



COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET

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Frankfort, Kentucky 40622
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OFFICE OF THE SECRETARY 111448
OFFICIAL ORDER _____

SUBJECT: *Right of Way Guidance Manual*

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This manual has been prepared to provide information and guidance to personnel of the Kentucky Transportation Cabinet. Its purpose is to establish uniformity in the interpretation and administration of laws, regulations, policies, and procedures applicable to the operations and services of the Division of Right of Way and Utilities and its relationship with other units of the Cabinet.

The policies and procedures set forth herein are hereby approved and declared effective unless officially changed.

All previous instructions, written and oral, relative to or in conflict with this manual are hereby superseded.

Signed and approved this 10th day of January, ~~2018~~ 2019.

Greg Thomas
Secretary

Approved as to Legal Form

Office of Legal Services



RIGHT OF WAY GUIDANCE MANUAL



ISSUED BY

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET

JANUARY 2019



Produced by Organizational Management Branch
Office of Human Resource Management



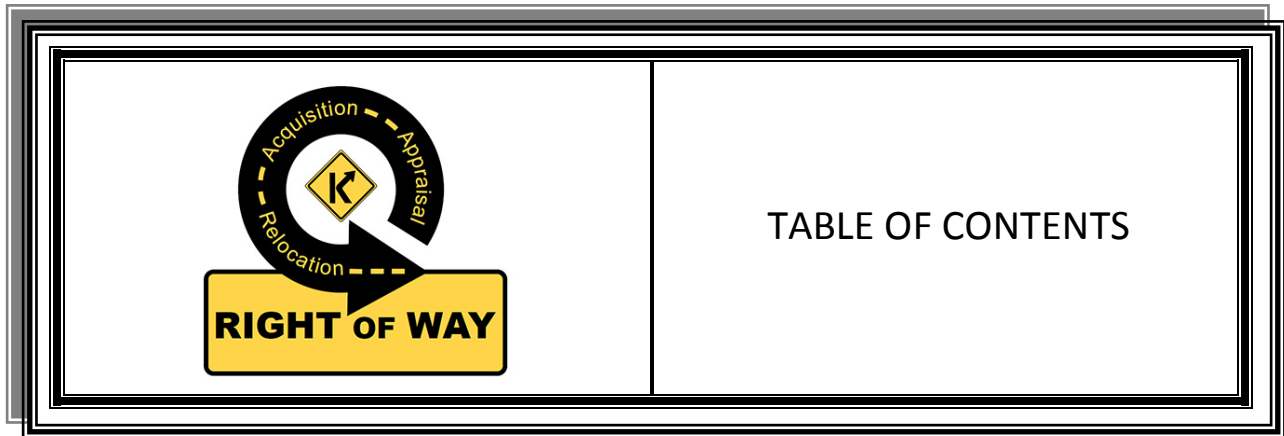
PREFACE

This *Right of Way Guidance Manual* was developed to provide technical guidance to professionals in several fields who are responsible for delivering the right-of-way programs to support the Kentucky Transportation Cabinet (KYTC) and the Federal Highway Administration. This manual provides guidance on statewide policies and standards for right-of-way transactions to both internal and external customers. The KYTC is a federal-rule state and follows the federal regulations found in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The intent of these laws is to assure fair and equitable treatment of displaced persons, to encourage and expedite acquisitions by negotiations, and to provide direction on properly managing properties once acquired by the KYTC.

Right-of-way professionals are aware that public trust and confidence in the highway program rests in high degree with the professionalism and skill they display in carrying out their work. The *Right of Way Guidance Manual* supports this understanding of the sensitivity and importance of the right-of-way process and encourages sensitivity to the needs and concerns of citizens who are called on to relinquish property, and sometimes home or business, for the overall public good. Right of way is not merely a financial transaction to acquire real estate. It is a human endeavor that requires the highest level of understanding and respect from the people who represent the Commonwealth of Kentucky in this activity. This manual will be used not only by KYTC staff, but also by local public agencies who acquire property for state- and federal-funded projects and by prequalified right-of-way consultants. This manual addresses specific topics to each user and indicates the close relationships and interdependencies of the distinct right-of-way disciplines. The Director of the Division of Right of Way and Utilities is authorized to interpret, clarify, or approve exceptions to provisions of this Manual. This may be done where application of policy as written might be misunderstood or have an unintended effect when applied to special situations

The *Right of Way Guidance Manual* is a living document that will change as laws and regulations change and more effective management practices evolve. All users of this manual are hereby made aware that all federal and state laws and regulations, whether mentioned herein or not, must be observed and followed to be in compliance with KYTC requirements. Users are encouraged to advise the Director of the Division of Right of Way and Utilities of the need for corrections or provide suggestions that would improve the content of this manual. Correspondence should be addressed to:

Kentucky Transportation Cabinet
Division of Right of Way and Utilities
200 Mero Street, Frankfort KY 40601
Attn: Director, Division of Right of Way and Utilities



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	<p><i>Chapter</i></p> <p>INTRODUCTION</p>
	<p><i>Subject</i></p> <p>Design of This Guidance Manual</p>

ORGANIZATION & NUMBERING

Chapter Title—The subject matter in the manual is divided into chapters. The chapter title appears in the upper right corner of the first page of a subject and in the upper left corner of any subsequent page.

Sections—Some chapters are divided into sections. Each section title, instead of chapter title, appears in the upper right corner of the first page of a subject and in the upper left corner of subsequent pages.

Subjects—Chapters and sections are arranged by subjects.

Subject Number—Each subject is assigned a number, which appears in the upper right corner of each page of the subject. For example, Chapter 400 includes Subject 401 followed by Subject 402, which is divided into Sections 402-1 through 402-7.

Subject Title—The title of a subject appears in the upper right corner of the first page of a subject and in the upper left corner of any subsequent page.

“ROW” Prefix—Preceding each subject number, this prefix stands for the manual title *Right of Way Guidance Manual*.

Date—The latest issuance date of a subject appears at the bottom of each page of the subject. This date agrees with the latest issuance date shown for the subject in the Table of Contents (**ROW-01**).

Page Numbering—Each subject has its own page numbering, which appears at the bottom of each page.

LOCATING INFORMATION

One index appears at the front of the manual:

Table of Contents (ROW-01)—This index at the front lists the titles of the manual’s chapters and their subjects, as well as other information, in numerical order. It includes the latest issuance dates of all the subjects. As the manual matures, these dates change.

CROSS REFERENCES

IN MANUAL

Subject Numbers within Narrative—A subject number within the narrative on a page directs the user to more information about the subject.

QUESTIONS


Whom to Contact—For answers to questions about the contents of the manual, please contact:

Division of Right of Way and Utilities
Transportation Cabinet Office Building
5th Floor East
200 Mero Street
Frankfort, KY 40622
(502) 564-3210

For copies of the manual, please contact:

Organizational Management Branch
Transportation Cabinet Office Building
6th Floor West
200 Mero Street
Frankfort, KY 40622
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	<i>Chapter</i> ADMINISTRATION
	<i>Subject</i> Organization

OVERVIEW

The Division of Right of Way and Utilities is a component of the Office of Project Development within the Department of Highways. The division holds responsibility for the acquisitions of all rights of way, including:

- Appraisals, appraisal reviews, negotiations, and property management
- Relocations of displaced persons in accordance with [The Uniform Act](#)
- Utility and railroad relocations

This guidance manual addresses each function related to the acquisitions of rights of way, with the exception of the relocation assistance and utility and railroad functions, which are in separate manuals. On all projects involving state or federal funding in any project phase, the division and its agents, subagents, and contractors are responsible for compliance with current federal regulations whether or not this manual reflects those requirements.

If a conflict exists between the federal regulations and the policies outlined in this manual, federal regulations prevail.

The division is decentralized, with staffs located in the Central Office and the 12 district offices throughout the state. The staffing and functions of these offices are as follows.

CENTRAL OFFICE

Under the guidance of a division director, the Central Office has statewide responsibility for the development of policies and procedures to best ensure that it completes property acquisitions in a timely manner and in accordance with all applicable laws and regulations. Central Office personnel provide technical guidance and oversight and maintain various statewide records.

**CENTRAL OFFICE
(CONT.)**

The Central Office structure of the Division of Right of Way and Utilities comprises four branches, each under the supervision of a branch manager, as follows:


- Appraisal Branch
- Acquisition Branch (responsible for administration of design-build projects and any subagencies and consultants)
- Relocation Branch (responsible for property management)
- Utilities and Rail Branch (responsible for utility and railroad relocations)

DISTRICT OFFICES

The district offices are responsible for direct project delivery that is necessary to clear right of way. The organizational structure of each district office mirrors that of the Central Office in all primary functions of the right-of-way process.

In each district right-of-way office, a supervisor oversees a staff of technical personnel and right-of-way agents who meet qualifications outlined in the right-of-way agent class-code specifications. The supervisor shall ensure that his or her staff receives training as established by the Kentucky Transportation Cabinet's Office of Human Resource Management *General Administration & Personnel (GAP) Manual* and as described herein to ensure compliant project delivery.



	Chapter ADMINISTRATION
	Subject Responsibilities

**OVERALL
RESPONSIBILITIES OF
DIVISION**

The Division of Right of Way and Utilities is responsible for acquiring the right of way for transportation projects.

The right-of-way program is governed by The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; 23 CFR Part 710; the Uniform Standards of Professional Appraisal Practice, KRS 56.610; KRS 177.021; 600 KAR 3:010; and, the KYTC *Right of Way Guidance Manual*.

The policies and procedures described herein cover the various functions of the acquisition process, including the Relocation Assistance Program for displaced persons, and ensure fair and equitable treatment of all persons affected as state and federal laws and regulations require. Only division staff or contract personnel meeting the minimum qualifications described in the Personnel Cabinet’s *Class Specifications* administer these functions. Neither division nor district staff, subagents, nor contract personnel shall be given an assignment in any acquisition function until they have:

- Received training in that function
- Worked sufficiently with an experienced person
- Demonstrated a clear understanding of current policies and procedures

Subagents and contract personnel shall be prequalified prior to being given any right-of-way responsibilities.

RESPONSIBILITIES**OF CENTRAL OFFICE**

The Central Office responsibilities are to oversee all of the functions of the right-of-way program area. This includes, but may not be limited to, the following:

- Manage the program for compliance
- Advise district personnel and consultant agents
- Perform compliance reviews and reports for the districts
- Compile annual statistic reports
- Track projects
- Coordinate and develop training for all agents
- Coordinate delivery of the program with other federal and state agencies
- Keep the Director of the Division of Right of Way and Utilities and customers apprised of all program issues and concerns
- Evaluate the staffing capability of the district right of way section to assure that the required right-of-way activity is in compliance with the *Right of Way Guidance Manual* and federal laws and regulations.

RESPONSIBILITIES**OF DISTRICT OFFICES**

The district offices perform the same responsibilities of the Central Office at the project level of program development. Additionally, the district offices have the responsibility of helping citizens relocate with the least amount of disruption and in the most cost-effective manner. The district right of way section shall have qualified personnel in managing a right-of-way project.

RESPONSIBILITIES**OF DISTRICT****RIGHT-OF-WAY****SUPERVISORS**

District supervisors, with assistance and guidance from Central Office branch managers, shall have overall responsibility for the appraisal, acquisition, relocation assistance, property management, and disposal of all right-of-way activity within a district.

RESPONSIBILITIES

OF DISTRICT

RIGHT-OF-WAY

SUPERVISORS (CONT.)

This responsibility shall include assuring that all right-of-way activities are made in compliance with legal requirements of state and federal laws and regulations. The district right of way agent supervisor shall oversee each function of the process in order to prevent conflicts of interest and to avoid fraud, waste, and abuse. The district right of way agent supervisor is responsible for project oversight on all right-of-way projects, review and approval of work, and payment requests.

RESPONSIBILITIES

OF DISTRICT

RIGHT-OF-WAY

PROJECT MANAGERS


A staff right of way project manager may be assigned to manage a project within a district upon approval of the Director of Right of Way & Utilities. The district right of way agent supervisor may request from the Director of Right of Way & Utilities to assign a staff right of way project manager for a project.

A staff right of way project manager shall hold the position of a right of way unit-leader. Required experience shall include appraisal knowledge, acquisition experience, relocation knowledge, demonstrated right-of-way management experience, and a clear understanding of current policies and procedures.

All staff right of way project managers shall be pre-qualified by the Division of Right of Way & Utilities prior to any assignment. The pre-qualification criteria shall include appraising, acquisition, and relocation experience. A written request shall be submitted by the district right of way agent supervisor to the Division of Right of Way and Utilities in care of the Acquisition Branch Manager for review and approval. The pre-qualification request shall include detailed work experience within the three criteria areas. The Acquisition Branch Manager, Relocation Branch Manager, and Appraisal Branch Manager shall review and make recommendations to the Director of Right of Way for approval.

A request for a staff right of way project manager shall be done on a project-by-project basis. The Director of Right of Way & Utilities shall determine if a request is acceptable.



	Chapter ADMINISTRATION
	Subject Training

**OVERALL
RESPONSIBILITIES
OF DIVISION**

The Division of Right of Way and Utilities is responsible for acquiring the right of way for transportation projects. The right of way program is governed by The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; [23 CFR Part 710](#); the Uniform Standards of Professional Appraisal Practice, [KRS 56.610](#); [KRS 177.021](#); [600 KAR 3:010](#); and, the *Right of Way Guidance Manual*.

Only staff or contract personnel meeting minimum qualifications described in the Personnel Cabinet’s *Class Specifications* shall perform right-of-way functions.

Subagents and contract personnel shall be prequalified prior to being assigned any duties.

**CENTRAL OFFICE
RESPONSIBILITIES**

Central Office branch managers shall develop and offer the following training sessions upon request and as schedules permit:

- Workshops that introduce right-of-way employees to policies and procedures
- Advanced sessions in various disciplines as needed

**RIGHT-OF-WAY
SUPERVISOR
RESPONSIBILITIES**

District right-of-way supervisors shall coordinate with the Central Office branch managers to provide training for district staff. Sources of training include:

- Assignment to work with an experienced staff member, either in the trainee’s own district or in another district

**RIGHT-OF-WAY
SUPERVISOR
RESPONSIBILITIES
(CONT.)**

- Educational seminar presented by a recognized professional organization
- Training seminar provided by the Federal Highway Administration
- Training seminar conducted by the Division of Right of Way and Utilities


**CONSULTANT
& SUBAGENT
RESPONSIBILITIES**

Contract personnel and subagents of the Kentucky Transportation Cabinet (KYTC), including local public agencies, shall coordinate with the Division of Right of Way and Utilities branch managers to provide training for their agents. Sources of training include:

- Educational seminar presented by a recognized professional organization
- Training seminar provided by the Federal Highway Administration
- Training seminar conducted by the Division of Right of Way and Utilities

When KYTC provides training, contract personnel and subagents will be charged a fee to offset the costs of using KYTC personnel and materials.



	Chapter ADMINISTRATION
	Subject Conflicts of Interest

POTENTIAL CONFLICTS

An employee of the Division of Right of Way and Utilities or a local public agency (LPA) or a contractor involved in the acquisition of a right of way has the responsibility to avoid any real estate activity that is or can be perceived as a conflict of interest. Activities that pose potential conflicts of interest for employees include:

- Acquiring real estate for personal use when an employee knows a project is planned for the area in which the acquired property is located
- Serving as an agent or appraiser of a property to be affected by a highway project
- Acquiring right of way from a state employee, an elected official, or a prominent person in the project area

Policies related to conflicts of interest are described in the following:

- Kentucky Transportation Cabinet (KYTC) [General Administration & Personnel \(GAP\) Manual](#)
- Official Order 97129 of the Secretary of the Kentucky Transportation Cabinet
- Rules of the [Commonwealth of Kentucky Executive Branch Ethics Commission](#)
- [KRS Chapter 11A](#)
- [KRS Chapter 45A](#)

The appraiser, review appraiser, negotiator, and relocation assistance agent shall not have any interest, direct or indirect, in the property that is being acquired.

CENTRAL OFFICE**EMPLOYEES**

A project involving property owned by an employee of KYTC's Central Office or by a member of his or her family shall be reported to the Director of the Division of Right of Way and Utilities. If the director perceives a conflict of interest in making appropriate assignments, the director shall advise the State Highway Engineer, or his or her designee, of the potential conflict. The State Highway Engineer's office shall make all assignments in this situation.

DISTRICT OFFICE**EMPLOYEES**

When a project requires acquisition of real property from a district office employee or a member of the employee's family, the district supervisor shall notify the Director of the Division of Right of Way and Utilities, or the Acquisition Branch Manager, as soon as the supervisor learns the property will be acquired. Personnel from another district or from the Central Office shall manage all aspects of the acquisition.

RIGHT-OF-WAY**CONSULTANTS**

Consultants and subagents of KYTC shall not accept project assignments involving property owned by:

- Themselves
- Firms owned by themselves
- Members of firms owned by themselves
- Employees of their businesses
- Subcontractors of their firms
- Any members of the families of those identified above

PARCEL ASSIGNMENTS

The acquisition of right of way involves various disciplines, including appraisals, appraisal reviews, negotiations, relocation assistance, and the delivery of payment checks. To minimize the opportunity for fraud, waste, or abuse of discretion, an agent shall perform only one discipline on a parcel except as noted below:

- An agent calculating a Minor Acquisition Review valuation described in [ROW-701](#), "Acquisitions: Policy," can negotiate with the owner to purchase the parcel.
- An agent can negotiate with the owner to purchase a parcel and provide relocation assistance services to the parcel owner.
- A replacement housing evaluator can compute and present a replacement housing offer to a displacee when a relocation specialist, the Relocation Branch Manager, or the Director of the Division of Right of Way and Utilities has approved the computation, thereby allowing the districts and consultants to administer the program with one relocation agent.

**PARCEL ASSIGNMENTS
(CONT.)**

- A relocation agent can provide relocation assistance services and deliver relocation checks on assigned parcels when a relocation specialist, the Relocation Branch Manager, or the Director of the Division of Right of Way and Utilities has approved the claim for payment, thereby allowing the districts and consultants to administer the program with one relocation agent.

CONFIDENTIALITY

All elements of the Right of Way program shall be performed with discretion and confidentiality. The acquisition of private property for public use is a serious matter. Those in government charged with managing and implementing property acquisition programs have a responsibility to the governmental body and to the public to ensure that such right-of-way programs are executed professionally and fairly.

All right-of-way documents, including the appraisal report, offer letter, and relocation assistance shall not be shown to, read to, permitted to be read by, or lent to any person other than those listed below in the discharge of official business of the Division of Right of Way and Utilities:

- Division of Right of Way and Utilities personnel (whose classification is that of the Right of Way series)
- District Office Right of Way personnel
- Local Public Agencies' Right of Way personnel
- Prequalified Right of Way consultant
- Office of Legal Services personnel
- Federal Highway Administration (FHWA) personnel

Note: Official business includes supplying the property owner with his or her due copy of the report.

The appraisal report is for the use of the Division of Right of Way and Utilities in determining just compensation for study and review by the negotiator; when applicable, for use by Office of Legal Services in eminent domain proceedings; and, for review by the FHWA for federal cost participation.


All valuation documents and relocation documents are confidential to the Division of Right of Way and Utilities. Documented information shall not be disclosed to anyone other than the Division of Right of Way and Utilities officials or the FHWA unless specifically authorized by the Director of the Division of Right of Way and Utilities.

CONFIDENTIALITY

(CONT.)

All files on a right-of-way project are considered confidential until any and all litigation on the project is settled.



	<p><i>Chapter</i></p> <p>ADMINISTRATION</p>
	<p><i>Subject</i></p> <p>Agent Identification</p>

FORMS OF IDENTIFICATION


On the first meeting with a property owner, anyone representing himself or herself as being involved in the right-of-way acquisition process for the Kentucky Transportation Cabinet (KYTC) shall show the property owner an official identification. The KYTC representative shall use two or more of the following for identification purposes:

- Photo identification card
- KYTC/consultant business card
- Letter of assignment from the Division of Right of Way and Utilities

The Division of Graphic Design and Printing provides state employee photo identification cards and business cards. Employees, consultants, and subagents of KYTC shall:

- Carry their cards at all times while on official duty
- Keep the cards safe, neat, and clean
- Use the cards for official purposes only



	<i>Chapter</i> ADMINISTRATION
	<i>Subject</i> Acronyms


ACRONYMS

The following acronyms are commonly used in this manual:

ACM	Asbestos Containing Material
ADHS	Appalachian Development Highway System
ASRR	Acquisition Stage Relocation Report
BCIS	Bureau of Citizenship and Immigration Service
CFR	Code of Federal Regulation
DEA	Department of Environmental Analysis
FEMA	Federal Emergency Management Agency
FHA	Federal Housing Administration
FHWA	Federal Highway Administration
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989
GAP	General Administration & Personnel
HLR	Housing of last resort
HUD	U.S. Department of Housing and Urban Development
KAR	Kentucky Administrative Regulations
KRS	Kentucky Revised Statute
KYTC	Kentucky Transportation Cabinet

ACRONYMS (CONT.)	ROW PM	Kentucky Transportation Right of Way Project Manager
	LPA	Local Public Agency
	MAR	Minimum Acquisition Review
	MOA	Memorandum of Agreement
	MOU	Memorandum of Understanding
	MAP-21	Moving Ahead for Progress in the 21 st Century Act
	MIDP	Mortgage interest differential payment
	NEPA	National Environmental Policy Act
	PM	Project Manager
	PS&E	Plans, Specifications, & Estimate
	RA	Relocation Assistance
	RFP	Request for Proposal
	RHP	Replacement housing payment
	ROW	Right of Way
	STIP	State Transportation Improvement Program
	STURAA	Surface Transportation and Uniform Relocation Act Amendments of 1987
	TE	Transportation Enhancement
	URA	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
	USDOT	U.S. Department of Transportation
	USPAP	Uniform Standards of Professional Appraisal Practice
	UST	Underground Storage Tank



	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Policy</p>


POLICY

The Division of Right of Way and Utilities shall assist the Division of Planning and the Division of Highway Design in selecting the most appropriate and economically feasible roadway location by participating in environmental studies and cost studies of alternative routes. Projects shall be in an approved [State Transportation Improvement Program \(STIP\)](#) to be eligible for federal funding.

The division assists with the choosing of a preferred roadway location by:

- Providing right-of-way estimates and impact studies early in the planning stages
- Identifying and reporting socioeconomic impacts to the communities affected
- Reporting disproportionate impacts to any minority group of people
- Reporting housing available for displaced families and individuals



	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Studies</p>

OVERVIEW

Upon request, the district right-of-way personnel, qualified fee contractors, or subagents of the Kentucky Transportation Cabinet (KYTC) shall provide input to a requesting division regarding social, economic, and environmental effects of proposed projects for preparation of:

- Environmental impact statements
- Environmental assessments
- Categorical exclusions
- Feasibility studies
- Alternative route locations
- Project scoping
- Other assignments

Before the right-of-way staff can begin work on studies or estimates, the requesting division shall identify a project number to which the staff can make charges.

COST ESTIMATES

The right-of-way staff, qualified fee contractors, or subagents of KYTC conduct field inspections of proposed routes to prepare cost estimates on the TC 62-203 form, *Right of Way Cost Estimate*. The form shall include estimated costs for:

- Acquisitions and court costs
- Relocation assistance
- Property management
- Known environmental mitigation

It is essential for cost estimates to be prepared by qualified agents or consultants. While estimates are “estimates,” they shall be as accurate as possible, as they shall be used for comparison of various project locations and may be used for future funding or budget documentation.

**COST ESTIMATES
(CONT.)**

The individuals preparing the estimate shall sign and date the estimate, provide copies to other appropriate district office personnel, send a copy to the Director of the Division of Right of Way and Utilities, and place a copy in the district right-of-way project file. Field notes and parcel-by-parcel estimates shall be attached to the district right-of-way copy of the estimate.


**WASTE AREA
ESTIMATES**

Upon request by the Division of Highway Design, district right-of-way staff, qualified fee contractors, or subagents of KYTC provide cost estimates for acquiring waste areas. Generally, waste area sites shall be acquired in fee simple title. However, when advantageous to a community and the public, and with prior approval of the Federal Highway Administration on Interstate and National Highway Institute projects, waste area sites may be constructed on a temporary easement.

**ADVERSE EFFECTS
STUDIES**

District right-of-way staff, qualified fee contractors, or subagents of KYTC may be asked to study possible adverse social, economic, and environmental effects related to a proposed project. Data obtained from such studies (including but not limited to the income levels of displaced families and the availability of replacement housing) shall be provided to appropriate KYTC personnel for consideration in the environmental impact of various alternative corridors.



	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Project Scheduling (Lead-Time)</p>


**LEAD-TIME
FACTORS**

Lead-time needed to clear right of way on a particular project is established when right-of-way plans are delivered. Because of the wide diversity of projects, lead-time fluctuates but usually ranges 8–24 months. Factors considered when establishing lead-time include:

- Availability and accuracy of right-of-way plans including cross sections, profile sheets, pipe sheets, and diversionary sheets (MOT)
- Number of parcels and types of acquisitions
- Number of parcels requiring relocation assistance
- Number of improvements to be removed
- Existence of hazardous substances
- Time needed for condemnation proceedings

Note: Projects may not be advertised for construction until a right of entry has been secured for all right-of-way parcels. Project managers and right-of-way supervisors should have a **clearance date 30–45** days prior to the proposed letting date.



	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Public Hearings</p>

23 U.S. CODE 128

In compliance with [23 U.S. Code 128](#), the Kentucky Transportation Cabinet (KYTC) shall provide the opportunity for the public to request a corridor or design public hearing for any minor federal-aid project. Major projects (Environmental Analyses and Environmental Impact Studies) require public hearings.

CORRIDOR PUBLIC HEARING

When KYTC elects to hold a corridor public hearing, KYTC conducts the hearing before a route location has been approved and before KYTC has committed to a project. This hearing, usually presented in open forum, is held to ensure that interested persons are afforded the opportunity to participate in the process of determining the need for and the location of a highway route or improvement.

At a corridor public hearing, district right-of-way staff informs the public of:

- Right-of-way procedures
- Studies of alternatives being considered
- Estimated number of individuals, families, businesses, farms, and nonprofit organizations to be relocated by each alternative
- Eligibility requirements and payment procedures of the [Relocation Assistance Program](#)
- Methods used to ensure that housing needs will be met

At the hearing, both acquisition and relocation assistance booklets shall be available to the public. A representative from the Office of Project Development and the Division of Right of Way and Utilities shall be present to answer questions about right-of-way issues.

**DESIGN PUBLIC
HEARING**


When KYTC elects to hold a design public hearing, KYTC conducts the hearing after the route location has been approved but before KYTC has committed to a specific design proposal. This hearing, usually presented in open forum, gives interested persons the opportunity to participate in determining the specific location and major design features of a highway.

At a design public hearing, a printed project-specific statement shall be available for distribution. This statement outlines:

- Various programs for which affected individuals may be eligible
- Number of families and businesses to be relocated
- Availability of residences that meet decent, safe, and sanitary housing requirements
- Estimated time to acquire rights of way for the project

At the hearing, both acquisition and relocation assistance booklets shall be available to the public. Right-of-way personnel shall be present both before and after the hearing for discussion with affected individuals.



	Chapter PROJECT DEVELOPMENT
	Subject Plan Development

OVERVIEW

Under the supervision of the Division of Highway Design, right-of-way plans are prepared in accordance with current design standards and criteria. Although highway location and plan development are functions of the Division of Highway Design, a coordination of highway design and right-of-way personnel exists throughout the entire project-development process to assure that they appropriately address all concerns.

When right-of-way plans have been developed to a stage that encroachments on the existing right of way can be identified, the procedures described in the *Highway Design Guidance Manual* ([HD-1300](#), “Right-of-Way”) shall be followed.

JOINT FIELD INSPECTION

The district right-of-way supervisor, or a qualified representative, takes part in the plan-in-hand inspection and joint field inspection to ensure the effects of right of way are considered in establishing the location and design of the project.

The Division of Highway Design prepares and maintains inspection reports on the basis of recommendations from all members of the inspection party. Included with joint field inspection reports are current cost estimates that district right-of-way staff and district utility staff have prepared. Copies of the reports are filed in the right-of-way project file.

