDOT Bureau of Right of Way, Appraisal Section maintains a detailed "Appraisal Manual" providing additional information. A copy may be requested from the KDOT Local Liaison.

When the LPA has received authorization to acquire right of way for the project, the Valuation Process is the next step. Fair and just compensation should be considered for all interests in the property rights to be acquired and the Valuation Process provides documentation that it was.

The Valuation Process may be described in four basic areas.

- Whether to use an appraisal or implement the appraisal waiver process.
- Appraisal Process/Appraisal Waiver Process
- Review Process
- Agency Establishment of Approved Offer

The balance of this chapter will discuss the areas of the Valuation Process.

6.2.2 To Appraise or Not To Appraise

The first decision the LPA will need to make during the Valuation Process is whether to obtain an appraisal or utilize the appraisal waiver process. This chapter of this manual will discuss both types of valuations. The KDOT Local Liaison is available to answer any questions regarding either process. Decisions regarding which process to utilize should be reached in compliance with all state and federal criteria on this subject to avoid conflicts that may adversely affect federal eligibility for the project.

This chapter provides detailed information concerning the appropriate use of both the Appraisal Process and the Appraisal Waiver Process. The following information provides the basis for determining which is the appropriate valuation process to use for specific parcels.

6.2.3 The Appraisal Process

Before the initiation of negotiations, the property must generally be appraised. There are two exceptions: (1) if the owners decide to donate the property and waive their right to an appraisal (see the discussion of Donations in Miscellaneous Topics, Chapter 8); or (2) if the simplicity of the acquisition indicate that an appraisal is not necessary (see the Waiver of Appraisal Process section) .

The format and level of documentation in an appraisal depends on the complexity of the appraisal problem. There are two appraisal report formats that satisfy Kansas DOT and FHWA standards; short form or standard form. The appraiser is expected to use the most appropriate format. The format to be used should generally be specified in the appraisal assignment.

- *Short Form Report*

A brief narrative discussion must be included covering the overall property, the acquisition, and the acquisition's effect on the remainder. The extent of documentation should be commensurate with the significance of the appraisal, and values involved. In the event of condemnation, the appraiser may be requested to provide before and after values for the property on the short form report. The estimate of just compensation arrived at in a value finding appraisal report reflects the appraiser's opinion of the difference between the before and after values.

The standard three approaches (Market Sales, Income and Cost) should be considered, but often only the Sales Comparison Approach will be developed. The land valuation requires a minimum of two sales, documented, identified, and confirmed in the same manner as comparable sales for a detailed appraisal report.

All items of the acquisition are to be listed on the short form report, even those for which the compensation value is zero. Access control, when acquired, should be listed as "Access Rights" under "Damage to the remaining property." .

The Uniform Residential Appraisal Report (URAR), with certain additions, may be used for appraising residential properties when a "Total Acquisition" is involved, or when a "before value"

must be developed for a partial acquisition. Photographs of both the interior and exterior, as well as a floor plan sketch with approximate dimensions, are recommended for any building to be acquired, along with comparable sales sheets with photographs and a sales location map.

All or part of this form may be used to value a residential portion, as defined, of a multi-use property and incorporated in larger report covering the entire property.

- *Standard Form Report – Detailed Appraisal Report*

Detailed Appraisal Reports are required on either total or partial acquisitions of properties when other less detailed formats are not applicable. In the case of partial acquisitions, this report is referred to as a “Before and After” appraisal.

This type of report should include all applicable approaches to value. Reasons for omitting any traditional approach to value should be clearly stated in the report. The Appraiser may be instructed to limit appraisal analysis to a specific valuation approach or approaches when inclusion of additional approaches to value would not significantly add to reliability and support of final value estimates, or when recommended by legal counsel.

It is not acceptable to produce an after acquisition value by subtracting the estimated value of acquisition and damages from the before acquisition value conclusion.

- *Opportunity to accompany the appraiser*

Regardless of the form used, the appraiser **must** offer the property owner, or their designated representative, a reasonable opportunity to be present during the inspection of the property. All appraisals are prepared in conformity with the "Uniform Standards of Professional Appraisal Practice" (USPAP) as promulgated by the Appraisal Foundation, except as they may conflict with the state and federal requirements for eminent domain, in which case the jurisdictional exception provision of USPAP is applicable.

Provided are some items to consideration when determining fair market value, including appraiser selection and qualifications, some general requirements, number of appraisals, and appraisal updates.

- *Appraiser Selection and Qualifications*

Prior to the selection of an appraiser, each parcel to be acquired must be reviewed to determine the complexity of the acquisition, the desired appraisal form and a problem statement must be written.

These determinations and the statement must be provided by someone with expertise and knowledge in these matters. The appraiser selected should be a qualified member of the agency's staff, one of KDOT's appraisers, or a qualified private consulting appraiser (fee appraiser). **A qualified appraiser must be a certified or licensed appraiser** and have demonstrated real estate experience, successful completion of real estate appraisal training, experience in eminent domain appraisals, and experience appraising the type of property being acquired.

In those instances when the services of a KDOT appraiser or a fee appraiser are being used, the LPA must enter into a written agreement for the purchased services. If a fee appraiser is hired, the agreement must contain a schedule of the fees, itemized by parcel. The fee appraiser's proposal for services should be based on the LPA's determination of what type of value report is required. It is advisable that the agreement also contain a completion date and payment schedule for possible court testimony.

- *Conflict of Interest*

No appraiser or review appraiser may have any interest, direct or indirect, in the real property being appraised for the LPA that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal cannot be based on the amount of the valuation (say, as a percentage of or on a charted basis) and an appraiser cannot act as a negotiator for a property he/she has appraised.

LPAs must establish an appeal procedure for all contractors who feel they have not been treated fairly during the selection process and/or in the administration of a contract. Please see "Appendix D-Appeal Procedure" for an example.

- *Required Number of Appraisals*

In general, only one appraisal is required for each non-complex tract acquired. In the event that there is an extremely controversial or complex appraisal, a change in highest and best use occurs, or a high dollar purchase is contemplated, the LPA may determine that a second appraisal or review is necessary. If federal funds are used in the appraisal costs, the LPA will need to obtain prior approval from KDOT before obtaining the second appraisal if reimbursement will be requested.

- *Appraisal Update*

An appraisal should be updated or a new appraisal obtained if: (1) additional value information is presented by the owner, (2) a material change in the property or proposed acquisition indicates the need to modify the appraisal, or (3) if a significant delay (depending on market conditions) has occurred since the date of the original appraisal.

6.2.4 The Appraisal Waiver Process

The Appraisal Waiver process estimates fair and just compensation, and has also been referred to as an Estimate of Just Compensation. The estimate of just compensation is not a formal appraisal and is used with minimal value purchases. It requires only a one-page form which you can find as Form G in Appendix B-Forms. This form can be used for *minor, uncomplicated acquisitions* where compensation to the property owner does not exceed \$10,000. The \$10,000 figure is exclusive of payments for the cost of tillage, fertilizer, growing crops, agricultural right of way fence.

