

## **Article 6. Acquisition Policies**

### **6182. Acquisition**

- (a) A public entity shall make its first written offer as soon as feasible following mailing or service of the Notice to Appraise and shall make every reasonable effort to acquire property by agreement and to do so expeditiously.
  - (b) Before negotiations are initiated, a public entity shall:
    - (1) Have the property appraised, except when donated, giving the owner or owner's representative who has been designated in writing an opportunity, by reasonable notice, to accompany the appraiser during the inspection of the property;
    - (2) If the owner of real property is also the owner of a business conducted on the real property to be acquired or on the remainder, inform such owner of the right of compensation for the loss, if any, of goodwill. The public entity should explain the pertinent provisions of the Eminent Domain Law dealing with goodwill.
    - (3) Establish an amount it believes to be just compensation for the property. In no event shall such amount be less than the public entity's approved appraisal of the fair-market value of the property.
  - (c) The entity shall base its determination of just compensation upon consideration of:
    - (1) The highest and best use of the real property being acquired;
    - (2) Where the real property being acquired is a part of a larger parcel, the damages, if any, and benefits, if any, to the remainder; and
    - (3) Loss of goodwill, where the owner of the real property is also the owner of a business conducted on the real property to be acquired or on the remainder and where the provisions of the Eminent Domain Law pertaining to compensation for loss of goodwill are satisfied. Goodwill consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage. Loss of goodwill is established through tax returns provided by owner. Owner also must show loss was not preventable.
  - (d) As soon as feasible after the amount of just compensation is established, the public entity shall offer to acquire the property for the full amount so established and shall provide the owner with a written statement of the basis for determination is just compensation.

The statement shall include the following:

    - (1) A general statement of the public use for which the property is to be acquired.
    - (2) A description of the location and extent of the property to be acquired, with sufficient detail for reasonable identification, and the interest to be acquired.
    - (3) An identification of the buildings, structures, fixtures, or other improvements.
-

- 
- (4) A recital of the amount of the offer and a statement that such amount:
    - (A) Is the full amount believed by the public entity to be just compensation for the property to be acquired.
    - (B) Is not less than the approved appraisal of the fair market value of the property;
    - (C) Disregards any decrease or increase in the fair-market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and
    - (D) Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the owner is entitled to receive under an agreement with the public entity, except for an amount to compensate the owner for that portion of loss of goodwill provided in accordance with Section 6100.
  - (5) If the real property is a portion of a larger parcel, the statement shall include an apportionment of the total estimated just compensation for the partial acquisition between the value of the property to be acquired and the amount of damage, if any, to the remainder of the larger parcel from which such property is taken.
  - (6) If the owner of the real property to be acquired is also the owner of a business conducted upon the property or the remainder, the statement shall include an indication of the amount of compensation for loss of goodwill, if any, and if established at that time. (Loss of goodwill in most situations will occur, if it occurs, after the acquisition is completed and owner has either relocated or continues in same location with diminished business.)
  - (e) At the initiation of negotiations, a public entity shall provide written notification to the owner of a business conducted on the real property to be acquired or on the remainder, who is not also the owner of the real property, concerning the right to compensation for loss, if any, of goodwill. The public entity should explain pertinent provisions of the Eminent Domain Law.
  - (f) If after receiving the public entity's offer the owner requests additional information regarding the determination of just compensation, and if an eminent domain proceeding has not been commenced, the public entity shall provide the following information to the extent that the determination of just compensation is based thereon:
    - (1) The date of valuation used.
    - (2) The highest and best use of the property.
    - (3) The applicable zoning.
    - (4) Identification of some of the sales, contracts to sell and purchase, and leases supporting the determination of value.
    - (5) If the property is a portion of a larger parcel, a description of the larger parcel, with sufficient detail for reasonable identification.
-

- (g) With respect to each sale, contract, or lease provided in accordance with subdivision (f), the following data should be provided:
- (1) The names and business or residence addresses, if known, of the parties to the transaction. If such information was provided confidentially, it shall not be included.
  - (2) The location of the property subject to the transaction.
  - (3) The date of transaction.
  - (4) The price and other significant terms and circumstances of the transaction, if known. In lieu of stating the other terms and circumstances, the public entity may, if the document is available for inspection, state the place where the times when it is available for inspection.
- (h) Whenever a part of a parcel of property is to be acquired by a public entity for public use and the remainder, or a portion of the remainder, will be left in such size, shape or condition as to constitute an uneconomic remnant, the public entity shall offer to acquire the remnant if the owner so desires. For the purposes of this subchapter an "uneconomic remnant" is defined as a parcel of real property in which the owner retains an interest after a partial acquisition and which has little or no utility or value to such owner. (Nothing in this subdivision is intended to limit a public entity's authority to acquire real property.)
- (i) Nothing in this section shall be construed to deprive a tenant of the right to obtain payment for any to be acquired property interest otherwise provided for by law.
- (j) Prior to commencement of an eminent domain proceeding, the public entity shall make reasonable efforts to discuss with the owner its offer to purchase the owner's real property. The owner shall be given a reasonable opportunity to present material which such owner believes to be relevant as to the issue of value and to suggest modification in the proposed terms and conditions of the purchase, and the public entity shall carefully consider the material submitted by the owner.
- (k) Prior to commencement of an eminent domain proceeding, if the data presented by an owner or if a material change in the character or condition of the property indicates need for a new or revised appraisal or if a delay which could affect the value has occurred since the determination of just compensation, the public entity shall have its appraisal updated. If a modification in the public entity's determination of just compensation is warranted, it shall make an appropriate price adjustment and promptly offer the new amount determined to be just compensation in writing to the owner.
- (l) In no event shall the public entity either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive or misleading in nature, in order to compel or induce an agreement on the price to be paid for the property.
- (m) If any interest in property is to be acquired by exercise of the power of eminent domain, the public entity shall promptly institute formal condemnation proceedings. No public entity shall intentionally make it necessary for an owner
-