ACQUISITION PLANS

These plans show the following:

- Center line
- Property lines
- Each property owner’s name and source of title
- Parcel numbers
- Topographic features
- Profile and tentative grade

**ACQUISITION
PLANS (CONT.)**

- Cross sections
- Pipe sheets
- Maintenance of Traffic (MOT), when applicable

The source of each title is obtained from contact with property owners and from a search of the county court clerk's records.

The district right-of-way staff works closely with the highway design staff or the design consultant to ensure that each parcel's boundary is consistent with accepted appraisal procedures and that all property interests are identified and considered.

The Division of Highway Design provides the Division of Right of Way and Utilities with approved right-of-way plans for all projects, including projects that local public agencies and subagencies are to acquire. Rights of way are acquired in accordance with approved plans. Acquisitions do not begin until authorized by the Director of the Division of Right of Way and Utilities.


The highway design staff or the design consultant provides a copy of the recorded source deed or deeds for each parcel and shows title information on the plans. Prior to formal submission of right-of-way plans by the Division of Highway Design, the right-of-way supervisor requests the Acquisition Branch to assign an attorney to provide title reports. The Acquisitions Branch forwards the supervisor's request to the Office of Legal Services (OLS), where a title attorney is assigned.

**DISTRIBUTION OF
PLANS**

Plans may be copied and made available to the public upon request and upon receipt of compensation for the copies. A copy of plan sheets showing how that property is being affected may be provided to each property owner at no cost.

Each preliminary plan sheet is stamped in red: "Preliminary—Subject to Change." All plans are considered preliminary until the Division of Construction has finalized the as-built plans.



	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Functional Replacement Program</p>

FUNCTION

The Functional Replacement Program provides an alternative method of acquiring and compensating for publicly owned property that provides an essential public service. Examples include but are not limited to:

- Schools
- Police stations
- Fire stations

The Kentucky Transportation Cabinet (KYTC) may provide compensation by functionally replacing the publicly owned real estate with another facility that provides equivalent utility. Excluded from these provisions:

- Utilities
- Railroads
- Land subject to the provisions of [23 USC 138](#) (4f properties)
- Properties subject to [16 USC 470\(f\)](#) (historic properties)

The use of functional replacement for real property in federal ownership shall be in accordance with the federal land transfer provisions in [23 CFR Part 710.601](#).

Early identification of qualifying properties is key to the success of this method of acquisition. Qualifying properties shall be identified in the environmental document. The process shall begin well in advance of any other acquisition for the project.

PROCEDURE

As soon as it is determined that a qualifying property shall be acquired by a project, the following steps shall be followed:

1. A request that outlines the type of property to be acquired and estimates of the cost for its replacement shall be made to the Director of the Division of Right of Way and Utilities. The director makes the final decision as to whether a property qualifies for functional replacement.

PROCEDURE (CONT.)

2. Upon approval of the request, contact shall be made with the owning agency to determine whether there is an interest in functional replacement. The owning agency shall be advised that it has the option of accepting the amount of just compensation established by the appraisal process or accepting functional replacement.
3. The owning agency shall write to the district right-of-way supervisor a letter requesting consideration. This letter shall include:
 - Explanation of why it is in the public interest for KYTC to acquire the property by this method
 - Waiver of the owning agency's right to an appraisal if the request is approved
4. KYTC and, if applicable, the Federal Highway Administration shall review the agency's letter of request for all federally funded projects, including [Appalachian Development Highway System \(ADHS\)](#) projects.
5. Upon approval of the request, the owning agency and KYTC shall prepare and execute an agreement. At a minimum this agreement shall stipulate:
 - That the owning agency has responsibility to develop plans and cost estimates for KYTC's approval

Note: Costs to increase capacity and to provide other improvements or enhancements are not eligible for consideration except where necessary to replace the public facility's utility. However, these costs may be necessitated by:


 - ◆ Existing codes, laws, or zoning regulations
 - ◆ Reasonable prevailing standards for the facility being replaced
 - The payment schedule for the owning agency's project

Note: KYTC shall make the final payment after it has inspected and approved the completed project.
 - That the owning agency presents an executed deed to the abandoned site upon final payment by KYTC

CABINET OVERSIGHT

- The district right-of-way supervisor is responsible for the agency's adherence to the terms of the agreement. The state, through its agencies or contractors, oversees:
- Purchase and construction of the replacement property
 - Review of all estimates and plans
 - Periodic inspection of construction throughout the construction period of the replacement facility



	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Property Damages During Plan Development</p>

KRS 416.560(4) When doing fieldwork for plan development, workers have the right to enter private property as outlined in [KRS 416.560\(4\)](#). Because of the need for timely plan development, the Kentucky Transportation Cabinet (KYTC) cannot necessarily wait for an opportune time. Proceeding with fieldwork in these situations may result in property damages. Examples of compensable damages that survey work or core drilling may cause include but not limited to:


- Crop damages
- Marketable timber losses

Note: Payment shall not be made for the right to enter upon the property.

**HIGHWAY DESIGN
GUIDANCE MANUAL**

The *Highway Design Guidance Manual* outlines the procedure of managing requests for compensation for property damages. (See [HD-305.2](#), "Damages," for more information.)



	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Advanced Authorization of Right-of-Way Funds, Hardship, & Advanced Protective Buying Acquisitions</p>

ADVANCED AUTHORIZATION OF RIGHT OF WAY FUNDS

Section 1302 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (codified in [23 USC 108](#)) allows KYTC to seek federal-aid reimbursement of all costs incurred by the state for acquiring property in advance of the completion of requirements established by the National Environmental Policy Act (NEPA). The goal of these provisions is to effectively accelerate project delivery of transportation projects.

CRITERIA

To seek approval for advanced authorization of right of way using state funds, certain criteria must be met and attested to by the district Project Development Branch Manager. The following criteria are a combination of requirements outlined in 23 USC 108 and information determined necessary by the Division of Right of Way and Utilities. The criteria are:

- Acquisitions shall be needed for projects within the [Statewide Transportation Improvement Program \(STIP\)](#).
- Acquisitions shall not be for a local public agency (LPA) project.
- Acquisitions shall be clearly identified through lines and boundaries established within a right-of-way layout map that provides enough information to define the property.
- Acquisitions shall not be for Section 4(f) or Section 6(f) protected lands, unless exceptions can be identified that would enable federal participation and reimbursement.
- Acquisitions shall not influence the environmental assessment of the project, the decision relative to the need to construct the project, the consideration of alternatives, or the selection of the project design or location.
- Acquisitions shall not affect the consideration of environmental impacts of the various alternatives under consideration.
- Acquisition costs shall be able to be reasonably estimated and provided within defined expenditure categories.

APPROVAL PROCESS To receive approval from the Federal Highway Administration (FHWA) for Advanced Authorization of Right of Way – State Funds, the district right of way supervisor shall submit to the Director of the Division of Right of Way and Utilities a request that includes:

- An updated *Right of Way Cost Estimate* (TC 62-203), *Request for Funding Authorization* (TC 90-122), and the *Advanced Authorization of Right of Way Funds – State Funds* attested by the district Project Development Branch Manager.
- Upon notification of funding approval, the Division of Right of Way and Utilities forwards the signed *Advanced Authorization of Right of Way Funds – State Funds* to FHWA for acknowledgment.
- Upon receipt of right-of-way clearance, the Division of Program Management requests funding reimbursement from FHWA.

Funding requests shall be in accordance with **ROW-400**, “Project Authorization.”

**HARDSHIP
ACQUISITION**

The purpose of a hardship acquisition is to alleviate a hardship to a property owner due to health, safety, or financial reasons. A request for hardship shall be considered on the basis of a property owner’s written submission that supports health, safety, or financial reasons that create an undue hardship compared with others on the project. The owner shall document an inability to sell the property at its fair market value within a reasonable period of time because of the impending project. The district right-of-way supervisor shall submit the owner’s letter with a recommendation to the Director of the Division of Right of Way and Utilities for review. The recommendation shall include estimated costs for the following:

- Purchase of the property
- Relocation assistance

**ADVANCED PROTECTIVE
BUYING ACQUISITION**

The purpose of a protective buying acquisition is to prevent the excessive cost to acquire right of way due to:

- Imminent development
- Increased costs on a preferred location of a project

APPROVAL PROCESS

To receive approval from the Federal Highway Administration (FHWA) for protective buying, the Kentucky Transportation Cabinet (KYTC) shall demonstrate that development of the property is imminent and that such development will limit future transportation choices. Increased costs may be one of the factors used to justify protective buying.

The district right-of-way supervisor shall submit to the Director of the Division of Right of Way and Utilities a written request that includes:

- Justification for the acquisition
- Estimated cost for purchase of the property

Prior to KYTC's obtaining final environmental approval, the Director of the Division of Right of Way and Utilities may request FHWA approval for advance acquisition. Examples include:


- Hardship acquisition (due to health, safety, or financial reasons)
- Protective buying acquisition (where substantial and imminent property development might unduly restrict the only reasonable highway location alternative)

Hardship and protective buying acquisitions do not apply to properties subject to provisions of [23 USC 138](#) or of [16 USC 470\(f\)](#) until the required Section 4(f) determination and the Advisory Council on Historic Preservation procedures have been completed. For a property to be eligible for consideration for advance acquisition, the project shall be included in the current approved transportation plan, and the appropriate public involvement requirements shall have been met.

When a parcel has been approved for a hardship or protective buying acquisition, the normal procedures for acquisition shall be followed. If agreement cannot be reached through normal negotiations, condemnation action shall not be delayed but initiated as normal.

Hardship and protective buying acquisitions are not eligible for federal participation but may be credited toward Kentucky's share of the project cost after normal right-of-way project authorization.



	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Ferry Acquisitions</p>

POLICY


It is the Kentucky Transportation Cabinet’s (KYTC) policy to acquire commercially operated toll ferries subject to the provisions of [KRS 180.260](#) and [KRS 180.276](#).

Pursuant to KRS 180.260, the Department of Highways may purchase or condemn any ferry that is located within 10 miles of a toll bridge owned in whole or in part by the state, if the department considers it necessary or advisable in order to protect the bridge from ferry competition.

KRS 180.276 requires that prior to the opening for public use of any interstate bridge, the Commonwealth of Kentucky shall purchase for a fair cash value the ferry, equipment, franchises, rights, and privileges used in connection with the operation of any ferry which has been in continuous operation for at least 15 years prior to the opening of the bridge and which is located within 5 miles of the site of the bridge. KYTC may also purchase, through condemnation or otherwise, and may operate a privately or publically owned ferry, if the ferry or its location of operation shall be incorporated into the state highway system.

Acquisitions of any privately owned ferry shall be according to the procedures outlined for all acquisitions by KYTC, including the appraisal of property rights of the said ferry.




	<p><i>Chapter</i></p> <p>PROJECT AUTHORIZATION</p>
	<p><i>Subject</i></p> <p>Policy</p>

POLICY

The Director of the Division of Right of Way and Utilities shall authorize the district to begin right-of-way activities after the Secretary of the Kentucky Transportation Cabinet approves right-of-way funding by signing the TC 10-1 form, *Project Authorization*. If applicable, the division shall also receive Federal Highway Administration approval in writing or electronically. Funding may be for all activities or may be for only preliminary work.

Right-of-way plans shall be on file in the Central Office and the district right-of-way office as soon as the plans are available.



	<p><i>Section</i></p> <p>CENTRAL OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Project Files</p>


**CENTRAL OFFICE
MANAGEMENT OF
PROJECT FILES**

Once the division receives funding for a project, the Acquisition Branch shall establish a project file with individual parcel files, where hard copies or electronic copies of all subsequent documentation concerning each parcel are filed.

In addition to individual parcel files, the project file shall consist of a file for:

- General correspondence
- Right-of-way cost estimates
- Approved state/federal funding authorization
- Official Orders
- Approved appraisal summary forms
- Copy of acquisition contracts (if applicable)



	<p><i>Section</i></p> <p>CENTRAL OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Federal Projects</p>

OVERVIEW When using federal funds for any phase of a project, the Kentucky Transportation Cabinet (KYTC) acquires rights of way in compliance with:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended ([The Uniform Act](#))
- Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs ([49 CFR Part 24](#))
- Right of Way and Real Estate ([23 CFR Part 710](#))

**REQUEST FOR
FHWA AUTHORITY**

KYTC shall prepare a project agreement in accordance with [23 CFR Part 630](#), Subpart A, and shall base the agreement upon acceptable estimates for the costs of acquisitions and relocations. In the process of authorizing right-of-way funds, the Director of the Division of Right of Way and Utilities submits a request through the Division of Program Management to the Federal Highway Administration (FHWA) for authority to proceed with right-of-way acquisition.

FHWA receives the authorization request from federal fiscal accounts. The division may not begin right-of-way acquisitions until it has received FHWA authority in either hard-copy or electronic form. If requested on interstate and mega-projects and other mandated projects as agreed to by KYTC and FHWA, the director shall submit the following to the FHWA Realty Officer for approval:

- Right-of-way plans
- Project agreements
- Cost estimates
- MAP-21 advanced authorization (when requested)

PRELIMINARY**AUTHORITY**

If the Secretary of the Kentucky Transportation Cabinet has authorized preliminary funds, the director requests authority to proceed with preliminary activities prior to the official order and notice to proceed (NTP) such as:

- Developing a project report
- Securing title reports
- Compiling relocation worksheet data
- Pre-acquisition data, such as comparable sales book, PVA information, MAR value range

The district right-of-way supervisor shall submit a written request to the director for authority to begin appraisal work and complete appraisals as a preliminary right-of-way activity. The request shall include:

- Parcel numbers for which authority is requested
- Estimated cost to write the appraisals and conduct first-stage reviews
- Date final right-of-way plans and National Environmental Policy Act approval are expected
- Benefits expected from completing appraisals early

Absent FHWA approval, property shall not be acquired under preliminary authority. Once the Secretary authorizes full funding, the director or his or her designee requests authority to acquire property and relocate displacees.

REQUESTS FOR ADVANCE**ACQUISITIONS**

The FHWA may approve requests for advance acquisitions for:

- Health or financial hardship reasons
- Protective buying (where substantial and imminent property development might unduly restrict the only reasonable highway location alternative)

Note: A written justification for advance acquisition shall be approved by the FHWA and placed in the parcel file.

REQUESTS FOR ADVANCE

ACQUISITIONS (CONT.) FHWA may consider a significant increase in cost an element justifying protective buying. However, FHWA can grant approval only after KYTC has:

- Given official public notice that the selected location is the preferred or recommended alignment
- Held a public hearing or has afforded an opportunity for a public hearing

Hardship and protective buying acquisitions shall not apply to properties subject to provisions of [23 USC 138](#) or [16 USC 470\(f\)](#) until the required Section 4(f) determination and the Advisory Council on Historic Preservation procedures are completed. Acquisitions of such properties shall not influence the environmental assessment of the project.

Hardship and protective buying acquisitions may not be funded with federal monies; they shall be charged to the Commonwealth of Kentucky only. After a right of way has been authorized, the hardship and protective buying acquisitions may be credited toward the Commonwealth of Kentucky's share of the project. [ROW-308](#) provides more details of advanced authorization of right-of-way funds for hardship and protective buying acquisitions.

OFFICIAL ORDER

Upon receipt of the TC 10-1 form, *Project Authorization*, FHWA letter of authorization (PR-1), and approved plans, the Director of the Division of Right of Way and Utilities requests that an Official Order be prepared.

An Official Order authorizes acquisition of right of way using eminent domain procedures afforded by law to the Commonwealth of Kentucky. After the Official Order is signed by the Office of Legal Services, the State Highway Engineer, and the Secretary of the Kentucky Transportation Cabinet, the Division of Accounts numbers and returns it to the Division of Right of Way and Utilities.

**AUTHORIZATION
OF PROJECT**

Upon receipt of the TC 10-1 form, *Project Authorization*, FHWA letter of authorization (PR-1), a signed and numbered Official Order, and approved plans, the Director of the Division of Right of Way and Utilities authorizes the right-of-way supervisor to proceed with FHWA-approved right-of-way activities and forwards copies of the:

**AUTHORIZATION
OF PROJECT (CONT.)**


- FHWA letter of authorization
- Signed Official Order
- Project Authorization form
- Notice to proceed

Immediately upon receipt of the Notice to Proceed (NTP) with right-of-way activities on a transportation project, the right-of-way agent supervisor will submit the Description of Acquisition Process Letter to all persons potentially affected by the transportation project involving the Kentucky Transportation Cabinet.

**CLEARANCE OF
RIGHT OF WAY**

Original deeds acquired in the name of the Commonwealth of Kentucky (or copies of the deeds if acquired in the name of a local public agency) shall be permanently filed in the division's project files. The director notifies the proper authorities when the project's right of way is clear.



	Section CENTRAL OFFICE PROCEDURES
	Subject State Projects

OVERVIEW The Kentucky Transportation Cabinet (KYTC) acquires rights of way on state-funded projects in compliance with:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended ([The Uniform Act](#))
- Uniform Government-wide Regulations ([49 CFR Part 24](#))
- Right of Way and Real Estate ([23 CFR Part 710](#))
- [KRS Chapter 177](#)
- [KRS Chapter 46](#)

This procedure not only affords equal treatment of property owners but also meets federal guidelines in case KYTC ultimately uses federal funds for any phase of a state-funded project.

OFFICIAL ORDER Upon receipt of the TC 10-1 form, *Project Authorization*, and approved plans, the Director of the Division of Right of Way and Utilities requests that an Official Order be prepared. An Official Order authorizes acquisition of right of way using eminent domain procedures afforded by law to the Commonwealth of Kentucky.

After the Official Order is signed by the Office of Legal Services, the State Highway Engineer, and the Secretary, the Division of Accounts numbers and returns it to the Division of Right of Way and Utilities.

AUTHORIZATION OF PROJECT Upon receipt of the TC 10-1 form, *Project Authorization*, a signed and numbered Official Order, and approved plans, the Director of the Division of Right of Way and Utilities authorizes the right-of-way supervisor to proceed with right-of-way activities and forwards copies of the:

**AUTHORIZATION
OF PROJECT (CONT.)**

- Signed Official Order
- Project authorization form
- Notice to proceed

Immediately upon receipt of the Notice to Proceed (NTP) with right of way activities on a transportation project, the right-of-way agent supervisor will submit the Description of Acquisition Process Letter to all persons potentially affected by the transportation project involving the Kentucky Transportation Cabinet.

**PRELIMINARY
AUTHORITY**

If the Secretary of the Kentucky Transportation Cabinet has authorized only preliminary funds, the director notifies the district to proceed with preliminary activities such as:


- Developing a project report
- Securing title reports and appraisals
- Compiling relocation worksheet data

In no case may property be acquired under preliminary authority. Once the Secretary authorizes full funding, the director notifies the district to acquire property and relocate displacees.

**CLEARANCE OF
RIGHT OF WAY**

Original deeds acquired in the name of the Commonwealth of Kentucky (or copies of the deeds if acquired in the name of a local public agency) shall be permanently filed in the division's project files. The Director of the Division of Right of Way and Utilities notifies the proper authorities when the project's right of way is clear.



	Section CENTRAL OFFICE PROCEDURES
	Subject Rural Secondary Projects

OVERVIEW Rural secondary road projects, which are mainly resurfacing jobs, are usually handled by local governments. These projects sometime include work on small bridges. Rights of way on these projects shall follow all applicable state laws for procurement and execution. If there is federal money involved in the project, all federal regulations shall be followed in the same way as any other state project with federal aid.

Acquisitions of rights of way on rural secondary projects are limited to roads currently in the rural secondary system or those that are to be included in that system. Either a local public agency or the Kentucky Transportation Cabinet (KYTC) may acquire such a right of way.

OFFICIAL ORDER Upon receipt of the TC 10-1 form, *Project Authorization*, and approved plans, the Director of the Division of Right of Way and Utilities requests that an Official Order be prepared. An Official Order authorizes acquisition of right of way using eminent domain procedures afforded by law to the Commonwealth of Kentucky.

After the Official Order is signed by the Office of Legal Services, the State Highway Engineer, and the Secretary of the Kentucky Transportation Cabinet, the Division of Accounts numbers and returns it to the Division of Right of Way and Utilities.

AUTHORIZATION OF PROJECT The Division of Right of Way and Utilities receives from the Division of Program Management a completed TC 10-1 form, *Project Authorization*, which authorizes the project’s funding and describes its:

- Limits
- Conditions
- Related responsibilities

Note: A TC 10-1 form also authorizes subsequent changes to a project.

AUTHORIZATION**OF PROJECT (CONT.)**

Upon receipt of the TC 10-1 form, *Project Authorization*, a signed and numbered Official Order, and approved plans, the Director of the Division of Right of Way and Utilities authorizes the right-of-way supervisor to proceed with right-of-way activities and forwards copies of the:


- Signed Official Order
- Project authorization form
- Notice to proceed

Immediately upon receipt of the Notice to Proceed (NTP) with right of way activities on a transportation project, the right-of-way agent supervisor will submit the Description of Acquisition Process Letter to all persons potentially affected by the transportation project involving the Kentucky Transportation Cabinet.

**CLEARANCE OF
RIGHT OF WAY**

Original deeds acquired in the name of the Commonwealth of Kentucky (or copies of the deeds if acquired in the name of a local public agency) shall be permanently filed in the division's project files. The director notifies the proper authorities when the project's right of way is clear.



	<p>Section</p> <p>CENTRAL OFFICE PROCEDURES</p>
	<p>Subject</p> <p>Acquisition Procedures by Subagents of KYTC & LPAs</p>

OFFICIAL ORDER

Upon receipt of the TC 10-1 form, *Project Authorization*, FHWA letter of authorization (PR-1) (when applicable), and approved plans, the Director of the Division of Right of Way and Utilities requests that an Official Order be prepared. An Official Order authorizes acquisition of right of way using eminent domain procedures afforded by law to the Commonwealth of Kentucky.

After the Official Order is signed by the Office of Legal Services, the State Highway Engineer, and the Secretary of the Kentucky Transportation Cabinet, the Division of Accounts numbers and returns it to the Division of Right of Way and Utilities.

AUTHORIZATION OF PROJECT

The Division of Right of Way and Utilities receives from the Division of Program Management a completed TC 10-1 form, *Project Authorization*, which authorizes the project’s funding and describes its:

- Limits
- Condition
- Related responsibilities

Note: A TC 10-1 also authorizes subsequent changes to a project.

At this point, the project authorization is handled like any other transportation project. The project completed by a subagent of the Kentucky Transportation Cabinet (KYTC) or a local public agency (LPA) shall be fiscally constrained before authorization. Right-of-way authorization requests shall include:

- Plans, including a right-of-way summary and strip map
- Cost estimates
- Project agreement
- Memorandum of Agreement (MOA)

**AUTHORIZATION
OF PROJECT (CONT.)**

Upon receipt of the Project Authorization form, a signed and numbered Official Order, and approved right-of-way plans, the Director of the Division of Right of Way and Utilities notifies the district right-of-way supervisor to advise the LPA or subagent to proceed and then forwards to the district right-of-way supervisor and the Federal Highway Administration (FHWA) copies of the:

- FHWA letter of authorization, when applicable
- Signed Official Order
- Project Authorization form
- Notice to proceed

Transportation projects involving LPAs are required to meet the same requirements. It shall be the responsibility of the district LPA coordinator to insure compliance with 23 CFR Chapter 1, Subchapter H, Part 710, Subpart C Project Development, §710.305(d). The district LPA coordinator will require the project manager to notify in writing the Description of Acquisition Process to all persons potentially affected by projects or acquisitions advanced under USC Title 23.

**DISTRICT RIGHT-OF-
WAY SUPERVISOR
RESPONSIBILITIES**

The district right-of-way supervisor is responsible for:

- Right of way project oversight on LPA or subagent projects
- Review and approval of work and payment requests


Note: All right-of-way activities are to comply with the Uniform Act and proper right-of-way procedures.

**CLEARANCE OF
RIGHT OF WAY**

Original deeds acquired in the name of the Commonwealth of Kentucky (or copies of the deeds if acquired in the name of a LPA) shall be permanently filed in the division's project files. The Director of the Division of Right of Way and Utilities shall notify the proper authorities when the project's right of way is clear.

Note: Authorization for project construction by subagents of KYTC shall follow the same requirements as those for KYTC. See [ROW-402-3](#), "State Projects," for further information.



	<i>Section</i> CENTRAL OFFICE PROCEDURES
	<i>Subject</i> Acquisitions for Finance & Administration Cabinet Projects

**TRANSPORTATION
ACQUISITIONS FOR
FINANCE**

By mutual agreement, the Kentucky Transportation Cabinet (KYTC) shall acquire real property for the Finance and Administration Cabinet (Finance) upon request. For such acquisitions, KYTC shall follow the policies and procedures in this guidance manual, except in specified cases where Finance policy takes precedence, and shall comply with federal regulations where federal-aid funding is used.


**RECORDING
ACQUISITIONS**

Deeds shall be taken in the name of the Commonwealth of Kentucky for use by and benefit of Finance. Records of these acquisitions shall be maintained with other project files.

**RECORDING
EXPENSES**

Agents shall keep records of expenses incurred while performing work on Finance projects. Such expenses shall be charged and inter-accounted to the project identification furnished by Finance.



	<p><i>Section</i></p> <p>CENTRAL OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Design-Build Projects</p>

FINAL RULE The Final Rule establishing federal regulations for design-build projects became effective January 9, 2003, and is outlined in [23 CFR 710.313](#).

**PROJECT
ACTIVATION
POLICIES**

When right-of-way acquisition services shall be handled in the design-build contract, each proposal document shall address the following guidelines:

- The contractor shall submit in the proposal an executed certification that he or she has received a copy of the approved *Right of Way Guidance Manual* and will comply with the described procedures, including the Kentucky Transportation Cabinet's (KYTC's) right-of-way forms. In lieu of adopting KYTC's approved acquisition policies, the contractor may submit written acquisition policies and procedures to the Division of Right of Way and Utilities for approval before beginning right-of-way activities.
- Before beginning right-of-way activities, the contractor shall submit an acquisition stage relocation report (ASRR) in accordance with [RA-303](#) that provides for a reasonable time for the orderly relocation of residents and businesses on the project as provided in [49 CFR 24.205](#). The district shall provide a copy of the notice of proposed acquisition letter.
- The acquisition consultant shall provide a Right-of-Way Status Progress Report and a quality control system. The report shall reflect the status of:
 - ◆ Appraisals
 - ◆ Appraisal reviews
 - ◆ Negotiations
 - ◆ Relocation assistance
 - ◆ Condemnations

**PROJECT ACTIVATION
POLICIES (CONT.)**

The status progress report shall be current within seven days and shall be submitted to the district right-of-way supervisor weekly as well as be maintained with the Division of Right of Way and Utilities. Additionally, any of these files shall be up-to-date and available upon request by KYTC or the Federal Highway Administration.

- Before authorizing acquisition activities, the contractor shall submit to the Division of Right of Way and Utilities a proposed schedule for right-of-way acquisition for review and approval. The schedule shall comply with the Federal Uniform Act and include:
 - ◆ Information regarding appraisal and appraisal review
 - ◆ Time period for negotiations
 - ◆ Timeframe for completing the Relocation Assistance Program, if applicable
- Also, before approving acquisition activities, the roadway contractor shall not:
 - ◆ Begin construction on any parcel
 - ◆ Take any action that may impair the safety of or be coercive toward owners of any properties on the project not yet acquired
 - ◆ Disrupt utility services to any occupied properties on the project
 - ◆ Conduct any open burning:
 - Within 1,000 feet of an occupied dwelling
 - Violating any policies of KYTC

Note: If right of entry is pursued on a parcel that is leased or occupied by a tenant, approval from the tenant or lessee is required prior to entry for roadway construction. Notes regarding permission for entry shall be added to the certification and plans.