Please note that simply because the compensation value is less than \$10,000 does not mean that an estimate of just compensation may be used rather than an appraisal. The potential complexity of the acquisition must also be considered. In Appendix A-Checklists is a checklist entitled "Checklist for Determining Complex Parcel for Appraisal Purposes." This sheet can help in determining if an acquisition is complex enough to require an appraisal or, if not, that a compensation estimate may be used.

Consultants may prepare and sign an estimate of just compensation **ONLY IF THEY ARE A LICENSED OR CERTIFIED APPRAISER.** Otherwise, an authorized agent for the LPA must sign it.

It is not necessary that the estimator offer the property owner or the owner's representative an opportunity to be present during the property inspection. Access control, when being acquired, should be listed as "Access Rights" under "Other Considerations" on the form (see discussion of Access Control in Miscellaneous Topics, Chapter 8).

The estimator can also serve as the acquisition agent. An administrative approval must be obtained before the offer is made. The administrative approval must be provided by an official of the LPA other than the person making the compensation estimate. If the agency maintains a right of way staff, the agency might assign a qualified licensed or certified appraiser to approve these estimates. Although not required to do so, the local agency may wish to maintain a listing of approved compensation estimates along with who approved the estimates.

This report form can also be used for simple partial acquisitions when damages to the remainder are non-existent or are relatively minor, are easily measured or explained, or are measurable by cost-to-cure.

An example of a "simple partial" acquisition would be a strip acquisition from a large property, which does not approach close enough to any improvements to cause possible proximity damages. Any partial acquisition which necessitates reconfiguration of improvements or which damages the improvements cannot use this form. Any partial acquisition which changes the highest and best use of remaining property also could not be appraised using this form.

There is \$10,000.00 limit to the total value of land and damages when using this form. This type of form does not express before and after values, but only indicates compensation due to the property owner and/or lessee. Value of the land and/or improvements acquired must be supported by applicable data. Any large cost-to-cure items must also be appropriately supported.

6.2.5 The Review Process

If the LPA does not have a qualified review appraiser on staff, –the LPA will need to secure the services of a reviewer, either through their LPA staff or a private contractor. The reviewer's responsibility is to ensure consistency of property values on a project, an adequate investigation of the local market to support the appraisal and that the appraisal conforms to applicable eminent domain appraisal standards. The LPA will need to designate a local official to subsequently approve the amount to be offered as just compensation following review of the appraisal.

All appraisals require review by a qualified review appraiser. The person performing the appraisal review function must be thoroughly familiar with the Uniform Act and eminent domain requirements under the law. An appraisal review may not be performed by the appraiser that made the appraisal of fair market value. The review appraiser will examine the appraisal to determine it:

- has been completed in accordance with the approved appraisal specifications,
- follows accepted appraisal principles and techniques in valuation of real property in accordance with the USPAP and state law for eminent domain acquisitions,
- contains information necessary to explain, and substantiate the conclusion and estimate of fair market value,
- includes consideration of compensable items, damages, if any, and does not include compensation for items not compensable under state law,
- contains an identification of the buildings, structures and improvements on the land as well as the fixtures which were considered as part of the real property (see discussion of Tenant-Owned Improvements and Leasehold Interests),
- contains an estimate of fair market value for the acquisition and, where appropriate in the case of a partial acquisition, an allocation of the estimate between the real property and damages to the remainder property.

Upon completion of the review and any corrections or modifications necessary by the appraiser to make the appraisal conform to these guidelines, the review appraiser will attach to the appraisal and place in the parcel file a signed and dated statement setting forth the following:

- whether the appraisal is accepted and approved, accepted and not approved,
- the approved amount recommended to be offered as just compensation,
- the understanding that the determination is to be used in connection with a federal-aid highway project,
- the extent of the visual inspection of the parcel to be acquired and of the applicable comparable sales,
- that no direct or indirect, present or contemplated future personal interest in the property exists nor that any benefit from the acquisition of the property appraised will occur,
- that this determination has been reached independently based on appraisals and other factual data of record without collaboration or direction,
- the determination shall be documented to show its basis.

6.2.6 Agency Establishment of Approved Offer

The LPA must determine the amount of the approved offer of just compensation. This responsibility cannot be transferred to a consultant or contractor. Each file should document a determination of the approved offer signed by an official of the LPA.

49 CFR Part 24.102 (d) requires the LPA to establish an opinion of fair and just compensation, offer the full amount believed to represent fair and just compensation, and that the approved amount cannot be lower than the lowest appraisal received.

6.2.7 Summary of Valuation Process

The following steps have been provided as a quick guide to help the LPA through the valuation process.

- Determine the appropriate type of valuation needed.
 -
 - Rely on local staff expertise
 - Consult with KDOTs Local Liaison

- Assign the work to the appropriate people.
 - Appraisers with expertise for the type of appraisal problem.
 - Acquisition agents with sufficient expertise to develop compensation estimates.
 - An appraiser can complete the Estimate of Just Compensation and serve as the acquisition agent.

- Complete the necessary review
 - Qualified review appraiser for appraisal review.
 - Qualified staff for administrative review of compensation estimates.

- Establish the agency's approved estimate of fair and just compensation.
 - Must be an official of the LPA.
 - Amount must be, at a minimum, the lowest appraisal received.
 - Should be written and documented in parcel file.

6.3 The Acquisition Process

6.3.1 Introduction

The Acquisition Process has presented challenges for many acquiring agencies and property owners alike. KDOT's Bureau of Right of Way Acquisition Section maintains a policy and procedure manual for this process. If needed, The Acquisition Section Manual is available through KDOT's Local Liaison.

This chapter has been divided into five specific areas. The areas that will be reviewed are:

- Overview and getting started
- Offers/Notices
- Contracts/agreements
- Notes/documentation
- Administrative settlements

Sample forms have been provided in the Appendixes. All of the forms are available electronically. Please contact KDOT's Local Liaison for electronic versions of forms.

6.3.2 Overview and Getting Started

- *Title information*

Prior to the initiation of the Acquisition Process, adequate title information must be obtained. The LPA will need to recognize early in the process all the interests to be acquired including but not limited to owners, lien holders, tenants, easement holders, and taxing authorities.

- *Good Faith Negotiations*

Code of Federal Regulations (CFR) Title 49 Part 24.102 (f) requires the LPA to negotiate in good faith and present each owner with a statement of their rights. A copy of a statement of rights pamphlet "*Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges*" is available on the KDOT website. It is to the benefit of the LPA to make the pamphlet a part of a packet that is automatically provided to every property owner.

Negotiating in good faith contemplated providing all parties the opportunity to discuss their views, opinions, and concerns. All parties should also have the opportunity to have their thoughts seriously considered, and their questions answered. All parties must be given reasonable opportunity to consider the information and seek counsel if they wish. At the end of good faith negotiations all parties will need to determine what they believe to be an appropriate outcome.

