

Acquisition and Relocation

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Introduction

This chapter describes acquisition and relocation using CDBG-DR funds. Acquisition and relocation funded by CDBG-DR funds must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended. This chapter also includes the appeals and record keeping processes for the acquisition of real property, and covers the relocation requirements for individuals who must be relocated due to the impacts of the project.

Note: For this chapter, "Agency" is defined at [49 CFR § 24.2](#) as "any entity utilizing Federal funds or Federal financial assistance for a project or program that acquires real property or displaces a person." Subrecipients of the State's CDBG-DR grant funds are considered the acquiring "agency." Throughout this chapter, the terms "agency" and "subrecipient" are interchangeable.

Note: HUD requires comprehensive documentation of the acquisition process regardless of the type of acquisition or whether the Subrecipient ultimately acquires the property. Such documentation is referenced throughout the chapter. In cases where HUD provides examples of forms, notifications, ledgers, or templates, the chapter provides a link. In cases where HUD does not provide an example document, DCA is prepared to provide examples upon request. Please contact DCA for additional guidance.

Acquisition

Acquisition under the State's infrastructure programs involves the voluntary or involuntary purchase of real property for redevelopment. The property must be purchased at the current fair market value. This chapter does not include requirements for "buyout" properties, which is the acquisition of properties located in a floodway, floodplain, or other Disaster Risk Reduction Area that is intended to reduce risk from future hazards and will remain as open space. While buyouts are an eligible use of CDBG-DR funds, they are not funded under the State's infrastructure programs.

General Acquisition Requirements

The following general requirements (and URA requirements) apply to acquisition under CDBG-DR.

This manual defines "property to be acquired" as any permanent interest in land, including full ownership, land contracts, permanent easements, long-term leases (50 years or more), and rights-of-way. Temporary easements must follow the same rules as other types of acquisitions, unless the easement benefits only the property owner. Subrecipients should note that all types of acquisitions, whether through purchase, donation, or partial donation, are covered by the URA.

Acquisition rules must be followed whenever:

- The subrecipient undertakes the purchase of property directly;

- The subrecipient hires an agent, private developer, or other third party to act on their behalf;
- The subrecipient provides a nonprofit, or for-profit entity with funds to purchase a property.

The first step subrecipients should consider before undertaking any acquisition is a title search to determine the legal owner of the property.

Subrecipients must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts. Refer to the Environmental Review chapter in this manual for detailed guidance.

Voluntary Acquisitions and Donations

Subrecipients must understand the critical difference between voluntary and involuntary acquisitions to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary sales. The key difference between the two types of acquisition is that when a voluntary sale occurs, **there can be no threat of eminent domain.**

Regardless of the form of acquisition used, it is strongly recommended that the subrecipient maintain a correspondence log with the owner in each acquisition file.

The URA recognizes three general types of purchases as potentially voluntary. Generally, they are:

- Purchases in which persons are acting on behalf of an agency with the power of eminent domain but the community states in writing it will not use this power.
 - *Example:* The City or County subrecipient has identified parcel(s), but it will not use its powers to obtain the property through condemnation. The buyer must inform the seller of this fact in writing and – if the offer is not accepted – be prepared to look for another property. The property will not be taken using the condemnation process.
- Purchases where the agency or person does not have the power of eminent domain.
 - *Example:* A nonprofit organization without the power of eminent domain is looking for properties suitable for purchase, rehabilitation, and resale. All their negotiations must be conducted in accordance with the rules for voluntary acquisition.
- Purchases of property from government agencies (federal, state, or local) where the subrecipient does not have the power of eminent domain over the other entity.
 - *Example:* A nonprofit organization without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. The nonprofit organization would never be able to purchase it if the Corps is not agreeable to their offer.
- Under the URA, a “willing seller” or “amicable agreement” does not automatically make a transaction “voluntary.” For a transaction to be considered voluntary, the regulations at [49 CFR 24.101\(b\)\(1-3\)](#) must be met. This includes the requirement that the agency cannot use eminent domain and must inform the property owner in writing, no later than

the time of the offer, that the property will not be acquired if negotiations fail. The agency must also provide their estimate of the property's fair market value. If multiple properties in the same area are being purchased, all owners must be treated equally. [49 CFR § 24.101\(b\)\(1-3\)](#) specifically states: The agency will not use the power of eminent domain to acquire the property, and the following conditions are met:

- No later than the time of the offer the agency informs the owner of the property or the owner's designated representative in writing of the following:
 - The agency will not acquire the property if negotiations fail to result in an amicable agreement; and
 - The agency's estimate of fair market value for the property to be acquired. (See [Appendix A, §§ 24.101\(b\)\(1\)\(i\)](#) and [24.101\(b\)\(1\)\(i\)\(B\)](#))
- Where an agency wishes to purchase more than one property within a general geographic area on this basis, all owners are to be treated similarly. (See [Appendix A, § 24.101\(b\)\(1\)\(ii\)](#))
- The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area must be acquired within specific time limits. (See [Appendix A, § 24.101\(b\)\(1\)\(iii\)](#))
- The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

Public notices should clearly outline the subrecipient's intent to acquire property, including what is being purchased, why it is needed, and any conditions sellers should know.

Owner-occupants of properties acquired voluntarily are not eligible for relocation benefits under the URA. However, tenants in legal occupancy, including non-residential tenants, may be protected by the URA and may be eligible for relocation assistance if they are displaced as a direct result of the project. Subrecipients should state this in public notices and include an acknowledgment form with the purchase offer to confirm the seller understands the voluntary nature of the transaction.

Voluntary Acquisition by a Subrecipient or Persons Acting on Behalf of a Subrecipient with the Power of Eminent Domain

To be considered a voluntary acquisition by a purchaser with the power of eminent domain, the property cannot be part of a project where all properties in the area are planned to be purchased within a specific time frame.

The search for alternative sites for the project or activity may be limited to one geographic area, but if none of the owners are willing to sell voluntarily, the subrecipient must be prepared to look in another area for a suitable site. Where an agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated in an equivalent or like manner.

If a subrecipient determines that a specific site is necessary for a program or activity it is planning to undertake, then the sale cannot be considered voluntary. It is assumed that, if negotiations fail, the subrecipient could ultimately acquire the property through condemnation. Thus, the acquisition is **not** considered voluntary.

For an acquisition to be considered voluntary, the subrecipient must give the property owner written assurance that federal funds are involved, but eminent domain will not be used if negotiations fail. The subrecipient must also provide an estimate of the property's market value. While formal appraisals are not required, the subrecipient must have a reasonable basis for the estimate.

After a subrecipient has established a market value for the property and has notified the owner of this amount in writing, the subrecipient may negotiate freely with the owner to reach an agreement. Negotiations may result in an agreement for an amount equal to, exceeding, or below the original estimate.

Although not required by the regulations, it could be appropriate for subrecipients to apply the URA administrative settlement concept and procedures in the URA regulations to negotiate amounts that exceed the original estimate of market value (if they can demonstrate that the offer was reasonable and necessary to accomplish the project). Administrative settlements may be considered when reasonable efforts to negotiate an agreement at the amount offered have failed and a settlement would be deemed reasonable, prudent, and in the public interest. (Handbook [1378 Chapter 5- Real Property Acquisition](#)). If subrecipients anticipate offering an amount greater than market value, they must submit a written request with supporting documentation to DCA, providing a basis for paying an amount above the market value. This amount must meet cost reasonableness standards, and DCA must provide approval prior to payment.

Subrecipients cannot take any coercive action in order to reach agreement on the price to be paid for the property.

Voluntary Acquisition without the Power of Eminent Domain (Including Nonprofits and Individuals)

Nonprofit organizations and individual buyers generally do not have the power of eminent domain. Under such circumstances, the requirements for URA are limited. In these types of purchases, the buyer, who could be a private citizen, a developer, or an organization, must inform the seller of three things in writing:

- The buyer does not have the power of eminent domain,
- Federal funds are involved in the acquisition of their real estate, and the owner will not be eligible for relocation benefits, and
- An estimate of the fair market value of the property.

After the buyer/subrecipient has determined the property's market value and has notified the owner of this amount in writing, the buyer may negotiate freely with the owner in order to establish the purchase price.

The seller must be notified of the preceding information using Exhibit 5-1 from HUD Handbook 1378—Disclosures to Seller with Voluntary, Arm’s Length Purchase Offer.

If, for any reason, the seller is not informed of these facts prior to closing, the seller should be immediately informed and allowed to withdraw from the purchase agreement without penalty.