- The roadway contractor shall provide for adequate access to all occupied properties at all times.
- Any right-of-entry agreement or consent and release involving the area of a proposed right of way may be pursued but only after the owner of the property being sought has been fully advised of the acquisition process and his or her right to just compensation. If the owner is agreeable to executing a right-of-entry agreement or consent and release, the roadway contractor shall not enter upon the property until the appraiser and review appraiser have:
 - ◆ Viewed the property to be acquired
 - ◆ Obtained photographs of the property in its existing condition

ACQUISITION**AUTHORITY**

Immediately after a contract has been awarded, the district office shall prepare and submit to the Division of Right of Way and Utilities a cost estimate for right-of-way acquisition and a Relocation Assistance Report if applicable. The contractor shall submit to the Division of Right of Way and Utilities for approval the names of the acquisition team, including:

- Right-of-way project manager
- Title attorney
- Appraisers
- First-stage review appraiser
- Buyers
- Relocation assistance agents
- Closing agent

Note: No offers to purchase any rights of way shall be made until right-of-way activities are authorized. Right-of-way authorization may not be requested until there is an approved National Environmental Policy Act (NEPA) document for the project by the Division of Environmental Analysis.

ACQUISITION**COMPLIANCE**

All right-of-way acquisition activities shall comply with the Federal Uniform Act and KYTC's right-of-way acquisition policies.

RIGHT-OF-WAY**CLEARANCE****CERTIFICATION**

For design-build projects, the right-of-way certification may be based on parcel-by-parcel features or by project section. The agreement or contract with the contractor shall specify the procedures required for certification. The roadway contractor shall not enter upon any parcel or section of parcels until the Division of Right of Way and Utilities has received a right-of-way clearance certification.

The right-of-way clearance certification letter shall specify:

- Parcel numbers
- Names of all applicable owners
- Statement that KYTC has possession of the properties based on:
 - ◆ Right-of-entry agreement
 - ◆ Deed of conveyance
 - ◆ Right of entry issued by the appropriate court

RIGHT-OF-WAY

CLEARANCE

CERTIFICATION (CONT.) If the properties acquired involve improvements, the right-of-way clearance certification letter must specify that the occupants have:


- Received the offer of relocation assistance, including replacement housing if applicable
- Vacated the improvements

IMPROVEMENT

REMOVALS

Unless otherwise specified in the roadway contract, the roadway contractor shall be responsible for the demolition and removal of all improvements acquired for the new rights of way. The disposal of any improvements acquired outside the limits of the new rights of way shall be at the discretion of the Division of Right of Way and Utilities. Subagents of KYTC shall comply with the environmental commitments found in the NEPA approval.



	<p><i>Section</i></p> <p>DISTRICT OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Project Files</p>

**DISTRICT OFFICE
MANAGEMENT OF
PROJECT FILES**

Project files shall be maintained with separate folders for the following:

- Project authorization
- General correspondence
- Approved appraisal summaries
- Contracts
- Plan revisions
- Comparable sales books
- Sales of improvements
- Individual acquisition and relocation parcel
- CAP file (MOU)
- Excess Property


Hard copies or electronic copies of documents and correspondence pertaining to a parcel are filed in the appropriate parcel folder. (Usually, a preliminary project folder containing all project-related information is maintained until the project is authorized.)

Each branch shall include a required checklist for project and parcel files. Each checklist shall include:

- Dates of accomplishments
- Date sent to Central Office

All parcels' files should be entered into the Division of Right of Way and Utilities' database, if available.



	<p><i>Section</i></p> <p>DISTRICT OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Supervisory Responsibility for Project Planning</p>

**RESPONSIBILITIES
OF DISTRICT
SUPERVISOR**

At least once a month, the district right-of-way supervisor shall:

- Review the Preconstruction Status Report (Pre-con Report) for projects advancing to the right-of-way phase
- Notify the Acquisition Branch Manager of changes in plan due dates, if design completion is not on schedule
- Update project estimates using the TC 62-203 form, *Right of Way Cost Estimate*, if design completion is on target and plans are scheduled for submittal

Note: Updated estimates shall include sufficient justification for any difference—increase or decrease—between a project's current estimates and its enacted Six-Year Highway Plan projected costs.

- Determine if staff or consultant services are required
- Request assignment of an attorney to provide title reports if the district attorney is unable to provide them (the chain of title is searched back at least 35 years and submitted on a title report.); the request, which shall be sent by memorandum to the Office of Legal Services and to the Acquisition Branch Manager, shall include ([ROW-1003](#)):
 - ◆ Estimated number of parcels requiring title reports
 - ◆ Description of the type of properties needing title reports
 - ◆ Specific date by which title reports are needed
 - ◆ List of any special needs, such as mineral titles

Note: Reports are not required for parcels involving only minor temporary easements.


**RESPONSIBILITIES
OF DISTRICT
SUPERVISOR (CONT.)**

- Review and discuss with the appropriate branch manager the need for:
 - ◆ Appraisers
 - ◆ Negotiators
 - ◆ Relocation agents
- Verify that a project report has been prepared if a fee appraiser or acquisition consultant shall be used
- Review and approve right-of-way issues for subagents and local public agents on their projects

Upon receipt of authorization to proceed, the district right-of-way supervisor shall:

- Notice of proposed acquisition letter
- Prepare and enter into the computer system appropriate project and parcel data
- Compare plan data to identify items requiring plan changes with:
 - ◆ Title reports
 - ◆ Relocation assistance contacts
 - ◆ Utility information
- Request the district project manager to effect necessary changes in plans
- Ensure acquisition progress is entered in the appropriate project status report as it occurs and continue reporting as long as a project remains active



	<p><i>Section</i></p> <p>DISTRICT OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Inspection for Hazardous Materials</p>

**INSPECTION
PROCEDURES**


Upon authorization to proceed with acquisitions, the district property management agent shall confer with the project manager and the district environmental coordinator to determine whether any parcel contains hazardous materials or underground storage tanks (USTs) that were not identified in the National Environmental Protection Act documentation. If signs of hazardous materials or USTs are observed, the right-of-way supervisor shall request appropriate testing as outlined in [ROW-1104](#), "Hazardous Materials." All acquired improvements, except those retained by the owner, shall be inspected by the Division of Environmental Analysis for the presence of asbestos-containing material (ACM). The supervisor shall request ACM inspection and abatement as outlined in [ROW-1104](#). The supervisor shall:

- Submit to the Director of the Division of Right of Way and Utilities a list of all properties having hazardous materials, along with estimated costs for remediation
- Recommend to the director appropriate steps relative to the acquisition of these properties

During inspection, photographs of improvements and of USTs being acquired shall be made. The photographs shall be retained for future property management needs.

Before purchasing properties at their approved appraised values, the Kentucky Transportation Cabinet (KYTC) may require owners to perform appropriate clean-up procedures. The Director of the Division of Right of Way and Utilities shall advise the district of the procedures to follow when negotiating for parcels containing hazardous materials. This work can be advanced more quickly by referencing the approved environmental documentation for the project.



	<p>Section</p> <p>DISTRICT OFFICE PROCEDURES</p>
	<p>Subject</p> <p>Relocation of Human Remains</p>

REQUESTING GRAVE ASSESSMENT

Upon authorization to proceed with acquisitions, the district right-of-way supervisor shall confirm that the Division of Environmental Analysis has assessed all affected cemeteries for their historical significance (Section 4(f) determination) and the presence of Native American graves.

If an assessment has been completed, the supervisor shall send a copy of the clearance notice from the Division of Environmental Analysis, along with the information below, to the Relocation Branch Manager. If an assessment has not been completed, the supervisor shall send the following information with a request for assessment to the district environmental coordinator and send copies to the Relocation Branch Manager:

- Number of cemeteries within the right-of-way limits
- Location of each cemetery the project affects
- Number of graves affected in each cemetery
- Description of each cemetery and the way the project affects the cemetery
- Plat of each disinterment cemetery showing:
 - ◆ Location of the cemetery
 - ◆ Boundary—by distance and bearings—of the cemetery
 - ◆ How the proposed project affects the cemetery
 - ◆ Each grave to be relocated and the grave number
 - ◆ Name of the remains in each grave

Note: If the name is unknown, the plat is to designate the remains as "Unknown."

Note: The Division of Highway Design, in accordance with the [Highway Design Guidance Manual](#), shall provide the plat of each disinterment cemetery.


**REQUESTING GRAVE
ASSESSMENT (CONT.)**

- Grave relocation agent's estimate of cost for the grave relocation project

Note: The agent's estimate of cost shall be prepared as outlined in [ROW-1203](#), "Preparing to Relocate Human Remains."

- Other pertinent information, such as:
 - ◆ Names of the owner of the property and the owner of the cemetery
 - ◆ Owners' relationships to those interred
 - ◆ Possibility of relocating remains to another part of the disinterment cemetery
 - ◆ Name and location of the nearest perpetually maintained public cemetery



	<p><i>Section</i></p> <p>DISTRICT OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Rural Secondary Road Projects</p>

COMPLIANCE

Local governments usually handle rural secondary road projects, which are mainly road-resurfacing jobs and occasional small-bridge work. All applicable state procurement laws ([KRS 45A](#)) shall be followed when acquiring rights of way for rural secondary road projects. If federal money is involved in the project, all federal regulations shall be followed the same as any other state project with federal aid.

RESPONSIBILITIES OF DISTRICT SUPERVISOR

Upon receipt of the director's notice to proceed, the district right-of-way supervisor shall:


- Check deed descriptions against the plans and prepare deeds
- Prepare a letter to the head of the local government, transmitting:
 - ◆ One set of plans
 - ◆ Unexecuted deeds
 - ◆ Information for counties acquiring right of way for rural secondary road projects
- Specify in the transmittal letter the project's priority and the date the local government is expected to have its obligations completed
- Provide a copy of the transmittal letter to the:
 - ◆ District utility agent
 - ◆ Director of the Division of Right of Way and Utilities
- Assist the local government in its efforts to secure right of way to whatever extent is practical

Note: Neither the Kentucky Transportation Cabinet (KYTC) nor the local government may request donations.

**RESPONSIBILITIES
OF DISTRICT
SUPERVISOR (CONT.)**

- Advise the Central Office of the local government's progress through routine status reports
- Recommend action to be taken when the local government's efforts appear unsuccessful
- Check and forward all documents to the Central Office when the local government has fulfilled its obligations



	<p>Section</p> <p>DISTRICT OFFICE PROCEDURES</p>
	<p>Subject</p> <p>Acquisition Procedures by Subagents of KYTC & LPAs</p>

**RESPONSIBILITIES
OF DISTRICT
SUPERVISOR**


Upon receipt of the notice to proceed from the Director of the Division of Right of Way and Utilities, the district right-of-way supervisor shall:

- Prepare a letter to the head of the local public agency, transmitting one set of plans and, if applicable, the unexecuted deeds
- Specify in the transmittal letter the project's priority and the date the public agency is expected to have its obligations completed
- Provide a copy of the transmittal letter to the district utility agent and to the Director of the Division of Right of Way and Utilities
- Advise the Kentucky Transportation Cabinet (KYTC) subagent of his or her responsibilities for compliance with state and federal transportation programs
- Verify that the subagent has a current copy of the approved *Relocation Assistance Guidance Manual* and *Right of Way Guidance Manual*
- Assist the public agency in its efforts to secure right of way and to comply with all state and federal regulations found in the *Right of Way Guidance Manual*
- Advise the KYTC subagent that all persons delivering these right-of-way programs shall meet the same requirements and qualifications as:
 - ◆ State appraisers
 - ◆ Relocation agents
 - ◆ Negotiators

**RESPONSIBILITIES
OF DISTRICT
SUPERVISOR (CONT.)**

- Conduct routine oversight reviews and prepare quality assurance reports on the delivery of the right-of-way program
- Recommend actions to be taken when the public agency's efforts appear unsuccessful or are not in compliance with state and federal regulations
- Review all documents for compliance with state and federal regulations and forward them to the Central Office when the public agency has fulfilled its obligations




	<i>Section</i> DISTRICT OFFICE PROCEDURES
	<i>Subject</i> Acquisitions for Finance & Administration Cabinet Projects

OVERVIEW By mutual agreement, the Kentucky Transportation Cabinet (KYTC) shall acquire real property for the Finance and Administration Cabinet (Finance) upon request. Policies and procedures described in this manual shall be followed for such acquisitions except in specified cases where Finance policy takes precedence. Right-of-way acquisitions on these requests shall follow all applicable state laws for procurement and execution. If federal funds are involved in a project, then all federal regulations shall be followed.

RECORDING ACQUISITIONS Deeds shall be taken in the name of the Commonwealth of Kentucky for use by and benefit of Finance. Records of these acquisitions shall be maintained with other project files.

RECORDING EXPENSES Agents shall keep records of expenses incurred while performing work on Finance projects. Such expenses shall be charged and inter-accounted to the project identification furnished by Finance.



	<p><i>Section</i></p> <p>LOCAL PUBLIC AGENCIES</p>
	<p><i>Subject</i></p> <p>Contracting Agreements</p>

TERMS OF AGREEMENT

A local public agency (LPA) or a subagent of the Kentucky Transportation Cabinet (KYTC) shall acquire rights of way in accordance with KYTC-approved policies and procedures on all federal and state projects. All right-of-way work shall comply with [The Uniform Act](#), even if it is not described in this manual. An LPA or a subagent of KYTC may develop and use its own procedures and policies if approved by KYTC and the Federal Highway Administration. The agreement between KYTC (state agency) and the LPA or subagent of KYTC shall outline the responsibilities of each agency to include, but not be limited to:

- Agency’s name in which the title to the property shall be acquired
- Each agency’s share in the costs associated with the project
- Agency having responsibility for instituting condemnation actions
- Agency responsible for arrangements with affected utility companies to provide for adjustments to their facilities

Note: Arrangements shall be made as soon as possible to allow completion of such work prior to award of a contract. In any case, a notice of at least 30 days shall be given to the utility companies so that they may comply with [KRS 416.140\(3\)](#), which concerns utility companies on state highways.

- Agency responsible for any expenses incurred for adjustments to railroad facility crossing installations

Note: The Utilities and Rail Branch of the Division of Right of Way and Utilities is responsible for any plans or technical assistance, including easements, necessary in connection with railroads.

**TERMS OF
AGREEMENT (CONT.)**

- Agency responsible for the removal of the following located within the right of way prior to award of a contract:
 - ◆ Buildings
 - ◆ Fences
 - ◆ Other obstructions

- All personnel used to deliver the right-of-way functions


Note: These personnel shall be precertified and prequalified by the state in the same manner as any other state employee.

- All files and work subject to state or federal review

Upon satisfying all of the preceding conditions, the LPA or the subagent of KYTC shall send the original recorded deeds to the district office if the title to the right of way was acquired in the name of the Commonwealth of Kentucky.

If the title was acquired in the name of the LPA or the subagent of KYTC, a copy of the deed shall be submitted to the district office and forwarded to the Central Office.



	<p><i>Section</i></p> <p>LOCAL PUBLIC AGENCIES</p>
	<p><i>Subject</i></p> <p>Acquisitions for Transportation Enhancement Activities</p>

OVERVIEW Moving Ahead for Progress in the 21st Century Act (MAP-21) enhancement projects are federally funded surface transportation programs. They are not necessarily road projects, but shall have a clear transportation connection since they are using federal transportation funds.

REQUIREMENTS Transportation enhancement (TE) activities that involve acquisition, management, and disposition of real property and the relocation of families, individuals, and businesses are governed by the general requirements of the federal-aid program found in Titles 23 and 29 of the [Code of Federal Regulations](#) (CFR).

Displacements resulting from TE activities are subject to the [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970](#).

Acquisitions for TE projects are subject to the signed memorandum of agreement (MOA) that specifies the local public agency (LPA) authority under the power of eminent domain. The requirements are as follows:

- Prior to making an offer for the property, the LPA shall clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement.
- The LPA shall obtain an appraisal from an appraiser on the state’s prequalified list of appraisers.
- A state review appraiser shall review the appraisal.
- The LPA shall provide the owner with:
 - ◆ A written offer to purchase
 - ◆ A copy of the approved appraisal, which documents the market value of the property to be acquired

REQUIREMENTS (CONT.)


- Owners of such properties are not displaced persons and are not entitled to relocation assistance benefits. However, tenants on such properties may be eligible for relocation assistance benefits.

- All transportation enhancement activities shall follow all approved KYTC policies and procedures found in this guidance manual and the [*Relocation Assistance Guidance Manual*](#).

Real property acquired with transportation enhancement activities funds shall be managed in accordance with the property management requirements contained in [23 CFR Part 710](#), Subpart D. Any use of the property for purposes other than those for which the transportation enhancement activity funds were provided is not permitted without Federal Highway Administration approval. (See 23 CFR Part 710.511.)

These acquisitions shall be tracked separately and shall be available for oversight reviews and fiscal accounting on a quarterly basis.




	<p><i>Chapter</i></p> <p>PROJECT AUTHORIZATION</p>
	<p><i>Subject</i></p> <p>State & Local Government Contributions of Right of Way</p>

POLICY

Real property owned by state government or by a local government and incorporated within a federally funded project can be used as a credit toward the matching share of the project costs. Credit cannot exceed the matching share required by the project agreement and shall be at fair market value. The project agreement is to have been executed after June 9, 1998.

Note: [23 CFR Part 710.507](#) identifies exemptions and other qualifiers to state or local government contributions to a federally funded project.




	<i>Chapter</i> APPRAISERS & COURT WITNESSES
	<i>Subject</i> Policy

POLICY

Appraisers shall establish a fair value for property to be acquired. Appraisers must disclose if they have appraised the property in the last three years. Appraisers shall have no direct or indirect personal or contemplated future personal interest in property to be appraised. Employment of or compensation to appraisers is not contingent upon values derived for property to be appraised. Appraisers and review appraisers affirm adherence to this policy by signing a certification to that effect on each appraisal report.



	<p><i>Chapter</i></p> <p>APPRAISERS & COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Assignment of Appraisers</p>

WHEN AN APPRAISAL IS NOT REQUIRED

An appraisal is not required in the following two instances:

- When the owner is donating property

Note: The owner must release the agency from having to prepare an appraisal.
- When the agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less

Note: A minor acquisition review (MAR) shall be based upon a review of available data and be prepared by a right-of-way person who sufficiently understands the local real estate market.

MARs GREATER THAN \$10,000 BUT \$25,000 OR LESS

When approved by the property owner, the division may use the MAR valuation process for uncomplicated parcels valued at more than \$10,000 but \$25,000 or less. The steps to be followed are referenced in ROW 702.

While an appraiser or review appraiser may provide market data, the involvement of either is discouraged. Any acquisition agent knowledgeable of real estate practices and acquisition policies can calculate a MAR valuation. Final preparation and approval of an MAR calculation rests with the district right-of-way supervisor.

PROCEDURES FOR ASSIGNING APPRAISERS

The district right-of-way supervisor shall assign staff appraisers, if available, to appraise parcels of a project. As projects require, the following shall discuss the need for appraisers and review appraisers:

- District right-of-way supervisor
- Appraisal Branch Manager
- Director of the Division of Right of Way and Utilities

**PROCEDURES FOR
HIRING APPRAISERS**

The following procedures shall be used when hiring appraisers utilizing the statewide appraisal services contract (not related to legal appraisals):

1. The district right-of-way agent supervisor shall submit a request for appraisal services to the Appraisal Branch Manager, KYTC Division of Right of Way and Utilities, with copies to the Director of the Division of Right of Way and Utilities, Assistant Director of Right of Way and Utilities, and designee.
2. KYTC Division of Right of Way and Utilities selects the next appraiser in rotation for that area
3. KYTC Division of Right of Way and Utilities sends the appraiser a notification with project information, and copies to the district right-of-way supervisor. The appraiser shall respond within five calendar days.
4. Once the appraiser accepts, the Notice to Proceed begins immediately.
 - a. Within fourteen days, the appraiser shall submit electronic copies of the project report to the Appraisal Branch Manager, KYTC Division of Right of Way and Utilities; Director of the Division of Right of Way and Utilities; Assistant Director of the Division of Right of Way and Utilities; and, designee).
 - b. The project report is **only** for the assigned parcels to be appraised, not the entire project, and will be reviewed by district and KYTC Division of Right of Way and Utilities staff.
5. The district right-of-way supervisor shall schedule an appraisal scoping meeting within seven calendar days of receiving the project report.
6. Appraisal scoping meeting attendees shall include the awarded fee appraiser, right-of-way supervisor, appraisal branch manager, assigned review appraiser, district staff appraiser, district review appraiser, and the district relocation agent, if necessary. (Optional attendees who may be invited include the Director of the Division of Right of Way and Utilities, Assistant Director of the Division of Right of Way and Utilities, and designee.)
7. Appraisal Scoping Meeting
 - a. The district right-of-way supervisor shall conduct the appraisal scoping meeting in accordance with appraisal scoping meeting guidelines. See the appraisal scoping meeting checklist online at:
<https://transportation.ky.gov/RightofWay/Pages/Appraisals.aspx>

**PROCEDURES FOR HIRING
APPRAISERS (CONT.)**

- b. The assigned appraiser is responsible for keeping appraisal scoping meeting minutes.
- c. The appraiser is responsible for sending copies of scoping meeting minutes within three calendar days. Approval of the minutes by all attendees is needed within five calendar days or less.

Note: A non-response by an attendee is considered an approval.

8. If the fee proposal is **\$50,000.00 and above**, it shall be sent directly to the KYTC Division of Professional Services only for review. Send the appraisal parcel list breakdown to the KYTC Division of Right of Way and Utilities without fees so an individual estimate can be created.
 - a. If fee proposal is **less than \$50,000.00**, submit the fee proposal to the KYTC Division of Professional Services and the Division of Right of Way and Utilities, including copies to the Appraisal Branch Manager, Director of the Division of Right of Way and Utilities, Assistant Director of the Division of Right of Way and Utilities, designee, and the district right-of-way supervisor
 - b. The assigned appraiser shall submit the appraisal fee proposal within five calendar days of the approval of the scoping meeting minutes
9. Upon approval of the fee proposal, the Division of Professional Services shall write and forward the Letter Agreement to the Director of the Division of Right-of-Way and Utilities, as well as the appraiser, for signature (generally within five working days)
10. The final Letter Agreement shall be signed in ink and returned to the Division of Professional Services immediately to be archived.
11. The Letter Agreement encumbers the fund to allow for reimbursement to the appraiser upon completion of services

Note: Forms and instructions for appraisal fee submittal may be accessed on the KYTC Right of Way Appraisals website.

**HIRING AN APPRAISER
FOR PROJECT SPECIFIC
SERVICES**

Agreements are executed with individual appraisers and, in some cases, appraisal firms. Appraisers that respond to solicitations for services posted on the Division of Professional Services website are invited to view the project and plans. Letters of interest and submitted fee proposals are received and evaluated. Members of the evaluation team may include:


**HIRING AN APPRAISER
FOR PROJECT SPECIFIC
SERVICES (CONT.)**

- Division of Right of Way and Utilities supervisor or designated representative
- Appraisal Branch Manager, Division of Right of Way and Utilities
- Two members of the Governor's pool
- One member from the Cabinet Secretary's pool
- Observing member from the Division of Professional Services

Selection of one or more prequalified appraisers is based upon an evaluation that considers such factors as the following:

- Responsiveness to the solicitation
- General experience
- Knowledge and experience in the location of the project
- Quality of work
- Cooperation
- Timeliness
- New or seldom-used contractor
- Convincing personality and good public relations demeanor
- Disadvantaged Business Enterprise (DBE)



	<p><i>Chapter</i></p> <p>APPRAISERS & COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Prequalification of Fee Appraisers</p>

**APPRAISER
PREQUALIFICATION
COMMITTEE**

By Official Order 105438, the Kentucky Transportation Cabinet (KYTC) has created an Appraiser Prequalification Committee composed of the:

- Director of the Division of Right of Way and Utilities
- Appraisal Branch Manager
- Executive Director of the Office of Project Development

The committee:

- Uses established procedures to ensure the availability of qualified fee appraisers
- Determines if the applicant meets the minimum requirements necessary to make acceptable appraisals for KYTC
 - ◆ *Education*—A minimum of four years college with a BA or BS degree, or two-year associate’s degree in real estate plus two years of experience in the real estate field. Four consecutive years of demonstrated eminent domain appraisal experience will substitute for the required degree. All applicants must be certified by the Kentucky Real Estate Appraisers Board at the time of applications.
 - ◆ *Experience*—A minimum of five years full-time experience in appraising real estate. An appraiser will be considered full time if 50% or more of his time is devoted to appraising. The five years counted must be worked within the last seven years.

**APPRAISER
PREQUALIFICATION
COMMITTEE (CONT.)**

- ◆ *Knowledge*—Appraisers must have a layman’s understanding of state laws regarding item of compensability and non-compensability in eminent domain acquisitions; must be able to read engineering plans and specifications; must be able to prepare various economic studies related to the documentation of appraisals and must have a good public relations demeanor
- ◆ *Technical*—Appraisers must pass the pre-qualification examination.
- ◆ *References*—Appraisers must be able to furnish references (if required) and submit copies of recent appraisal work for review by the Cabinet’s Appraiser Prequalification and Selection Committee to determine if the technical quality of the applicant’s work meets cabinet requirements.

**APPRAISER
QUESTIONNAIRE**

Applicants interested in fee appraisal work are to complete the TC 62-3 form, *Experience Questionnaire for Fee Appraiser*, furnished by the Division of Right of Way and Utilities. The questionnaire, which outlines the applicant's education, experience, and training, is evaluated to determine whether the applicant has the necessary qualifications to meet KYTC’s requirements. Representative appraisal work is also reviewed to determine whether the applicant has the necessary appraisal training, experience, and expertise.

**APPRAISER
EXAM**

A comprehensive appraisal exam has been developed for use in the prequalification of fee appraisers. The exam consists of three parts:

- Part I, General Real Estate and Appraisal
- Part II, General and Residential Applications
- Part III, Commercial and Income Producing

To prequalify for appraisal assignments, applicants must pass Parts I, II, and III with a composite score of 75 percent. The composite score is calculated by adding the scores on each part of the test and dividing by 3.

APPRAISER**EXAM (CONT.)**

The prequalification exam is given in Central Office under the supervision of the Appraisal Branch Manager, who checks and scores each applicant's completed exam. The exam is scheduled on the basis of the:

- Number of new applicant requests
- KYTC workload

An applicant may not take the exam more than once in a 90-calendar-day period.

Two unsuccessful attempts to pass the exam suspend an applicant's opportunity at prequalification for a one year period from the date of the last exam.

Failure to pass the exam in four attempts will further cause the applicant to reapply to the prequalification committee after a period of five years has elapsed from the date of the last exam.

PREQUALIFYING**SPECIALTY****APPRAISERS**

Unusual properties sometimes require the services of a specialty appraiser, recognized as an expert in a specific field. Such an appraiser may prequalify for a particular appraisal problem upon submission of a resumé for review by the Appraiser Prequalification Committee and an interview with KYTC appraisal staff.

PREQUALIFYING**FORMER STATE****EMPLOYEES**

An appraiser who voluntarily left state employment for reasons other than retirement may not be prequalified until one year after his or her employment ended. Such an appraiser is deemed a state employee until all salary, termination pay, and payments representing annual leave have been made.

A former state employee, who has been out of state service for one year or longer, must apply and complete the prequalification process.

**REVOCAION OF
PREQUALIFICATION
STATUS**

Reasons to revoke an appraiser's prequalification status may include but are not limited to any one of the following situations:

- Appraiser's work has been unsatisfactory
- Three years have passed since submission of satisfactory work


**REVOCAION OF
PREQUALIFICATION
STATUS (CONT.)**

- Appraiser has not actively pursued assignments from KYTC for a period of three years
- Appraiser has failed to complete assignments within a reasonable time
- Appraiser has failed to furnish additional documentation determined to be necessary by review appraisers or to answer federal ineligibility notifications in a satisfactory manner
- Appraiser has plagiarized material from other appraisers

The Appraisal Branch Manager shall provide written notice to an appraiser whose prequalification status has been revoked. Prior to revocation, the appraiser shall be given an opportunity to respond to allegations that prompted the revocation.

To be reconsidered for fee appraisal work, the appraiser shall reapply and complete the entire prequalification process.



	<p><i>Chapter</i></p> <p>APPRAISERS & COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Acceptance of Appraisals</p>

ASSIGNING A REVIEW

APPRAISER The district right-of-way supervisor or the Appraisal Branch Manager designates a review appraiser to:

- ◆ Review each appraisal for general acceptability and format
- ◆ Conduct instructional meetings during the period of assignment

ACCEPTABLE APPRAISAL

Upon completion of the review process, the district right-of-way supervisor, or designated representative, reviews invoice submittal and recommends for approval to the Division of Professional Services for payment.