Any knowledgeable and qualified member of LPA staff may be the negotiator. It is helpful if the negotiator is a Notary Public for notarizing documents signed by property owners, but not a requirement.

The negotiator should personally contact the property owner and tenant of each property on the project. The initial contact with the owner(s) as part of the Acquisition Process will depend on which form of the Valuation Process you have selected. Remember the Valuation Process is completed either by an appraisal or the Appraisal Waiver Process.

If the Appraisal Waiver Process is used for valuation purposes, the initial contact will be when the acquisition agent completes the compensation estimate form after meeting with the owner. Compensation estimates should not be completed by one representative and delivered by another. Remember, the goal of the Appraisal Waiver Process is to reduce the time and expense for the owner and acquiring agency.

If after reasonable efforts have been made and an agreement still cannot be reached, the LPA may need to institute eminent domain (condemnation) proceedings to acquire the required property rights. The negotiator cannot do or say anything that may be construed as being coercive in nature to obtain the owner's agreement. However, a brief explanation of the eminent domain procedure should be provided to the owner along with the brochure titled "*Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges*". This will assist the owner in understanding the process.

- *Miscellaneous Acquisition Expenses*

State and federal regulations require all LPA's acquiring right of way to reimburse expenses incidental to and necessary for the transfer of property. A partial list of these expenses include recording fees, transfer taxes, documentary stamps, evidence of title. These and other eligible expenses may be reimbursed to the owner, or preferably, paid directly to the person(s) entitled to payment. The LPA is not required to pay costs required solely to perfect title or assure that the title to the real property is entirely without defect, surveys and legal descriptions of the real property, penalty costs and other charges for prepayment of any preexisting recorded mortgage encumbering the real property entered into in good faith.

- *Items to present to the owner*

The person negotiating on behalf of the LPA should be prepared to explain the project plans and the impact of the project on the owner's property. As required by Federal law the following must also be presented and explained:

- The written offer of just compensation for not less than the full amount of the reviewed and approved appraisal, and approved by the LPA with the amounts for land, improvements, fence and damages separately listed.

- If the acquisition includes relocation of personal property or individual a statement should be provided informing the owner or tenant that they will not be required to move their personal property earlier than 90 days from the date of the notice, nor earlier than 30 days from the date compensation has been made available, as long as the 30 days from date of payment does not supersede the 90 day notice.

- An informational brochure, "*Real Property Acquisition for Kansas Highways, Roads, Streets and Bridges*" or an approved alternative.

- The documents to be signed by the owner once the LPA's offer is accepted.

6.3.3 Offers/Notices

Owners and tenants are entitled to written offers reflecting the LPA's approved estimate of fair and just compensation. In the event of relocation, owners and tenants are also entitled to notices informing them of when they will be required to move from the property.

Should the LPA subsequently approve a revised appraisal review or estimate of just compensation for a different amount, a revised written offer must be provided to the owner and/or tenant. Form D in Appendix B has been developed for this requirement.

The date of the offer must reflect the date the written offer of just compensation was presented and all required notices provided. If the offer is accepted, the LPA must pay the agreed purchase price BEFORE taking possession of the property.

6.3.4 Contracts/agreements

The goal of the Acquisition Process is to reach a mutually acceptable agreement which will be memorialized in a legally binding contract. As a tool for reference, samples of contracts and contract clauses are provided. These samples are for reference only and the LPA should consult with local legal counsel as to specific contract and conveyance needs.

6.3.5 Notes/Documentation

It is important after each phone call with a property owner, the local negotiator completes a written negotiator's contact report, sometimes called negotiator's notes. These notes should summarize each contact and interview with the property owner and should remain in the parcel file. These reports will eventually become available for inspection by the public See Form F in Appendix B for a sample. Each report should contain as a minimum:

- project number,
- parcel number,
- date of contact,
- type of contact (phone or in person),
- name, address and telephone number of person contacted,
- special instructions, if necessary, for locating that person,
- names of all other persons present,
- names, addresses and phone numbers of attorney or other representatives,
- main points discussed, questions and commitments made by agent,
- principal objections to offer or taking,
- whether offer was accepted or rejected,
- requests made by owners,
- any other highlight discussions of the contact including special instructions for closing, relocation or property management,

- negotiator's signature and date.

6.3.6 Administrative Settlements

The Uniform Act requires that "The head of the agency shall make every reasonable effort to acquire expeditiously real property by negotiation." Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Offers to purchase should not reflect a "take it or leave it position."

The LPA may determine that it is in the public's best interest to make a negotiated settlement with the owner for more than the approved appraisal amount. All negotiated settlement increases must be documented. A written report called an "Administrative Settlement" should explain and provide justification why this settlement is in the public's best interest.

Administrative settlements should describe the acquisition, state the offer of just compensation and the proposed negotiated settlement amount, and introduce information which supports the settlement and the requested approval from the proper authority. The settlement may also include information on recent court awards for similar type property, the property owner's appraisal data, an estimate of trial cost or an opinion of legal counsel. The settlement must be approved by an officer of the LPA acquiring the right of way and not by the negotiator. The person approving the settlement should be able to judge the risk/benefit issues of a potential court action.

If a revised appraisal review showing new valuation or extent of damage information is performed, then a written revised offer must be made and presented to the owner reflecting the updated consideration. See Form D in Appendix B. If the revised written offer is accepted, an administrative settlement is NOT required.

6.3.7 Summary of Acquisition Process

The following steps have been provided as a quick guide to help the LPA through the acquisition process.

- Overview and getting started
 - Title information, consider everyone that has an interest in the property.
 - Good Faith Negotiations, providing the opportunity; time; and consideration to attempt to reach an acceptable agreement.
 - Miscellaneous Acquisition Expenses, costs incurred by the owners as a result of the acquisition.
 - Provide to the owner the materials necessary to provide good faith negotiations.

- Offers/Notices
 - Provide written offers in the amount of the agency's approved estimate of fair and just compensation.
 - Provide the written notices as to when the property must be vacated.

 - ContractsA written instrument that secures the property rights needed for the project.
 - KDOT has samples available upon request.

- Notes/Documentation
 - Provide written documentation of negotiations
 - Provides documentation for future inquiries
 - Future problem solving resource

- Administrative Settlements
 - Describe acquisition
 - Describe reasons for settlement
 - Ensures future participation

6.4 Relocation Assistance

6.4.1 Introduction

K.S.A. 58-3502 requires *all* agencies acquiring right of way to provide relocation assistance benefits to *all eligible* persons on *all* projects. Eligible persons include owners and anyone else lawfully occupying the property. Whenever the LPA anticipates displacements requiring Relocation Assistance, KDOT's Local Liaison should be notified as soon as possible.