Purchases—Voluntary Acquisition of Government Property

Acquisition is considered voluntary when the property is owned by a government agency and the buyer does not have the power of eminent domain. Subrecipients and individual buyers do not possess the legal authority to condemn government-owned property.

Donations of Property

Voluntary acquisition includes donations of real property; however, the owner must be fully informed of their rights under the URA, including the right to receive a payment for the property. In addition, the owner must acknowledge their URA rights and release the subrecipient, in writing, from its obligation to appraise the property. The Subrecipient must keep this acknowledgement in the project file.

Voluntary transactions that fail to complete the required documentation will be held to the more stringent involuntary transaction requirements.

Involuntary Acquisitions

Use of CDBG-DR Funds and Eminent Domain

No CDBG-DR funds may be used to support any federal, state or local projects that seek to use the power of eminent domain *unless* eminent domain is employed for public use. This includes projects aimed at removing immediate threats to public health and safety. Public use cannot include economic development projects that primarily benefit private entities.

Subrecipients contemplating using eminent domain must do so in accordance with the [Eminent Domain Act of New Jersey](#), and must contact DCA for further guidance before proceeding.

Easements

Temporary easements are subject to all the same rules as other forms of acquisition, except when the easement is for the exclusive benefit of the property owner. For example, if a subrecipient obtained an easement to connect a sewer line from the public right-of-way to a home being rehabilitated with CDBG-DR funds, the easement would exclusively benefit the property owner and would not be subject to the URA.

In all other instances, the URA applies. For example, if a subrecipient is installing a new water or sewer line and requires permanent easements from property owners along the path of the line for installation and future maintenance, these easements will be required and subject to the URA.

Involuntary Transaction Requirements

In accordance with the requirements of the URA for involuntary transactions, the subrecipient must:

- Notify the seller of the subrecipient's interest to acquire their property;
- Obtain an appraisal in compliance with the URA and invite the seller to accompany the appraiser;
- Notify the owner and, if applicable, any tenants of their URA protections;
- Determine the fair market value of the property based on the appraised value (reviewed by a Review Appraiser)
- Offer the fair market value for the property being acquired; and
- Complete the sale as expeditiously as possible.

Notification Requirements

There are two key notices that subrecipients must issue when undertaking an involuntary acquisition:

- A Notice to Owner or Notice of Intent to Acquire, informing the property owner of the subrecipient's interest in purchasing the property. Subrecipients should be cautious about using a Notice of Intent to Acquire, as it triggers relocation eligibility for owner-occupants and tenants.
- A Notice of Just Compensation, sent after the appraisal is completed and reviewed. This notice communicates the offer amount (equal to the full determined value) and establishes the official date for relocation benefits eligibility for all legal occupants, including non-residential occupants.

Timing of URA Coverage

Subrecipients should be aware that the timing of an acquisition can trigger URA requirements. Any property acquisition by a subrecipient on or after the date of the CDBG-DR application submission for an activity using that property is subject to the URA, regardless of the source of funds.

Acquisitions made before the application submission can also be subject to URA if DCA determines there is clear evidence that the purchase was made in anticipation of receiving CDBG-DR funds. Additionally, the URA applies if an agency reimburses itself for the acquisition with non-federal funds, such as general funds, when the project ultimately becomes federally assisted.

Notice to Owner

The Notice to Owner should be sent as soon as possible after a site is selected. This Notice:

- Expresses the agency's initial interest in acquiring the property;
- Informs the owner that the agency must conduct an appraisal of the property to establish fair market value, and that the owner has the right to accompany the appraiser;

- States that the owner will be offered fair market value (just compensation) and identifies what costs will also be covered;
- Informs the owner about the protections provided by the URA.

The subrecipient should also send HUD's brochure ([HUD Form 1041-CPD](#)) entitled, "When a Public Agency Acquires Your Property." The booklet explains the basic protections afforded to the property owner by law.

In the event that relocation benefits are triggered, the Notice to Owner should advise all occupants not to move. The notice only informs the property owner of the subrecipient's initial interest in acquiring their property, but it is not a commitment to provide relocation benefits at this point. Relocation is covered in more detail later in this chapter.

Notice of Intent to Acquire

Subrecipients may choose to send a Notice of Intent to Acquire instead of a Notice to Owner. A Notice of Intent to Acquire must contain all the information included in a Notice to Owner but would also state that the agency intends to acquire the property, rather than expressing a preliminary statement of interest. **The notice should advise all occupants not to move.**

Subrecipients should be aware that the Notice of Intent to Acquire triggers eligibility for relocation benefits by occupants. As such, there is the risk that occupants might move prior to the establishment and written offer of just compensation. Therefore, subrecipients should exercise caution if they choose to send a Notice of Intent to Acquire.