UNACCEPTABLE APPRAISAL


If an appraisal does not comply with the contract or is considered unacceptable, a percentage of the parcel's contract fee is withheld pending corrective action by the appraiser. The review appraiser:

- Returns any unacceptable appraisal as soon as possible to the appraiser, along with a letter stating the reasons for rejection
- Sends a copy of the letter to the district right-of-way supervisor or project manager and the regional review appraiser or the Appraisal Branch Manager

Failure by an appraiser to perform the following may result in revocation of the appraiser's prequalified status:

- Furnishing additional documentation determined to be necessary by a review appraiser
- Answering satisfactorily any federal ineligibility notifications



	<p><i>Chapter</i></p> <p>APPRAISERS & COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Instructions to Appraisers</p>

**INFORMATION
FOR STAFF &
FEE APPRAISERS**

Staff and fee appraisers shall meet with the review appraiser prior to the commencement of appraisal activities, at which time the appraiser and review appraiser shall obtain and review the following information before proceeding with appraisal assignments:


- Plans, plats, maps, and appraisal forms (when available)
- Title reports (when available)
- Special instructions relating to other interests, encumbrances, leaseholds, etc. (as applicable)
- [Answers to Questions about Right of Way Acquisition](#) brochures, a copy of which shall be given to each property owner on initial contact

Note: Brochures are available from the district office.

- TC 62-19 form, *Property Owner Interview*

Note: The appraiser shall explain how the acquisition will affect the property and shall leave the form with the property owner.



	<p><i>Chapter</i></p> <p>APPRAISERS & COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Review Appraisers</p>

**QUALIFICATIONS
OF A REVIEW
APPRAISER**

The selection of a review appraiser is based upon experience, training, and the ability to coordinate appraisal functions in a district office.

To qualify as a review appraiser, an applicant shall:

- Have graduated from an accredited college or university with a 4-year degree as required for a right-of-way agent

Note: Experience in appraising or right-of-way negotiations may be substituted for education on a year-for-year basis.

- Have at least 3 years of progressively responsible experience in right-of-way appraising, acquisition, and supervision (or an equivalent combination of acceptable experience and training in the field of appraising)
- Be fully conversant with the following pertaining to right-of-way acquisition:
 - ◆ Procedures
 - ◆ Regulations
 - ◆ Laws
- Possess extensive knowledge of:
 - ◆ Appraisal techniques
 - ◆ Factors affecting property values
 - ◆ Currently accepted methods of appraising property

Note: The quality of past appraisal work serves as an example of experience and ability to perform the duties of a review appraiser.

**QUALIFICATIONS
OF A REVIEW
APPRAISER (CONT.)**

- Have successfully completed instructional courses given by recognized appraisal organizations
- Have a working knowledge of Kentucky statutory and case law pertaining to compensability
- Possess the following:
 - ◆ Working knowledge of highway location survey work
 - ◆ Broad knowledge of real estate laws and practices
 - ◆ Ability to understand maps, profiles, and other data connected with highway plans and designs
- Be able to impart/explain information concerning policy changes to staff and fee appraisers and to implement such changes
- Be able to deal effectively and courteously with people

If an applicant meets these qualifications and receives recommendations from a district right-of-way supervisor and the Appraisal Branch Manager, the Director of the Division of Right of Way and Utilities may designate the applicant a review appraiser.

**FEE REVIEW
APPRAISERS**

Upon recommendation by the Appraisal Branch Manager and after prequalification, fee appraisers may be designated by the Director of the Division of Right of Way and Utilities as qualified for appraisal review assignments and may be employed for that purpose. Fee review appraisers operate under the guidelines previously outlined in this section for review appraisers.

**ACTING REVIEW
APPRAISERS**


When the workload is very heavy and a shortage of review appraisers exists, the division may need to appoint acting review appraisers.

Staff appraisers who have demonstrated outstanding performance and ability in the appraisal field but do not have the three years' experience necessary to qualify as review appraisers may be designated acting review appraisers. Under the supervision of the regional review appraisers, acting review appraisers perform review appraisal functions until they have gained the necessary experience to be designated as review appraisers.

**REVOCAION OF
REVIEW STATUS**

When a staff review appraiser has not performed appraisal review work for the Kentucky Transportation Cabinet (KYTC) for a period exceeding one year, the staff appraiser's review status is automatically dropped. The recommendation of the district right-of-way supervisor and the approval of both the Appraisal Branch Manager and the Director of the Division of Right of Way and Utilities are required for reinstatement to review status.



	<p><i>Section</i></p> <p>COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Staff Appraisal Witnesses</p>

PREPARATION FOR COURT TESTIMONY

Every person called as a court witness should prepare as thoroughly as possible. Staff appraisers are expected to support their appraisals by appearing as court witnesses when necessary. When notified of a trial date, the district right-of-way supervisor shall arrange sufficient time for the staff appraiser to prepare and appear as a court witness. If the staff appraiser cannot be available for the trial, the district right-of-way supervisor shall promptly notify the trial attorney and the Director of the Division of Right of Way and Utilities so that a substitute court witness can be obtained or a continuance of the trial sought.

As soon as possible after notification that he or she will be called as a court witness, the staff appraiser shall:

- Update his or her original report to the date of taking


Note: The date of taking is the date of right of entry or the Interlocutory Order Judgment date.

- Submit the report sufficiently early to allow for appraisal review well in advance of the trial date

EXEMPTIONS FROM COURT TESTIMONY

Review appraisers and Central Office review personnel are exempt from court testimony unless otherwise instructed by the Director of the Division of Right of Way and Utilities. In most instances, this would be an emergency situation involving insufficient time or the inability to obtain another court witness. Occasionally, the director may deem a case so important that the testimony of the review appraisers would be warranted.



	<p><i>Section</i></p> <p>COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Contract Appraisal Witnesses</p>

PREPARATION FOR COURT TESTIMONY

Every person called as a court witness shall prepare as thoroughly as possible. All fee appraisers are expected, under the terms of their contracts, to support their appraisals in court when necessary.

An appraisal witness, in addition to or instead of the original appraiser, may be provided for by a *Statewide Agreement for Appraisal & Review*. When necessary, the trial attorney selects an appraiser to inspect condemned properties for purposes of qualification and soliciting a fee proposal.

FEE PROPOSAL PROCEDURES FOR COURT APPRAISAL SERVICES

These fee proposal procedures shall be followed when requesting court appraisal services:

- The attorney shall make a request to the appraiser for the fee proposal.
- A copy of the request shall be sent to the Appraisal Branch Manager.
- The appraiser shall send the fee proposal in letter form to the Appraisal Branch Manager on the appraiser’s letterhead.
- The letter shall be addressed to the Transportation Cabinet at 200 Mero Street, Frankfort, KY, 40622, in care of the Appraisal Branch Manager.
- The letter shall include:
 - ◆ County name
 - ◆ Item number
 - ◆ Project number
 - ◆ Road name
 - ◆ Defendant’s name
 - ◆ Parcel number

**FEE PROPOSAL
PROCEDURES FOR
COURT APPRAISAL
SERVICES (CONT.)**

- The fee proposal shall include:
 - ◆ Type of property being appraised
 - ◆ Size of the property
 - ◆ Any improvements on the property
 - ◆ Size of the taking area (including all fee simple areas, temporary easements, and permanent easements)
 - ◆ Improvements within the taking areas
 - ◆ Other issues that may affect value (i.e. proximity, changes in grade, changes in highest and best use, etc.)
- The fee proposal shall include enough detailed information that the reviewer can make a reliable recommendation for approval of the fee.
- The Appraisal Branch Manager shall review all fee proposals and make a recommendation to the Division Director.
- The Division Director may approve the fee proposal, reject the fee proposal, or ask the Appraisal Branch Manager to negotiate with the appraiser for an alternative fee.
- Once approved, the Appraisal Branch Manager shall send an authorization letter via email to the appraiser, as well as a courtesy copy to the attorney.
- Hard copies of the authorization letter shall not be sent except under special circumstances.

**PROCEDURES FOR
SUBMITTING COURT
APPRAISALS FOR
REVIEW**

These procedures shall be followed when submitting court appraisals for review:

- All copies of appraisal reports shall be addressed to the Appraisal Branch Manager and sent to Central Office at 200 Mero Street, Frankfort, KY, 40622.
- The fee appraiser shall not submit any appraisal reports to the attorney.

**PROCEDURES FOR SUBMITTING
COURT APPRAISALS
FOR REVIEW (CONT.)**

- The appraiser's invoice shall be submitted with the appraisal report.
- The standard invoice and Legislative Research Commission (LRC) *Personal Service Contract Invoice* form are required.
- The invoices must include the item number, parcel number, contract number, and correct dates. (Questions about dates shall be directed to the Appraisal Branch Manager.)
- The Appraisal Branch Manager shall distribute the reports to one of the regional review appraisers for review.
- In order to expedite the payment of invoices, the reviewer shall complete a cursory review of the report and submit the *Court Testimony Compliance Checklist* to Central Office.
- Upon completion of the review process, the review appraiser shall submit the *Court Testimony Appraisal Final Review* form to the Appraisal Branch Manager.
- Upon final approval by the Division Director or Appraisal Branch Manager, a copy of the report and the review shall be sent to the attorney of record by the Appraisal Branch Manager.


Note: Until the report has been approved by the Division Director or the Appraisal Branch Manager, it shall not be used for court testimony or distributed.

All invoices for trial preparation and court time shall be approved by the trial attorney and forwarded to the Appraisal Branch Manager for payment against the appraiser's *Statewide Agreement for Expert Court Witness*.

A fee appraiser who has previously appraised a property and is being called for trial testimony should:

- Update his or her original report to the date of taking
- Submit the report to the Appraisal Branch Manager early enough to allow for review well in advance of the trial date



	<i>Chapter</i> <p>APPRAISALS</p>
	<i>Subject</i> <p>Policy</p>


POLICY

Appraisal standards are the same throughout the state. A staff or prequalified fee appraiser shall appraise all properties to be acquired with the exception of properties acquired using the format of “Appraisal Waiver” or Minor Acquisition Review (MAR) valuations.

Owners shall receive an offer that reflects “just compensation” as determined by the difference in the fair market value of the entire property prior to the acquisition and the fair market value of that part of the property that remains after the acquisitions—both values evaluated without the influence of any outside factors.

To ensure the Kentucky Transportation Cabinet (KYTC) complies with these objectives, all appraisals shall be reviewed by either a staff review appraiser or a prequalified fee review appraiser assigned the parcel by KYTC. The review of the appraisal shall be completed prior to the initiation of negotiations for the acquisition of the property and the review shall give consideration to accuracy, documentation, and final value conclusions.



	<p><i>Chapter</i></p> <p>APPRAISALS</p>
	<p><i>Subject</i></p> <p>Appraisal Standards</p>

STATE APPRAISAL BOARD

Appraisals shall be prepared in accordance with state and federal laws and shall contain all elements considered essential in good appraisal practice and as outlined in [49 CFR 24.103](#).

The [Division of Right of Way and Utilities Appraisal Guidelines](#) offers further interpretation of the division’s policies and procedures. All of these requirements are intended to be consistent with the [Uniform Standards of Professional Appraisal Practice](#) (USPAP) promulgated by the Appraisal Foundation. With the exception of appraisal waiver valuations (Minor Acquisition Reviews), an appraiser prepares before- and after-value appraisals on all partial acquisitions. When estimating before- and after-values, the appraiser shall consider the three approaches to value:

1. Cost
2. Sales comparison
3. Income

The appraiser:

- Uses only those approaches applicable in each appraisal situation
- Explains why any unused approach is not applicable

Upon completion of an appraisal, the appraiser submits it to a review appraiser, who forwards the original approved appraisal to the Division of Right of Way and Utilities for permanent filing. A copy is sent back to the district with the approved review for the appropriate offer and payment to proceed.

CONFLICT OF INTEREST

Appraisers shall have no direct or indirect personal or contemplated future personal interest in property to be appraised. Employment or compensation to appraisers is not contingent upon values derived for property to be appraised, and appraisers shall write their reports in conformance with all state and federal laws, regulations, and policy.

CONFLICT OF INTEREST (CONT.)

Appraisers and review appraisers affirm adherence to this policy by signing a certification to that effect on each appraisal report.

APPRAISER INDEPENDENCE

No person shall attempt to unduly influence or coerce an appraiser or a review appraiser regarding any valuation or other aspect of an appraisal or appraisal review. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except under certain conditions outlined in [49 CFR, Part 24.102\(n\)\(2\)](#).

CHANGE IN FAIR MARKET VALUE

The appraiser shall disregard any decrease or increase in the market value of the real property caused by the:

- Project for which the property is to be acquired
- Likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner

DAMAGES

Even though the value of a property may be reduced in the open market, damages that are considered noncompensable under state law shall not be reflected in the after value.

ENHANCEMENTS

When there is an increase in value to a property (enhancement) caused by special benefits, the after value shall reflect the effect of those benefits. In accordance with state law, enhancements that occur shall be offset against the value of the part acquired and the damages to the remainder.

UNECONOMIC REMNANTS

The review appraiser shall determine whether a remainder is an uneconomic remnant and so state in the review.

CONTAMINATED PROPERTIES

Properties known or suspected to be contaminated are appraised as though clean, although a note shall be made in the appraisal of the suspected contamination. The decision to modify the offer of just compensation may be made as an administrative measure at a later date.

SURPLUS PROPERTY

If surplus property is sold to an adjoining owner, its value is found both as a separate entity (stand-alone value), if applicable, and as it would contribute value to the adjacent property. The final value estimate is the higher of the two values. If the property is to be sold publicly, the appraisal shall reflect the property's value as a separate entity.

SURPLUS PROPERTY**(CONT.)**

Any proposed sale that is noncomplex and valued at \$10,000 or less may be calculated by a qualified KYTC employee and approved by the right-of-way supervisor using the Minor Acquisition Review (MAR) process.

In cases where a proposed sale is noncomplex and the value will be greater than \$10,000 but \$25,000 or less, the property owner shall be given the option to obtain an appraisal at his or her own expense or have a qualified KYTC employee estimate the value of the surplus using the MAR process.

WASTE AREAS

When the Division of Highway Design determines that the Department of Highways shall provide waste areas, the division shall request the Division of Right of Way and Utilities to prepare comparative cost estimates for acquiring the areas in fee simple and temporary easements. This procedure is outlined in the [Highway Design Guidance Manual](#).

When KYTC has made the final determination as to the title desired, the Division of Right of Way and Utilities appraises the property accordingly. The waste areas shall be valued at full fair market value for fee acquisitions and accordingly for temporary acquisitions. The appraisal shall identify all the trade-off amenities that are to be included as part of the acquisition. A waste site:

- Shall be acquired following FHWA guidelines
- May not be acquired or appraised until an environmental review has been completed
- May not cause the displacement of families or individuals without Central Office approval
- Acquired in fee and subsequently not incorporated into the project or used for project mitigation shall be disposed of at fair market value unless it is:
 - ◆ Used for other public or environmental applications
 - ◆ Approved by the Federal Highway Administration (FHWA)

ACCESS POINTS

Appraisals shall be completed as before- and after-value reports. The before value reflects the value of the property as it exists on the date of appraisal. The after value reflects the value of the property assuming the new access point has been granted. The difference in these two figures, if any, represents the property's change in value as a result of the granting of access.

AIRSPACE LEASES

Appraisals for the valuation of airspace leases shall reflect the contribution of the leased airspace to the parent tract. Typically, an appraiser will find the fair market (contributory) value of the tract sought to be leased. Once approved, that lease is sent to the Permits Branch, Division of Maintenance, for analysis.

AIRSPACE LEASES**(CONT.)**

When reliable data is available, comparable rents or other methods may be used to derive rental value. The Director of the Division of Right of Way and Utilities and the FHWA may approve any waivers of payments. FHWA must approve any airspace lease on interstate or Appalachian Development Highway System (ADHS) projects.

TRANSPORTATION**ENHANCEMENTS**

When real estate is acquired in fee for transportation enhancements under the MAP-21 regulation, a prequalified appraiser shall prepare an appraisal according to the appraisal standards above. A regional review appraiser shall review this appraisal. If the appraisal is over \$100,000, it shall be forwarded to the FHWA Realty Office for review.

These acquisitions must demonstrate a clear transportation connection. As these properties are acquired with federal transportation dollars, they may not be transferred to other state proprietary agencies without federal approval or agreement.


Appraisals prepared for the Office of Transportation Enhancement Programs are prepared and reviewed to the same standards and requirements as those appraisals prepared for right-of-way acquisition. If a fee appraiser prepares the appraisal, he or she must be on KYTC's prequalified list. Appraisal reports are reviewed at both first and second levels. If the appraisal is over \$100,000, a copy shall be forwarded to the FHWA Realty Office for review.

**NUMBER OF
APPRAISALS**

At least one appraisal is required on any parcel that is not designated a Minor Acquisition Review (appraisal waiver). Additional appraisals may be requested by the Appraisal Branch Manager in the event of unusual circumstances or complexities.

Two additional appraisals may be obtained when litigation is imminent or deemed necessary by KYTC. Also, additional appraisals may be obtained when requested by FHWA.



	<p><i>Chapter</i></p> <p>APPRAISALS</p>
	<p><i>Subject</i></p> <p>Data Assemblage & Analysis</p>

OVERVIEW

The appraiser shall make a preliminary inspection of the project and plans to ascertain the amount and type of data to gather, analyze, and assemble to properly arrive at and document the appraisal conclusions.

The inspection shall include:

- Type and general characteristics of the neighborhoods involved
- Type and general characteristics of properties the project directly affected
- Any unusual problems or circumstances that require particular attention, assistance, or documentation

**MARKET DATA
ASSEMBLAGE**

Before beginning the appraisal of each individual property affected, the appraiser gathers and analyzes available market data, including:

- Sales of properties similar to those being appraised
- Rental information
- Current building and construction costs
- Any other factors that may affect the value of properties to be appraised

Each staff or fee appraiser shall make an independent analysis and judgment of this information in formulating the comparable sales and appraisal reports. The sales report may be separate from each appraisal but becomes a part of each appraisal by reference.

**COMPARABLE
SALES REPORT**

The sales report is one of the most essential components of any appraisal assignment because it is the basis from which the appraiser will exercise judgment and support for conclusions of value.


COMPARABLE

SALES REPORT (CONT.) The final sales report shall be submitted as part of the project file. At a minimum, the sales report shall consist of the following:

- Letter of Transmittal and Appraiser Certification Form—A letter transmitting the sales and appraisal reports and a signed TC 62-22 form, *Appraiser's Certification of Comparable Sales Data*, stating that the appraiser has inspected and verified each comparable sale
- Area or Neighborhood Analysis—An analysis and description of economic and other factors relevant to market value in the community affected by the project
- Project Analysis:
 - ◆ Brief description of the project and its location
 - ◆ Portion of the community most affected
 - ◆ Anticipated effects (grade changes, access changes, etc.) to the types of properties involved
- Other Analyses (if applicable)—Analyses of location, topography, time, financing, damage studies, etc.
- Comparable Sale Data Form—The appropriate form listing the data from the analysis of each sale used in the appraisal assignment:
 - ◆ Either the TC 62-20B form, *Comparable Sale Data—Residential/Commercial/Industrial*, or the TC 62-20C form, *Comparable Sale Data—Rural*
 - ◆ TC 62-20D form, *Additional Comparable Sale Data*, to which properly identified photographs of each sale are attached
- Market Data Map—A city or topographic map, as applicable, on which each sale is numbered and properly spotted to aid in reviewing the appraiser's work

Note: The project area shall be spotted on the map as well.



	<p><i>Chapter</i></p> <p>APPRAISALS</p>
	<p><i>Subject</i></p> <p>Inspection of Property</p>

OVERVIEW

The appraiser shall personally make a detailed inspection of the property being appraised. Buildings taken or damaged shall be measured and necessary photographs taken in compliance with instructions furnished to the appraiser.

INITIAL CONTACT WITH PROPERTY OWNER

Pursuant to Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, when the appraiser makes initial contact with a property owner (or his or her designated representative), the owner (or his or her representative) is given the opportunity to accompany the appraiser during inspection of the property. To certify this has been done, the appraiser signs the certificate of appraisal on the first page of the TC 62-20.1 form, *Appraisal Report*.


On initial contact, the appraiser shall:

- Provide a detailed explanation of how the acquisition will affect the property
- Give the owner a copy of the Department of Highways’ informational brochure [Answers to Questions About Right of Way Acquisition](#)

Note: Brochures are available from the district office.

- Provide the owner a copy of the TC 62-19 form, *Property Owner Interview*, and a postage-paid return envelope, with the request that the completed form be returned to the Division of Right of Way and Utilities



	Chapter <p>APPRAISALS</p>
	Subject <p>Documentation</p>

DEFINITION OF DOCUMENTATION

Documentation is defined as the provision of facts or evidence to substantiate a methodical discussion of principles involved and conclusions reached for fair market value. It is therefore necessary that an appraiser provide facts and other evidence affecting market value to substantiate or support each appraisal. The extent of facts and other evidence necessary depends upon the type and complexity of the appraisal problem involved.

In addition to gathering, analyzing, and assembling data for the comparable sales report, the appraiser shall support, explain, or document each applicable approach to value to the satisfaction of the review appraiser.

PROPERTY & BUILDING SKETCHES

Sketches are an important part of all appraisals. These visual depictions, along with the narrative descriptions, allow the appraiser more flexibility in discussing appraisal problems by simple reference to the drawings.

PHOTOGRAPHS

Properly identified photographs are required on all appraisals even if no improvements are acquired. The appraiser shall:

- Note on the property sketch the location from which he or she takes each picture
- Take pictures from vantage points that provide the sharpest possible details of the subjects being photographed
- Date and sufficiently identify the photographs to allow the reader to determine what the photographs depict and to which parcel and project they belong
- Attach photographs to all copies of the appraisal
- Maintain a digital file for future copies

PERSONAL PROPERTY An appraisal report shall include an adequate description of the physical characteristics of the property being appraised, including items of personal property that have to be appraised with the real estate. The relocation agents shall inventory personal property not paid for in the appraisal.

**SALES COMPARISON
APPROACH**

The appraiser shall:

- Make direct comparisons between the property being appraised and comparable properties sold
- Adjust differences in the properties by dollar or percentage amounts

Careful independent considerations shall be used in analyzing and adjusting comparable sales used. In addition to stating the reason for the adjustment, the appraiser shall explain why he or she uses a particular dollar or percentage amount.

The appraiser may save considerable time by making reference in the appraisal to common adjustments that are documented in the comparable sales report such as:

- Time
- Location
- Topography
- Damage studies
- Other studies as needed

COST APPROACH

The appraiser shall support cost figures by the use of cost indices or actual construction costs. Appraisals shall contain the specific source of cost data, its date of issue, and the section and page numbers to which the reference is made. The appraiser may also personally analyze the following for use in the cost approach:

- Prevailing local costs
- Contractor's estimates

When using a national cost service, the appraiser shall use all applicable modifiers according to instructions provided for the manual's use. If it becomes necessary to deviate from the manual's base unit cost, the appraiser shall provide adequate explanation for such reasoning. The appraiser shall classify the buildings carefully so that he or she uses the proper unit cost.

**COST APPROACH
(CONT.)**

The appraiser shall sufficiently explain depreciation—physical, functional, or external. The appraiser may use the depreciation tables in the cost manual, along with the narrative explanation provided, to support the depreciation he or she estimates.

INCOME APPROACH

The appraiser shall establish the economic rent of the property in question by referring to other properties whose income streams exhibit similar characteristics in terms of quality, quantity, and durability.

The appraiser shall explain or document items such as:

- Vacancy and credit losses
- Expenses
- Interest rates
- Discount rates
- Internal rates of return
- Gross Rent Multiplier (GRM)
- Capitalization rates

**BEFORE- &
AFTER-VALUE
ESTIMATES**


Adequate documentation is required to support both before- and after-value estimates. The appraiser shall use each applicable approach to value. If the appraiser does not use an approach, he or she shall explain why it is not applicable.

It may be difficult to find desired market data for partial acquisitions involving possible damage or enhancements. However, one or more of the following methods based on available data shall support the after-value estimate:

- Sales, comparable to the remainder
- Sales of comparable properties from which there have been similar acquisitions for like usage
- Development of the income approach on properties that show economic losses or gains as a result of similar acquisitions for like usage
- Cost approach with supporting documentation
- Indications from severance damage studies as related to similar acquisitions

If the data described above is not available, the appraiser shall so state and furnish a narrative explanation to justify his or her reasoning and conclusion of value.



	<p><i>Chapter</i></p> <p>APPRAISALS</p>
	<p><i>Subject</i></p> <p>Appraisal Reports</p>

TYPES OF APPRAISAL REPORTS

An appraisal report shall contain all elements considered essential in good appraisal practice as outlined in:

- [Uniform Standards of Professional Appraisal Practice](#)
- [49 CFR, Part 24](#)
- Other instructional data that the Kentucky Transportation Cabinet (KYTC) provides an appraiser
- Uniform Appraisal Standards for Federal Land Acquisition (Yellow Book)

The appraiser shall prepare one of the following reports:


- TC 62-20.1 form, *Appraisal Report*—The appraiser shall use this form on all acquisitions not classified as a MAR or which a narrative report has been deemed necessary.
- Narrative Appraisal Report—The appraiser shall use narrative appraisal reports for appraisals of unusual or uniquely complex properties. These reports shall also contain other instructional data that KYTC may furnish the appraiser.

Both report formats must show:

- Valuation date
- Signature and certification of the person making the appraisal
- Date the report was signed

A fee appraiser's employees may assist in the appraisal process, but the appraiser under assignment must certify that he or she developed the value conclusion by using his or her independent judgment. Upon completing an appraisal, the appraiser shall submit it to a review appraiser.



	Section APPRAISAL REVIEW
	Subject Criteria

OVERVIEW A qualified review appraiser reviews all appraisals to determine their acceptability as to:

- Procedure
- Form
- Documentation

Therefore, the review appraiser, like the appraiser, shall be:

- Familiar with the project and plans
- Knowledgeable of economic and general market conditions in the project area

The review procedure remains the same in all districts, and the appraisal review process shall meet the requirements outlined in [49 CFR, Part 24](#).

UNECONOMIC REMNANTS On all projects, the review appraiser shall determine and state in the review as to whether a remainder is an uneconomic remnant.

SALVAGE VALUE The district property management agent shall determine the salvage value of improvements and shall furnish this information to the review appraiser for inclusion on the TC 62-87 form, *Appraisal Review*.

COURT-TESTIMONY APPRAISALS A review of all court appraisals are handled by Central Office Appraisal staff.

SURPLUS-PROPERTY APPRAISALS A review appraiser reviews appraisals for disposal of surplus property for acceptability as with any other appraisal report, keeping in mind the purposes of the reports and the values being estimated as described in [ROW-602](#), "Appraisal Standards."

ACCESS-POINT**APPRAISALS**

A review appraiser reviews these appraisals for acceptability as with any other appraisal report, keeping in mind the purposes of the reports and the values being estimated as described in **ROW-602**, "Appraisal Standards."

AIRSPACE-LEASE**APPRAISALS**

A review appraiser reviews these appraisals for acceptability as with any other appraisal report, keeping in mind the purposes of the reports and the values being sought as described in **ROW-602**, "Appraisal Standards."

**TRANSPORTATION-
ENHANCEMENT****APPRAISALS**

A review appraiser reviews these appraisals for acceptability as with any other appraisal report, keeping in mind the purposes of the reports and the values being sought as described in **ROW-602**, "Appraisal Standards."

BUILDABLE LOTS

For purposes of computing a replacement housing payment, the relocation evaluator may ask the review appraiser to determine whether a remainder is a buildable lot. Such determination may ultimately be furnished by memorandum from the review appraiser or the appraiser.

Note: A copy of this memorandum shall be placed in the parcel file.


