

# *Citizen's Guide to Property Acquisitions*

*By Local Public Agencies in Mississippi*





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# 1: INTRODUCTION



Government programs designed to benefit the public as a whole often result in acquisition of private property and, sometimes, in the displacement of people from their residences, businesses or farms. Acquisition of this kind has long been recognized as a power of government and is known as the power of eminent domain. However, the use of that power is limited by U.S. and State Constitutions. The Fifth Amendment of the U.S. Constitution states that private property shall not be taken for public use without just compensation. That requirement of compensation also appears in Article 3 § 17 of the Mississippi State Constitution. Mississippi statute law regarding the acquisition of real property in publicly funded projects can be found in the Mississippi Code, Title 43, Chapter 37.

To provide uniform and equitable treatment for persons whose property is acquired for public use, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amended it in 1987. This law, called the Uniform Act, is the foundation for the information discussed in this booklet.

Revised rules for the Uniform Act were published in the Federal Register on January 4, 2005. The rules are reprinted each year in the Code of Federal Regulations (CFR), Title 49, Part 24. All Federal, State and local government agencies, as well as others receiving Federal financial assistance for public programs and projects, that require the acquisition of real property, must comply with the policies and provisions set forth in the Uniform Act and the regulation.

This booklet explains your rights as an owner of real property in Mississippi to be acquired for a public project. The requirements for relocation assistance are explained in a separate booklet entitled “Citizen’s Guide to Relocation Assistance For Local Public Agencies in Mississippi”

Acquisition and relocation information can be found on the Federal Highway Administration Office of Real Estate Services website: [www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate)

The local agency responsible for the federally-funded program or project in your area will have specific information regarding your acquisition. Please contact your local agency (usually your city, town, or county government office) to receive answers to your specific questions.

# 2: PLANNING OF PROJECT

Planning a road or other public project cannot happen overnight. It takes several years of concentrated effort. We appreciate your continued patience and cooperation during the property acquisition phase of this project.

To assure that the public is given every opportunity to participate in the project development processes, opinions of the local residents and federal, state, and local agents are consulted during the environmental study phase of the project. Also at public meetings and public hearings individuals are given the opportunity to express their viewpoints concerning the project. After these opinions and viewpoints have been given full and careful consideration, a specific proposal is recommended to the appropriate officials of your local public agency.

After the environmental process has been completed the Mississippi Department of Transportation will authorize the local agency to acquire the property necessary for the project. During the property acquisition phase, plats are developed, property deeds are prepared, property valuations are made, property is acquired, displacees are relocated, and improvements are removed from the acquired properties. After this has been accomplished, bids for the construction of the project can be secured.



# 3: IMPORTANT TERMS

## *USED IN THIS BOOKLET*

### **Acquisition Process**

The acquisition process begins when you are contacted by a representative of the acquiring agency and presented with a written offer to acquire your property.

### **Agency, Local Agency, Local Public Agency, or Acquiring Agency**

An agency can be a government organization (Federal, State, County, City or Town), a non-government organization (such as a utility company), or a private person using Federal financial assistance for a program or project that acquires real property or displaces a person

### **Appraisal**

An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

### **Condemnation**

If you and the acquiring agency cannot reach an agreement on the sale of your property, the acquiring agency may institute a formal legal process known as “Condemnation Proceedings” to acquire your property through the power of eminent domain. Eminent domain is the power that governments have to acquire private property for public use upon payment of just compensation.

### **Displaced Persons**

The term displaced person means any person who must move from real property or must move his or her personal property from real property as a direct result of the local agency’s intent to acquire such real property. A local agency’s notice of “intent to acquire” occurs when the owner receives a written offer to acquire the property.

### **Easement**

In general, an easement is the right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary (i.e., limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right.

### **Eminent Domain**

Eminent Domain is the power of government to take private property for public use upon payment of just compensation.