Basis for the Determination of Just Compensation

The written offer to the owner, including the just compensation and summary statement, is sent after the appraisal is completed and the agency has determined the amount of just compensation.

Once this amount has been determined, this written offer should be delivered promptly.

- The delivery date of this written offer constitutes the date that
- triggers relocation eligibility related to the acquisition.
- This written offer must include an offer for the full amount of the just compensation.
- A statement must be included that summarizes the basis for the offer. This summary statement should provide:
 - A statement of the amount offered as just compensation;
 - A description and location of the property to be acquired; and
 - Identification of the buildings, structures, equipment, and fixtures that are included in the offer.

Notice of Intent Not to Acquire

If the subrecipient decides not to buy or condemn a property at any time after the Notice of Intent to Acquire or Notice to Owner has been sent to the property owner, the subrecipient must send written notification, "The Notice of Intent Not to Acquire" to the owner and any tenants occupying the

property. This written notice must be sent within 10 days of the decision not to acquire. The subrecipient should document the reason(s) for deciding against acquiring the property.

Administering Notices

Notices shall be sent by certified or registered mail, return receipt requested, or hand delivered by agency staff. Subrecipients must document receipt of the notices by the owner or occupant. If the owner or occupant does not read or understand English, the subrecipient must provide translations and assistance. Each notice must give the name and telephone number of agency staff that may be contacted for further information.

After confirming the receipt of the appropriate notices by the owner or occupant, the subrecipient should enter the proposed acquisition into a [Site Acquisition Chart](#) to document critical information about each potential property acquisition.

This chart provides information on:

- Number of parcels;
- Property dimensions;
- Source of title;
- Owners;
- Number of houses, businesses, vacant lots, owners and tenants; and
- The amount paid.

Use of this chart reduces time, duplication of effort, and facilitates state and local review.

Appraisals

For acquisitions requiring the estimation of fair market value, the URA requires only one appraisal and a review of this appraisal by a qualified person. The following sections describe the contents of an appraisal and appraiser qualifications.

If an acquisition is complex, potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or likely has a high value, DCA recommends that two appraisals, at a minimum, be obtained. These appraisals will be useful during negotiations and any court proceedings.

Waiver Valuation

An appraisal is not required under two circumstances: (1) when a property is being donated and the owner has waived their rights; or (2) when a property has a value estimated at \$15,000 or less. If an agency determines that a formal appraisal is not required, then the valuation process used is called a waiver valuation. The agency must notify DCA of this determination, and DCA must provide approval for the use of any waiver valuation.

- The determination that a property has a value less than \$15,000 must be based on a review of available data by someone who has sufficient understanding of the local real estate market. This decision must be documented in the project file.

A waiver valuation is not appropriate when the following situations arise:

- The use of eminent domain is anticipated;
- The anticipated value of the proposed acquisition is expected to exceed \$15,000;
- Possible damages to the remainder property exist;
- Questions on highest and best use exist;
- The valuation problem is complex; or
- Hazardous material/waste may be present.

In the case of a voluntary acquisition, if the property owner elects to have the agency appraise the property, the agency must obtain an appraisal and shall not use the waiver valuation method described above.

Easements

As outlined above, a subrecipient must obtain an appraisal for any property, including easements, estimated to be worth more than \$15,000. For easements worth less than \$15,000, the subrecipient can use a Short Form Appraisal Report for Easement Takings. This form should summarize the information that the appraiser/subrecipient must have on file to document the estimated value of the property.

If an owner chooses to donate the property for the easement, the subrecipient must document that the owner has acknowledged that while they have a right to the involuntary acquisition process, including appraisal, that they are choosing to waive their rights under this process.