CARVE OUTS

When a carve out is necessary, the review appraiser shall be asked to furnish values based on the carve out identified by the relocation evaluator when any or all of the following occur:

- Appraisal does not give this information
- Relocation evaluator's determination of a typical home site differs from the appraisal
- Carve out is needed for replacement property being purchased by a displacee

Carve-out values may ultimately be furnished by memorandum from the review appraiser or appraiser.



	Section APPRAISAL REVIEW
	Subject Procedures

STAGES OF REVIEW An appraisal review is accomplished in two stages. The first stage is a desk review of the appraisals and comparable sales report to determine their acceptability as to procedure and form. The comparable sales report is checked to verify that its analyses support adjustments and statements in the appraisals.

The second stage consists of detailed on-site inspections of all properties—those being appraised and those identified in the comparable sales report—to determine whether the appraiser has included all items affecting the values of the properties.

**APPRAISAL
ACCEPTABLE**

If only one appraisal is required and the reviewer finds the appraisal to be properly completed and documented and the appraiser's conclusion of value sound, the reviewer is to:

- Approve the appraisal by signing the TC 62-87 form, *Appraisal Review*
- Attach the TC 62-87 form and the TC 62-223 form, *Appraisal Review Recapitulation*, to the appraisal
- Attach appraisal summary

**DIFFERENT
CONCLUSIONS**

If a review of the appraisal and supporting data indicates a different conclusion from that of the appraiser's, the reviewer shall thoroughly document and explain his or her conclusion on the *Appraisal Review* or in an attached narrative. If the reviewer disagrees with the appraiser's value conclusions, the reviewer shall provide support for his or her opinion.

Note: A reviewer should never replace a documented opinion with an unsupported or undocumented opinion.

MINOR ERRORS

If the reviewer finds minor mathematical errors that do not affect the final value conclusion or discovers the omission of certain factual data, the reviewer may make corrections after documenting and explaining the changes on the *Appraisal Review* or in an attached narrative.

APPRAISAL**UNACCEPTABLE**

If an appraisal requires substantial corrections or revisions, it is returned to the appraiser for correction and the following policies shall be observed:

- All copies of appraisals submitted by the appraiser shall be returned for correction.
- Appraisals shall be returned with a transmittal letter detailing the items to be corrected.
- The reviewer shall make a copy of the complete appraisal before returning it to the appraiser.
- The reviewer shall send a copy of the transmittal letter to the Appraisal Branch Manager.
- The reviewer shall retain the following in the parcel file as a permanent record copy of the appraisal:
 - ◆ Copied returned appraisal
 - ◆ Copy of the corrected appraisal
 - ◆ Copies of all relative correspondence

DUAL APPRAISALS

The review appraiser shall determine the acceptability of each report as to procedure, standards, and methods outlined in instructions provided to the appraisers when two appraisals have been made on one parcel.

The review appraiser shall complete a review of each report. If one or both appraisals are unacceptable, the report(s) shall be returned for correction before final review. If both appraisals are acceptable, the reviewer shall determine which appraisal:

- Presents the better documentation
- Reflects more reasonably the compensation to be paid

The reviewer shall select one of the reports as the basis for compensation. **Reconciling portions of the two reports into a third value is not acceptable.**

**DUAL APPRAISALS
(CONT.)**

The review of the recommended report shall:

- Note that it has been selected as representative of fair market value
- State at the end the amount of compensation
- Make no comparisons to the other report

Note: The review appraiser's recap sheet shall accompany only this review.

The review of the report that is not recommended shall:

- Discuss the reasons why it is not recommended
- Note the superiority of the other report

The review sheet on this report shall not:

- Carry a recap sheet
- Include a recommended value


The summary sheet covering the two reports shall carry only the recommended value.

**SUBMISSION TO
CENTRAL OFFICE**

After thorough reviews by the review appraiser, appraisals are submitted to the Central Office as follows:

- TC 62-20.1 form, *Appraisal Report*
- TC 62-87 form, *Appraisal Review*—attached to the *Appraisal Report*
- Comparable Sales Book from each appraiser assigned
- Appraisal summary



	<p><i>Chapter</i></p> <p>ACQUISITIONS</p>
	<p><i>Subject</i></p> <p>Policy</p>

POLICY

Right of way is acquired through negotiations based on just compensation and approved right-of-way plans. Right-of-way acquisition and related relocation assistance activities must be in accordance with [49 CFR Part 24](#) and [23 CFR Part 710](#) if federal funding is involved with any phase of the project. The Division of Right of Way and Utilities shall make every reasonable effort to acquire the real property expeditiously through the process of good faith negotiations.

All parcel acquisition assignments shall be completed through the Division of Right of Way and Utilities’ data management software, if available for subject project.

NOTICE TO OWNERS

As soon as feasible, the district right-of-way supervisor shall cause a letter to be written to each owner of real property that the Kentucky Transportation Cabinet (KYTC) is interested in acquiring. Said letter shall advise each owner of the protections that are available by law and pursuant to 49 CFR. It shall be the responsibility of the district right of way agent supervisor to provide written notice to persons affected by projects or acquisitions advanced under Title 23 of the United States Code.

Immediately upon receipt of the Notice to Proceed (NTP) with right-of-way activities on a transportation project, the right of way agent supervisor will submit the *Description of Acquisition Process Letter* to all persons potentially affected by the transportation project involving KYTC.

Transportation projects involving Local Public Agencies (LPAs) are required to meet the same requirements. It shall be the responsibility of the district LPA coordinator to insure compliance with 23 CFR Chapter 1, Subchapter H, Part 710, Subpart C Project Development, §710.305(d).

The district LPA coordinator will require the LPA project manager to notify in writing the *Description of Acquisition Process* to all persons potentially affected by projects or acquisitions advanced under Title 23 of the United States Code.

**NOTICE TO OWNERS
(CONT.)**

After the Notice to Proceed (NTP) is given and as soon as feasible, all persons potentially affected by projects or acquisitions shall be given written notice of the acquisition process prior to any right-of-way activity. The method of notification shall be by first class registered or certified mail, return receipt requested.


In the event that this process fails to notify the person, the parcel file shall be properly documented as to why notification was not successful.

All description of acquisition process notifications shall be placed in the permanent parcel file. A copy of the property owner notification of acquisition letter shall accompany all parcel payment requests. The standard *Notice of Proposed Acquisition Letter* shall be used.

The district supervisor may initiate negotiations on a project immediately upon Central Office approval of the appraisal summary when an appraisal is prepared. Negotiations may be initiated on Minor Acquisition Review parcels upon approval of the value findings by the right-of-way supervisor.

The Director of the Division of Right of Way and Utilities may allow variations to the foregoing policy if they are considered to be in the best interest of KYTC. Under no circumstances shall variations be allowed that will be less than the minimum requirements outlined in 49 CFR Part 24.



	<p><i>Chapter</i></p> <p>ACQUISITIONS</p>
	<p><i>Subject</i></p> <p>Initiating Negotiations</p>

POLICY

The district may initiate negotiations:

- After right of way has been authorized
- Upon Central Office approval of just compensation when an appraisal has been prepared

The district may initiate negotiations for parcels involving minor and noncomplex acquisitions immediately upon the district right-of-way supervisor’s approval of a Minor Acquisition Review (MAR). The district may begin calculating MAR values upon notification from the Director of the Division of Right of Way and Utilities that right-of-way activities have been authorized and sufficient plan information is available ([ROW 303](#).)

The director or the Appraisal Branch Manager may allow variations to the foregoing policy if they are considered to be in the best interest of the Kentucky Transportation Cabinet (KYTC). Under no circumstances shall variations be allowed that will be less than minimum requirements outlined in [49 CFR Part 24](#).

All parcel acquisition assignments shall be completed through the Division of Right of Way and Utilities’ data management software if available for subject project.

MINOR ACQUISITION REVIEW

The division encourages the districts to use the Minor Acquisition Review (MAR) valuation and acquisition process. Effective use of the MAR process will reduce the workloads of appraisers and review appraisers and advance the acquisition process. It is essential that the district identify and acquire parcels covered by this process early in the right-of-way phase.

MARs will fall into one of two categories, both of which must involve noncomplex acquisitions that cause no damages to the remaining property. The process to be used by the two categories is:

MINOR ACQUISITION**REVIEW (CONT.)**

Parcels valued at \$10,000 or less. The Division of Right of Way and Utilities may determine the use of MAR valuation for parcels valued at \$10,000 or less. The steps to be followed are:

1. Early in the right-of-way phase, identify parcels that are to be acquired by this process
2. Determine the highest and best use of the properties
3. Search market data to find a value range for each use
4. Get approval of the district right-of-way supervisor for value ranges
5. When performing calculations for each parcel acquisition analyze the following:
 - ◆ Size of the tract before and after the acquisition
 - ◆ Type of property
 - ◆ What is being acquired and what remains
 - ◆ How the acquisition impacts the property
 - ◆ Photographs of the acquisition area
6. Present the offer in person both verbally and in writing to the property owners. It shall be documented within the Record of Contacts when circumstances preclude direct contact.
7. The negotiator shall never be in such a hurry that the owner feels rushed. The negotiator, however, shall make every reasonable effort to help the owner make a decision within 45 days.
8. Promptly process the parcels for payment when a deed is signed.
9. In the event of unsuccessful negotiations, promptly prepare for condemnation.

Parcels valued at more than \$10,000 but \$25,000 or less. When approved by the property owner, the division may use the MAR valuation process for parcels valued at more than \$10,000 but \$25,000 or less. The steps to be followed are:

1. Early in the right-of-way phase, identify parcels that are to be acquired by this process
2. Determine the highest and best use of the properties
3. Search market data to find a value range for each use
4. Get approval of the district right-of-way supervisor for value ranges
5. Contact property owners in person prior to making the just compensation offer, explain the option for a MAR valuation or an appraisal, and allow the owner to choose

**MINOR ACQUISITION
REVIEW (CONT.)**

6. If the owner elects to have an appraisal made, request the district supervisor to assign the parcel to an appraiser
7. If the owner elects to use the MAR valuation process, request the owner to sign a waiver of the appraisal requirements
8. When performing calculations for each parcel acquisition analyze the following:
 - ◆ Size of the tract before and after the acquisition
 - ◆ Type of property
 - ◆ What is being acquired and what remains
 - ◆ How the acquisition impacts the property
 - ◆ Photographs of the acquisition area
9. Present the offer in person both verbally and in writing to the property owners. It shall be documented within the *Record of Contacts* when circumstances preclude direct contact.
10. The negotiator shall never be in such a hurry that the owner feels rushed. The negotiator, however, shall make every reasonable effort to help the owner make a decision within 45 days.
11. Promptly process the parcels for payment when a deed is signed
12. In the event of unsuccessful negotiations, promptly prepare for condemnation

While an appraiser or review appraiser may provide market data, the involvement of either is discouraged. Any acquisition agent knowledgeable of real estate practices and acquisition policies can calculate a MAR valuation. Final preparation and approval of an MAR calculation rests with the district right-of-way supervisor.

Regardless of the valuation process used, the buying agent—at the time of making the offer to acquire—shall:

- Provide the property owner with a written offer, and a copy of the value calculations that describe the offer of just compensation. Upon request of the property owner, the deed book and page number of comparable sales may be provided.
- Explain that the valuation problem is uncomplicated and that the offer was computed using values from local market data

Note: The agent's TC 62-77 form, *Record of Contacts*, in each parcel file is to show the offer calculation.

**MINOR ACQUISITION
REVIEW (CONT.)**

- The negotiator shall never be in such a hurry that the owner feels rushed. The negotiator, however, shall make every reasonable effort to help the owner make a decision within 45 days.
- Submit the parcel for suit as with any other acquisition if a settlement cannot be reached

**CONSULTANT USE OF
MINOR ACQUISITION
REVIEW**


A right-of-way consultant shall follow the same procedures as outlined above with the following exception:

Federal regulations require that KYTC determine just compensation. Prior to an offer being made by an acquisition consultant, the district right-of-way supervisor shall approve:

- The range of values
- Value calculations of the acquisition
- Just compensation

The acquisition agent shall include a copy of each in the parcel file.



	<p><i>Section</i></p> <p>ADMINISTRATIVE SETTLEMENTS</p>
	<p><i>Subject</i></p> <p>Overview</p>

DEFINITION Administrative settlements occur when the Director of the Division of Right of Way and Utilities, the Acquisition Branch Manager, and the district right-of-way supervisor agree to acquire a parcel for an amount that varies from the approved just compensation offer. The director and Acquisition Branch Manager may make an administrative settlement on a particular parcel without the concurrence of the supervisor.

Note: A call shall be placed to the district right-of-way supervisor to discuss possible effects on future projects.

GENERAL GUIDELINES Administrative settlements and the amount of the increase shall be supported in writing by one or more of the following criteria:

- The omission of minor items from the appraisal that alters just compensation by a negligible amount
- Property owner’s submission of a counter offer not substantially different from the approved appraisal
- Compensation for issues that cannot be documented by an appraisal
- The complexity of the acquisition
- Anticipated costs for court preparation
- Risks of high court award
- History of previous court awards in the local court

A record of all administrative settlements and justifications is required in the parcel file and in the Division of Right of Way and Utilities’ data management system.


GENERAL GUIDELINES

(CONT.)

Settlement shall not be made with an owner until an administrative settlement has been approved by appropriate personnel.

If the parcel involves replacement housing, the relocation agent shall be advised of the settlement and the amount of the increase in compensation. The owner shall be advised that the increase may impact the amount of the replacement housing payment.



	<p><i>Section</i></p> <p>ADMINISTRATIVE SETTLEMENTS</p>
	<p><i>Subject</i></p> <p>Acquisitions from State Employees</p>

POLICY

If the Kentucky Transportation Cabinet (KYTC) acquires property from a state employee and bases the settlement upon an increase in compensation above the approved appraisal, the district right-of-way supervisor shall justify the increase in writing. Regardless of the amount of the increase, the supervisor shall:

- Write a detailed recommendation for the administrative settlement
- Complete a *State Employee Administrative Settlement Documentation* form
- Submit the completed form and the recommendation for approval to the Director of the Division of Right of Way and Utilities and to the Acquisition Branch Manager

All administrative settlements and legal actions that involve state employees and that exceed the amount of the fair market value offer require the approval of the Director of the Division of Right of Way and Utilities prior to any signed agreement.

When an administrative settlement is required for a State Employee, additional documentation shall be required and shall accompany the request for payment submitted to the KYTC Division of Right of Way and Utilities. This includes, but is not limited to, the following:

- What is the impact on the project (dollar and schedule) if this administrative settlement for the acquisition or easement is not approved?
- Can a monetary amount be estimated regarding the cost of condemnation (if this is even applicable)?
- Is there a precedent for approving a percent amount over the appraised value (regardless of the dollar amount)?

POLICY (CONT.)


- Are we establishing a precedent for landowners holding out in the future knowing the Cabinet can and will pay almost double the appraised value?

EXCEPTIONS

The following employees are exempt from this policy and do not require the Governor's approval:

- Retired employees (if retired prior to start of negotiations)
- Teachers
- All college employees
- All county employees



	<p><i>Section</i></p> <p>ADMINISTRATIVE SETTLEMENTS</p>
	<p><i>Subject</i></p> <p>Minor Deviation</p>

PROCEDURES

If a minor item is omitted that alters the just compensation by a negligible amount, or if the property owner submits a counter proposal not substantially different from the just compensation, the negotiator, with prior approval from the district right-of-way supervisor, may complete the transaction without Central Office approval if the amount of the deviation falls within the guidelines listed below.

Note: The Director of Right of Way and Utilities may extend or limit the Minor Deviation Authority.

- For acquisitions from \$2,500 up to \$25,000, the district right-of-way supervisor has administrative authority of \$2,500. If administrative settlement is greater than \$2,500, Central Office approval is required.
- For acquisitions from \$25,001 to \$50,000, the district right-of-way supervisor has administrative authority of \$5,000. If administrative settlement is greater than \$5,000, Central Office approval is required.
- For acquisitions of \$50,001 or more, the district right-of-way supervisor has administrative authority of \$10,000. If administrative settlement is greater than \$10,000, Central Office approval is required.

Any deviations of \$1,000 or less shall be clearly explained on the TC 62-77 form, *Record of Contacts*. If the deviation exceeds \$1,000, it shall require proper justification within the administrative settlement ([ROW 703-1](#)).


**PARCELS WITH OWNER-
OCCUPIED RELOCATION
ASSISTANCE**

On a parcel involving owner-occupied relocation assistance, written notification shall be provided to the Relocation Branch Manager explaining the amount of the increase and the justification for such increase so that a determination can be made as to its effect on the replacement housing computation.

**PARCELS ACQUIRED BY
RIGHT-OF-WAY
CONSULTANTS**

At the discretion of the district right-of-way supervisor, right-of-way consultants may acquire parcels with minor deviations from the approved appraisal or minimum acquisition review. Right-of-way consultant project managers and their agents shall not have administrative settlement approval or authority unless delegated by the district right-of-way supervisor.



	<p><i>Section</i></p> <p>ADMINISTRATIVE SETTLEMENTS</p>
	<p><i>Subject</i></p> <p>Substantial Deviation</p>

POLICY

An administrative settlement shall be made to acquire a parcel at an amount that varies substantially from the approved just compensation if the settlement is:

- Prudent and reasonable
- In the interest of the public
- Due to a history of high court awards in the local court

Kentucky Transportation Cabinet (KYTC) employees, subagents of KYTC, and local public agents (LPAs) shall follow this process.

Note: Substantial variations above the fair market value on mega-projects and Interstate projects shall be submitted by Central Office to the Federal Highway Administration for review.

The district right-of-way supervisor’s recommendation for settlement shall document in detail the reasons for the proposed settlement.

If necessary, two branch managers (one of whom acts for the director) may approve the recommendation. In some circumstances, the district right-of-way supervisor may obtain verbal approval, but it shall be confirmed in writing immediately.

DOCUMENTATION

The written request shall be documented in the following manner:

- If prior verbal approval was obtained from the Central Office, this shall be stated at the outset, including the date of approval and the name of the individual who granted the approval
- A description of the property before acquisition
 - ◆ Location and current use of property
 - ◆ Land size, topography, and access
 - ◆ Improvements and special land improvements
 - ◆ Value before acquisition

DOCUMENTATION


(CONT.)

Note: A note is to be made if the minor acquisition review valuation was used to determine just compensation.

- A description of the acquisition (if not a total acquisition)
 - ◆ Land and improvements being acquired
 - ◆ Grade change and access
 - ◆ Any anticipated damages
 - ◆ Description of remainder
 - ◆ Fair market value offer, including a breakdown of the offer
- A description of negotiations
 - ◆ Concerns of owner (including why the owner feels the offer is not indicative of the fair market value)
 - ◆ Counter offers
 - ◆ Final counter offer
 - ◆ Other data or concerns
- Documentation in support of justification for settlement
 - ◆ Statements declaring that:
 - Offer is the least amount the property owner will accept
 - Relocation assistance is or is not involved in the acquisition
 - ◆ A report listing the benefits to KYTC

When an administrative settlement is made on a parcel that involves owner-occupied relocation assistance, the settlement memorandum shall indicate whether relocation assistance is involved. A copy of the approved settlement shall be sent to the Relocation Branch Manager for a determination of the settlement's effect on the replacement housing computation.



	<p><i>Section</i></p> <p>ADMINISTRATIVE SETTLEMENTS</p>
	<p><i>Subject</i></p> <p>Legal Settlements</p>

POLICY

A legal settlement is made after legal action has been filed in circuit court and shall be handled by the staff or contract attorney assigned to the case.

A legal settlement may be made to acquire a parcel if the settlement is:

- Reasonable and prudent
- In the interest of the public and the Cabinet

Note: The Director of Right of Way and Utilities may extend or limit the Minor Deviation Authority.

The appropriate agency file shall be documented whenever a legal settlement is made within the minor deviation set below. The rationale for the settlement shall be set forth in writing.

The attorney may agree to a legal settlement if the deviation from the approved appraisal falls within the following guidelines:

- For acquisitions from \$2,500 up to \$25,000, the attorney has administrative authority of \$2,500. If administrative settlement is greater than \$2,500, Central Office approval is required.
- For acquisitions from \$25,001 to \$50,000, the attorney has administrative authority of \$5,000. If administrative settlement is greater than \$5,000, Central Office approval is required.
- For acquisitions of \$50,001 or more, the attorney has administrative authority of \$10,000. If administrative settlement is greater than \$10,000, Central Office approval is required.

If the deviation falls within the above limits, the attorney shall supplement the parcel file with a memorandum giving a detailed description of negotiations and justification for the settlement. The memorandum shall accompany the request for payment sent to Central Office.

POLICY (CONT.)

If the deviation exceeds the above-listed authority, the attorney shall make a recommendation of settlement through the District Right-of-Way Supervisor which must be approved in Central Office by the Director of the Division of Right of Way and Utilities and the Office of Legal Services.

If necessary, a branch manager acting on the director's behalf may approve the recommendation. If the attorney obtains verbal approval of a legal settlement, it shall be confirmed in writing immediately.

The appropriate agency file shall be documented whenever a legal settlement in excess of the amount established as just compensation is made. The rationale for the settlement shall be set forth in writing. Legal settlements which are based upon new or revised appraisal data as the principal justification should be coordinated with and by the responsible official of the acquiring agency having final authority over Right of Way matters.

- All appraisals, including the owner's, if appropriate

Caution: If an appraisal issue becomes apparent, the appraisal unit or review appraiser should be consulted. For example, where two acceptable agency appraisals were obtained, and the offer was based on the lower appraisal, consideration should be given to settling up to the supported part of the higher appraisal if an honest difference of opinion exists.

- The approved offer of just compensation
- Recent court awards, showing the average percentage increase over the just compensation for cases that went to trial
- The negotiator's record of the actual negotiations
- Valuation problems, including the probable range of testimony as to just compensation by both sides should the case go to court trial
- The estimate of trial costs in conjunction with other information developed
- If "Excessive Commissioners Awards" are cited as justification, provide recent specific examples of original just compensation and the Commissioners Awards on several parcels
- The opinion of legal counsel, as appropriate

DOCUMENTATION

The attorney's recommendation for a legal settlement shall include:

- If prior verbal approval was obtained from Central Office, this shall be stated at the outset, including the date of approval and the name of the individual who granted the approval
- A description of the property before the acquisition
- A description of the acquisition (if not a total acquisition)
- A description of the impacts on any remaining property (if not a total acquisition)
- The amounts and dates of any appraisals made for the Kentucky Transportation Cabinet (KYTC)
- The amounts and dates of any appraisals submitted by the owner
- The amount of the Commissioners' Award and date the money was posted with the court
- Whether the parcel has been mediated or not and, if so, when
- A detailed explanation of the reasons for the proposed settlement
- Reasons the settlement is prudent and in the best interest of the public
- Spaces for signature approval by submitting attorney, the District Right of Way Agent Supervisor, Office of Legal Services, and the Director of Right of Way

**NON-VALID BASIS FOR
ADMINISTRATIVE
SETTLEMENTS**

Administrative settlements are not justified when one of the following considerations is the only basis given:

- A mere desire to avoid litigation
- A mere desire to compromise difference between the State's appraisals and the landowner's appraisals
- Alleged impossibility of obtaining an unbiased jury
- Likelihood of sympathy for the owner
- Cost of condemnation proceedings

When submitting an administrative settlement you should never discuss relocation or the cost associated with making a settlement. Never discuss a cost savings if relocation is affected. Relocation is completely separate from an acquisition settlement and should never be included together.


**NON-VALID BASIS FOR
ADMINISTRATIVE
SETTLEMENTS (CONT.)**

On a parcel involving owner-occupied relocation assistance, written notification shall be provided to the District Right of Way Supervisor and the Relocation Branch Manager explaining the amount of the increase and the justification for such increase so a determination can be made as to its effect on the replacement housing computation. Relocation Housing Payments and computations may be affected by an administrative settlement and are not finalized until the parcel in condemnation is settled or a final settlement is obtained through court proceedings or jury award. (Send electronic copy of signed approved settlement to the Relocation Branch Manager.)

The attorney shall discuss the administrative settlement with the District Right of Way Supervisor and the Director of Right of Way & Utilities. The Right of Way Supervisor may have reasons that the proposed settlement recommendation should not be approved at this time. An example of this might be that there are parcels on the project that are still pending and being negotiated by Right of Way. Another example might be that Right of Way is negotiating on the next section of an adjoining project, and a settlement might impede negotiations on that project, especially if they are in the same county. Final settlement authority lies with the Director of Right of Way & Utilities.

If the deviation from the approved appraisal falls within the limits of authority, the attorney shall supplement the parcel file with a memorandum giving a detailed description of negotiations and justification for the settlement. The memorandum shall accompany the request for payment sent to Central Office. (Contract attorneys shall not have any settlement authority above the just compensation.)



	<p><i>Section</i></p> <p>ADMINISTRATIVE SETTLEMENTS</p>
	<p><i>Subject</i></p> <p>Court-Ordered Mediation</p>

**GUIDELINES FOR
COURT-ORDERED
MEDIATION**

In an effort to reduce the number of cases on the dockets of the circuit courts, judges frequently demand mediation hearings of condemnation cases be held with court-appointed mediators. Both parties are required to appear before the mediator and attempt to reach a settlement agreement. Representatives of both sides, each having full settlement authority, are required to be present at the mediation hearing.

Only the Director of the Division of Right of Way and Utilities has full settlement authority. However, it is impractical for the director to attend all mediation hearings and therefore necessary for full settlement authority to be delegated to one of the following on a case-by-case basis:


- District right-of-way supervisor
- Assistant director
- Central Office Right of Way branch manager

Upon notice that mediation has been scheduled, the director shall provide the attorney the name of the person who will attend the mediation hearing on behalf of the director. The director shall contact the named individual who will represent the Kentucky Transportation Cabinet (KYTC) and discuss the case.

The assigned representative shall have full settlement authority at the mediation hearing.

Settlements reached as a result of mediation shall be documented by the trial attorney as any other recommendation for settlement, with a copy of the approved recommendation of settlement being placed in the parcel file.



	<p><i>Chapter</i></p> <p>ACQUISITIONS</p>
	<p><i>Subject</i></p> <p>Changes to Approved Plans</p>

OVERVIEW

If a plan change requires additional right of way, the district shall not appraise or attempt to buy the additional right of way until the change has received proper approval from the Division of Right of Way and Utilities and, when applicable, the Federal Highway Administration (FHWA).

Plan changes to projects on the Interstate System and selected non-interstate projects require FHWA approval. Plan changes on other federal and state projects require approval of the State Highway Engineer.

The district design office returns completed plan changes to the district right of way and utilities offices and furnishes copies to the Central Office Acquisition Branch. Receipt of approved revised plans constitutes authority to proceed.

PLAN CHANGE DURING NEGOTIATION PHASE

When a plan change is necessitated as part of the negotiation, the district right-of-way supervisor shall request needed plan changes during the right-of-way acquisition stage. The supervisor’s written request shall be submitted to the district design office accompanied by plan sheets indicating:

- Changes to be made in red
- Description of the effects that the changes have on utilities

If utilities are affected, the names of the companies involved shall be listed, and a copy of the request for change shall be provided to the Central Office Utilities and Rail Branch.

**PLAN CHANGE
DURING
CONDEMNATION
PHASE**

It is the district right-of-way supervisor's responsibility to provide revised plan sheets and descriptions to the district attorney for any parcel that has been recommended for or is in condemnation.


**PLAN CHANGE
DURING
CONSTRUCTION
PHASE**

A plan change during the construction stage shall be:

- Requested by the Division of Construction
- Routed through the Division of Right of Way and Utilities for endorsement
- Sent to the Division of Highway Design for preparation

A construction change on an Interstate System project or other selected project requires FHWA approval. Normal procedures for such a construction change include a field inspection with an FHWA representative present. When FHWA approves the construction change, the acquisition of additional right of way shall be simultaneously approved.



	<p><i>Chapter</i></p> <p>ACQUISITIONS</p>
	<p><i>Subject</i></p> <p>Special Acquisitions</p>

**FINANCE &
ADMINISTRATION
CABINET PROJECTS**

By mutual agreement, the Kentucky Transportation Cabinet (KYTC) may acquire real property for the Finance and Administration Cabinet (Finance) upon request. In the acquisition of such property, KYTC shall follow the policies and procedures in this guidance manual except in cases where Finance policy takes precedence. Any variation from KYTC policy shall be documented thoroughly in the mutual agreement with Finance.