Rights and entitlements of individuals, families, businesses, farms and nonprofit organizations displaced by federal-aid projects are defined by and discussed Uniform Act. State Relocation requirements for all other projects being acquired under the threat of Eminent Domain are provided in K.S.A. 26-501 to 26-516. Generally, all persons occupying property to be acquired on the date negotiations begin who are required to move are eligible for relocation assistance and payments to reimburse the costs of moving personal property to locations off the right of way. In addition, residential displacees who meet minimum occupancy requirements may qualify for replacement housing payments to offset increased costs of obtaining replacement housing payments.

No person lawfully occupying real property shall be required to move from a dwelling or to move from a business or farm operation without at least a 90-day written notice from LPA. When the landowner's residence, dwelling house, outbuildings if the residence or dwelling house is also acquired, orchard, or garden are condemned and the owner appeals the condemnation to district court they may not be forced to move until the compensation has been finally determined and paid. See 49 CFR Part 24.102 (j). Since time for right of way acquisition is a major concern for most projects, relocatees should be dealt with as early as possible.

The appeal process described in Appendix C applies to relocation benefit resolution as well as incidental expenses. The LPA will need to ensure that the relocatee is aware of the right to appeal and be given an explanation of the process.

The KDOT Bureau of Right of Way maintains a policy and procedure manual for Relocation Assistance approved by FHWA. KDOT recommends the LPA work closely with KDOT's Local Liaison on Relocation Assistance matters, retain a consultant with the necessary experience, and/or request a copy of the KDOT Relocation Assistance Manual through KDOT's Local Liaison.

6.4.2 Personal Property Move

Quite often personal property is located on land being acquired. The owner of the personal property is entitled to relocation assistance and payment for the actual and reasonable costs to move the personal property. The owners of personal property may or may not be the owners of the real estate. The move may be reimbursed through itemized bills and receipts paid to a contractor for the move, or a self-move based upon an agreed to amount considered to be fair and reasonable. Additionally, the 90 and 30 day notices discussed in the Acquisition Section of this manual apply to these types of moves.

6.4.3 Residential Moves

The Residential Relocation program was intended to leave the displaced person(s) in a similar situation after the displacement. Eligibility is determined by occupancy, not ownership. Only displaced persons are eligible for the payments to be discussed, which may or may not be the owner of the property.

This manual will provide only a brief discussion and is not intended to provide all the necessary information pertaining to Residential Moves. Please refer to the KDOT Relocation Assistance Manual, or KDOT's Local Liaison for more specific information.

- *Replacement Housing Requirements*

Comparable replacement housing must be made available before a displaced person can be required to move from their home. Comparable replacement housing is defined as being functionally similar, in as good or better condition and in a similar area to the house being acquired. The replacement housing must also meet decent, safe and sanitary criteria.

- *Replacement Housing Payments*

The purpose of this payment is to provide funds if a shortfall exists between the fair market value and the cost of replacement housing. Replacement housing payments may be calculated as supplemental purchase payments or supplemental rental payments.

Supplemental purchase payments are developed for owner occupants by studying the local market to determine what is available at the time of displacement. The cost of replacement is compared to the amount paid for the house by the LPA. The difference between the two costs is considered the

Replacement Housing payment. Specific criteria for developing payments, establishing limits and describing requirements are available through KDOT's Local Liaison.

Supplemental rental payments are available for displaced non-owner occupants and owner occupants that elect not to purchase replacement housing. The present market rent of the property being acquired is compared to adequate replacement housing present for lease in the local market. The present lease value is then compared to the replacement lease value. The difference between the two costs is considered the supplemental rental payment. Displaced tenants may in certain situations apply their supplemental rental payments as a down payment in the purchase of replacement housing. Specific criteria for developing payments, establishing limits and describing requirements are available through KDOT's Local Liaison.

Please note, the replacement dwelling considered by the Relocation Agent is only for establishing the amount of payment the eligible displacee is entitled. The displacee shall always choose the replacement housing they will occupy. The reimbursement shall be made based upon the amount actually spent by the displaced, not to exceed the relocation agent's study.

- *Increased Mortgage Payments*

This payment is calculated when displaced owner occupants must refinance at a higher mortgage rate than the mortgage on the property being acquired. The payment is limited to the amount owed and the remaining life of the original mortgage.

- *Normal and Customary Closing Costs*

These are costs that are normal and customary for real estate transactions in the local market. Qualifying expenses may include abstracting costs, recording fees, and credit reports. Certain other expenses may be excluded, such as "points" or prepaid interest. Contact KDOT's Local Liaison about specific expenses.

- *Moving Expenses*

In addition to other payments, displaced persons are entitled to reasonable moving expenses. These payments may be based upon reimbursement of itemized bills and receipts from qualified movers, or a scheduled payment system. Contact KDOT's Local Liaison for current federally approved payment schedules and criteria.

6.4.4 Non-Residential Moves

Displaced farms, businesses, and non-profit organizations are also eligible for Relocation Assistance benefits, but the benefits are different than those provided for residential moves. The basic concepts of the major benefits are provided in this manual. The LPA will need further information from KDOT's Local Liaison before attempting to provide all the appropriate benefits to a displaced farm or business.

- *Re-establishment expenses*

These payments are designed to reimburse the actual expenses incurred to re-establish the farm, business, or non-profit organizations in the new location. The present maximum reimbursement for these types of expenses is \$10,000. Offering and providing these services will require specific knowledge and experience. If the LPA has questions contact KDOT's Local Liaison or other qualified relocation resource.

- *Searching Expenses*

In some cases the displacee is entitled to searching expenses in the search for a new location for their farm, business, or nonprofit organization. The present maximum reimbursement is \$2,500. Offering and providing these services will require specific knowledge and experience. If the LPA has questions contact KDOT's Local Liaison or other qualified relocation resource.

- *Incidental Expenses*

Other costs incurred in the move may also be eligible for reimbursement. For example the reprinting of stationary presently on hand with the new address; loss of personal property as a result of the move or discontinuance of the operation; or the purchase of subsequent personal property required as part of the move. Implementation and offering these services will require specific knowledge and experience. If the LPA has questions contact KDOT's Local Liaison or other qualified relocation resource.

- *Moving Expenses*

The displaced non-residential occupant is entitled to actual and reasonable moving expenses. The payments may be based upon itemized bills and receipts from a qualified mover, or payments may be

made to the displacee as part of a self-move. If the displacee opts for a self-move the LPA should contact KDOT's Local Liaison for assisting establishing payment.

- *In Lieu of Payment*

The displacee may opt to receive a payment based upon the net income of the displacee over the last two years. This type of payment is in lieu of all other payments and only available to non-residential displacements. The minimum payment is presently \$1,000 with a maximum payment of \$20,000. Offering and providing these services will require specific knowledge and experience. If the LPA has questions contact KDOT's Local Liaison or other qualified relocation resource.