Appraiser Qualifications

For properties estimated to be worth more than \$15,000, an appraisal must be conducted. There are several minimum requirements for appraisers, including:

- An appraiser must hold a New Jersey appraiser's license. A copy of the license must be included in the acquisition or procurement file.
- A Contract (fee) appraiser must be state licensed or certified in accordance with title XI of the Financial Institutions Reform Recover and Enforcement Act (FIRREA) of 1989. ([49 CFR § 24.103\(d\)\(2\)](#))
- The appraiser, review appraiser, or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the agency. This would be a conflict of interest. ([49 CFR § 24.102\(n\)\(1\)](#))
- No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation aspect of an appraisal, waiver valuation, or review of appraisals or waiver valuations. ([49 CFR § 24.102\(n\)\(2\)](#))
- Persons functioning as negotiators may not supervise nor formally evaluate the performance of any appraiser or waiver valuator. ([49 CFR § 24.102\(n\)\(2\)](#))
- No appraiser may negotiate on the agency's behalf if he or she performed the appraisal, review or waiver valuation, on the property. There is an exception for properties valued at \$15,000 or less.

Contracting for an Appraisal

In order to procure an appraiser, the subrecipient must request statements of qualifications from a number of local appraisers, review those qualifications, and employ only qualified appraisers. See Procurement Chapter from this manual for more information on procurement of professional services.

The subrecipient must execute a professional services contract with an independent appraiser. **The contract must include a detailed scope of services that the appraiser will perform** (see HUD 1378 Handbook Appendix 19, Guide for Preparing Appraisal Scope of Work). Payment for the appraiser's services, or waiver valuation, must not be based on the amount of the resulting property value.

Appraisal Process & Criteria

Appraisals must meet nationally/state-recognized industry standards. The appraiser may not use race, color, religion, or the ethnic characteristics of a neighborhood in estimating the value of residential property. The contract must also specify the content requirements of the appraisal report.

The subrecipient or the appraiser must invite the property owner in writing to accompany the appraiser during inspection of the property. This invitation should be given before the appraisal is undertaken. A copy of the invitation should be placed in the property acquisition file along with evidence of receipt by the owner.

At a minimum, all appraisals must contain the following:

- The purpose and function of the appraisal.
- A statement of the assumptions and limiting conditions affecting the appraisal.
- An adequate legal description of the property, any remnants not being acquired, and its physical characteristics.
 - This should also include key information such as title information, location, zoning, present use, highest and best use, and at least a five-year sales history of the property.
- An explanation of all relevant and reliable approaches to value.
 - If sales data are sufficient, the appraiser should rely solely on the market approach.
 - If more than one method is used, the text should reconcile the various approaches to value and support the conclusions.
- A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- A final statement of the value of the real property.
 - For partial acquisitions, the appraisal should also give a statement of the value of damages and benefits to the remaining property.
- The effective date of the valuation appraisal, date of the appraisal, signature and certification of the appraiser.

See [Handbook 1378, Chapter 5, Paragraph 5-4](#) and [49 CFR § 24.103](#) for more information.

Review of Appraisal

After the initial appraisal is conducted, a review must be made by a New Jersey licensed appraiser under written contract. The review must be documented in writing, signed and dated.

The qualified review appraiser must examine all appraisals to check that the appraisal meets all applicable requirements, and to evaluate the initial appraiser's documentation, analysis, and soundness of opinion. See [49 CFR § 24.104](#) for more information.

If the review appraiser does not approve or accept an appraisal, it may be necessary to seek a second full appraisal. If the review appraiser does not agree with the original appraisal and it is not practical to do a second appraisal, the review appraiser may re-evaluate the original appraisal amount.

Establishing Just Compensation

After a review of the appraisal, the subrecipient must establish just compensation and present this in a written offer to the owner.

Just compensation shall not be less than the approved appraisal or waiver valuation of the fair market value of the property. In determining this amount, the subrecipient may take into account the value of allowable damages or benefits of the remaining property.

If the owner retains or removes any property improvements, (for example, permanent fencing) the salvage value of the improvement should be deducted from the offer of just compensation.

If an entire parcel is not being acquired, and the agency determines that the owner would be left with an uneconomic remnant, the agency must offer to purchase this remnant. An uneconomic remnant is defined as a parcel of real property with little or no value to the owner. An example of this might be a remnant not large enough for future use, or without access to a street.

Along with the initial written purchase offer, the subrecipient shall provide the property owner with a written statement of the basis for determination of just compensation, which will include:

- A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
- A description and location identification of the real property and the interest in the real property to be acquired.
- An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

Negotiating the Purchase

As soon as just compensation is established, the subrecipient must promptly send the owner a Written Offer to Purchase, which includes the Statement of the Basis for the Determination of Just Compensation. As with all notices, receipt by the owner must be documented. If the property is occupied by a tenant, owner or business, the subrecipient must issue a written Notice of Eligibility for Relocation Benefits as soon as possible after the written offer to purchase (also called the “Initiation of Negotiations”) is made.