KYTC agents shall:

- Maintain records of their expenses while performing work on Finance projects
- Charge and interaccount the expenses to the project identification furnished by Finance

**OTHER STATE
AGENCIES**

An acquisition from any other state agency shall be completed by the district office or Central Office Division of Right of Way and Utilities staff. The district right-of-way supervisor shall confer with the Acquisition Branch Manager to determine the most effective and expedient means of completing the acquisition. For an acquisition that can be better handled by the Central Office, the district supervisor shall send the following documentation to the Acquisition Branch Manager:

- Legal description of the property to be acquired
- Copy of an approved appraisal
- Title report
- Plan and profile sheets
- Right-of-way strip maps, if available
- Special sheets affecting the property
- Layout sheet

OTHER STATE**AGENCIES (CONT.)**

Upon receipt of such requests and appropriate documents, the Acquisition Branch Manager shall submit a request to the appropriate official of the agency having jurisdiction over such land for written concurrence in conveyance to KYTC. The request shall include:

- Plan sheets
- Legal description of the land to be acquired
- Copy of the approved appraisal
- Right of entry and property transfer agreement

Upon receipt of an executed right of entry and property transfer agreement from the agency, the Central Office shall forward the following documents to the Finance and Administration Cabinet, Division of Real Properties, requesting the deed be executed by appropriate parties:

- Right of entry and property transfer agreement
- Copy of the appraisal
- Proposed deed
- Copy of the official order authorizing the project
- Official order for execution by the Secretary of the Finance and Administration Cabinet authorizing the conveyance

An acquisition from a federal agency may be completed by the district office or Central Office Division of Right of Way and Utilities staff. The district right-of-way supervisor shall confer with the Acquisition Branch Manager to determine the most effective and expedient means of completing the acquisition. If it is determined the acquisition can be handled more expeditiously by the Central Office, the same information required for state agency acquisitions shall be sent to the Acquisition Branch Manager.

KYTC may file an application with the Federal Highway Administration (FHWA) or directly with the land-owning agency if that agency has its own authority for granting interest in land. For all other federal agencies, KYTC shall submit a request to FHWA pursuant to [23 USC 107\(d\) and 317](#) as referenced in [23 CFR Part 710.601](#). The Central Office shall handle acquisitions from federal agencies if the acquisitions are processed through FHWA.

GRANTOR

STIPULATIONS

Certain federal agencies require KYTC to comply with special stipulations prior to receiving right of entry. Generally, stipulations involve matters concerning divisions other than the Division of Right of Way and Utilities. Copies of such stipulations are submitted to the appropriate divisions for concurrence prior to formal approval and submission to the agency involved.

ACQUISITIONS

FROM RAILROAD


COMPANIES

Acquisitions involving a railroad shall be handled by the rails coordinator in the Division of Right of Way and Utilities. A copy of the approved appraisal or MAR, approved value range for MAR, offer letter, colored plan sheet, memorandum of understanding, and easement agreement or deed description shall be sent to the company.

If condemnation becomes necessary, guidance shall be obtained from the district attorney relative to title reports and appraisals.

Appraisers should continue to refer to the list of railway company offices for the appropriate contact person. The railroad real estate office contact person, in most cases, is different from the contact used by the utilities section.



	<p><i>Chapter</i></p> <p>ACQUISITIONS</p>
	<p><i>Subject</i></p> <p>Title to Be Acquired</p>

FEE SIMPLE TITLE The Kentucky Transportation Cabinet (KYTC) acquires fee simple title—that is, title and all interests and rights (including mineral rights unless the minerals are specifically excepted in the deed of conveyance). Interstate and other limited-access projects require a fee simple taking. Fee simple title is taken on all other projects unless conclusive proof shows that it is more economically feasible to only take title to the surface rights.

SURFACE RIGHTS ONLY Minerals are excepted on interstate and limited-access projects only when studies, tests, etc. by experts prove conclusively that substantial savings will result. If it is clearly more economically feasible to take title to the surface rights only, the owner may be permitted to retain minerals, with the stipulation that mining of the minerals may not interfere with the construction, maintenance, or full enjoyment of surface rights granted to the Commonwealth of Kentucky.

SHARING OF RIGHTS Occasionally, public interest demands that KYTC recognize or define:

- Air rights
- Municipal water supplies
- Other similar sharing of rights

In such case, KYTC shall take sufficient title to construct and maintain the proposed facility to assure that the facility is safe.

EXCESS PROPERTY Excess property can be acquired only in fee simple. Title to excess property that has known contamination shall not be taken unless extenuating circumstances show that it is to the benefit of KYTC.

The following information regarding excess property shall be provided to the Central Office property management specialist and tracked in the Right of Way and Utilities database:

EXCESS PROPERTY (CONT.)

- Size
- Type
- Access to property
- Zoning
- Location
- Funding
- Project

Districts shall maintain a separate project file for any excess parcels acquired during project acquisition. Upon acquisition of excess property, an additional project number may be needed from central office.

**WETLAND &
ENVIRONMENTAL
MITIGATION SITES**


Acquisitions of sites for the mitigation of the following shall be handled through normal acquisition procedures:

- Wetlands
- Natural habitats
- Other appropriate environmental mitigation
- “Wetland banking”

These acquisitions shall be completed pursuant to regulations covered by The Uniform Act when the acquisitions are made as a result of a program or project receiving federal funding.

Note: A copy of the memorandum of agreement from the environmental document requiring mitigation specifications shall be attached to authorization requests.



	<p><i>Section</i></p> <p>NEGOTIATORS</p>
	<p><i>Subject</i></p> <p>Responsibilities of Negotiators</p>

RESPONSIBILITIES

Negotiators shall:

- Have good communications and public-relations skills and a thorough knowledge of all acquisition policies and procedures
- Deal fairly and honestly with property owners or their representatives
- Be courteous and professional at all times
- Be concerned with problems that acquisitions present to property owners and provide assistance in resolving problems that can be reasonably resolved
- Understand and clearly explain engineering features of projects, such as:
 - ◆ What buildings, trees, driveways, fences, shrubs, or other improvements will be affected
 - ◆ The distance from the traveled way to any improvements
 - ◆ Grade changes to the existing roadway
 - ◆ Any other construction features that have a direct bearing on the property
- Have a thorough understanding of the:
 - ◆ Appraisal process
 - ◆ Factors considered in arriving at the amount of compensation being offered
- Avoid the use of threats or coercion of any kind
- Not make any promises. Any parcel change shall be approved by the right of way supervisor or KYTC project manager.


**RESPONSIBILITIES
(CONT.)**

- Refrain from threatening condemnation action during negotiations
- Provide a thorough explanation of the steps taken for condemnation, including:
 - ◆ Filing of action in circuit court
 - ◆ Appointing of commissioners and their reports
 - ◆ Applying right of appeal by all parties
 - ◆ Attaining right of entry and jury trial
- Be familiar with eminent domain laws and clearly explain to property owners their rights and any other recourse that might be available to them
- All right of way staff shall be a Notary Public properly commissioned and bonded in the Commonwealth of Kentucky.

No person who has a past, present, or contemplated future interest in a parcel shall accept assignment as negotiator for that parcel. Each negotiator shall sign a certificate stating that he or she has no conflict of interest in the property.

The appraiser or review appraiser may not serve as negotiator unless the acquisition was valued as a minor acquisition review and approved by the district right-of-way supervisor.



	<p><i>Section</i></p> <p>NEGOTIATORS</p>
	<p><i>Subject</i></p> <p>Types of Negotiators</p>

**STAFF
NEGOTIATOR**

A staff negotiator, classified in the right-of-way series, is normally responsible for acquiring rights of way. The qualifications are set out in class specifications for the respective grades that have been furnished by a separate statement to the Federal Highway Administration (FHWA).

**CONSULTANT
NEGOTIATOR**

Right-of-way acquisition consultants and local public agencies (LPAs) shall utilize negotiators having sufficient education and skills and experience necessary to acquire right of way in compliance with:


- State and, if applicable, FHWA requirements
- Current policies and procedures

Each consultant negotiator shall be a Notary Public properly commissioned and bonded in the Commonwealth of Kentucky.

The Director of the Division of Right of Way and Utilities shall approve negotiators used by a right-of-way consultant firm. Because acquisition complexities differ on projects, the consultant for each contract shall obtain approval of the negotiators to be used on that contract.

A current résumé for each proposed negotiator shall accompany the consultant's letter of interest. Any request to use a negotiator not included in the consultant's original letter of interest shall be accompanied by a current résumé.




	<i>Section</i> NEGOTIATORS
	<i>Subject</i> Evaluation of Negotiators

POLICY

The district right-of-way supervisor shall conduct periodic evaluation of each staff negotiator working in his or her district as part of the negotiator's overall performance as a KYTC employee.




	<p><i>Chapter</i></p> <p>NEGOTIATION PROCESS</p>
	<p><i>Subject</i></p> <p>Negotiators</p>

QUALIFICATIONS

A staff or consultant buyer shall conduct negotiations for rights of way as soon as practical after the approval of just compensation. The staff or consultant buyer shall be:

- Thoroughly familiar with the acquisition
- Fully prepared for the negotiation by having studied the plans and approved appraisal or Minor Acquisition Review (MAR)
- Knowledgeable of current policies and procedures



	<p><i>Chapter</i></p> <p>NEGOTIATION PROCESS</p>
	<p><i>Subject</i></p> <p>Preparing for Negotiations</p>

**PREPARATION BY
NEGOTIATOR**

The negotiator shall:

- Become familiar with the project and parcel to be acquired by conversing with the appraiser and by reviewing the comparable sales book; right-of-way plans with Design staff, as needed; title reports; deeds; and, appraisals or Minor Acquisition Review (MAR)
- Ensure the areas to be affected are the same in the conveyance agreement description, the appraisal or MAR, and the right-of-way plans
- Discuss questions prior to the initiation of negotiations with the district right-of-way supervisor regarding building retention or disposal and the trade of property

LEASEHOLD INTEREST

When the parcel to be acquired is tenant-occupied or -leased, the negotiator shall research the parcel’s title to see whether a release of leasehold interest is needed. A release is not necessary if a tenant has no lease and rents or leases month-to-month. A long-term lease may be recorded or unrecorded.

A recorded lease is usually reflected in the title report; an unrecorded lease is more common and usually requires contact with the property owner or the tenant to establish its existence.

If it appears that a tract may be wholly or partially leased, the negotiator shall question the property owner or the tenant or both prior to making the offer to see whether a lease exists. A tenant with a leasehold interest may be entitled to a part of the compensation and therefore shall be party to the negotiations and present when the offer to purchase is made.

Leases are written in many different ways and need to be read thoroughly to ascertain their intent. Questions regarding the need for lease releases shall be discussed with the district attorney.

TENANT-OWNED**REALTY**

Tenant-owned realty is an item that the tenant owns and attaches to the property, making it part of the real estate. If tenant-owned realty has been separated out in the appraisal, the negotiator shall make the tenant a separate offer for this realty. Prior to compensating the tenant for the realty, the negotiator shall obtain from the property owner a written statement that acknowledges the tenant's ownership (bill of sale for the improvement acquired) and disclaims any interest by the owner in the realty.

The negotiator shall make the written statement a part of the file. If the acquisition results in legal action with the owner, the tenant may still reach a settlement on the tenant-owned realty if the owner provides a written statement acknowledging the tenant's ownership interest. If there is no settlement on tenant-owned realty, both the tenant and the owner, and their spouses, if any, shall be parties to the litigation.

LEASE RELEASES

Lease releases are required when either legal knowledge of a lease exists or a written lease agreement gives the lessee rights that the acquisition will affect. The effect of the acquisition may be:

- Direct, such as land-lease agreements that contain specific property descriptions (as in leases for billboard locations)
- Indirect, such as in storefront agreements (as are used in shopping centers) where specific amounts of parking are guaranteed to a lessee


RELOCATION**ASSISTANCE**

The negotiator shall discuss with the relocation assistance agent the need to coordinate the appointment for presenting an offer when personal property is stored on affected parcels or displaces any of the following:

- Individual
- Family
- Business
- Farm operation
- Nonprofit organization
- Miscellaneous items only

The effect on personal property may not be apparent until after the negotiator has made the offer to purchase. Immediately upon learning that personal property needs to be cleared from the proposed right of way, the negotiator shall inform the district right-of-way supervisor in order to determine the appropriate relocation assistance offer to make.



	<p><i>Chapter</i></p> <p>NEGOTIATION PROCESS</p>
	<p><i>Subject</i></p> <p>Documenting Negotiations</p>

DOCUMENTATION The negotiator shall prepare and maintain the following forms on all current parcels:

- TC 62-77 form, *Record of Contacts*
- TC 62-83 form, *Parcel Summary*
- TC 62- 83A form, *Memorandum of Understanding*

RECORD OF CONTACTS

The negotiator shall record details of each meeting with the property owner immediately after the meeting to ensure accuracy. The record shall include:

- Date
- Time
- Place of the meeting
- List of all persons present by name and title, including the name of the negotiator

The TC 62-77 form shall be inclusive of all pertinent items discussed, questions asked, and answers given. If an answer to a question is not readily available, the negotiator shall include the answer in the record of a subsequent meeting. The negotiator shall include as much information as possible in the TC 62-77 form, including documentation regarding the retention of an improvement by the property owner.

The agent shall complete items 1-19 below individually and shall record answers in the *Record of Contacts* in detail prior to presenting an offer.

1. Confirm the *Notice of Proposed Acquisition Letter* was sent and received. If not, explain why.

**RECORD OF
CONTACTS (CONT.)**

2. Review title report with the owner(s) and confirm they are the owner(s) of the property. Include information related to the current owner(s), previous chain of title, and any encumbrances to the property, including divisions of legal or physical interests.
3. Confirm the stated title exceptions for accuracy and ask if there are any other exceptions not shown on the title report, which may exist. These shall be recorded on the record of contacts.
4. Obtain addresses and telephone numbers of title exceptions in order for our closing attorney to contact them for necessary release of interest prior to closing. This information shall be recorded on the record of contacts.
5. Obtain account numbers or any security deeds or loans on the property, also to be used by our closing attorney. Shall be recorded on the record of contacts.
6. Confirm that the property is not under foreclosure.
7. Confirm that there is not a bankruptcy involved; if so, obtain name, address, and telephone number of the court appointed Bankruptcy Trustee.

Note: Property cannot be acquired either by deed or by condemnation until Trustee releases the required acquisition from the bankruptcy proceedings.

8. If an owner is deceased, ask if a will has been probated and in what county. Attempt to obtain names of all heirs and their relationship and address. If the title report does not show an estate, notify our title attorney after returning to office. Obtain an affidavit of decent if there is no will.
9. Explain the project overview or concept: What will be constructed? Present the brochure and TC 62-90, *Property Owner Opinion Survey*.
10. Explain the project purpose: Why will it be constructed?
11. Review the project timetable: When will it be constructed?
12. Review the design features: How will it be constructed?

**RECORD OF
CONTACTS (CONT.)**

13. Explain parcel overview and review with the owner(s) the project plan sheets. What is needed to be acquired from the property and why it is needed? Use visual aids, such as: the right-of-way plan sheets, cross-sections, driveway profiles and so on.
14. Review the required right of way (area, depth, and length), which shall be recorded on the record of contacts.
15. Explain the purpose of permanent and temporary easements, which shall be recorded on the record of contacts.
16. Record the access rights on the record of contact. (such as, fully controlled, partial controlled, and permit).
17. Explain closing procedures and items which may be reimbursable to the owner(s) by KYTC.
18. Explain pro-rated taxes and all requirements, which shall be recorded on the record of contacts.
19. Explain the general appraisal process or MAR process, as necessary. Explain that all appraisals are reviewed and approved.
20. Once items 1-19 have been completed and recorded in the *Record of Contacts*, present an offer in writing and verbally. Give a copy of the appraisal to the owner and review its contents, especially the review sheets and sheet #10.

Note: If acquisition is a MAR, a detailed explanation of how the value was derived is required. MAR valuation shall be recorded within the *Record of Contacts*. Provide MAR sheet to owner(s).

Record of Contacts forms may be kept in print or electronic format. In either case, it shall be clear who was responsible for the work. If the parcel goes to condemnation proceedings, the file shall include print copies for the attorneys involved.

PARCEL SUMMARY

The Parcel Summary shall include the following information regarding each owner and, if applicable, each spouse and any tenant:

- Name
- Address


**PARCEL SUMMARY
(CONT.)**

- Phone Number
- Social security number and or tax ID number
- Designated contact (if applicable)
- Encumbrances, leases, etc.

**MEMORANDUM OF
UNDERSTANDING**

All negotiators actively involved in any discussion relative to compensation shall sign the TC 62-83A form, *Memorandum of Understanding*. This certification shall become a part of the district office's permanent parcel file.



	<p><i>Section</i></p> <p>CONTACTING PROPERTY OWNERS</p>
	<p><i>Subject</i></p> <p>General Responsibilities of Negotiators</p>

CONTACTS

Upon receipt of proper authority, the negotiator shall schedule an appointment with the property owner. The offer shall be person-to-person contact, unless circumstances preclude. Should a person-to-person meeting not occur, the reasoning why shall be documented in the *Record of Contacts*. At the first meeting, any person representing the Kentucky Transportation Cabinet (KYTC) in any capacity shall show the owner an official identification ([ROW 205](#)).

The negotiator shall contact first any owner involved in an inevitable condemnation case (minor heir or other title problem) or an out-of-state resident. The negotiator shall attend to a parcel involving relocation assistance as soon as possible to allow for the timely relocation of the displacee. The negotiator shall coordinate with the assigned relocation assistance agent to allow simultaneous presentations of the offer and the relocation benefits.

The negotiator shall attempt to contact each property owner personally. However, the owner may designate a representative to serve on his or her behalf during the negotiations until such time the owner may direct otherwise. An attorney for the owner may directly contact the negotiator to serve as the owner’s representative in the negotiations. If the property owner designates a contact other than him or herself, the name and contact information shall be documented in writing.

If a parcel has more than one owner, all owners should be present during all discussions. This attendance is not mandatory; however, it reduces the possibility of misunderstandings. The negotiator should secure confirmation that all owners are up-to-date post-discussion.

The negotiator shall make every effort to locate the owner of record. It may be necessary to research courthouse records and to talk with heirs, relatives, and neighbors.

CONTACTS (CONT.) If the negotiator cannot locate an owner or establish rightful ownership of the property, condemnation action shall be necessary to acquire the property and may be necessary if the negotiator cannot determine a partial property interest. Detailing all efforts to contact owners on the TC 62-77 form, *Record of Contacts*, is extremely important.

If a property is subject to a leasehold interest, the lessee should be present during negotiations to reduce the chance of misunderstanding. In most short-term leases, the owner and the lessee shall agree to terms of a settlement before the acquisition of the interest of either party. If unusual circumstances exist, KYTC may acquire one interest without the other with prior approval of the Director of the Division of Right of Way and Utilities. If KYTC is to acquire tenant-owned realty, the lessee may convey the interest without a settlement of any remaining interest, provided the fee owner of the property signs a disclaimer to any interest in the tenant-owned realty.

The negotiator shall never be in such a hurry that the owner feels rushed. The negotiator, however, shall make every reasonable effort to help the owner make a decision within 45 days.

STATE EMPLOYEE During initial contact with an owner, the negotiator shall ask whether anyone having an interest in the property is a state employee and, if so, of what agency. Negotiations with a state employee are conducted as with any other owner. However, pursuant to [KRS 45A.045\(9\)](#), the negotiator shall explain that any acquisition from a state employee is subject to the approval of the Secretary of the Finance and Administration Cabinet and the Governor and that the state employee should receive payment for the property between 3 and 5 months.

**EXPLANATION OF
ACQUISITION**

To assure the owner fully understands the area to be acquired and the effect of the acquisition on the remainder, the negotiator shall:

- Give the owner a copy of KYTC's brochure explaining the acquisition process, and the property owner opinion survey form
- Thoroughly explain the proposed acquisition including:
 - ◆ Review and copy of the plans
 - ◆ On-site inspection of the property
 - ◆ Review of title facts
 - ◆ Discussion of other acquisition means available

**EXPLANATION OF
ACQUISITION
(CONT.)**

The negotiator shall initiate action to correct any error found on the plans or in the appraisal during the explanation of the proposed acquisition and resolve any legitimate problem before presenting the offer of compensation.

The negotiator shall immediately inform the relocation assistance agent of any circumstances in which a property owner previously considered ineligible for relocation assistance may now be eligible.

The negotiator shall answer any questions the owner has relative to the project, such as the treatment of and effect on the property. However, the negotiator shall not give information regarding negotiations or appraisal amounts of other properties. If the negotiator does not know the answer to an appropriate question, he or she shall secure the answer as soon as possible, inform the owner, and record the answer on the TC 62-77 form, *Record of Contacts*.

Under no circumstances shall a negotiator attempt to answer a question unless he or she is certain of the answer.

**NEGOTIATIONS
THROUGH A
THIRD PARTY**

A firm may solicit property owners to act as the owner's agent during negotiations for a needed right of way. If both parties agree, the firm typically receives a fee for any increase negotiated above KYTC's offer. During the acquisition phase of a project, if an agent of the firm contacts the KYTC negotiator, the agent of the firm shall:

- Show that the firm is a legitimate business registered with the Office of the Secretary of State
- Present any required local permits if requested
- Submit the original properly signed document from the owner authorizing the firm's representation on the owner's behalf

The KYTC negotiator shall include the document in the parcel file and clearly identify the specific property by county, item number, parcel number, and owner's address.

For the initial contact for negotiations, the negotiator and the firm shall meet on the subject property to allow for a complete review of the plans and the area of the acquisition.

NEGOTIATIONS

THROUGH A

THIRD PARTY (CONT.)


An owner may seek advice from an appraiser, real estate agent, attorney, engineer, etc., and occasionally request any of these individuals to be involved in negotiations. At any time an owner may delegate negotiations to another party. In such cases, the KYTC negotiator shall secure appropriate confirmation from the owner.

COUNTEROFFER

The right-of-way supervisor or consultant project manager shall send a letter to the property owner requesting a counteroffer when it appears that negotiations on the parcel have reached a stalemate and that litigation may be necessary in an effort to gain title to the property.

The right-of-way supervisor or consultant project manager shall send the letter directly to the property owner and a copy to the firm or individual representing the owner (if applicable) prior to submitting the parcel batch for condemnation.



	<p>Section</p> <p>CONTACTING PROPERTY OWNERS</p>
	<p>Subject</p> <p>Specific Responsibilities of Negotiators</p>

TRANSFER TAX

Transfer taxes are paid when the deed is put to record. The Kentucky Transportation Cabinet (KYTC) pays the transfer taxes as part of the closing costs.

The combination of a fee simple acquisition and one or more easements can be taxed for the stated consideration. Acquisitions that are not fee simple may not be subject to transfer taxes.

Since easements may not be subject to the same transfer taxes as fee simple acquisitions, the negotiator may want to prepare separate documents when the acquisition involves both, especially when the value of the easements exceeds \$10,000.

PROPERTY TAX

The negotiator shall advise owners of their right to claim a one-time reimbursement for property taxes attributable to land they have conveyed to the state. Reimbursement shall be pro-rated from the date KYTC acquires the property. A standard closing form shall clearly state the total liabilities of both the seller and the buyer (Commonwealth of Kentucky) including taxes.

INCIDENTAL EXPENSES

The negotiator shall advise owners that KYTC is obligated to pay directly, or reimburse owners, for actual and necessary expenses incidental to conveying rights of way, such as mortgage-prepayment penalties, costs of appraisals required to obtain mortgage releases, and mortgage-release processing fees.

Owners shall submit the request for reimbursement on the TC 62-18 form, *Reimbursement Request for Incidental Expenses*, and attach a documented receipt.

PRESENTATION OF OFFER

On the first contact where the negotiator and the owner discuss price, the negotiator shall explain the basis for the offer of just compensation and that the offer is the full amount of the approved just compensation.

PRESENTATION**OF OFFER (CONT.)**

After, or simultaneously to, making a verbal offer, the negotiator shall present the owner an offer-to-purchase letter. The negotiator shall provide the owner a copy of the appraisal or a copy of the minor acquisition review (MAR) (**ROW 803**).

REVISED OFFER

Upon revision of any offer of just compensation, the negotiator shall:

- Present a revised offer-to-purchase letter to the property owner or his or her representative
- Explain the reason for the revision to the property owner
- State the reason for the revision in the TC 62-77 form, *Record of Contacts*
- Provide a copy of any documents affected by the revision

OFFER BY**CORRESPONDENCE**


With some property owners who live away from the project area, a negotiator may be able to initiate and complete negotiations by correspondence, particularly with an owner of an uncomplicated acquisition.

In a letter, the negotiator shall include:

- Purpose of the project
- Description of the area to be acquired
- Offer of compensation with an explanation of the basis for the offer
- Copy of the appraisal (if appraisal was the basis of the offer)
- Plan sheets properly colored to depict the acquisition
- TC 62-83A form, *Memorandum of Understanding*
- Deed of conveyance
- Request that the deed be executed in the presence of a notary public
- Invitation to meet the owner at the property to further explain or discuss the proposed acquisition

The entire offer packet with plans is to be sent by certified mail accompanied with the introduction transmittal letter. Within a few days after mailing the letter, the negotiator shall contact the owner by telephone to ensure receipt of the correspondence and to answer any questions.



	<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>
	<p><i>Subject</i></p> <p>Improvements</p>

**IMPROVEMENTS WITH
CONTAMINATION**

Although a building is appraised as if clean and free of hazardous materials, the Kentucky Transportation Cabinet (KYTC) may require an owner to perform clean-up procedures prior to purchasing the property at its approved appraised value. The Director of the Division of Right of Way and Utilities or the Central Office property management specialist shall advise the district of the procedure to follow when negotiating for parcels with hazardous materials.

When the property owner is to retain an improvement known to contain hazardous material, the owner shall be advised of the existence of the hazardous material and the requirement for compliance with local, state, and federal regulations regarding its removal.

The district shall encourage an owner to contact the local Department for Environmental Protection to review such regulations and requirements prior to making a decision to retain an improvement. See TC 62-41 form, *Improvement Removal Contract*.

**RENTAL OF
IMPROVEMENTS**

Generally, KYTC shall remove improvements as soon as possible after it has obtained right of way. However, the occupant may rent the improvements monthly if the occupant wants to remain beyond KYTC's date of possession or the property is not needed for construction purposes for a substantial length of time.

Rental will not start until the 30-day and 90-day notices have expired. KYTC gives the owner a minimum of 30 rent-free days to vacate an improvement after KYTC obtains possession. Completing the TC 62-26 form, *Rental Agreement*, is not required if an owner is to vacate by the 30-day vacation date. However, the date by which an owner is to vacate shall be reflected on the TC 62-83A form, *Memorandum of Understanding*.

**RENTAL OF
IMPROVEMENTS
(CONT.)**

Note: KYTC may allow an owner to occupy an improvement rent-free beyond the 30-day vacation date if it is in KYTC's best interest and if sufficient time remains before the project's scheduled clearance date.

As part of the consideration for the property, KYTC may give the owner up to 60 additional rent-free days to vacate. The TC 62-26 form is to be executed:

- If the owner expects to vacate after the rent-free period expires
- When the owner is paid for the property, with rent beginning when the rent-free period ends

Rental rate is:

- Calculated according to market conditions
- Determined by a district appraiser or replacement-housing evaluator

KYTC may, however, accept a lesser amount if:

- Improvement cannot be rented for prevailing market values
- Prevention of a situation attractive to vandalism is desirable

If a lesser amount is accepted, the parcel file shall contain explanatory documentation.

An owner who has not been given additional rent-free days but wants to continue occupancy beyond the 30-day notice to vacate shall:

- Execute the TC 62-26 form when paid for the property
- Begin paying rent at the expiration of the 30-day notice to vacate

There is no rent-free period for tenants. Title to an improvement passes to KYTC when either the owner is paid his or her consideration or the money is posted with the circuit court.

The *Rental Agreement* is entered into with a tenant when the owner is paid. Rental rates will continue in the amount the owner has been charging.