**Fair Market Value**

A widely accepted definition of "fair market value is:"... the most probable price in cash that a willing buyer will pay and a willing seller will accept for the property as of a specified date; both being informed of the highest and best use of the property; neither being under duress or under any compulsion to either buy or sell; and allowing a reasonable time for exposure on the open market.

**Interest**

A right, title, or legal share in property. People who share in the ownership of real property, or possess a legal right to the use of real property, have an interest in the property.

**Just Compensation**

Just Compensation is usually defined as the fair market value of the property acquired plus damages, if any, to the remaining property.

**Lien**

A lien is a charge against a property in which the property is the security for payment of a debt. A mortgage is a lien. So are taxes. Customarily, liens must be paid in full when the property is sold.

**Person**

As used in this booklet, a person is an individual, partnership, corporation, or association.

**Personal Property**

In general, personal property is property that can be moved. It is not permanently attached to, or part of, the real property. Personal property is not to be included in the valuation of real property.

**Program or Project**

A program or project is any activity or series of activities undertaken by an agency where Federal and/or State financial assistance is used in any phase of the activity.

**Real Property**

Real property is defined as the rights and interests possessed in land and generally whatever is erected, growing upon or affixed to it.

**Retention Value**

Retention value or salvage value is the amount the acquiring agency will charge you should they decide to sell the building or structure back to you.

### **Uneconomic Remainder**

The property remaining after a partial acquisition which has little or no utility or value to the owner. Your local agency will offer to purchase it, but you are not required to sell it.

### **Waiver Valuation**

The valuation process used and the product produced when the agency determines that an appraisal is not required. Waiver valuations may be used for those property valuations that the agency determines are relatively low-value and uncomplicated.



# 4: WHO WILL CONTACT ME

## *ABOUT THE ACQUISITION OF MY PROPERTY*

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### **1. Valuation**

A valuation specialist will contact you for an appointment to inspect your property. You, or a representative you designate, will be given an opportunity to accompany the agency representative on his/her inspection of your property. Accompanying the inspection will afford you the opportunity to point out any unusual or hidden features the property may possess.

### **2. Acquisition**

After the valuation process has been completed, an agency acquisition agent will contact you concerning the acquisition of your property. He/She will provide you with a written offer which the acquiring agency believes to be just compensation for your property.

### **3. Relocation Assistance**

An agency relocation specialist will contact you if you meet the definition of a displaced person as defined on page 6. He/She will give you a relocation assistance brochure and will explain the relocation assistance program to you in detail as it pertains to your particular situation. This agent will provide necessary relocation assistance advisory services and will offer the relocation assistance payments for which you may be eligible.

### **4. Clearance**

An agency demolition specialist will contact you to explain the procedures for performing an asbestos inspection of your improvements and, when necessary, a survey of your property for environmental clearance. He/She will supply you with an Asbestos Fact Sheet and arrange a time for the asbestos inspection.

### **5. Consultants**

On some right of way projects, your local agency may hire consultants to perform some or all of the functions listed above. The local agency must review final values and establish what is believed to be just compensation for the property to be acquired.

# 5: FLOWCHART OF PROCEDURES

<b>Title</b>
1- Local courthouse records are used to determine ownership.
<b>Engineering</b>
1- Prepare maps and legal instruments for property needed.
<b>Valuation</b>
<ol style="list-style-type: none"><li>1- Meet with property owners.</li><li>2- Perform inspection of property.</li><li>3- Check recent sales of properties.</li><li>4- Prepare property valuation report.</li></ol>
<b>Acquisition / Relocation</b>
<ol style="list-style-type: none"><li>1- Initiate contact with property owner.</li><li>2- Present and explain the Fair Market Value Offer.</li><li>3- Present and explain (if applicable) the offer for relocation assistance.</li><li>4- Secure properly signed instruments from landowners and mortgage holders.</li><li>5- Invoice for payment.</li></ol>
<b>Title</b>
<ol style="list-style-type: none"><li>1- Update Ownership of Title.</li><li>2- File Instruments for Record.</li><li>3- Disburse Funds.</li></ol>

# 6: DEVELOPING AN ESTIMATE OF MARKET VALUE

A valuation of your property must be made before the acquisition process is started. Valuation procedures are designed to protect both the property owner and the taxpayers. The valuation process utilized to determine the value of your property will vary depending on the nature of the acquisition and the complexity of the valuation. The valuation agents assigned to perform the valuation of your property are experienced and well qualified in the field of real property valuation and have been instructed “to report with utmost accuracy the fair market value of the property under consideration”.



