**Chapter 7.0**

*Right-of-Way*

This section is to serve as a basic reference for Local Public Agencies (LPA) and others who receive Federal-aid highway funds for projects involving the acquisition of real property and the relocation of residents, businesses, and others.

Right-of-Way (ROW) is a general term denoting land or property acquired for or devoted to a public use. If ROW is not already owned for a public project, it must be acquired by purchase, donation, or eminent domain. Fee simple title, permanent easements, and temporary easements are all means of conveying ROW.

The Fifth Amendment to the U. S. Constitution expresses the philosophy that *due process* and *just compensation* are required for acquiring private property for a *public use*. All ROW acquired must conform to the rules and regulations under Title 49 of the Code of Federal Regulations Subtitle A – Part 24, which is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended *(Uniform Act)*. The Uniform Act applies even when Federal dollars are not used specifically for property acquisition or relocation activities, but are used elsewhere in the project, such as in preliminary engineering, utility relocation, or construction. The Uniform Act must be followed even if there is *NO* Federal funding in the ROW phase. ALDOT has overall responsibility to the FHWA for the acquisition of ROW on all FHWA funded transportation projects in the State.Subparts C through F of the Uniform Act, where applicable, must be followed when the acquisition of property causes any person to be displaced from the property or to move their personal property from the acquired property. Visit the FHWA website for additional information regarding ROW issues and the Uniform Act: [**UNIFORM ACT.**](http://www.fhwa.dot.gov/realestate/ua/index.htm)

**7.1 Right-of-Way Acquisition Federal-Aid**

LPA right-of-way acquisition projects must be processed in accordance with the following guidelines if federal funds are used in any phase of the project (Preliminary Engineering, Right of Way, Utility, or Construction). Failure to follow these guidelines in acquiring right of way on major collector projects after December 1969, and on minor collector and local road and street projects after January 4, 1975, will make the project ineligible for federal-aid funding. Further, the State of Alabama will adhere to policies provided in the following documents:

[**Federal-aid and ROW.**](http://www.fhwa.dot.gov/realestate/pdg1.htm)

[**Real Estate Acquisition Guide for Local Public Agencies (FHWA June 2011).**](http://www.fhwa.dot.gov/realestate/lpaguide/index.htm)

LPA projects are typically initiated in the Region, and oversight of the LPA is done by Region staff with significant support from the Local Transportation Bureau and other bureaus, offices, and sections at ALDOT Central Office. For this chapter the managing office will be referred to as the ALDOT *Lead Bureau*. At the direction of the Region Engineer, LPA staff must coordinate with Region ROW staff during an acquisition process.

Identifying LPA Uniform Act acquisition projects early in the project development process is essential for ALDOT to provide proper guidance and oversight for right of way acquisition. It is important for the LPA to apprise the ALDOT Lead Bureau when a project requires right of way even if no federal funds are in the right of way. To achieve this, it is important to have good communication and coordination between LPA and ALDOT Right of Way personnel. Each staff should have contact information (telephone numbers and emails) and establish communication. The LPA and ALDOT contact person should attend onsite milestone meetings required by ALDOT Guide for Developing Construction Plans to assess the right of way development. The following guidance should be followed to identify federally funded LPA projects that will require right of way and establish the review and/or approval plan:

1. The LPA and ALDOT Lead Bureau should attend the initial Scope meeting and determine if right of way is to be acquired.
2. Determine the LPA point of contact for the acquisition.
3. Meet with LPA contact and name an ALDOT point of contact.
4. Deliver Acquisition checklist to LPA and establish deliverables to ALDOT for review and/or approval. Discuss the required acquisition process with the LPA. If the LPA is new to Uniform Act Acquisition and the right of way involvement for the project is extensive, the LPA should consider consultant assistance. Unless agreed to beforehand, ALDOT will not do the work for the LPA.
5. For projects where right of way acquisition has not been determined if required or not, ALDOT and LPA contacts must maintain communication and attend the 30% Inspection meeting where right of way needs can be assessed with some certainty.
6. If an LPA project finds right of way is required late in project development, the LPA and ALDOT Lead Bureau must go back and establish information in steps 2 – 4 above.
7. Discuss in advance all items that must be provided in the right of way certification for acceptance.
8. At the time of certification, ALDOT will review the completion of the required items on the acquisition checklist. If any items is incomplete or in question, it is the LPA’s responsibility to provide the additional information.