When a tenant vacates an improvement or property prior to KYTC obtaining a title to the property, KYTC shall consider paying the owner the fair rental price for the property until KYTC can obtain the title. Items to consider include the:

**RENTAL OF
IMPROVEMENTS
(CONT.)**

- Anticipated rental costs compared to the estimated cost for a replacement housing payment
- Complexity of finding comparable replacement rental housing

The district right-of-way supervisor shall recommend in writing to the Director of the Division of Right of Way and Utilities that the property be rented and state the amount of rent and the expected duration of the rental period.

Upon approval by the director, the district right-of-way supervisor and the owner shall execute the *Rental Agreement*.

The district right-of-way supervisor shall advise owners and tenants that they shall make their rent payments to the Kentucky State Treasurer by money order, certified check, or cashier's check.

**RETENTION OF
IMPROVEMENTS**

Prior to executing a deed, KYTC may give a property owner the opportunity to retain an improvement for its approved salvage value. KYTC will deduct the salvage value from the right-of-way payment.

The title to a retained improvement passes to KYTC with legal possession of the property and remains with KYTC until removal of the improvement.

The owner:

- Shall execute the TC 62-41 form, *Improvement Removal Contract*, which includes the terms and conditions of such removal
- May begin removal of an improvement upon receipt of an authorization letter from the district right-of-way supervisor

A performance bond is required to insure the improvement's complete and timely removal.

If a tenant occupies an improvement, KYTC shall give the tenant ample time to relocate, although the tenant shall actually vacate before the district issues a letter authorizing a property owner to remove an improvement.

**RETENTION OF
IMPROVEMENTS
(CONT.)**

The district right-of-way supervisor should encourage tenants to notify the district if an owner tries to speed the tenant's relocation process along for the sole purpose of removing the improvement.

KYTC shall discontinue utility service to all acquired improvements upon payment for the property or upon vacation of the improvement, whichever is later ([ROW-1103](#), "Managing Acquired Improvements").

**REMOVAL
REQUIREMENTS**


The negotiator shall explain that the owner shall:

- Have a specified period of time to remove improvements
- Post a performance bond (negotiator shall advise the owner of the amount)
- Comply with all local and state laws in said removal
- Obtain any necessary permits
- Comply with the specifications covering the final condition of the right of way

The negotiator shall make every effort to assure that the property owner understands all the problems he or she may encounter in removing the improvement, including the penalty of bond forfeiture in the event of noncompliance.

The negotiator shall document on the TC 62-77 form, *Record of Contacts*, the information regarding retention of an improvement by the property owner.



	<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>
	<p><i>Subject</i></p> <p>Relocation Assistance Program</p>

**RELOCATION
BENEFITS**

The Relocation Assistance Program assists persons, businesses, and organizations impacted by a transportation project in facilitating their relocation in the fairest and most cost-effective manner. Displacees shall qualify for these benefits based on their individual needs. Assistance includes providing:


- Brochures on relocation assistance
- Advisory services
- Moving payments
- Supplemental housing payments
- Closing cost payments
- Other incidental expenses related to relocation

The following may receive payments for actual and reasonable expenses related to moving and reestablishment or may receive fixed payments in lieu of those payments:

- Businesses
- Farm operations
- Nonprofit organizations

Note: The [Relocation Assistance Guidance Manual](#) discusses the policies and procedures for the relocation assistance function.



	<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>
	<p><i>Subject</i></p> <p>Uneconomic Remnants</p>

DEFINITION An uneconomic remnant is a property that the Kentucky Transportation Cabinet (KYTC) has determined as having little or no utility or value to the owner.

ACQUISITION PROCESS KYTC shall make an offer to the property owner to purchase any remainder determined by the review appraiser to be an uneconomic remnant. While KYTC may offer to purchase an uneconomic remnant, the property owner has the option to convey or retain the remnant. An uneconomic remnant shall be:


- Acquired in fee simple
- Described separately in the deed of conveyance

If condemnation action is necessary to acquire the needed right of way, the uneconomic remnant shall not be included in the suit.

During the course of negotiations, the right-of-way negotiator may discover circumstances that would cause a remainder to fall within the parameters of an uneconomic remnant. In this case, the negotiator, through the district right-of-way supervisor, shall submit a written recommendation to the Director of the Division of Right of Way and Utilities to classify the remnant as uneconomic. Upon the director’s approval, the negotiator shall make the property owner an offer to purchase the remnant.

Note: The negotiator shall never make an offer to acquire any uneconomic remnant property that has contamination.



	<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>
	<p><i>Subject</i></p> <p>Excess Property</p>

REQUIREMENTS FOR ACQUISITION

The Kentucky Transportation Cabinet (KYTC) may acquire excess property—property not actually needed for the project—when KYTC determines it is in its best interest. The parcel file shall include appropriate documentation. Excess property shall be:

- Acquired in fee simple
- Described separately in the deed of conveyance


When KYTC purchases excess property, the district right-of-way section shall maintain individual excess property parcel files of the following documents:

- TC 62-85 form, *Notice of Excess Purchase*
- 8 1/2" x 14" reproducible plat
- Legal description of the acquisition
- Executed copy of the deed of conveyance

The Relocation Branch shall maintain a file of these documents for the Central Office. The district office shall maintain duplicate documents in its project file.

ROW-1400 details procedures regarding disposal of excess property.



	<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>
	<p><i>Subject</i></p> <p>Trade or Exchange of Property</p>

TRADE OR EXCHANGE OF PROPERTY

If an owner wishes to exchange or trade needed right of way for surplus property, the negotiator shall explain the process for approvals. Without prior approval of the Director of the Division of Right of Way and Utilities or the Acquisition Branch Manager, the negotiator shall not commit to more than a statement that he or she will recommend the excess be exchanged.

The TC 62-83A form, *Memorandum of Understanding*, shall include a statement indicating the property exchange agreement is not binding upon the parties until both the Secretary of the Finance and Administration Cabinet and the Governor approve the agreement.

The district shall first determine that a trade can and should be made. Any trading or exchanging of property on federally funded projects may require Federal Highway Administration approval (see current Stewardship and Oversight Agreement). The trade may fall into one of two categories and shall be handled as follows.

PROPERTY ON ACTIVE PROJECT

Property on an active project may be traded for right of way on that project. Traded or exchanged properties shall be at equal fair market value determined before and after the appraisal of the needed right of way. To initiate the trade, the right-of-way supervisor shall recommend that the property be declared surplus and seek concurrence with the recommendation from both the project engineer and the chief district engineer. Upon full agreement, the district right-of-way supervisor shall complete the transaction and submit the following items to the Central Office:

- TC 62-85 form, *Notice of Excess Purchase*
- Description and plat of the tracts of land to be traded
- Value determination
- Mailing address and social security number of the grantee
- Any information needed to properly prepare a deed of conveyance

**PROPERTY ON
ACTIVE PROJECT
(CONT.)**

The value determination can be the appraised after-value when its value can be abstracted from the appraisal. When several excess tracts are combined, additional documentation in the form of a review value finding may be required.

The Division of Right of Way and Utilities shall have the deed prepared, executed, and returned to the district.


**PROPERTY NOT
ON ACTIVE PROJECT**

If the desired property is not on an active right-of-way project, the property shall be declared surplus before a commitment to trade the property is made. (For policies and procedures covering the disposal of surplus property, see [ROW-1400](#).)

Any request that a trade be completed shall be submitted to the Division of Right of Way and Utilities. If the division approves the request, steps shall be taken to have the documents processed.

The Commissioner of the Department of Highways or the Secretary of the Kentucky Transportation Cabinet may execute an exchange agreement following approval. If the exchange is approved, the owners shall make payment for the approved value of the excess. Payment for the deed of conveyance shall be the gross amount of the agreement.



	<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>
	<p><i>Subject</i></p> <p>Donations & Waste Areas</p>

DONATIONS

A nongovernmental owner wishing to donate right of way shall:

- Receive information of his or her right to a full appraisal
- Acknowledge in writing that he or she is aware of the entitlement to an appraisal and just compensation

A separate certificate properly signed by the owner may be used if it refers to the specific deed of conveyance by project and date of the deed.

Property may be donated at any time. With prior approval from the Director of the Division of Right of Way and Utilities, a property owner may donate property in exchange for construction features or services beyond those normally afforded to every other property owner on the project. The value of the donation shall be limited to the fair market value of the donated property less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the Kentucky Transportation Cabinet’s (KYTC) share of project costs. Donations may not be accepted prior to a National Environmental Policy Act approved environmental document for the transportation project.

In addition to executing a deed, an owner wishing to donate right of way shall execute a notarized certificate stating the transfer is by gift. The notarized certificate shall include:


- Estimated fair market value of the property being donated
- Disclaimer that the owners have not been asked or coerced by any state employee to make this donation

DONATIONS (CONT.) This requirement can best be accomplished by including the certificate in the deed of conveyance. Furthermore, the owner shall be advised that prior to claiming the deduction against taxable income, he or she shall consult a tax advisor for current Internal Revenue Service regulations relative to donations.

The donated property may be credited to KYTC’s matching share of the project. The amount of credit shall be based on the fair market value of the property on the date the donation becomes effective or on the date the property is vested with the state. See [23 CFR 710.505\(b\)](#) for other considerations for credits for donations.

WASTE AREAS Waste areas provided by KYTC shall be negotiated as any other parcel in accordance with established procedures.



	<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>
	<p><i>Subject</i></p> <p>Signature Entrance Signs</p>

POLICY

Payment shall be made to relocate or replace a signature entrance sign if the sign is:

- Owned by a city or county government and the sign is located on their rights of way
- Located on an existing state-owned right of way and the local government demonstrates the sign existed prior to the establishment of the right of way

The following are not eligible for replacement or relocation costs:

- Permitted signs on state rights of way
- Signs owned by developers or neighborhood associations on public rights of way (city, county, or state)

Payment shall be handled as a cost-to-cure item and is limited to the cost to relocate or replace the existing sign with a similar sign. Costs for betterment of the sign shall not be paid.

Payment shall be:

- Based on the lowest estimate obtained by the district right-of-way office from two qualified contractors
- Approved by the Director of the Division of Right of Way and Utilities

The estimate and payment may include, but is not limited to, the cost to replace the following around the sign:

- Flowers
- Shrubs
- Lights
- Irrigation systems


POLICY (CONT.)

However, the estimate and payment shall not include the cost to acquire any land on which to relocate the sign.

The local public agency and the district right-of-way supervisor shall enter into an agreement that identifies:

- Work to be completed
- Amount of payment to be made
- Date the sign shall be removed from the limits of roadway construction



	<p><i>Section</i></p> <p>NEGOTIATIONS WHERE AGREEMENT IS REACHED</p>
	<p><i>Subject</i></p> <p>Preparation of Conveyance Agreement</p>

**PREPARING DEED
OF CONVEYANCE &
GRANT OF EASEMENT**


A deed of conveyance is used for acquisitions of rights of way on all projects. On rural secondary projects, the conveyance of property may be to the local government when the local government shall maintain the road.

When only an easement is needed, permanently or temporarily, a grant of easement, which describes the easement and sets forth the compensation to be paid, is prepared. This signed agreement may be used in the same manner as a deed to obtain payment.

Descriptions are obtained from district design personnel and placed on the appropriate form. Every conveyance agreement shall include:

- Total consideration to be paid (cash and non-cash benefits)
- Marital status of each party in the caption and acknowledgment certificate
- Clause about each tract that establishes the type of interest being conveyed
- Back source title information
- Official order number authorizing acquisitions for the project
- Type of highway access involved as defined in [603 KAR 5:120](#)
- Typewritten or stamped statement below the grantors' acknowledgment showing the name and address of the attorney who prepared the instrument



	<p><i>Section</i></p> <p>NEGOTIATIONS WHERE AGREEMENT IS REACHED</p>
	<p><i>Subject</i></p> <p>Execution of Conveyance Agreement</p>

EXECUTING CONVEYANCE

AGREEMENT

When agreement is reached with the owner, a deed of conveyance or grant of easement shall be executed in the presence of a notary public.

No parcel may be considered complete until all parties of ownership have conveyed their rights to the Kentucky Transportation Cabinet (KYTC). Conveyance agreements for partial interest may be accepted in special situations and with prior approval of either the Director of the Division of Right of Way and Utilities or the Acquisition Branch Manager.

In such circumstances, condemnation action shall be initiated to obtain titles to the remaining property interests.

When the property owner of record is deceased and no clear chain of title is on record, an affidavit of descent shall be obtained. Affidavits can be obtained from either an heir of the deceased person or two residents of Kentucky who are acquainted with all pertinent facts to establish current ownership.

The affidavit shall be referenced in the conveyance agreement and put on record in the county clerk's office.

If the owner is a business, the negotiator shall check the status with the Kentucky Secretary of State to confirm active status/good standing.

The negotiator shall obtain a W-9 (if an LLC, designate tax classification), a properly signed original of the minutes of a board or membership meeting authorizing the signing of the documents authorizing conveyance of the property if the owner is any of the following:

- Company
- Corporation (Resolution required)
- Limited Liability Company (LLC)
- Partnership
- Church
- Organization governed by a board or membership

EXECUTING CONVEYANCE

AGREEMENT (CONT.) The minutes or resolution shall specify the approved compensation and the names and positions of the authorized officers.


In accordance with Kentucky law, conveyance agreements shall be acknowledged by a notary public before they can be placed on record. Agreements executed outside Kentucky shall be acknowledged by a notary public and shall bear the seal of the notary executing them.

After identifying all parties who have an interest in the property and their sources of title, the negotiator completes the conveyance agreement in its entirety prior to execution of the document by the owners. The owners and the negotiator shall initial any changes made in the agreement. A notary public shall be present when the document is executed. The state becomes legally obligated at this time to pay the owner the consideration amount for the property. The negotiator shall explain that a payment for the property is to be obtained and delivered to the property owner at a later date, usually in 4 - 6 weeks after all encumbrances have been cleared.

A person other than the parcel's appraiser or negotiator shall deliver the check and ensure that all liens or encumbrances against the property rights acquired are released prior to making payment. A right-of-way supervisor shall never be involved in the closing process.

Immediately after the check has been delivered, the executed deed shall be taken to the county clerk's office to be placed on record. The district shall return the recorded deed to the Central Office for permanent filing. A copy of the recorded deed shall be retained in the district's parcel file.



	<p><i>Section</i></p> <p>NEGOTIATIONS WHERE AGREEMENT IS REACHED</p>
	<p><i>Subject</i></p> <p>Deed for Donations</p>

POLICY

An owner wishing to donate right of way shall acknowledge in writing that he or she is aware of the entitlement to just compensation but waives that right and wishes to donate the property. This requirement can best be accomplished with a statement placed in the deed immediately before the owner’s signature. A separate certificate properly signed by the owner may be used if it refers to the specific deed of conveyance by:


- Project
- Date of the deed

In addition to executing a deed, an owner wishing to donate right of way shall execute a notarized certificate stating:

- Transfer of property is a donation
- Owner has not been coerced in any way by any state employee to make this donation
- Estimated fair market value of the property being donated

Furthermore, the owner shall be advised that prior to claiming the deduction against taxable income, he or she should consult a tax advisor for current Internal Revenue Service regulations regarding donations.



	<p><i>Section</i></p> <p>NEGOTIATIONS WHERE AGREEMENT IS REACHED</p>
	<p><i>Subject</i></p> <p>Conveyance Involving a State Employee</p>

POLICY

When a state employee conveys right of way, the payment request submitted to the Central Office shall be accompanied by a certification from the district right-of-way supervisor. The certification shall state that the state employee, because of his or her position, reached the agreement without any influence. The certification shall include the state employee's:

- Name
- Social security number
- Agency of employment

A request is made for approval from the Secretary of the Finance and Administration Cabinet and the Governor upon receipt of the following in the Central Office:


- Payment request
- Certification

Because of these required approvals, it is to be explained that payment cannot be made as quickly as normal but usually is made within 3–5 months.

SCHOOL TEACHERS

For the purpose of acquiring right of way, a school teacher is not considered to be a state employee.



	<p><i>Section</i></p> <p>NEGOTIATIONS WHERE AGREEMENT IS REACHED</p>
	<p><i>Subject</i></p> <p>Memorandum of Understanding</p>

PROCEDURES


The negotiator and the property owner execute, in duplicate, the TC 62-83A form, *Memorandum of Understanding*, (purchase agreement). A signed copy shall be left with the owner; the other signed copy shall become a part of the district's permanent parcel file.

If a parcel has multiple owners, the negotiator shall set forth in the TC 62-83A form the following, including information pertaining to spouses:

- Names
- Addresses
- Social security/Tax ID number
- Amount of compensation each owner is to receive
- Phone numbers of owners

All parties to the acquisition shall sign the TC 62-83A form. The check to each owner shall be issued as agreed.



	<p><i>Chapter</i></p> <p>NEGOTIATION PROCESS</p>
	<p><i>Subject</i></p> <p>Negotiations Resulting in Condemnation</p>

OVERVIEW After all reasonable attempts have been made to negotiate for a property and no agreement can be reached, it becomes necessary for the Kentucky Transportation Cabinet (KYTC) to exercise its right under the law of eminent domain to institute a condemnation action. When it is evident that a parcel cannot be purchased, the negotiator notifies the district right-of-way supervisor that negotiations have reached an impasse.

PARCELS WITH LEASEHOLD INTEREST If the acquisition of a parcel results in condemnation, the lessee shall be made a party to the suit just like any other entity having an interest in the condemned property. The only exception to this results when either the:

- Lessee acknowledges in writing that he or she has no claim to an interest in the acquisition
- Lease specifically excludes any interest (many leases contain condemnation clauses that clearly absolve the existence of any leasehold interest)

REQUEST FOR COUNTER PROPOSAL To reach agreement on an acquisition in the right-of-way phase, the district right-of-way supervisor may write to the owner a letter, which acknowledges the status of negotiations and invites the owner to present a written counteroffer to include any documentation or justification.

The letter shall:

- Assure the owner that his or her response will be examined and consideration given to settlement on any issue he or she may present
- Specify a date by which the counteroffer is to be received

Careful attention shall be made to construct a letter that does not threaten condemnation action to obtain a settlement.

**REQUEST FOR
COUNTER PROPOSAL
(CONT.)**

When the right-of-way supervisor receives from the property owner a written counteroffer containing documentation that has merit, the supervisor or negotiator shall contact the property owner again to:

- Discuss the issue of merit
- Inquire, without commitment, whether an agreement can be reached if payment were allowed for those specific items

If the owner agrees to a settlement, the supervisor shall:

- Write a recommendation for an administrative settlement as outlined in [ROW-703-3](#), "Minor Deviation" or [ROW-703-4](#), "Substantial Deviation"
- Order a deed executed based on the agreed consideration once the settlement is approved

The supervisor shall write to the property owner another personal letter courteously explaining that the parcel is being turned over to the legal staff to be prepared for condemnation action if:

- Response is received that has no issue of merit
- Agreement cannot be reached based on the issue having merit
- Reply has not been received by the indicated date

Once a parcel has been referred to an attorney for condemnation, no further contact shall be made with the property owner unless specifically requested by the attorney assigned to the case. A request made by the property owner to reopen negotiations or discuss the case shall be politely referred to the attorney.

IMPROVEMENTS

An owner may be given the opportunity to retain an improvement when such retention is in KYTC's best interest and approved by the trial attorney assigned to the case and the Director of the Division of Right of Way and Utilities.

PLAN CHANGES

In addition to information outlined in [ROW-1004](#), "Condemnation Transmittals," the district right-of-way supervisor is responsible for providing revised plan sheets and descriptions for any parcel that has been recommended for or is in condemnation to the trial attorney.

FILING**CONDEMNATION**

After all reasonable attempts have been made to negotiate for a property and no agreement can be reached, it becomes necessary for the Kentucky Transportation Cabinet (KYTC) to exercise its right under the law of eminent domain to institute a condemnation action. When it is evident that a parcel cannot be purchased, the negotiator notifies the district right-of-way supervisor that negotiations have reached an impasse.

After the condemnation parcel batch is received in the Central Office and checked for accuracy, it is forwarded to the Office of Legal Services for assignment. In order to protect the best interest of the Cabinet, the Office of Legal Services shall file the condemnation action within 30 days of receipt.

CONDEMNATION**ACTIONS**

In all condemnation actions the trial attorney assigned the action shall notify in writing (electronically) the appropriate district right-of-way supervisor of the following:

- Date the suit was filed
- Date the Interlocutory Order and Judgment (IOJ)
- Date of Right of Entry (ROE)

The Kentucky Transportation Cabinet (KYTC), Department of Highways, Division of Right of Way & Utilities, is to be considered the client in all condemnation actions. The trial attorney shall keep the appropriate district right-of-way supervisor informed of all proceedings and actions involving a condemnation case and shall consult with the appropriate district right-of-way supervisor prior to making substantive decisions regarding the condemnation case. It is imperative that this be done since the supervisor is responsible for:


- Issuing 30-day vacation notices
- Preparing clearance letters
- Following other procedures dependent on the right-of-entry date

Note: Rights of entry can be accepted only on unoccupied parcels.

MEDIATIONS

Upon notification that a mediation is required, the trial attorney assigned to a condemnation action shall notify the Director of Right of Way and Utilities in writing (electronically) well in advance so a representative with settlement authority may attend. The mediation date shall be coordinated with the Director of Right of Way & Utilities. Only the Director of the Division of Right of Way & Utilities has full settlement authority. The guidelines set forth in [ROW-703-6](#) shall be followed.



	<p><i>Chapter</i></p> <p>SERVICES BY RIGHT-OF-WAY CONSULTANT</p>
	<p><i>Subject</i></p> <p>Policy</p>


POLICY

For the purpose of expediting the acquisition process or when special circumstances require, the Division of Right of Way and Utilities may elect to acquire rights of way through the use of qualified right-of-way acquisition consultants.

Appraisers used by the consultants or their subagents shall be on the list of prequalified state appraisers. Staff/consultant review appraisers shall provide appraisal reviews, and the division director, or his or her designee, shall give final approval of all acquisition amounts.

Division personnel shall monitor all real property acquisition activities by consultants or subagents of the state to assure compliance with state and federal laws and regulations and shall impose penalties in cases of material noncompliance.



	<p><i>Section</i></p> <p>PREQUALIFICATION OF RIGHT-OF-WAY CONSULTANTS</p>
	<p><i>Subject</i></p> <p>General Information</p>

**ENLISTING
CONSULTANTS**

Right-of-way consultants interested in acquiring rights of way for the Kentucky Transportation Cabinet (KYTC) shall be prequalified to perform those services. Only prequalified firms shall be considered for assignments to projects.


The Director of the Division of Professional Services will publish a notice seeking firms interested in acquiring rights of way for KYTC. The notice shall:

- Be published in compliance with established KYTC procedures
- Provide notice that a firm must be prequalified to respond to solicitations advertised on KYTC’s website

Firms that have been previously prequalified shall be invited by letter to renew their prequalified status at the end of each year.

KYTC shall affirmatively ensure that disadvantaged business enterprises are afforded full opportunity to submit statements in response to a prequalification notice and are not discriminated against on the basis of race, color, sex, religion, national origin, age, or disability in consideration for a contract.



	<p><i>Section</i></p> <p>PREQUALIFICATION OF RIGHT-OF-WAY CONSULTANTS</p>
	<p><i>Subject</i></p> <p>Criteria</p>

**RIGHT OF WAY
CONSULTANTS**

In order to respond to advertised projects, a firm must submit their request to the Division of Professional Services and become prequalified by the Division of Right of Way and Utilities prior to the response due date. Criteria for being placed on the Kentucky Transportation Cabinet’s (KYTC) prequalified list of right-of-way consultants are outlined below.

FIRM

A firm shall have a project manager, a level III relocation agent, and at least two buyers who are on staff or committed to working exclusively for the firm. One of these buyers must meet the minimum requirements of a level III agent. The second buyer may be either a level I or trainee.

PROJECT MANAGER

A firm shall have a project manager who is either on staff or committed to working exclusively for that firm. To qualify as project manager, the individual must have a minimum of six years of experience in managing complex right-of-way acquisition, relocation, and appraising under the laws of eminent domain, with demonstrated management skills. A project manager cannot acquire or relocate right-of-way parcels on the same project they are also the project manager of.

**LEVEL III
ACQUISITION AGENT**

A level III acquisition agent shall have a minimum of four years of recent experience in buying under the laws of eminent domain and be capable of handling multiple complex acquisition issues.

**LEVEL II
ACQUISITION AGENT**

A level II acquisition agent shall have a minimum of two years of recent experience in buying under the laws of eminent domain and be capable of handling complex acquisition issues.

**LEVEL I
ACQUISITION AGENT**

A level I acquisition agent shall have a minimum of one year of experience in buying under the laws of eminent domain and be capable of handling minor acquisitions and non-complex issues.

ACQUISITION**AGENT TRAINEE**

An acquisition agent trainee shall meet the minimum qualifications, but have no experience in acquiring right of way under the laws of eminent domain. To be considered as a trainee, an individual:

- Must be a graduate of a college or university with a bachelor's degree
- Have experience in writing real estate appraisals, right-of-way negotiations, or relocation assistance, all of which must have been under the laws of eminent domain

Working directly under a project manager or a level III buyer for a period of three years will substitute for the required education on a year-for-year basis.

LEVEL III**RELOCATION AGENT**

A level III relocation agent shall have a minimum of four years of recent experience in relocation assistance under the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970, as amended, and be capable of handling multiple complex residential and non-residential relocation issues. This includes project management and review of projects where complex residential and non-residential relocation issues existed.

LEVEL II**RELOCATION AGENT**

A level II relocation agent shall have a minimum of two years of recent experience in relocation assistance under the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970, as amended, and be capable of handling complex relocation issues.

LEVEL I**RELOCATION AGENT**

A level I relocation agent shall have a minimum of one year of experience as a relocation agent trainee under the laws of eminent domain and be capable of handling minor relocation files and noncomplex issues.

RELOCATION AGENT**TRAINEE**

A relocation agent trainee shall meet the requirements of a level I acquisition agent, but have no experience in relocation under the laws of eminent domain. To be considered as a trainee, an individual:

- Must be a graduate of a college or university with a bachelor's degree
- Have experience in right-of-way acquisitions, all of which must have been under the laws of eminent domain

RELOCATION AGENT**TRAINEE (CONT.)**

Working directly under a project manager or a level III relocation agent for a period of three years will substitute for the required education on a year-for-year basis.


Note: When submitting prequalification applications or renewals, the applicant shall provide a detailed resume that satisfies the requirements needed for the position being applied for (education, years of experience, number of parcels acquired or relocated, type and complexity of parcels acquired or relocated, name and item number of project, along with time frame).

INDEPENDENT**FEE AGENTS**

All independent fee acquisition buyers or relocation assistance persons must be associated with a qualified firm in order to be considered for prequalification. A fee acquisition or relocation assistance person may work as a sub-consultant for another prequalified firm on a project-by-project basis upon receiving prior approval from KYTC's Division of Right of Way and Utilities by request from the consulting firm who was awarded the project. For any individual or firm proposed to perform work in any of the above disciplines who is not a direct salaried employee or a subsidiary, there must be a signed letter of intent included in the submission. If there is any change in staff, the consultant is to notify the KYTC Division of Right of Way and Utilities immediately.

Note: A firm's renewal of prequalification status will be based on satisfactory performance on past and current projects, as well as an affirmation by an officer of the firm that the qualified personnel identified in previous submittals for prequalification remain in that function. Any changes must be submitted as part of the annual request for renewal.



	<p><i>Section</i></p> <p>SELECTION OF RIGHT-OF-WAY CONSULTANTS</p>
	<p><i>Subject</i></p> <p>Project Information</p>

PURPOSE Provide a detailed summary of all services needed for the proposed project.


PREPARATION After final inspection, plans are delivered to the district office for review and as soon as possible after it has been determined that a right-of-way consultant is needed, the district shall prepare and forward (email preferred) to the Central Office Acquisition Branch. The request for consultant service process is as follows:

1. Submit project data
2. Explain services requested such as titles, appraisals, appraisal reviews, acquisitions, closings, relocations, project management, and property management
3. Make available a full set of right-of-way plans or useable plans that shall be a link from Projectwise
4. If applicable, make available maintenance of traffic, cross sections, and pipe sections that shall be a link from Projectwise
5. Provide a specific date of completion of right-of-way services
6. Provide any other information deemed pertinent to the project

The request shall include the date the final right-of-way plans are expected to be submitted to the Central Office and a statement that the environmental document has been approved and the date a reevaluation is expected to be approved. Attach a copy of any MOUs from the environmental document that involves any right-of-way issues.