6.4.5 Summary of Relocation Process

- *Types of moves*
 - Personal property move
 - Residential move
 - Non-residential move
 - Displacee may be eligible for all three types on the same property.
 - More than one displacee may be involved on the same property.
- *Personal Property move*
 - Costs to remove personal property from land being acquired.
 - Fixed payment or reimbursement for qualified mover.
- *Residential move*
 - Decent, safe and sanitary replacement housing must be available
 - Replacement housing payments
 - Replacement rental payments
 - Customary and usual closing costs
 - Moving expenses
- *Non-residential move*
 - Re-establishment expenses
 - Searching expenses
 - Incidental expenses
 - Moving expenses
 - In lieu of payment

6.5 Title and Closing

6.5.1 Introduction

This chapter will discuss Title and Closing and the Condemnation Processes. Both processes may be described as the act converting possession and/or ownership of property. Title and closing concentrates on transactions where there is a mutual agreement, while Condemnation focuses on those situations where an agreement is not achieved.

6.5.2 Title and Closing

Title and Closing involves examining the legal title to property, determining what actions must be taken to obtain clear title to the right of way and working with the owner to complete the transaction. The desired results are to secure all the documents necessary to ensure clear title of the land is conveyed to the LPA.

The LPA may have their City or County Attorney handle this work a real state specialist or a professional title and closing agency. The closing agent should be someone other than the person who negotiated and/or drafted the contract with the property owner.

If the contract for deed method is used by the LPA (first a contract is signed by the owner accepting the offer and later a deed is signed conveying the land), then the title documents must be drafted from the language of the contract. Sometimes the deed is prepared in advance and signed at the time the offer is accepted. Mortgage holders, lien holders, and taxing authorities must be notified and their interests waived or released as it pertains to the property acquired by the LPA. All conveyances should be recorded in the Office of the Register of Deeds.

Providing payment to the owners is an integral part of the Title and Closing process. The timing of the payment must ensure title has been passed to the LPA, but the owner of the property cannot be required to surrender possession until payment has been received.

KSA 75-6201, 75-6202 and 75-6203 requires agencies to assist in the collection of property taxes and assessments when the property is being acquired for a public use. Applicable taxing authorities should be included during the title and closing process. Payments for Relocation Benefits are exempt from this requirement as set out in KSA 58-3507. Additionally, since 1991, all real estate transactions have been subject to reporting requirements of the IRS. The LPA must provide appropriate 1099's to the IRS and all parties receiving payments. Even when State funds are used for payment, the 1099

reporting responsibility remains with the local agency. IRS guidelines for this reporting are available from KDOT's Local Liaison.

6.5.3 Summary of the Title and Closing Process

- *Examine Title*
 - Secure qualified closing assistance
 - Research county records
 - If necessary, update Certificate of Title or Title Report

- *Resolve title issues with owners*
 - Review title for “clouds”
 - Remove “clouds”

- *Acquire all interests*
 - Leaseholds
 - Lien holders
 - Mortgages
 - Easement holders
 - Taxing authorities

6.6 Eminent Domain-Condemnation

Condemnation is the exercise of the power of eminent domain. This power has been reserved to the state, municipalities, political subdivisions and others by federal and state constitutions and law. Guidelines, authorities and procedures are outlined in the KDOT Administrative Condemnation Instructions Manual, prepared by the Office of Chief Counsel.

An administrative condemnation begins with the filing of a petition in the District Court of the county where the property is situated. After statutory notice is given a hearing is conducted by a District Court Judge who determines, upon the face of the petition, that the condemning authority has the power of eminent domain and that the taking is within the lawful purposes of the authority. At that hearing the Judge appoints three disinterested residents of the county to serve as Court Appointed Appraisers and establishes a date on which the appraisers shall file their report. An appraisers hearing is the conducted by the Court Appointed Appraisers to determine just compensation to be awarded by the appraisers. Following the hearing, each party to the condemnation has the right to appeal the appraisers' award to district court.

During condemnation it is important to acquire all interest at the condemnation hearing. This includes those interests that may not have a market or compensable interest. Applicable taxing authorities should be included in the listing of interested parties identified in the petition for each tract.

Providing payment to the property owners is an integral part of Condemnation process. The Court Appointed Appraisers award must be paid to the Clerk of the District Court before the LPA can require the owner to surrender possession of the property. The award must be paid regardless of any appeals to District Court. Failure to pay this amount into the court within 30 days will "Vacate" the proceeding. If vacated, the LPA must start the condemnation process all over again and also be responsible to pay the defendants legal fees.

6.6.1 Summary of the Condemnation Process

- **Identify all interests in the property.**
 - Leaseholds
 - Lien holders
 - Mortgages
 - Easement holders
 - Taxing authorities

- **Payment to the Clerk of the District Court**
 - Once monies are deposited in the Court, ownership is immediately transferred to condemning party.

- **Record applicable documents**
 - Appraisers Report is filed in District Court as a part of proceedings.
 - Copy of Appraisers Report **must** be recorded in the Register of Deeds Office.

- **IRS Notification/1099's**
 - Acquiring agency responsibility
 - Provide to IRS
 - Provide to all parties receiving payments

6.7 Property Management

6.7.1 Introduction

A well planned property management program can enhance the efficiency of LPA projects by avoiding construction delays involving demolition work and maximizing the value of the LPA's assets. The LPA will encounter two phases in managing property: pre-construction and post-construction.

6.7.2 Pre-Construction

- *The Inventory*

An inventory of the land and/or buildings or other fixtures acquired can be developed as the right of way is identified for the project. This inventory may then be used throughout the project to identify the assets the LPA has acquired. The inventory should include an explanation of how land and/buildings or other fixtures are disposed of, an accounting of management expenses, rental receipts, and payments received for the sale of the land and/or buildings or other fixtures.

- *Planning*

Pre-construction planning involves the time period between property acquisition and the beginning of project construction. During this time, the LPA will be responsible for the management of the property in a manner consistent with public safety and, acting as a steward of the public's assets, defray or reduce overall costs to the public. There are three basic approaches to property management.

- Leasing

Land and/or buildings or other fixtures may be leased prior to being needed for construction or ultimate disposal. Residential buildings must conform to decent, safe, and sanitary criteria to be leased if federal funds are to be used in any part of your project.

Leasing can reduce the LPAs overall maintenance expenses, as the tenant assumes responsibility for mowing, snow removal and other similar types of usual expenses. Market rent should be received for the properties.

- Sale of improvements to be moved

If leasing the acquired buildings or other fixtures is not desirable, the LPA may wish to consider selling the buildings that are to be removed by the contractor. The successful purchasers are then required to move the improvements from the required right of way.

- Demolition

The LPA could elect to demolish any buildings or other fixtures. If this is the chosen option, ongoing maintenance such as mowing and snow removal should be considered.

6.7.3 Post-Construction

Structures not removed by demolition or public sale should be placed on the construction plans for removal by the contractor.