NOTE: To assure compliance with all Statutes and Regulations ~~to~~ for right of way acquisition, LPA’s should communicate to Region Right of Way staffs when its determined right of way is required on a project no matter how small the project or how late in the process of project development.

**All responsibility for complying with state and federal laws, including all approval authority and settlement authority, is held by the LPA. The region function is to provide procedural approvals (#1 above), contracting approvals (#4 above), guidance, and recommendations to the LPA.**

[Local Transportation Bureau will continue to process and oversee ALDOT let projects, but these are not to be confused with the FHWA LPA program, in which projects are to be let and managed by the LPA.]

**7.1.1 Environmental Coordination**

Another requirement for funding is compliance with the National Environmental Policy Act of

1969 (NEPA). On a federal-aid project, an environmental document must be submitted to the ALDOT Lead Bureau. State funded projects do not require this assessment. Under rare circumstances, and only with ALDOT (Right-of-Way Bureau) prior approval, the appraisal process may begin and proceed to the point, *but not yet include*, of making contact with the property owner. Once the environmental document is approved, the ALDOT Lead Bureau will notify the LPA Engineer to proceed with right-of-way acquisition.

**Note: For a complete review of NEPA processes and required environmental documentation under US Code (USC) and Codes of Federal Regulations (CFRs), please see Chapter 5.0 of this *Manual*. For this document, FHWA is lead agency and LPAs are subject to guidance under 23 CFR 771.**

**7.1.2 Right-of-Way Plans**

A right-of-way map is required as part of project design, indicating the property that is needed to build and maintain the transportation project. The map should contain essential data for appraisal and negotiation, and it provides a valuable visual-aid for negotiators, appraisers, and attorneys involved in acquisition transactions.

If the right-of-way is to be acquired with federal funds, a right-of-way map conforming to mapping standards published on the ALDOT Right-of-Way Bureau webpage in the Engineering Section, must be submitted for authorization. At a minimum, the map must identify the following: project location; existing property lines; specific tract numbers; the owner’s name; the total tract area before and after acquisition; clearly labeled or annotated existing and acquired right-of-way; labeled or annotated building or minor site improvements within or near the acquisition; and topographical features or objects of interest. If a map is not submitted for ALDOT review, a separate plat containing the above stated information, will be required attached to each appraisal.

When an LPA project with federal aid participation in the right-of-way phase has been initiated, a Right-of-Way Cost Estimate and a Form ROW-RA-2 (Project Relocation Analysis), must be completed and submitted to the Region Engineer/Area ROW Office, with a copy to Special Programs Section in the Local Transportation Bureau if this is a Transportation Enhancement project. A copy of the ROW-RA-2 may be downloaded from the ALDOT ROW site at [Relocation Forms.](http://www.dot.state.al.us/rwweb/rowforms.html) If there is no federal aid in the project right-of-way phase, the Cost Estimate is not required. However, if relocation is involved, the ROW-RA-2 form must be completed and submitted. Additional information is available at [Right-of-Way Bureau Website.](http://www.dot.state.al.us/rwweb/index.html)

Once the environmental analysis and development of the ROW plans have been completed, the project is ready for acquisition phase. Prior to initiation of the acquisition process, adequate title information must be obtained. It is important to recognize all interests to be acquired, including owners, lien holders, tenants, easement holders, and taxing authorities.

**7.1.3 Valuation**

An appraisal of the real property to be acquired for the project is the initial step in the acquisition process to estimate the fair market value of the property. Just compensation is established by the acquiring agency.

**7.1.3.1 Just Compensation**

The U.S. Constitution and Alabama Statute require that property owners be paid *just compensation* when the federal or state government acquires private property. The Uniform Act requires that an approved appraisal be used to develop an amount the agency believes to be *just compensation*. The amount offered to the property owner must be at least the approved amount based on an appraisal.

**7.1.3.2 Donation**

Even if the owner has indicated a willingness to donate, the LPA is required to contact the owner or the owner’s representative to discuss its offer to purchase the property based on an appraisal. If the owner indicates the intent to donate his or her property, the owner must release the agency from its obligation to appraise the property by signing the acknowledgment at the bottom of the letter to the property owner. If the property owner donates the property, the LPA accepts the property owner’s donation and processes the title to the property in the usual manner. If the property owner decides not to donate and refuses to sign the acknowledgment, a note written on the letter by the LPA Engineer or the negotiator should state that the property owner refuses to sign the acknowledgement and the property owner understands all of his or her legal options in the acquisition of his or her property. A copy of this documentation must be retained by Region ROW.