The agency shall make reasonable efforts to contact the owner or the owner’s designated representative and discuss its offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The agency shall give these suggestions full consideration. ([49 CFR § 24.102\(f\)](#))

If owner-provided information, a material change in the property, or a significant delay warrants it, the agency shall update or obtain a new appraisal or waiver valuation. If the latest appraisal or waiver valuation warrants a change in the purchase offer, the agency shall promptly reestablish just compensation and provide the revised offer to the owner in writing.

The owner must be paid for costs to transfer title to the agency. These costs may be advanced instead of reimbursed, and they include recording fees, legal fees, prepayment penalties, and incidental costs.

Documentation of negotiation proceedings should be placed in the project acquisition file. Subrecipients should be sure to thoroughly document the justification for payment if it is more than the original offer of fair market value.

If the offer exceeds fair market value, then DCA must review and approve it to ensure that it is cost reasonable in any case. DCA will not approve reimbursement exceeding the necessary and reasonable expenditure for real property, at the discretion of DCA.

Closing the Sale or Condemnation

Before the agency takes possession of the property, the owner must be paid just compensation. If the agency is taking the property through condemnation, the agency must deposit the full amount of just compensation with the court. See [Handbook 1378](#), Chapter 5, paragraph 5-4 for more information.

Willing Seller—No Condemnation Action Taken:

If negotiations are successful in an involuntary acquisition, a contract for sale must be prepared and executed, and transfer documents secured. If payment exceeds the market value, and the subrecipient failed to obtain pre-approval of the amount from DCA, the acquisition file must include a written justification of the amount paid. DCA will review these justifications carefully to ensure they are reasonable, and if the payment is determined to be unjustified, the payment will be disallowed. See [49 CFR § 24.102\(j\)](#) for more information.

At the conclusion of settlement, the subrecipient must give the owner a Statement of Settlement Costs, which identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or person handling the transaction. DCA requires that subrecipients obtain a copy of the cancelled check to document receipt for the purchase price.

Condemnation Procedures

If negotiations are unsuccessful, condemnation proceedings may be initiated. Condemnation is a legal action and must be carried out consistent with all applicable laws. Subrecipients must follow the condemnation procedures outlined in [Chapter 5 of the Tenant Assistance, Relocation and Real Property Acquisition Handbook](#).

Waiver of Rights Relative to Withdrawal of Court Deposit: If a property owner withdraws funds deposited by the agency during a condemnation process, it shall not affect their right to challenge the acquisition. This is a requirement under the URA.

Withholding of Payment in Lieu of Security: The procedure of withholding a portion of the salvage value of owner-retained improvements in lieu of a security deposit or bond to guarantee clean-up of the acquired site is permissible. Every property owner is to be offered the full amount of just compensation, but may elect to retain improvements. When improvements are retained in this manner, it is considered good business practice to hold sufficient funds to ensure proper clean-up of the premises. Additional benefits are also provided through reduced administrative costs.

Compensation Funds Deposited with Court at Time of Filing for Condemnation: DCA requires a deposit of just compensation at the time of filing condemnation actions. Filing condemnation actions without concurrent deposit of just compensation funds has a clear potential for coercion of affected property owners, and is contrary to the intent of the Uniform Act.

Escrow of Acquisition Payment: An agency may retain a reasonable portion of the purchase price to ensure that the acquired property, including fixtures, is surrendered to the agency. This portion must be made available to the property owner at the time of the agency's taking physical possession of the property.

Owner has Right to Withdraw Full Amount Deposited with Court Prior to Surrendering Possession: When condemnation is used, owners must be allowed to withdraw the full amount of the court deposit before being required to surrender possession of the property. This is based on the phrase "for the benefit of the owner," which is found in [49 CFR § 24.102\(i\)](#) and means the owner has the right to withdraw the full amount of the court deposit for the owner's use, in the same sense that the owner has the use of the full amount of the agreed purchase price in instances where condemnation is not involved.