6.7.4 Management of Airspace

Temporary or permanent use of airspace may be granted if use is in the public interest and does not interfere with the construction, operation, maintenance, ventilation, and safety of the highway facility.

Use of airspace is subject to prior approval by FHWA when federal funds are participating in the acquisition of right of way, unless granted, without charge, to a publicly owned mass transit authority for public transit purposes.

All airspace leases and submissions for approval must follow the policy requirements contained in the Airspace Guidelines to 23 CFR 710.405 – 710.407.

6.7.5 Other Useful Property Management Information

- *Lead based paint Requirements*

Residential buildings constructed prior to 1978 are subject to Environmental Protection Agency (EPA) rules. If pre-1978 residential dwellings are sold or leased, the LPA will need to comply with EPA mandated notification requirements. All prospective purchasers or tenants must be informed of any knowledge the LPA has concerning the presence of lead-based paint. However, the LPA does **not** have to inspect the property to determine if lead based paint is present. The LPA must provide a brochure outlining the EPA rules. The pamphlet must be approved by EPA. The LPA may obtain brochures from KDOT's Local Liaison. In addition, any prospective buyer or tenant must be provided an opportunity to have a pre -1978 residence inspected to determine if lead-based paint is present. The cost of the inspection is the responsibility of the buyer or tenant. Forms documenting this offer are available from KDOT's Local Liaison.

6.7.6 Summary of Property Management Process

- *Pre-Construction*
 - Develop Inventory
 - Lease
 - Sell improvements to be moved
 - Demolition
- *Post Construction*
 - Add structures to plans for removal
- *Lead- based paint*
 - Applies to pre-1978 residential housing
 - Provide known information
 - *Provide opportunity to buyers or tenants to test, but at their expense.*

6.8 Certification of Right of Way

The Certification of Right of Way, DOT Form 1306 (see Form N in Appendixes B-Forms) is required from the LPA prior to advertising for construction bids to build the project. BLP must receive this certificate signed by the LPA four months prior to the actual letting of the project. This certificate **must** be completed as follows (from top down on form):

- The identification information including, city, county, project number and date.
- The location of improvements and the scope of the project.
- Statement that requirements of paragraph 1 have been met.
- Completion of all six (6) areas of Paragraph 2. If no tracts are needed for the project, then either entering a “None” or “0” response is acceptable.
- Any railroad and utility companies that are affected by the project must have agreements drafted and signed. These agreements will reflect the arrangements made with the company(s) for coordination of work on the project.
- Signature block is signed and dated by the LPA. (Unless required by local by-laws or ordinances, Certification does not have to be signed by governing body)
- ***Returned to the Project Manager of said project in BLP four months prior to letting.***

6.9 Miscellaneous Right of Way Topics

This portion of the manual discusses miscellaneous topics which the authors and editors felt needed an expanded discussion. These include:

- Access control
- Advanced acquisition
- Donations
- Easements
- Hazardous waste/contaminated properties
- Parcel -What is it?, and
- Tenant-owned improvements and leasehold interests
- Frequently asked questions
- Potential problems
- Where do I find?
- Outdoor Advertising Procedures
- Summary

6.9.1 Access Control

Access rights are the rights of adjoining property owners to have unrestricted access to and from the highway. Access Control is the term used when these rights are restricted or controlled. Controlled Access Facilities are discussed in K.S.A. 68-1901, 68-1902, 68-1903, 68-1904 and 68-1905.

Cities and highway authorities may establish controlled-access facilities. When such facilities are established, property owners adjoining the road do not have the right to enter or leave this road unless specifically granted by the highway authority at the time of, or subsequent to the establishment. For existing roadways that have not been previously designated controlled-access, the rights of the adjoining property owner(s) may be acquired. State law specifically states that these rights may not be acquired by prescription or adverse possession--they must be acquired.

In general, acquiring the rights of access to a property does not reduce its market value as long as reasonable access remains after the acquisition. Therefore, quite often the value or worth of restricting access across a property and allowing access at certain specific locations is zero dollars. There are some cases though where a change in potential property use and market value occurs and the appraiser must determine the difference in the value before and after the acquisition due to the restriction of access.

6.9.2 Advanced Acquisitions

An advanced acquisition is the acquisition of right of way before the final environmental document is approved or before the final design of a highway has been approved. There are two main types of advanced acquisitions, hardship acquisition and protective buying.

If federal funds are to be used in the acquisition of the right of way, the KDOT and FHWA must approve both hardship and protective buying acquisitions. Neither hardship nor protective buying acquisitions will be approved before: (1) public notice has been given of the preferred location of the facility or (2) the public hearing/notification requirements have been met. If state funds are to be used in the acquisition of the right of way, KDOT must give prior approval for the advanced acquisitions.

➤ *Hardship Acquisition*

Hardship acquisitions usually occur when a property owner makes a written request to the LPA to acquire the property in advance of the normal time scheduled for acquisition due to a "hardship". The hardship acquisition request to the KDOT by the LPA must include the estimated cost of the acquisition, relocation and incidental costs along with supporting documentation. Justifications must include reasons why the project causes a condition for the owner that is different from or disproportionate to the inconvenience suffered by the majority of others in the project area. Also, a statement is necessary indicating that reasonable alternatives are not open to the property owner that would accomplish relief of the situation without acquiring the property at this time.

Once the LPA initiates the acquisition process a serious commitment has been given to the property owner. The LPA has accepted an obligation to proceed with the acquisition, even if the property must be acquired through condemnation. Federal participation is dependent upon the agency's ability to condemn if necessary. Requests from owners for hardship acquisitions must contain a waiver of all impediments to a condemnation and an agreement to be condemned should negotiations prove unsuccessful. This is to safeguard against the LPA not being able to accomplish their condemnation due to the early nature of a hardship acquisition.

➤ *Protective Buying*

Protective buying is purchasing property in advance of the project to preserve a preferred or essential location for the proposed project. Requests to KDOT for protective buying must include the estimated cost of the acquisition. The LPA must give reasons why the request should be considered such as, the costly development or physical alteration of a property is imminent, a zoning change is occurring which will add substantial costs to the parcel acquisition, or a reconstruction of improvements damaged by fire or natural disaster is imminent.

Care must be taken so the final project design is not changed or influenced as the result of an advanced acquisition. If the early acquisition of a parcel is approved but the right of way is ultimately not needed for the project, the LPA will be responsible for the total cost of the acquisition.

6.9.3 Donations

There are occasions when property owners have expressed a willingness to donate the right of way needed for a project, especially when the project will provide a benefit to the property and the community in general. The LPA may also accept an owner's offer to donate the right of way in exchange for services rendered that will benefit the owner. If federal funds are involved in right of way, design approval must have occurred.

In either event, the owner must be fully informed of the right to be paid just compensation for the acquisition, as determined by an appraisal. If agreeable to the donation, the owner can waive the right to an appraisal. This must be in writing and the waiver or a copy of it must be kept in the parcel file (see Forms L and M in Appendix B-Forms).