**7.1.3.3 Appraisal**

If the property owner desires compensation, then the value of just compensation must be determined. There is no single operation within a right-of-way acquisition program that is more important to its success than the appraisal, or appraisal review process, of needed tracts of real property. The Uniform Act requires that the property be appraised before an acquiring agency begins negotiations to acquire it and that the appraisal be the basis of the offer of *just compensation*. The property owner must be given an opportunity to accompany the appraiser during the examination of his or her property. In no case are the appraisal report or the appraisal report’s data (i.e. comparable sales, etc.) to be made available for review by the property owner or their representative.

An appraisal must be conducted by a qualified appraiser and reviewed by a qualified *review* appraiser if the property owner indicates he or she wants compensation. The qualifications of the appraiser and review appraiser must be based on both the appraiser and review appraiser being able to perform a certified appraisal/appraisal review on the total value of the property in question before the acquisition. If an LPA is direct-hiring an appraiser and/or review appraiser, the individual(s) have to either have an active contract with ALDOT (which requires active engagement on ALDOT projects), or they will have to be hired in compliance with the standard consultant selection procedures prior to selection. The LPA may contact the Region/Area Consultant Management Engineer or, Consultant Management Administrator, to go over the required procedures.

If the appraiser and/or review appraiser is providing a fee quote as a direct subcontractor to the engineering consultant, or a subcontractor to a subcontractor for an engineering firm, already selected or being considered for selection, the appraiser will only have to meet the requirements to perform the work. However, the appraiser’s proposed qualifications and fee quotes will have to be submitted from the prime consultant for review and approval in the original or supplemental proposal in accordance with the City/County/MPO Consultant Selection Manual.

Contact the Region ROW Office for appraisal and appraisal review assistance before any further discussion with the property owner concerning compensation is conducted. The decision process in determining whether an appraisal is necessary, following receipt of authorization to proceed, is illustrated in **Figure 1.**

**7.1.3.4 Reserved for future use.**



Figure 1.

**7.1.4 Acquisition**

Property acquisition is one of the most sensitive aspects of agency interaction with landowners, the general public, and other agencies, because it entails direct personal contact with people affected by a transportation project. Acquisition of property must be in accordance with the Uniform Act (see links on p. 7-1) Additional guidance may be obtained by reviewing the Real Property Appraisal, Negotiation, and Relocation Assistance sections of the Right of Way Manual found on the ALDOT [Right-of-Way Bureau Website.](http://www.dot.state.al.us/rwweb/index.html)

**7.1.4.1 Negotiation**

The LPA Engineer or negotiator should begin negotiation for the property after the offer of *just compensation* has been determined. The negotiator must be someone other than the appraiser or review appraiser. The initial offer must conform to the amount contained in the review appraiser’s determination of value. The offer must be furnished promptly to the property owner in writing. No further breakdown of the offer should be made other than as shown on the ‘Written Offer’ letter. The owner will be given reasonable time to consider the offer and to submit information that the owner believes is relevant to determining the value of the property.

The rationale for any counteroffer considered reasonable and accepted by the LPA Engineer is to be documented as an Administrative Settlement. The LPA Engineer may request a recommendation from the Region Right of Way Manager for supporting documentation. The LPA Engineer should retain copies of the negotiator’s log for the files. Negotiations must be conducted free of any attempt to coerce the property owner into reaching an agreement. In no case are the appraisal report or the appraisal report’s data (i.e. comparable sales, etc.) to be made available for review by the property owner or their representative.

**7.1.4.2 Negotiators Log**

The LPA must maintain an adequate record of each parcel negotiated, including contacts with property owners or their representatives, in order to document important information; i.e., name of negotiator, amount of offer, number and amount of the counter-offers, and upon completion of negotiations, the negotiator’s signature and date.