Condemnation of Uneconomic Remnants: If the acquisition of a portion of a parcel leaves the owner with an uneconomic remnant, the acquiring agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. While it would be acceptable to condemn an uneconomic remnant to resolve title issues where the property owner

consented to the acquisition, condemnation of uneconomic remnants over valuation issues should not be used on federal aid projects. The condemnation of uneconomic remnants without the owner's consent is inconsistent with both the letter and the intent of the Uniform Act. The law states that the "head of the Federal agency concerned shall offer to acquire that remnant." The law intentionally limits the acquiring agency to "offering" to acquire an uneconomic remnant. To permit the condemnation of uneconomic remnants would effectively allow the taking of private property not required for a defined public purpose. Many, if not most, States would consider the condemnation of real property, in excess of that actually required for a public facility, to be improper as it would not meet the necessity (for taking) test.

See [HUD CPD Handbook 1378.0](#) for more information.

Appeals

Subrecipients must promptly review all appeals in accordance with the requirements of applicable laws and the URA regulations on appeals at [49 CFR § 24.10](#). Subrecipients must develop written procedures to resolve disputes relating to their acquisition, relocation, and demolition activities. These written procedures must be communicated to all potentially affected parties prior to the initiation of negotiations. (Refer to Chapter 1: Project Administration for information on grievance procedures.)

Who May Appeal

Any person, family, or business directly affected by the acquisition and/or relocation activities (voluntary or involuntary) undertaken by a subrecipient may appeal. All appeals must be in writing and must be directed to the chief executive officer of the subrecipient and the highest official of the administering agency undertaking the acquisition, relocation or demolition activity. A protestor must exhaust all administrative remedies as outlined in the subrecipient's written procedures prior to pursuing judicial review.

Basis for Appeals

Any aggrieved person has the right to file a written appeal with the agency if they believe their application for assistance has not been properly considered. This assistance may include, but is not limited to, determinations regarding eligibility, the amount of payment required under §§ [24.106](#) or [24.107](#), or relocation payments under this part. The agency will review appeals regardless of the format of the written appeal.

The agency may establish a reasonable time limit for filing appeals. However, this time limit cannot be less than 60 days from the date the person receives written notification of the agency's decision regarding their claim.

Individuals also have the right to be represented during the appeals process. They may choose legal counsel or another representative, but they are responsible for any costs associated with such representation.

Review of Appeals

The subrecipient shall designate a Review Officer to hear the appeal. The Review Officer shall be the chief administrative officer of the unit of local government or their designee, provided neither was directly involved in the activity for which the appeal was filed. The subrecipient shall consider all pertinent justification and other material submitted by the person and all other available information that is needed to ensure a fair review of the appeal. See [49 CFR § 24.10](#) for more information.

Once all information supporting an appeal has been received, the subrecipient must promptly make a written determination on the appeal. This determination should include an explanation of the basis for the decision. The subrecipient must then notify the person who submitted the appeal of the decision.

If the appeal is denied, the subrecipient must advise the person of his or her right to seek judicial review of the subrecipient's decision.

Record-keeping

The subrecipient must establish an acquisition program file, which contains:

- Development Plan,
- Statement of qualifications of appraisers,
- Appraisal contracts, and
- Copies of public solicitations for voluntary acquisitions.

The subrecipient must establish a file for each property to be acquired and include copies of all notices and proof of receipt, along with other acquisition documents. A checklist should be kept in each acquisition file to help track the process. HUD provides an example of an Acquisition Checklist here: <https://www.hud.gov/sites/documents/1378x24cpdh.pdf>

Some suggested items to include in acquisition files are:

- Signed Waiver Donation Form (if voluntary donation).
- All appropriate notices and copy of "When a Public Agency Acquires Your Property."
- Evidence that a competitive process was utilized in selecting appraisers.
- Appraisal contracts.
- Appraisal and Review Appraisal Report.
- Map and photos for all improved properties.
- Evidence and date of personal contacts with property owner.
- Evidence that the property owner was invited to accompany the appraiser.
- Evidence that the appraisal was reviewed by council and just compensation established.
- Written Offer to Purchase and Summary Statement of the Basis for the Offer of Just Compensation.
- Evidence that the items sent to property owners were mailed certified or registered mail, return receipt requested.
- Written acceptance or rejection of offer to purchase.

- Written evidence of negotiation (if applicable).
- Copy of canceled checks.
- Summary Statement of Settlement Costs.
- Copy of the executed and recorded deed.

At the close of the acquisition, the subrecipient should review the project acquisition file to ensure that it contains all required documentation. Files must be kept for at least six years after full project close-out.