The requirements of this provision do not apply to dedications of land for public purposes that may be required as part of the platting process pursuant to K.S.A. 12-752.

6.9.4 Easements

Easements are interests in real property that permit the use, but not the ownership, of land. Easements are rights to perform specific acts on land. They may be temporary or permanent in nature. Temporary easements may be held for a specific or an indefinite time period. The purposes of easements are as varied as there are uses for real estate. Each easement must be examined to determine the reduction in value to the land directly affected the remaining property, and how much compensation is due the owner. In some cases they may not cause a damage to or reduction in the value of property

All easements whether temporary or permanent must be considered as a right in land which must be acquired. Temporary Easements (such as small shaping easements) must be acquired and certified prior to the construction of the project.

6.9.5 Hazardous Waste/Contaminated Properties

Contamination of property by hazardous materials has become an area of great concern in the development of highway projects. Early detection of contamination of the right of way to be acquired is extremely important in determining project cost, project timing and potential liability. There must be a visual inspection of the possible contamination very early in the project development. Contaminants or items of concern may be as common as petroleum products, above ground or underground fuel storage tanks (UST's), battery waste, building material containing asbestos, certain paints and their residues.

Contamination may appear as soil which is oozing, an area bare of vegetation, an area which is sunken, an area containing junk containers or other less obvious junk material, or in even less obvious ways. Former gas stations may be identified by UST vent pipes, pump islands or characteristic structural features. Signs of contamination or awareness of prior uses (such as gas station, a manufacturing plant, a dry cleaner, a body shop, homes built prior to 1975, etc.) should lead to further study of the possibility of contamination.

In the event that there are signs of contamination, or if there are underground storage tanks present on the property, good business practices require the property be further evaluated with regard to recommended remedial measures and costs prior to proceeding with the acquisition of the property. In addition, state and federal laws administrated through the Kansas Department of Health and Environment and the EPA may need to be considered. Should a property already be acquired at the time contamination is verified, former owners may be determined to be responsible for the clean-up costs, but recouping of such costs can prove difficult.

If you encounter any indications of contamination of any necessary right-of-way, ***IMMEDIATELY*** contact KDOT's Local Liaison for further advice and assistance on how to proceed.

6.9.6 Parcel or Tract - What is it?

A parcel may also be described as a tract or tracts of land, or an improvement, or a legal property right owned by a single entity or multiple entities and operated as a single unit. All or part of the larger unit may be required for highway right of way or damaged by highway construction or maintenance.

There are three tests used to determine what constitutes a parcel or tract; unity of use, proximity, and unity of ownership. Unity of use is not limited to the existing use but also the highest and best use to which the property may be put. Proximity is not limited to tracts abutting each other, but rather tracts within proximity that a larger parcel is still a practical, economic unit. Unity of ownership may or may not prove indicative of what makes up a parcel or tract.

- Example - 240 acres of a farm (Farm A) is in the name of just John Smith who is married to Mary. John and Mary Smith jointly own a 240-acre farm (Farm B) one mile away from the first farm, but the properties do not share a common property line. Both of these farms are farmed together by the couple, but Mary is only on the title for Farm “B”. Therefore, these would be two (2) separate tracts due to the fact they have two separate owners and the parcels are not contiguous with each other.

6.9.7 Tenant-Owned Improvements and Leasehold Interests

Tenants are owners of an interest in real property and must be dealt with. Their interests cannot be overlooked and should be identified as early as possible. Leases can be either oral or written as they transfer the rights to use land and/or buildings or other fixtures to the tenant for a specified rent and for a specified period of time. The first step in determining a leasehold interest is to obtain a copy of the lease, if possible. Other items to look for and consider are sales tax permits (commercial property) and asking who "owns" the crops on agricultural land or who resides in residential property.

Compensation for a tenant-owned improvement is the amount the land and/or buildings or other fixtures contributes to the fair market value of the whole property or its salvage value, whichever is greater. The appraiser should secure the signatures of both the owner of the land and the tenant on a written agreement stating the land and/or buildings or other fixtures owned by each party. This agreement will be included in the appraisal with a suggested allocation of the appropriate amount for the land and/or buildings or other fixtures to be purchased. The tenant is entitled to accompany the appraiser during an inspection of the tenant-owned land and/or buildings or other fixtures.

If the landowner and tenant don't agree on who owns what, then the LPA needs to include the names of all the owners and tenants together on the same contract and/or acquisition proceeds check, permitting the parties to divide the total amount themselves. The appraiser's suggested allocation of the estimate of just compensation for the tenant and landlord is just that--a suggestion only.

Where there is no dispute on who owns what, the tenant may sign a tenant contract separate from the owner's. This serves as a release of the tenant's interests in the lease. If there are tenant-owned improvements being acquired, these should be itemized on the contract and a subsequent Bill of Sale signed by the tenant transferring ownership of the items to the local agency.

The LPA may not want to accept contracts from an owner or the tenant unless an agreement has been reached with both of them. If an agreement cannot be reached, both interests can be combined and acquired in a single condemnation proceeding, although either the tenant or the owner are entitled to ask for separate awards at the condemnation hearing. Exceptions may include minor acquisitions, tenants with 30-day verbal leases or farm year-to-year leases for either cash or crop share have a minimal financial interest. In these cases the acquisition may be accomplished by having the tenant sign a separate tenant contract. When dealing with landowners and tenants separately the LPA will need to coordinate the surrender of possession from the various interest holders so as not to delay the project..

For example, an LPA finds a tenant who agrees to relinquish his rights of possession on January 1 and the landowner has not agreed to settle. On January 1, the owner is in a precarious situation for the tenant has left the property and rent is no longer being paid. Would it not be wise for the owner to find a new tenant and collect rent until settlement is reached with the acquiring authority? Relocation payments made to tenants are not payments of just compensation. In the situation described above, if a new tenant arrives on the scene, this new-interested party may be entitled to relocation payments. It will be necessary to determine what relocation benefits, if any, the new tenant qualifies for.

6.9.8 Typical Questions

Provided in this section of the manual are frequently asked questions and answers.

- *How does an LPA find an appraiser, a relocation agent or some other right of way professional?*

Ans. The KDOT Local Liaison can provide a list of right of way services consultants who perform and who are familiar with federal and state policies/guidelines.

- *Can an LPA use a local appraiser?*

Ans. If the local appraiser is certified or licensed and qualified to do eminent domain appraisals, then a local appraiser can be used.

- *Can an employee of the LPA do an appraisal?*

Ans. No, but they may complete an “Estimate of Just Compensation” form for acquisitions that are “simple” and compensation is \$10,000 or less per tract.

- *How long does it take to do an appraisal?*

Ans. Depending on the complexity of the parcel, and the availability of appraisers the process may take from 6 to 8 weeks, or longer.