A Negotiators Log is required to thoroughly document the course of events leading to an amicable settlement, and if necessary, condemnation. The log will also document compliance with the Uniform Act requirements; i.e., encourage acquisition by agreement and avoid litigation, show there was no coercion to accept the offered amount and ensure consistent treatment for the owner. Form ROW 10, Negotiators Report for LPA Projects, must be used to document all negotiations. See the Uniform Act link on p. 7-1 for additional information on Act requirements. [ALDOT Negotiations Manual](http://www.dot.state.al.us/rwweb/doc/proceduralmanuals/Negotiations%20Manual.pdf)

**7.1.4.3 Condemnation**

Eminent Domain, or *Condemnation,* is the governmental power reserved to acquire private property rights by due process of law when the proven necessity for public use arises. When exercising this right, two basic requirements must be met: 1) the use must be public and 2) *just compensation* must be paid to the owner prior to taking possession of the property.

When it becomes evident that an agreement cannot be reached and negotiations cannot proceed, it will be necessary to acquire the property through condemnation proceedings in Probate Court in the county in which the property is located. The LPA representative should explain to the property owner the condemnation process so they will understand their rights and what to expect. After a condemnation petition has been filed, an administrative settlement can still be made between the LPA and the property owner prior to the Probate Court rendering an award. After a Probate Court award is rendered and either side appeals to Circuit Court a Legal Settlement can still be made at any time prior to the Circuit Court trial. We recommend any Legal Settlement be referred to the Region Right-of-Way Acquisition Manager for a recommendation consistent with ALDOT policy. When the acquisition of property is in the court process, any motions and/or orders other than those that are a part of routine procedure must be brought to the attention of the Region/Area Right-of-Way Acquisition Manager for review, in order to maintain consistency with statewide ALDOT legal procedure.

**Note: To meet the requirement of allowing reasonable time for the property owner to consider the offer and to submit information that the owner believes is relevant to determining the value of the property, negotiations should continue for a minimum of 30 days after the presentation of the written offer prior to filing a condemnation petition.**

**7.1.5 Right-of-Way Certification**

Prior to advertising for construction bids for the project, the LPA must prepare a Right-of-Way Certification. A certification states that the properties needed for construction of the project have been obtained, they are clear of any structures which must be removed, and persons or businesses displaced by the project have been relocated. The Right-of-Way Certification must be presented to the ALDOT Lead Bureau through the Region Office. If the right-of-way was purchased or condemned, the total cost must be provided with the certification.

When the right-of-way has been acquired and recorded, a letter must be submitted to the ALDOT Lead Bureau through the Region Office, listing the name of the property owner, the date of the acquisition, the method in which the right of way was acquired (donated, purchased and/or condemned), and the deed book number and page number in which it is recorded.

**7.2 RELOCATION ASSISTANCE**

The following is a brief synopsis of the Uniform Act Relocation requirements. View the ALDOT ROW Relocation Manual for a more detailed explanation at the following site:

[Right-of-Way Procedural Manuals.](http://www.dot.state.al.us/rwweb/proceduralmanuals.html)

Rights and entitlements of individuals, families, businesses, farms, and nonprofit organizations displaced by federal-aid projects are prescribed in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The Uniform Act requires all acquiring agencies to provide relocation assistance benefits to all eligible persons displaced from federal aid projects. It is important to understand that successful relocation is essential not only to the welfare of those to be displaced, but to the progress of the entire highway project.

Relocation Assistance is described as a reimbursement program. The program was developed for reimbursing costs incurred by displaced persons as a result of a Federal-aid project. The term *displaced person* applies to any person who moves from the real property or moves his or her personal property from the real property.

Relocation Assistance can be complex. LPAs must work closely with local Region Right-of-Way personnel on complex relocation issues. The relocation program consists of four main components: Relocation Planning, Notices, Advisory Services, and Relocation Assistance Payments. Generally, all persons occupying property to be acquired are eligible for relocation assistance and payments. The purpose is to reimburse the cost of moving personal property to replacement sites. In addition, residential displacees who meet minimum occupancy requirements may qualify for replacement housing payments to purchase replacement housing.

**7.2.1 Relocation Planning**

Successful relocation requires due diligence in planning the process. After the final location of a project has been approved and prior to the time of the Design Public Hearing, the LPA will complete a Relocation Plan on Form ROW-RA-2. The Plan will be an inventory of characteristics and needs of individuals and families to be displaced. This is also required for businesses needing replacement sites that will fit business operations and still be convenient to clientele.