Replacement Housing Assistance for 90-Day Homeowners

Only homeowner-occupants who were in residency for ninety (90) days prior to an offer to purchase their home using involuntary acquisition are eligible for a Replacement Housing Payment (RHP) as “displaced persons.” ([49 CFR § 24.401](#)) If homeowners were in occupancy for less than 90 days prior to the Initiation of Negotiations (ION), they are still protected by the URA as “displaced persons,” but the calculation method is different.

If an owner occupies a property acquired using voluntary acquisition requirements, they are NOT eligible for relocation benefits.

Relocation

For CDBG-DR beneficiaries, residents could have been displaced at the time of the disaster event. Displacement results when people or a non-residential entity moves permanently as a direct result of the disaster impacts, acquisition, demolition, or rehabilitation of property for CDBG-DR-funded projects. Per Section 414 of the Stafford Act, persons displaced by the disaster event are eligible for relocation. This section provides guidance regarding relocation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and Section 104(d), as well as one-for-one unit replacement requirements. It outlines the procedures that subrecipients should follow to ensure compliance with both the URA and 104(d).

Relocation Notices

The URA regulations require three notices to be issued to eligible persons. These notices provide important information about the project, the affected persons' resulting rights, their protections, and their eligibility for relocation assistance and payments under the URA. It is critical for subrecipients to issue appropriate notices to affected persons at the appropriate time.

General Information Notice (GIN): Informs affected persons of the project and that they may be displaced by the project. The GIN is issued as soon as feasible to both owners and tenants to provide preliminary information on the proposed project and potential rights and protections. "As soon as feasible" is typically the time of application for federal assistance or when site control is obtained.

Notice of Relocation Eligibility (NOE): Informs persons that they will be displaced by the project and establishes their eligibility for relocation assistance and payments. Eligibility for relocation assistance at Initiation of Negotiations (ION), actual property acquisition, or upon issuance of a Notice of Intent to Acquire, whichever occurs first. Once eligibility begins, the NOE must be issued within 10 days of ION, actual acquisition, or the date of a Notice of Intent to Acquire, whichever occurs first.

90 Day Notice: Informs displaced persons of the earliest date by which they will be required to move. This notice may not be issued unless a comparable replacement dwelling is available, and the displaced person is informed of its location and has sufficient time to lease or purchase the property. Permanently displaced households must be provided with a minimum of 90 days written notice prior to being *required* to move. The 90 Day Notice may not be issued prior to the NOE, but the two notices may be combined.

Relocation Advisory Services

Relocation advisory services are required to be provided to all eligible displaced persons, including nonresidential displaced persons. Key relocation advisory services requirements include:

- Determine the needs and preferences of displaced persons.
- Explain available relocation assistance.

- Explain a person's right to appeal if they are not satisfied with agency decisions.
- Offer and provide transportation to locate replacement housing.
- Offer other assistance (e.g. social services or financial referrals, housing inspection, etc.)
- Provide current and ongoing listings of comparable dwellings for residential displacements and replacement sites for businesses.
- Supply information on other federal and state programs offering assistance.
- Provide counseling and other assistance to minimize hardship in adjusting to relocation.

Residential Relocation

In addition to relocation advisory services, residential displaced persons may be eligible for other relocation assistance including relocation payments for moving expenses and replacement housing payments for the increased costs of renting or purchasing a comparable replacement dwelling.

Subrecipients should consult 49 CFR Part 24, Subparts D, E, and F and HUD Handbook 1378 for guidance on payments for moving and related expenses, replacement housing payments, and the acquisition and/or relocation of mobile homes.

Housing of Last Resort

Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, DCA may determine to provide replacement housing of last resort. In accordance with [49 CFR § 24.404\(a\)\(2\)](#), the decision to exceed the monetary limits set by [49 CFR § 24.401](#) or [§ 24.402](#) and to provide this additional assistance is determined based on the following criteria:

- There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;
- A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
- The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

Nonresidential Relocation

In addition to relocation advisory services, nonresidential displaced persons may be eligible for other relocation assistance including relocation payments for moving expenses and reestablishment. The URA provides the following moving options:

- Payment for the actual, reasonable moving costs and related expenses, and
- Payment for actual, reasonable reestablishment expenses, or
- A fixed payment “in lieu of” moving and re-establishment costs.