- *How long does it take to review an appraisal?*

Ans. Depending on the complexity, it can take from 3 to 4 weeks.

- *Who can act as the agency's negotiator?*

Ans. A qualified full-time employee of the LPA, or a fee negotiator.

- *Can the negotiator offer less than the approved appraisal?*

Ans. No.

- *Can the final agreed compensation exceed the approved appraisal?*

Ans. Yes, provided written documentation in the form of an Administrative Settlement is furnished. It is recommended that the KDOT Local Liaison be consulted prior to the LPA's commitment to the increased amount.

- *Can the LPA use its own legal staff for condemnation in the name of the state?*

Ans. Yes, but first contact the KDOT Local Liaison to make them aware of the situation.

- *When is possession of condemned property secured?*

Ans. When the proceeds of the condemnation proceeding are deposited with the court. If Relocation is involved, the 90 day and 30 day rules do apply as set out in Chapter 4 of this manual.

- *Does the LPA have to acquire temporary easements before we can let our project or can a "Right of Entry" be used?*

Ans. Yes, these interests must be acquired and certified prior to the construction of the project. The use of Rights of Entry are not an acceptable alternative to acquiring a temporary easement. (See the Easement section under Miscellaneous Topics.)

- *If there is no Federal funding in right-of-way acquisition, must I follow these procedures?*

Ans. Yes, if there is Federal funding in any phase of the project or program, federal law requires many of these procedures to be followed regardless of federal funding involvement. Additionally, it is recommended that these procedures be followed in all projects, regardless of the funding source.

6.9.9 Potential Problems

The following are LPA potential problem areas frequently encountered on projects. These issues need to be addressed by the LPA.

- *Project Size/scope* -- These concepts need to be seriously considered when a project is contemplated. If done properly, planning and project scoping can save considerable extra work later on. If the LPA lacks sufficient expertise to size and scope the parcel and/or project accurately, it is advisable to contact KDOT's Local Liaison for assistance.
- *Adequate title search* -- An early and accurate title search is necessary to determine all ownership interests. An accurate title search must be made for each parcel early in the right of way process. This search must identify the owner and also mortgage holders, lessees, judgment holders and major tenants.
- *Right of way plans* -- LPA project planning and construction design must include consideration of existing right of way and construction needs to determine all necessary land and property rights are fully acquired the first time.

- *Lead time identification* -- Attention must be paid to lead time needs. Failure to understand right of way acquisition procedures can add additional time and delay the letting of the project.
- *Local right of way administration or management* -- Many LPA's are not sufficiently staffed to handle anything other than minor or routine "strip-type" acquisitions. Some LPA's may be limited to low value, uncomplicated acquisitions valued by the use of a Compensation Estimate.
- *Part-time and inexperienced professional staffs* -- Many LPA's cannot justify or generate the necessary funding to retain full-time staffs which may only be involved with right of way projects from time to time. Consequently, when a project occurs your agency may be understaffed. In these situations the LPA may want to consider using KDOT assistance and/or consultant resources.
- *Appraisal process and product questions* -- Some LPA's have expressed a desire to ignore in disbelief the value of the appraisal process and the appraisal itself, the product of this process. Federal and state laws and regulations have been written, passed and implemented to reinforce the premise that the appraisal process works, helping to protect both the public in general and the individual property owner affected by public works projects.

6.9.10 Where Do I Find....?

Included is a list of references and an abstract of what is contained in those resources. Many of these references may be obtained from BLP, KDOTs Bureau of Right Way, or the FHWA.

- *Kansas DOT Bureau of Right of Way Policy and Procedures Manuals* -- These manuals collectively cover all aspects of the right of way process. Sections covered include Appraisal, Acquisition, and Relocation Assistance.
- *Kansas Statutes Annotated* – K.S.A. has many chapters and sections which apply to the purchase of right of way for highway purposes. The manner prescribed for most procedures are found in Chapters 12, 13, 75 and 76
- *Federal Regulations* -- The primary ones here are 23 CFR and 49 CFR Part 24. 23 CFR deals with highways in general. 49 CFR Part 24 is implementing regulation covering the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.
- *Department of Treasury, Internal Revenue Sec. 1.6045-4* -- The IRS regulations describing the reporting of real estate transactions are found in this section.

6.9.11 Outdoor Advertising Procedures for Right of Way Acquisition Guide For Local Public Agents

If any portion of the sign structure protrudes into the right of way it must be either removed or relocated. The sign(s) shall be appraised if determined to be eligible for compensation or relocation by the Beautification Section at KDOT.

A digital picture of the sign(s) affected by the highway project must be taken and submitted to KDOT Beautification along with the location of the sign including highway project number and station with approximate mile marker. The Beautification Section will determine the classification of the structure and if it is eligible for compensation or relocation.

If the sign is determined by KDOT to be illegal or otherwise not compensable or re-settable the Beautification Section will inform the owner of the project and status of the sign.

6.9.11.1 Sign Classes:

There are five classes of outdoor advertising structure that could be found on any highway project.

1. Legal Conforming
 - a. This structure is a sign that is in zoned or un-zoned commercial or industrial areas.
 - b. It can be made of any material and may be of any size up to 1200 square foot which was allowed prior to July 2006.

2. Legal non-conforming
 - a. These are signs constructed prior to 1972 and are generally in agriculture or residential zoned or un-zoned areas.
 - b. This structure is generally compensable but not eligible to be reset.

3. Service signs
 - a. Signs for churches and non-profit organizations
 - b. These signs are generally small, 32 square foot or less
 - c. They are compensable in most cases
 - d. We would prefer these signs be compensated for if determined by KDOT to be eligible
 - e. The owners should be asked to contact this office prior to resetting the sign off the new right of way.

4. On Premise Signs
 - a. On premise signs are located on the property advertised by the sign
 - b. These are considered part of the property and should be included in the appraisal of the tract they are on. (note; there are cases when the sign owner may be different that the land owner)

6.9.11.2 Process:

Sign is determined to be “off premise” and is in the new right of way (any portion of the sign).

Steps for Appraiser

Appraiser to take digital picture

Determine MM if available

Determine Location (station) on plans (Include project number)

Provide Sign Tag Number (Green tag should be visible on most signs)

E-mail or mail picture and information above to KDOT Beautification Section

KDOT Beautification will respond with:

Status/class and Eligibility of sign to be compensable or reset

Sign owner information will be forwarded to the appraiser

Land owner information verified

Specifications on file for size (may need to be verified by Appraiser)

Illegal or non-compensable Signs will be addressed by the Beautification Section

Appraiser:

Notification letter sent to sign owner of status by appraiser for compensable/movable signs

****Appraisal to be turned in separate Tract file to Chief Appraiser**

**** Note**

The sign owner must submit a new application to move the sign that is determined to be re-settable but the State application fee will not be required. However the owner will be responsible for local permits required to re-set any sign.