Businesses must be given relocation assistance as required by the Uniform Act. Housing resources must meet the needs of displaced residents in terms of size, price, location, and timely **availability**. Advisory services and various notices, some with specific timing requirements, must be provided. Payments must be made to displaced persons at the time they are needed to obtain replacement housing.

**7.2.2 Notices**

Written notices are required to be furnished to each displaced person, business, farm, or non-profit organization by the relocation agent to ensure that displacees are fully informed of the benefits and services available. The following subsections will include the different notices and their applicability.

**7.2.3 Relocation Information**

A Relocation Informational Letter is required to be provided to potential displaced persons at the time appraisers are assigned to the project. It will be written in language that can be easily understood and, in the event of limited English proficiency, in a foreign language.

**7.2.4 Notice of Relocation Eligibility**

This required notice is provided on the date of a Notice of Intent to acquire, the initiation of negotiations, or the actual acquisition, whichever occurs first. The notice informs the occupant that he or she will be displaced and therefore eligible for relocation benefits, as applicable.

**7.2.5 90 – Day Notice**

A person lawfully occupying real property will ***not*** be required to move without a required 90-day written notice from the LPA. The displacee is not required to move until the LPA pays the agreed purchase price to the owner, or in the case of condemnation, the LPA funds are deposited in Probate Court for the benefit of the owner. At that time the displacee will be given a 30-day notice to vacate. Samples of the 90 and 30-day notices are available on the ALDOT website link under Section 7.2 above.

**7.2.6 Advisory Services**

Relocation payments alone are often not enough to minimize the hardship of a move necessitated by a public project or ensure a successful move to a replacement location. A key element is the advisory services that are provided commensurate with the needs of the displaced. These services provide information, counseling, advice, and often entail repeated and sometimes intense, personal interaction with displacees.

**7.2.7 Relocation Assistance Payments**

There are two main categories of payments, residential and non-residential. Within each category there are several types of payments that address expenses incurred as a result of a required move. Each type also has its own eligibility criteria and computation requirements. For additional information, view the details of each in the *Relocation Assistance Manuals* found on the ALDOT ROW Bureau website under [Procedural Manuals.](http://www.dot.state.al.us/rwweb/proceduralmanuals.html)

**7.2.8 Residential Displacements**

The Relocation Assistance Program was developed to provide the displaced similar, if not identical, conditions to those existing prior to the displacement. Eligibility for residential moves is based on occupancy, not ownership. The owner of the property may or may not be the displaced person; persons qualify for assistance only if they occupy the property.

**7.2.8.1 Personal Property Move**

Many times, personal property is located on the land being acquired. The owner of the personal property is eligible for relocation assistance and payment for actual and reasonable costs to move the property. The owners of personal property may or may not be the owners of the real estate.

Personal property moves can be as simple as moving a few chairs or as complicated as moving an out of business junkyard. The move may be made to the remainder of the property or to a new location. Typically, the move may be made by reimbursing the displacee through itemized bills and receipts paid to a commercial mover or a self-move based upon an invoice with itemized labor, material, and equipment costs. Remember the 90-Day and 30-Day notices apply to these types of moves.

**7.2.8.2 Replacement Housing Payments**

The replacement housing payment provides additional funds to the displaced above the acquisition price of the dwelling, to purchase comparable replacement housing. Replacement housing payments may be paid to an owner as a supplemental purchase payment or to a tenant as a supplemental rental payment. Replacement housing payments for owners are based on comparable replacement dwellings for sale on the market and the payment is calculated as the difference between the cost of the comparable replacement dwelling and cost of the acquired displacement dwelling.

Supplemental rental payments are available for tenants and owner occupants that elect not to purchase replacement housing. The rental replacement housing payment is based on the difference between the cost of rent and estimated utilities of a comparable replacement dwelling available on the market and the rent (use fair market rent for an owner) and estimated utilities of the displacement dwelling for 42 months. Displaced tenants may use the rental replacement housing payment to supplement rental payments or as a down payment in the purchase of a replacement dwelling.

**7.2.8.3 Replacement Housing Standards**

It is a condition established in the previous acquisition procedures that comparable replacement housing must be made available before a displaced person is required to move from his/her home. The comparable replacement dwelling must meet the ***decent, safe, and sanitary*** threshold established in 49 CFR Part 24, and other standards as provided in the *ALDOT Right of-Way Relocation Assistance Manual*, Section III, sub-section C. The Manual may be viewed by accessing the *Procedural Manuals* link under 7.2.7 of this chapter. The comparable dwelling must be the functional equivalent and be in as good or better condition than the original dwelling.