Parcels of property needed for road construction or other public improvements come in all shapes and sizes. Roads or other public improvement construction projects do not usually require the acquisition of an entire parcel of land. When only part of a parcel is needed, it is referred to as a “partial acquisition”. The valuation process utilized for a partial acquisition will vary depending on the disposition of the property and the specific features of the part that is in need of being acquired. In some cases, such as with a very small piece of land whose valuation is uncomplicated, the acquiring agency may choose to use a process, authorized under Federal regulation and Mississippi law, called “Waiver Valuation”. In other cases, where the valuation is more complex and there are buildings or other improvements whose value may be impacted by the acquisition, an appraisal is made of the whole parcel including improvements, to estimate the fair market value before acquisition of the right of way. An appraisal is then made to estimate the fair market value of the land and improvements remaining after the acquisition. The difference between the two appraised values, before and after, is the amount the acquiring agency will offer to acquire your property. This amount reflects the value of the portion to be acquired as well as damages, if any, to the remaining property.

The valuation agent will inspect and study the property to be acquired, check recent sales of real estate, and accumulate all other data considered necessary to estimate the value of your property. Please provide the valuation agent with whatever information you feel will be helpful.



All property valuations are reviewed by officials of the acquiring agency to assure the valuation process was properly documented. All appraisals are reviewed by qualified appraisers. The review of the property valuation explains the delay between the time of the valuation and the initiation of acquisition process. It is the intent of your local agency that you are offered a fair price for property

needed in the construction of the local public project. To offer you less would not be fair to you. And to offer you more would not be fair to the taxpayers who must pay the bill. Every effort is made to assure that you will receive fair and equitable treatment.



# 7: ACQUISITION/RELOCATION PROCESS

After an amount is established by the acquiring agency of what it believes to be just compensation for your property, a property acquisition agent, trained and experienced in the acquisition of property for public projects will call on you to arrange for the acquisition of your property. The property acquisition agent will have maps which will show the amount of your property needed and the effect the project will have on your remaining property. He/She is authorized to provide you a specific written offer for the full amount the acquiring agency has determined to be



just compensation. The acquisition agent is not authorized to offer any more than the amount of the written offer. In cases where only a part of your property is to be acquired, the offer must separate the amount, if any, for damages to the remainder from the amount offered for the property being acquired.

After being fully informed by the agency of the right to receive just compensation for the property, an owner whose property is being acquired may donate the property to the acquiring agency. The acquiring agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the acquiring agency from the appraisal obligation.

If you meet the definition of a “Displaced Person” stated in the “Important Terms” section of this booklet an agency representative trained and experienced in relocation assistance, will contact you, provide a relocation assistance brochure, and explain the relocation assistance program to you in detail as it pertains to your particular situation. This agent will provide necessary relocation assistance advisory services and will offer the relocation assistance payments for which you may be eligible.



It is not necessary that the acquisition process be completed during the first visit. You will have adequate time to consider the offer. After you have considered the offer, the agency trusts that you will accept the offer and acquisition can be completed. If so, the acquisition is subject to final approval by authorized officials of the acquiring agency, and you should receive payment in approximately 30-60 days.

If for some reason you think that you are not being offered just compensation for your property, you may present the property acquisition agent with evidence supporting your claim. Officials of the acquiring agency will consider the information you submit very carefully, and make every effort to be fair, cooperative, and understanding.