to institute legal proceedings to prove the fact of the taking of such owner's real property.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety Code Section 50460. Reference: Government Code Section 7267-7267.7.

**6184. Notice of Decision to Appraise**

The public entity shall provide the owner with written notice of its decision to appraise the real property as soon as feasible after it makes the decision to appraise. The notice shall state, as a minimum, that:

- (a) A specific area is being considered for a particular public use;
- (b) The owner's property has been determined to be located within the area; and
- (c) The owner's property, which shall be described generally, may be acquired for the public use.

NOTE: Authority Cited: Government Code Section 7267.8; Health and Safety Code Section 50460. Reference Government Code Section 7267

**6188. Notice of Land Acquisition Procedures**

- (a) At the time the public entity notifies an owner of its decision to appraise real property, it shall furnish the owner a written explanation of its land acquisition procedures, describing in non-technical, understandable terms the public entity's acquisition procedures and the rights and options available to the owner.
  - (b) The notice shall include at least the following:
    - (1) A description of the basic objective of the public entity's land acquisition program and a reference to the availability of the public entity's statement covering relocation benefits for which an owner-occupant may be eligible;
    - (2) A statement that the owner or owner's representative who has been designated, in writing, shall be given the opportunity to accompany any appraiser during inspection of the property.
    - (3) A statement that if the acquisition of any part of real property would leave the owner with an uneconomic remnant, the public entity will offer to acquire the uneconomic remnant if the owner so desires;
    - (4) A statement that if the owner is not satisfied with the public entity's offer of just compensation, such owner will be given a reasonable opportunity to present relevant material, which the public entity will carefully consider; and that if a voluntary agreement cannot be reached, the public entity, as soon as feasible, will either institute a formal condemnation proceeding or abandon its intention to acquire the property, giving notice of the latter as provided in Section 6190.
-

- (5) A statement that construction or development of a project shall be so scheduled that no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by this subchapter will be available) or to move such person's business or farm operation without at least 90 days written notice from the public entity of the date by which the move is required; and
- (6) A statement setting forth the requirements of Section 6194.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267.

**6190. Notice of Public Entity's Decision Not to Acquire**

Whenever a public entity decides not to acquire a property after it has forwarded a Notice of Decision to Appraise or has made a firm offer, the public entity shall serve a notice in writing on the owner, all persons occupying the property and all other persons potentially eligible for relocation payments and assistance which shall state that the public entity has decided not to acquire the property. It shall be served not later than 10 days following the date of the public entity decision not to acquire.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267.

**6192. Incidental Expenses**

If the public entity acquires the real property by purchase, it shall pay all reasonable expenses incident to transfer. These expenses include recording fees, transfer fees and similar expenses incident to the conveyance of real property, and the pro rata portion of charges for public service such as water, sewage and trash collection which are allowable to a period subsequent to the date of transfer of title to the public entity, or the effective date of possession of such property by the public entity, whichever is earlier. The public entity shall inform the owner that such owner may apply for a rebate of the pro rata portion of any real property taxes paid.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267.

**6194. Short Term Rental**

- (a) If the public entity permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the public entity on short notice, the amount of rent required shall not exceed the lesser of the fair rental value to a short-term occupier or the pro rata portion of the fair-rental value for a typical rental period;  
If the owner or tenant is an occupant of a dwelling, the rental for the dwelling shall be within such owner or tenant's financial means.
-

- (b) A port-acquisition tenant who occupies real property acquired on a rental basis for a short-term and who is informed that the property has been acquired for a public use shall be given not less than 30 days' notice of termination of the tenancy.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267 and 7267.4.

**6196. Service of Notice**

Service of all notices required by this article shall be made either by first class mail or by personal service upon the person to be notified.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267.

**6198. Nonpossessory Interest Exception**

The provisions of subdivisions (b), (c), (d) (4), (f) and (g) of Section 6182 and Section 6188 shall not apply to the acquisition of any easement, right of way, covenant or other nonpossessory interest in real property to be acquired for the construction, reconstruction, alteration, enlargement, maintenance, renewal, repair or replacement of sub-surface sewers, water lines or appurtenance, drains, septic tanks, or storm water drains.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7267.

**6199. Preemption**

This Article does not preempt any other provision of law which provides greater protection to tenants or occupants subject to acquisition.

NOTE: Authority cited: Government Code Section 7267.8; Health and Safety code Section 50460. Reference: Government Code Section 7272

NOTE: The foregoing Housing and Community Development Guidelines are included in this handbook as an exhibit for informational purposes. They are not to be used to revise, modify, alter or otherwise qualify any policy or procedure of the Department of Transportation as set forth in its policy or procedural handbooks.

---