The displacing agency must offer every displaced person at least one comparable replacement dwelling choice and, if possible, three choices. This is a crucial part of the displacement process, since the comparable replacement dwelling costs will form the basis of the computation of the replacement housing payment.

**Note: The selected comparable property is used to set the upper limit of the residential displacee’s conditional replacement housing payment eligibility. The residential displacee is not obligated to purchase any comparable properties identified by the Local Public Agency.**

**The displacee will choose the replacement housing he/she will occupy and the reimbursement will be made based upon the amount actually spent by the displacee, and not exceed the conditional replacement housing payment calculated by the Relocation Agent.**

This Manual gives only a brief discussion and does not provide all the information pertaining to Residential Relocation. Please refer to the *ALDOT Relocation Assistance Manual* cited above or contact ALDOT Region Right-of-Way personnel for more specific information.

**7.2.8.4 Increased Mortgage Payments**

This payment is available for the displaced owner that must finance the replacement dwelling at a higher mortgage rate than the mortgage on the property being acquired. To be eligible for this payment the acquired dwelling must have been encumbered by a *bona fide* mortgage and a valid lien for at least 180 days prior to the initiation of negotiations. The interest rate on the new mortgage used to determine the amount of the payment cannot exceed the prevailing fixed interest rate for conventional or similar mortgages charged by mortgage lending institutions.

**7.2.8.5 Incidental Expenses**

Displaced persons purchasing replacement housing are eligible for reimbursement of reasonable closing costs incurred during the process, from attorney fees, title search, recording fees, and certain other closing cost normally paid by the purchaser.

**7.2.8.6 Moving Expenses**

In addition to other Residential payments, displaced persons are entitled to reasonable moving expenses. Moving payment reimbursements may be made by itemized bills and receipts from qualified movers, actual costs incurred by the displaced person for a self move or by a fixed moving cost schedule. Contact your local ALDOT Region Right-of-Way Office for the current federally approved payment schedule and criteria.

**7.2.9 Non-Residential Relocation**

Displaced businesses, farms, and non-profit organizations are also eligible for Relocation Assistance benefits, but the benefits are different from residential moves. The basic concepts of the benefits are provided in this manual. For further information consult with the local ALDOT Right-of-Way Office for all the appropriate benefits to a displaced business, farm, or non-profit organization.

**7.2.9.1 Moving Expenses**

The displaced non-residential occupant is eligible for actual and reasonable moving expenses. The cost to move, and, if appropriate disconnect and reinstall personal property, will usually be reimbursable. Costs incurred in hiring commercial and specialized equipment movers, plus certain utility connections, any professional services related to the purchase/lease of a replacement property, impact fees, and one-time assessments may be reimbursed if found to be actual, reasonable, and necessary.

The moving payment may be made based on an itemized bill and receipts from a qualified mover or the payment may be made to the displacee as a self-move. Eligibility for a self-move payment is determined by obtaining two acceptable bids or estimates from qualified moving firms based on an inventory list, with the displaced business being paid an amount equal to the low bid or estimate without supporting receipts of expenses incurred.

If a business owner decides not to move personal property, as an alternative he or she may elect to be paid on a basis of actual direct loss of tangible personal property or the cost of substitute personal property. Such alternative payments may not exceed the actual cost to move the items.

**7.2.9.2 Reestablishment Expenses**

This payment is designed to reimburse the actual expenses incurred in reestablishing at the new location. The maximum reimbursement payment for the expenses incurred is $25,000. Offering and providing these services will require specific knowledge and experience. We recommend requesting assistance from the local ALDOT Right-of-Way Office for the eligible items with this payment.

**7.2.9.3 Searching Expenses**

Displaced businesses, farms, and non-profit organizations are entitled to reimbursement for reasonable actual expenses incurred in searching for a replacement location, not to exceed $2,500. This payment includes time spent looking for replacement property, transportation, meals and lodging when away from home, along with other items eligible for searching expense. We recommend requesting assistance from the local ALDOT Right of Way Office for further explanation of the eligible items.