Differences of opinion are bound to occur occasionally. When there are different opinions about the value of the property being acquired, the local public project the best way to assure equitable treatment for all is to put the matter before the courts. This is what is known as "condemnation" or "eminent domain" proceedings.

A special court of eminent domain will be formed to hear the case. You will have an opportunity to explain to the court your opinion of the value of your property. Likewise, the acquiring agency will explain its opinion. The jury will then determine the amount of money you are to be paid. Both you and the acquiring agency have the right to appeal the judgment.

In some cases it may be necessary for the acquiring agency to gain right of immediate entry and title to your property to construct the public project before the eminent domain trial. If so, Mississippi's "right of immediate possession" law requires the court to appoint an appraiser for the court. The acquiring agency will then deposit 85% of the court appointed appraisal or 100% of the agency's opinion of fair market value, whichever is the greatest. This will give the agency possession of the property. This money is now available for the property owner to withdraw upon order of the court.





# 8: REIMBURSEMENT OF INCIDENTAL EXPENSES



You as property owner are entitled to be reimbursed for fair and reasonable expenses you necessarily incur for acquisition purposes, such as:

1. Recording fees, prepaid taxes and similar expenses incidental to conveying your property to the local public agency
2. Penalty costs for prepayment of any pre-existing recorded mortgage, entered into in good faith, encumbering your property.

Your local agency prepares deeds and mortgage releases and records them at no expense to you. However, the local agency is not required to pay costs solely to perfect your title to your real property nor to pay attorney fees incurred by you solely at your discretion in effecting transfer of the title to the acquiring agency.

If you have any questions concerning penalty costs for prepayment of mortgages, your acquisition/relocation agent will answer them for you.

You may file a written appeal with your local agency in any case in which you believe that the agency has failed to properly determine you eligibility for, or the amount of, a payment listed in paragraphs 1 and 2 above. The procedure for filing an appeal will be explained by your acquisition/relocation agent.

# 9: REIMBURSEMENT OF *LITIGATION EXPENSES*



If any one of the three following conditions exists, your local agency must reimburse you for your reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees which you have actually incurred.

1. The local agency starts a condemnation action, but the court decides that the agency does not have the authority to acquire you property by condemnation.

2. If the local agency starts a condemnation action and abandons it; or

3. If you, as owner, successfully maintain an inverse condemnation proceeding. (Inverse condemnation is a legal process by which an owner brings suit against the local agency to prove that the agency has taken compensable property rights without payment of just compensation.)



# 10: A FINAL WORD



Property owners should heed no other notice than direct communication from an authorized representative of the local public agency that supplied you with this booklet.

It is our hope that information contained in this booklet will be of value to you. We realize there are many questions which this booklet has not answered. We want to stress again that those questions left unanswered should be asked by you at the time the acquisition procedure is in progress. Questions such as whether or not the acquiring agency will sell a building or structure located within the boundaries of the property acquired can best be answered at the time the representatives of the acquiring agency meet with you.

In conclusion, it is hoped that this booklet has helped to provide a general understanding of your rights and an overview of the process utilize to acquire property for public project.

All inquiries regarding your property should be directed to the attention of:

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# NOTES



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## MDOT Statement of Nondiscrimination

The Mississippi Department of Transportation (MDOT) operates its programs and services without regard to race, color, national origin, sex, age, or disability in accordance with Title VI of the Civil Rights Act of 1964, as amended and related statutes and implementing authorities. Any person who believes she or he has been aggrieved by any unlawful discriminatory practice under Title VI may file a complaint with MDOT.

For more information on MDOT's civil rights program, and the procedures to file a complaint, contact 601-359-7466; email [jrigby@mdot.ms.gov](mailto:jrigby@mdot.ms.gov); or visit our Office of Civil Rights located at 401 North West Street, Jackson, MS 39201. For more information, visit [www.mdot.ms.gov](http://www.mdot.ms.gov)

If information is needed in another language, contact 601-359-7466  
Si necesita información en otro idioma, contacto 601-359-7466