**7.2.9.4 Fixed Moving Expenses (In Lieu of Payment)**

This type of payment is in lieu of all other moving expense payments for non-residential occupants. The minimum payment is $1,000 and the maximum payment is $40,000. The amount of the payment is based on the net income of the displacee over the last two years. Required documentation includes, but is not limited to, tax returns or a certified financial statement.

**7.3 INCIDENTAL EXPENSES**

Owners of real property acquired for a highway project are entitled to reimbursement for reasonable and necessary expenses incurred in transferring the property to the LPA. Such expenses may include: (1) recording fees, mortgage releases, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of real property and any similar expenses incidental to conveying the property; (2) penalty cost for prepayment of a mortgage entered into in good faith encumbering such real property if such mortgage is on record or has been filed for record under applicable State law; and (3) the pro rata portion of paid real property taxes, which are allocable to a period subsequent to the date of vesting of title in the LPA or the effective date of possession by the LPA, whichever is earlier. We recommend requesting assistance from the local ALDOT Right of Way Office for the eligible items with this payment.

**7.4 APPEALS**

Actions involving Relocation Assistance with the LPA may be appealed. Any displaced person with a grievance may file a written appeal with the LPA if they believe the LPA failed to properly consider the application for relocation assistance. The action may include eligibility of the person and/or the amount of payment. The LPA must ensure that all displaced persons are aware of their right to appeal.

When an appeal is received the LPA will conduct a lower echelon review of the appeal, with assistance from ALDOT if necessary, to determine whether the payment being appealed was handled in accordance with Federal and State regulations. If the lower echelon review determines the appeal has merit, then the payment requested in the appeal can be paid. If the lower echelon review determines the appeal does not have merit and Federal and State regulations were correctly applied, the case will be forwarded to the LPA Relocation Appeal Board for hearing.

The LPA Relocation Appeal Board is made up of ALDOT’s Region Pre-Construction Engineer of the Region the project is located, a representative of ALDOT’s Right of Way Bureau, and a representative of ALDOT’s Local Transportation Bureau. The appeal hearing should be as informal as possible with the relocatee, or their representative, presenting their case and a representative of the LPA presenting the LPA’s case.

The relocatee will present their case first, followed by the LPA, with each side being allowed a rebuttal. Immediately following the hearing, the Board will deliberate and come to a decision about the Board’s recommendation concerning the appeal. The Board will make its recommendation to the LPA’s decision maker (Mayor, City Council, County Commission, etc.) who will render the final decision for the LPA. Once the LPA’s decision regarding the appeal has been made, the appellant should be notified of the LPA’s decision by letter sent Certified Mail.

A relocation file should be created by the LPA that contains all the LPA’s documentation on the relocation, the relocation appeal filed by the relocatee, the lower echelon review, copy of the letter informing the relocatee of the appeal hearing place, date, and time, copy of the letter informing the relocatee of the LPA’s final decision, tracking receipts for the Certified Mailings, and an audio recording of the appeal hearing.

**7.5 DOCUMENT SAMPLES**

ALDOT requires the following documents be used during property acquisition by the Department for transportation projects. These and others are available for download on the [ALDOT LPA Website](http://cpmsweb2.dot.state.al.us/TransPlan/LPA/LPAHome.aspx) and the Right-of-Way website at [ALDOT Right-of-Way Bureau.](http://www.dot.state.al.us/rwweb/index.html)

Letter to Property Owner

Written Offer

Project Relocation Analysis

Right-of-Way Recording – Acquired

Right-of-Way Recording – Existing

City and Other Local Public Agency Certification for Physical Construction

Negotiator’s Report – LPA Projects

**7.6 PROPERTY MANAGEMENT**

FHWA regulations for the property management function are found in [23 CFR 710 Subpart D](https://www.ecfr.gov/cgi-bin/text-idx?SID=7cb8471b9ed91d15f873786c855c0c08&mc=true&node=sp23.1.710.d&rgn=div6). These regulations apply to all real property acquired by LPAs in connection with projects where Federal funds participate in any right of way costs for the project.

Keeping detailed, accurate records is important to effective property management before construction begins. A LPA needs create and maintain an inventory of all property it plans to acquire for the project.

The inventory should include all land and improvements, such as buildings, machinery, equipment and fixtures. Once the properties are acquired, the LPA will update the inventory as changes occur.

The LPA will have to clear the right-of-way of improvement for construction. If there are remnant of a property as surplus. The LPA then identified and inventories any surplus property.

If the LPA decides to sell or lease properties, it should contact Region Engineer for guidance and note any money received from the sales or leases must be applied to a Federal-aid eligible transportation project.

The LPA will be to generate the following process and compile a package for submission to the Area Local Transportation Engineer for review:

1. Proposed purchaser or lessee shall make a written request to the LPA with the following information and attachments:
   1. Location of the property with any maps, pictures or identifying information.
   2. Purpose for which the property will be used.
   3. Statement they are willing to pay market value for the property.
   4. Statement they are willing to pay the administrative cost to process the sale.  *(The LPA* may choose to pay for the appraisal; however, they should determine who will pay and be consistent.) The appraisal should not be provided to the purchaser and that should be stated to purchaser in writing. The appraisal must be by a qualified appraiser and reviewed by ALDOT.
   5. Copy of deed confirming ownership of the property adjacent to the property requested to purchase. The LPA will recommend or approve sales to adjoining owners, unless other adjoining owners have objection, or the property is sold by public sale.
   6. If the requested property has more than one adjacent owner, signed witnessed or notarized statements from all other adjacent owners that they have no objection to the property being sold to the proposed purchaser.
2. The request for a proposed sale or lease must be reviewed for comments by authorized LPA officials and recommended for approval. (*These units within the LPA may vary. City/County engineer, utilities and maintenance are recommended, with the mayor or the president of county commission recommending the release.)*

`

1. Information from the proposed purchaser and comments from the LPA organizational units shall be sent to the Region Engineer with a cover letter that includes:
   1. an explanation of how the property was acquired and the reason for disposal;
   2. the property has been declared excess and no longer needed for the right of way/enhancement/etc. purpose for which it was acquired;
   3. the property will be appraised and sold for market value;
   4. the excess property has no present or potential use for parks, conservation, beautification, recreational or related purposes;
   5. the property is not needed to restore, preserve or improve the scenic beauty and environmental quality adjacent to the highway;
   6. his/her recommendation to approval the sale/release.

1. The Area Local Transportation Engineer will review the proposed transaction, which may require a field review of the property. Comments and recommendations will be forwarded to the Region Engineer for submitting to FHWA by cover letter requesting approval. The letter to FHWA shall include:
   1. the property will be sold for market value;
   2. Federal Funds were used in the acquisition of the property and

(For Enhancement Project) the LPA will retain 20 percent of the proceeds and the balance of the proceeds shall be deposited into the Transportation Alternative Programs Account TAP; (For right of way projects) proceeds shall be credited to the Title 23 Collector Account. Note: Only right of way disposals on the NHS require approval by FHWA. The letter must state it is on the NHS.

* 1. The property does not have a potential use for parks, conservation, recreational, or related purposes.

1. Prior to submitting the request to FHWA, the request should be reviewed by the Area Right of Way Manager.
2. Upon receipt of the comments from FHWA, the Region Office shall notify the LPA of the determination by FHWA and, if approved, shall advise they may proceed with the appraisal.
3. The LPA shall contact the Area Appraisal Staff to discuss, with the Chief Appraiser in the Central Office Right of Way Bureau, the scope of the appraisal and determine the appraiser best qualified to do the work. The appraiser is then contacted by area staff and reviews the scope of the work.
4. Upon completion of the appraisal and review by the Area and Central Office ALDOT staff, the appraisal and reviewing appraisers’ Memorandum will be forwarded to the LPA.
5. The LPA shall notify the proposed purchaser of the appraised value and that the offer holds true for 90 days. (It is non-negotiable). The Region Engineer shall be notified if the offer is accepted or declined. If accepted, the Quitclaim Deed shall be furnished by the LPA and reviewed by ALDOT prior to execution by LPA Officials.
6. Upon execution, the deed shall be delivered to the proposed purchaser by the LPA upon receipt of the consideration stated in the deed. The consideration shall be in the form of a certified or cashier’s check or postal money order. The portion to be returned to FHWA shall be made payable to the Alabama Department of Transportation and forwarded to the Region Engineer for sending to the Area Right of Way Manger. The purchaser should be asked to record the deed and furnish a recorded copy to the LPA. The LPA shall furnish a copy to ALDOT.
7. The Area Office shall forward the proceeds to Office Engineer for TAP and Central Office Right of Way Bureau for the sale of excess right of way.