Upon approval of the prequalified consultant, the consultant coordinates with the KYTC Division of Right of Way and Utilities to provide a project report and set up a scoping meeting. (See latest *Scoping Meeting Guidelines* on the Division of Right of Way and Utilities' website.)




	<p><i>Section</i></p> <p>SELECTION OF RIGHT-OF-WAY CONSULTANTS</p>
	<p><i>Subject</i></p> <p>Professional Services</p>

PURPOSE The purpose is to assist the Kentucky Transportation Cabinet (KYTC) in providing a wide range of right-of-way services on a statewide basis for both highway plan and non-highway plan and non-highway projects on an as-needed basis.

OVERVIEW The selection of a right-of-way consultant shall be completed through the Division of Professional Services. To be considered for a contract to provide professional right-of-way services for KYTC, a firm shall meet KYTC’s prequalification requirements before responding to a KYTC advertisement for professional services. The Division of Professional Services shall ensure that KYTC has at its disposal and available for use a current list of prequalified consulting firms and other professionals.

PREQUALIFICATION & REQUIREMENTS The Division of Professional Services website outlines prequalification and requirement guidelines for professional services.



	<p><i>Section</i></p> <p>SELECTION OF RIGHT-OF-WAY CONSULTANTS</p>
	<p><i>Subject</i></p> <p>Consultant Performance Evaluation for Right-of-Way Services</p>

POLICY

Evaluation factors to be considered in the selection of a right-of-way consultant include:

- Project Manager
 - ◆ Does the project manager communicate well?
 - ◆ Is the project manager responsive?
 - ◆ Is progress reporting timely and informative?
 - ◆ Are the project files organized and maintained properly?
 - ◆ Are projects adequately managed?
 - ◆ Do the experience and qualifications in project management relate to the scope of services?

- Project Team
 - ◆ Does the team possess knowledge of and experience with the [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970](#) as amended (Uniform Act), KYTC's *Right of Way Guidance Manual*, and the [Uniform Standards of Professional Appraisal Practice](#) (USPAP)?
 - ◆ Are the key personnel to be assigned capable and experienced?
 - ◆ What is the estimated effectiveness of the team's proposed organization and coordination process?


- Quality of Work
 - ◆ The score is based on the quality of work performed by the assigned appraisers, reviewing appraisers, negotiators, and relocation assistance agents.
 - ◆ Did the firm meet all of the technical standards and quality expectations?
 - ◆ Was the firm's communication, oral and written, clear and concise?
 - ◆ Was the work completed to KYTC's satisfaction?

POLICY (CONT.)

- Cooperation and Timeliness on the Project
 - ◆ Did the firm complete the project within the contract schedule (taking into account those events beyond their control)?
 - ◆ Were all milestone activities met and completed on time?
 - ◆ Did the firm keep KYTC informed of project work and schedule status?

- Disadvantaged Business Enterprise (DBE)
 - ◆ Has a plan been presented within the project approach section to address how the consultant plans to utilize firms or persons who are registered as a DBE with the Commonwealth of Kentucky?



	<p><i>Chapter</i></p> <p>SERVICES BY RIGHT-OF-WAY CONSULTANT</p>
	<p><i>Subject</i></p> <p>Contract Administration</p>

**RESPONSIBILITIES
OF CONSULTANT**

The consultant shall channel all work products, inquiries, and requests through the district right-of-way supervisor responsible for the project.

**RESPONSIBILITIES
OF DISTRICT STAFF**

The district right-of-way supervisor and his or her staff shall administer right-of-way acquisition contracts. If the district has a heavy workload, the Director of the Division of Right of Way and Utilities may request the contract be assigned to another district for administration.


The district right-of-way supervisor is responsible for complying with the Department of Highways’ responsibilities and obligations explained in the contract.

The supervisor shall promptly review parcel batches as submitted and routinely review the consultant's project files to ensure compliance with the rules and regulations and current policy and procedures of the Kentucky Transportation Cabinet (KYTC) and, if applicable, the Federal Highway Administration. The supervisor shall document all such reviews and shall monitor the consultant's progress to ensure timely completion of the project.

The district right-of-way supervisor shall review any recommendations for administrative settlements and, if in concurrence, shall so designate on the document before submitting it to the Central Office for approval.

Each completed TC 40-408, *Engineering and Engineering-Related Services by Pay Estimate*, submitted by the consultant shall be promptly reviewed and processed by the district right-of-way supervisor. Invoices that contain errors or omissions shall be returned to the consultant for correction.



	<p><i>Chapter</i></p> <p>SERVICES BY RIGHT-OF-WAY CONSULTANT</p>
	<p><i>Subject</i></p> <p>Project Files & Evaluations</p>


PROJECT FILES

Upon completion of the project or upon termination of the contract, the consultant shall submit to the district right-of-way supervisor all files and documents of the project required to be maintained as outlined and described in the *Right of Way Guidance Manual* and the [Relocation Assistance Guidance Manual](#).

**INTERIM/PROJECT
CLOSE EVALUATION**

Upon completion of the project and, if needed, during the course of the project (interim), the district right-of-way supervisor and Central Office right-of-way staff shall complete an evaluation of the consultant’s performance based on their compliance with the contract and current policies and procedures. A copy of the evaluation shall be sent to the consultant who shall be allowed 30 days to make comments. Any response by the consultant shall be attached to the final evaluation and placed in the district and Central Office project files.



	<p><i>Chapter</i></p> <p>SERVICES BY RIGHT-OF-WAY CONSULTANT</p>
	<p><i>Subject</i></p> <p>Local Public Agency Contracting</p>

POLICY A local public agency (LPA) having agreement responsibility for right-of-way acquisition involving state or federal funds shall comply with all state and federal laws and procedures as outlined in the approved *Right of Way Guidance Manual*.

RESPONSIBILITIES The LPA shall comply with the right-of-way consultant contracting procedures of the Division of Right of Way and Utilities except that:


- The contract shall be a third-party contract by and between the Department, the LPA, and the consultant
- The head of the LPA shall assume administrative responsibilities in consultation with the district right-of-way supervisor or project manager

Note: All administrative settlements must be approved by the district right-of-way supervisor.

- The district right-of-way supervisor shall:
 - ◆ Monitor right-of-way activities
 - ◆ Provide guidance to the head of the LPA to ensure compliance with departmental operating procedures
 - ◆ Inform the LPA of all such requirements
 - ◆ Recommends sanctions in cases of material noncompliance

The LPA’s contracting procedures shall follow all state and federal regulations with compliance through the Division of Professional Services.



	<p><i>Chapter</i></p> <p>PAYMENTS, CLOSINGS, & CONDEMNATION PROCESSING</p>
	<p><i>Subject</i></p> <p>Policy</p>

POLICY


The Division of Right of Way and Utilities shall promptly conclude transactions of acquired properties, or when a property cannot be negotiated, shall submit the parcel for condemnation in a timely manner.

Title exceptions shall be cleared by quit claim deed or other form of release in order for KYTC to receive clear title before a closing can be scheduled.

Immediately after execution of a deed, the individual handling the parcel shall submit a request for payment to the Central Office. All deeds and, if appropriate, grants of easement shall be filed for record at the county clerk's office within 3 working days after the check is delivered.

District personnel shall promptly submit parcel negotiations resulting in condemnation to the Central Office for litigation.



	<p><i>Chapter</i></p> <p>PAYMENTS, CLOSINGS, & CONDEMNATION PROCESSING</p>
	<p><i>Subject</i></p> <p>Acquisition Payments</p>

REQUEST FOR CHECKS If a parcel has multiple owners, the negotiator shall set forth on the TC 62-83A form, *Memorandum of Understanding*, their names, addresses, and social security numbers and the amount of compensation each owner shall receive. All parties to the acquisition shall then sign the same *Memorandum of Understanding*. Checks shall be issued to the owners as agreed.

SUBMITTING

PAYMENT REQUEST The negotiator shall ensure the areas shown in the deed, in the appraisal/MAR, and on the right-of-way summary sheet all agree. The dollar amounts and total consideration shall be the same as those reflected in the latest approved appraisal/MAR and the completed offer letter, or on an approved administrative settlement.

The negotiator shall submit the payment request within 3 days of receipt of the signed conveyance agreement and obtain information needed for release(s) of all encumbrance(s).

Processing an acquisition payment packet requires use of a current payment order. (See the KYTC Division of Right of Way and Utilities website).

Note: KYTC forms shall not be modified, changed, or altered in any way.

**PURCHASE OF
EXCESS PROPERTY**

When excess property is being acquired, the district right-of-way supervisor or excess property coordinator shall check the deed to ensure that fee title is being taken and that the deed includes a waiver of the 8-year rule. The district Right of Way Section shall maintain the following documents on a project basis in individual excess property parcel files until 3 years after completion of the construction project:

- TC 62-85 form, *Notice of Excess Purchase*
- 8 ½" x 14" reproducible plat
- Legal description of the excess purchased

**PURCHASE OF
EXCESS PROPERTY
(CONT.)**

- Copy of the right-of-way deed
- Copy of the TC 62-209, *Payment Summary*

The district right-of-way office shall include information regarding excess purchases in a master file for future tracking and disposal purposes. The district right-of-way supervisor or excess property coordinator shall maintain a monthly updated spreadsheet outlining any actions that have taken place involving excess properties in the past 30 days and provide a copy to the Central Office branch manager in charge of property management issues.

ROW-1400 details procedures regarding disposal of excess property.

**AFTER SUBMITTING
PAYMENT REQUEST**

The negotiator shall prepare a letter advising the property owner of the owner's right to claim a one-time reimbursement of a prorated share of real-property taxes. The district right-of-way supervisor shall also be advised that an updated title report is needed for closing.

**AUDIT OF PAYMENT
REQUEST**

The Acquisition Branch periodically checks payment requests as follows:

- Conveyance agreements, forms, and records are examined for complete and correct project identification.
- Names and parcel numbers are examined and checked against the record plans to ensure that they are correct and identical on all documents.
- Monetary figures are validated from the FMV or approved administrative settlement.
- If the property owner has retained an improvement, the TC 62-41 form, *Improvement Removal Contract*, and the TC 62-77 form, *Record of Contacts*, are checked to ensure proper allowance has been given for the privilege of the owner to retain the improvements.

**ISSUANCE OF
CHECK**


Upon submittal of properly documented payment requests, all documents applicable to excess property shall be held in a suspense file to await payment for the parcel and, when applicable, proper credit to the Federal Highway Administration.

**ISSUANCE OF
CHECK (CONT.)**

Applicable check information on the transmittal sheets is recorded on the TC 62-209, *Payment Summary*.

The check is returned to the district for closing.



	<p><i>Chapter</i></p> <p>PAYMENTS, CLOSINGS, & CONDEMNATION PROCESSING</p>
	<p><i>Subject</i></p> <p>Closings</p>

TITLE REPORT When a check for payment of right of way is requested, the title shall be updated. After the title report has been updated, it is placed in the district's parcel file.

CLOSINGS Prior to any closing, it shall be the responsibility of the district right-of-way section or consultant involved with that particular project to provide all necessary information such as title updates, mortgages, or lien releases to the appropriate district attorney for review. Upon review and approval by the appropriate district attorney, the parcel shall be closed by the assigned staff and or consultant.

DELIVERY OF CHECK A person other than the parcel's appraiser or negotiator shall deliver the check and ensure that all liens or encumbrances against the property rights acquired are released prior to making payment.

The amount of the check shall be noted on the TC 62-209, *Payment Summary*, and the form shall be signed and dated by the person delivering the check.

REMINDERS TO OWNERS An owner shall be reminded that he or she cannot remove an improvement until he or she has received from the district a letter authorizing removal. Until vacated by the tenant, an improvement cannot be released to an owner for removal. Rent collected from the tenant after payment of consideration shall be made payable to the Kentucky Transportation Cabinet (KYTC) by money order, certified check, or cashier's check.

If a building retained by an owner contains hazardous material, the owner shall be reminded of the existence of hazardous material and the requirement for compliance with local, state, and federal regulations regarding its removal.

CHECK DELIVERY**BY MAIL**

To save personnel time and expense, the check may be sent to a property owner by mail whenever possible.

**RECORDING &
FILING OF DEED**


Immediately after the check has been delivered, the executed deed shall be taken to the county clerk's office to be placed on record. The district shall return the recorded deed to the Central Office for permanent filing. A copy of the recorded deed shall be retained in the district's parcel file.

POST-SURVEY

Promptly after payment has been made, the district right-of-way supervisor shall ensure the following are mailed to the property owner:

- TC 62-90 form, *Property Owner Opinion Survey*, with postage-paid envelope addressed to the Division of Right of Way and Utilities
- Pro-rata tax reimbursement letter with postage-paid envelope addressed to the District Right of Way office
- Fencing letter with appropriate days to be removed



	<p><i>Chapter</i></p> <p>PAYMENTS, CLOSINGS, & CONDEMNATION PROCESSING</p>
	<p><i>Subject</i></p> <p>Condemnation Transmittals</p>

**SUBMITTING
PARCEL BATCHES**

The negotiator shall prepare a parcel batch for condemnation. The parcel batch shall be given to the district right-of-way supervisor for approval and for submission to the Acquisition Branch Manager. Then, upon assignment from Central Office, deliver to the assigned legal staff. If the district does not have an attorney, the entire parcel batch shall be submitted to the Acquisition Branch Manager. A copy of all items sent shall be retained in the district's parcel file. The negotiator shall submit the condemnation transmittals within 3 days of failed negotiations.

Processing a condemnation payment packet requires use of current order (see KYTC Division of right of way and utilities website)

Note: Excess property is not condemned. Do not include in packet.

**CONDEMNATION
AUTHORIZATION**

The Acquisition Branch Manager and his or her staff shall review each transmittal for required content and the outstanding issues that have led to the parcel being recommended for condemnation action. If it appears reasonable efforts were made to secure a settlement with the property owner, and it is unlikely further negotiations would be productive, the Director of the Division of Right of Way and Utilities shall send a written request to the Office of Legal Services recommending a condemnation action be initiated.

**CONDEMNATION
PAYMENTS**

In order for the Kentucky Transportation Cabinet (KYTC) to have possession of a condemned property, the circuit court shall have signed and entered an interlocutory order and judgment (IOJ). Subsequent to entering an IOJ, the state shall post with the circuit clerk the sum awarded to the property owner by a Commissioners' Award, a court judgment, the amount of an agreed IOJ, or the amount of an agreed order settling the case.

CONDEMNATION**PAYMENTS (CONT.)**

When KYTC obtains judgment on a property and has possession, the attorney notifies the district right-of-way supervisor, who shall ensure a tax letter is prepared and sent to the property owner. The letter shall advise the owner of his or her right to claim a one-time reimbursement of a prorated share of real property taxes. When a settlement is made prior to possession, the attorney shall notify the district right-of-way supervisor, who shall ensure the letter is mailed to the property owner.

The Division of Right of Way and Utilities processes payments for posting of judgments taken in circuit court, jury verdicts, or settlements of condemnation actions.

The district attorney forwards by memorandum a request for payment. The request is supported by the following documents:

- Commissioners' report, court order, judgment, or executed conveyance agreement (whichever is applicable)
- TC 62-21A, *Condemnation Pay Statement*
- Authorization for settlement (where applicable)

Checks issued for these payments are forwarded to the district attorney for proper distribution.

The trial attorney has authority to settle as outlined in [ROW-703-5](#), "Legal Settlements." However, the attorney may submit offers of settlement with a recommendation as to further proceedings to the Director of Right of Way and Utilities.

**COMMISSIONER'S
AWARD**

Requirements for check request for condemnation (Commissioner's award or final settlement):

- Request submitted electronically
 - ◆ Email the request to the Acquisition Branch designee.
 - ◆ Include the county name, item number, parcel number, and project information (state and federal numbers) in the request.
 - ◆ State whether the purpose of the request is a settlement check or commissioner's award.
- Request settlement check
 - ◆ Specify to whom the check is to be issued.
 - ◆ Clearly indicate the amount of the check.


**COMMISSIONER'S
AWARD (CONT.)**

- ◆ If the check is to be issued to the property owner, a copy of the property owner's W9 shall be submitted with the request.
- ◆ For a settlement check that exceeds just compensation (FMV), the request shall include a recommendation of settlement letter signed by the Director of Right of Way and Utilities, as well as KYTC's Office of Legal Services.

- Requesting Commissioner's award check
 - ◆ Include the report on the Commissioner's award (complete report).

- Deviation from Commissioner's award amount
 - ◆ Approval of the Director of Right of Way and Utilities is required and shall be stated within the request letter, including the date approval was given.




	Chapter PAYMENTS, CLOSINGS, & CONDEMNATION PROCESSING
	Subject Incidental Expense Reimbursement

**REQUESTING
REIMBURSEMENT**

All requests for incidental expense reimbursement shall be made on the TC 62-18 form, *Reimbursement Request for Incidental Expenses*. Reimbursement requests shall be signed by the claimant and approved by the district right-of-way supervisor.



	<p><i>Chapter</i></p> <p>PAYMENTS, CLOSINGS, & CONDEMNATION PROCESSING</p>
	<p><i>Subject</i></p> <p>Protective Rent Payments</p>

POLICY Prior to a property’s acquisition (residential or nonresidential), the Kentucky Transportation Cabinet (KYTC) may lease vacant property scheduled to be acquired by KYTC (or property that is vacated after initiation of negotiations on the parcel), when doing so will be less costly for KYTC than relocating a potential subsequent tenant.

These leases require prior written approval of the Director of the Division of Right of Way and Utilities.

RECOMMENDATION FOR PAYMENT OF PROTECTIVE RENT

The district right-of-way supervisor shall be responsible for recommending payment of protective rent, subject to the following:

- Before recommending payment of protective rent, consideration shall be given to the district’s ability to promptly initiate negotiations and, if necessary, proceed with condemnation.
- When KYTC is paying protective rent for a property prior to the beginning of appraisal work on the project, the district right-of-way supervisor shall ensure maximum coordination among appraisal, acquisition, and relocation assistance to facilitate timely acquisition of that property.
- Priority shall be given to ordering and reviewing an appraisal, presenting an offer to purchase to the owner, carrying out subsequent negotiations, and obtaining a prompt closing or right of entry.

RENTAL AMOUNT

The rental amount shall not exceed the market rent for like units within the area or community, and shall be negotiated, taking into account the following factors:

- No one will actually occupy the property; therefore, no clean-up, painting, or improvements will be needed.

**RENTAL AMOUNT
(CONT.)**

- The owner shall be responsible for maintenance, repairs, and hazard insurance.
- The owner shall pay all water, gas, electrical, or other utility expenses which may be assessed against the property.
- Negotiations shall begin at a monthly rent no higher than the most recent monthly rent paid for the property.

The district shall document the reasoning used and facts considered in determining the need for a protective lease, which will be made on a month-to-month basis.

The right-of-way supervisor is responsible for having a TC 62-102 form, *Protective Rental Agreement*, executed with prior written approval of the director.

Any lease or rental agreement shall contain a “non-merger clause” providing that the terms of the agreement shall survive the execution of any subsequent deed of conveyance executed by the parties.


CLAIM SUBMITTAL

To request a protective rent payment, the district right-of-way supervisor shall submit the following items to the Acquisition Branch Manager:

- TC 62-209, *Payment Summary*
- Memorandum approving payment of protective rent
- TC 62-102 form, *Protective Rental Agreement*
- TC 62-84 *Rental Record* , when lessee rents and vacates property

Note: The check is returned to the district for delivery.



	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>Purpose, Authority, Scope, Policy, & Definitions</p>

PURPOSE This chapter establishes uniform procedures for managing and conducting an inventory of all real-property improvements and structures acquired through the right-of-way process and provides a process for maintenance and removal of all acquired improvements and structures.

Property management should be delivered in the most cost-effective and efficient manner for the Kentucky Transportation Cabinet (KYTC) and the citizens of Kentucky.

AUTHORITY [23 CFR, Section 710](#)—Subpart D—Real Property; [49 CFR 18.31](#)

SCOPE The policies and procedures detailed in this chapter apply to appropriate right-of-way staff of the Central Office, district offices, subagents, and consultants.

POLICY The Division of Right of Way and Utilities shall manage all acquired rights of way and improvements, implement remedial measures to abate hazardous materials located in improvements and soil contamination, and, to the extent practical, remove all improvements from the right-of-way limits prior to releasing the parcels to the roadway contractor. Environmental remediation is a function of the Division of Environmental Analysis and shall be conducted by persons licensed to perform the function.

For guidance relative to air space usage and release of access control, see the KYTC [Permits Guidance Manual](#).

For guidance relative to disposal of surplus right of way, see [ROW-1400](#).

DEFINITIONS **Amount Due Bidder:** Bid for which KYTC will expend funds if accepted

Amount Due State: Bid for which KYTC will receive payment if accepted

DEFINITIONS (CONT.)

Improvement: Real property in the nature of any building or other relatively permanent structure located on or attached to the land


Legal possession: Date the acquisition check is delivered or date the state obtains right of entry

Physical possession: Date of vacancy or surrender of keys by the former occupant

Solicitation packet:

- TC 62-218 form, *Solicitation for Removal of Improvements*
- Photographs of improvements
- Cost estimate memorandum
- Highlighted plans sheets of improvements to be removed
- Map, physical address, and directions of improvements to be removed



	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>General Information</p>

OVERVIEW

The Division of Right of Way and Utilities shall manage all acquired rights of way and, to the extent practical, remove all improvements from the right-of-way limits prior to releasing the parcels to the roadway contractor.

**PROPERTY
MANAGEMENT
AGENT**

Each district shall designate a property management agent, who is responsible for the management and security of acquired improvements. The district shall manage and secure acquired property from the time the Kentucky Transportation Cabinet (KYTC) obtains physical possession of the property until the improvements are removed or a contract is awarded to the roadway contractor.

The property management agent shall:

- Coordinate clearance of improvements from the right of way
- Manage rental agreements of acquired improvements (with proper credit being given to the appropriate account where applicable)
- Monitor and supervise maintenance of acquired improvements
- Furnish the review appraiser with salvage values of improvements to be acquired
- Maintain adequate records reflecting the current status of right-of-way clearance, property rental, rental collection, etc., and provide copies to the Relocation Branch Manager or designee

The right-of-way supervisor shall closely coordinate with the negotiator, the relocation assistance agent, and the property management agent to ensure that all records, procedures, and documentation are current, accurate, and complete. The supervisor shall also ensure that agents have performed their respective duties and are fully informed of the status of improvements at all times.

PROJECT SUMMARY**OF IMPROVEMENTS**

A *Project Summary of Improvements*, TC 62-201, is required on all projects where improvements are acquired. The district property management agent shall prepare this form when the project is being developed for right-of-way acquisition. A copy of the summary shall be sent to the Relocation Branch Manager or designee at this time to provide a guide as to the number and type of improvements the project affects.

The district's copy of the summary shall be kept current to provide an accurate project status record. Dollar values shall be shown on the summary under the "Removal Cost" columns if improvements are retained by owners or removed by solicitation. Upon completion of improvement removal, a copy shall be forwarded by the property management agent to the Relocation Branch Manager or designee, and a duplicate shall be placed in the district's project file.

When all improvements have been satisfactorily removed or designated for removal by the roadway contractor, a copy of the completed summary shall be submitted to the Relocation Branch Manager or designee, and a duplicate shall be placed in the district's project file.

PHOTOGRAPHS

Photographs shall be made of all improvements being acquired. The photographs shall be attached to the *Improvement Removal Contract*, TC 62-41, or the successful bidder's *Solicitation for Removal of Improvements*, TC 62-218. In addition, a set of photographs should be kept in the district office files.


DOCUMENTATION

Regardless of how removal is accomplished, the file shall be documented to support the property management agent's original inspection and determination that rodent control is or is not necessary, the method by which improvements have been removed, and the cost thereof.

RIGHT-OF-WAY**CLEARANCE**

Before reporting right of way clear, the roadway/demolition contractor shall have removed, or approved removal of, all improvements within project limits.



	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>Managing Acquired Improvements</p>

OBTAINING TITLE The Kentucky Transportation Cabinet (KYTC) obtains title to an improvement with legal possession of a property, and title remains with KYTC until the improvement is removed or a contract is awarded to the roadway contractor. If an improvement is tenant-occupied, the tenant shall vacate before the district issues a letter authorizing a property owner to remove an improvement.

ADVERTISING FOR REMOVAL An improvement cannot be solicited for removal until KYTC has legal possession of the property and the occupants have vacated or have given written permission for its advertisement.

MAINTAINING EXISTING SERVICES Existing public convenience services and health and safety conditions for individuals or families in the immediate vicinity shall be maintained to the maximum extent possible.

DISCONNECTING UTILITIES Utility service to all acquired improvements shall be discontinued after KYTC is given possession of the property. The date of possession is when payment is made for the property or when the improvements are vacated, whichever date is later. The property management agent shall advise each utility company in writing that KYTC owns the property and request that service be discontinued and the meter removed. If any utility serves other improvements that were not acquired by KYTC, the agent shall make arrangements with the previous owner to have service provided to the remaining improvements at no cost to KYTC.

All utilities to acquired improvements shall be disconnected and the meters removed before issuing a work order for improvement removal.

PROJECT SECURITY The property management agent is responsible for the preservation of the improvements and for reasonable safety measures when KYTC has acquired ownership and possession of the property. Acquired right of way shall be maintained in a manner that will prevent, minimize, or correct problems such as illegal dumping or disposal of rubble, debris, etc., on cleared right of way until needed for construction.


DETERMINING

FINAL DISPOSITION The Division of Right of Way and Utilities shall determine final disposition of improvements by permitting the owner to retain the improvement, permitting another displaced person to remove it from the right of way and use the improvement for replacement housing, or effecting removal by solicitation or by the roadway contractor. On occasion the Director of the Division of Right of Way and Utilities or the district right-of-way supervisor may allow the owner to retain some of the improvements as part of an administrative settlement in negotiating the parcel. This permission shall be supported in writing.

MINOR REPAIRS

Minor repairs that prove economically feasible may be made when the district right-of-way supervisor approves them. Generally, only minor repairs to a rented improvement are justified. Documentation in the form of receipted bills is required for the parcel file.



	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>Hazardous Materials</p>

OVERVIEW

Hazardous materials on roadway projects are normally identified during the environmental study for the project, as this contributes to “location” considerations. The responsibility for identification lies with the Division of Environmental Analysis (DEA). The district property management agent shall coordinate with DEA contractors during the acquisition stage for the removal of these materials.

Asbestos is the only hazardous material for which the district property management staff is directly responsible to contract for removal.

INSPECTING PROPERTY

Upon authorization to proceed with acquisitions, the property management agent shall inspect all property to be acquired to determine whether any parcel contains hazardous materials or underground storage tanks (USTs). If signs of hazardous materials or USTs are observed, the right-of-way supervisor shall make a written request to the district’s environmental coordinator to have a Site 1 Environmental Investigation conducted on the parcel.

After inspecting all property to be acquired, the property management agent shall:

- Prepare a *Project Summary of Improvements*, TC 62-201
- Coordinate with DEA for the advancement of environmental remediation, including asbestos abatement

Note: All other environmental remediation, including UST removal, is to be completed by DEA.

- Make sure all improvements are clear of inhabitants and photograph them
- Notify DEA immediately and allow them to initiate a Site 1 Environmental Investigation when potential environmental contaminants are identified that were not addressed in the original approved environmental impact study

INSPECTING PROPERTY**(CONT.)**

The Kentucky Transportation Cabinet (KYTC) may require owners to perform required clean-up procedures prior to purchasing property at its approved appraised value. The Division of Environmental Analysis and the Director of the Division of Right of Way and Utilities or the Relocation Branch Manager is to advise the district of the procedure to follow in such cases.

REMOVAL BY**OWNER**

When the property owner is to retain the improvement, the property management agent shall advise the owner of the possible existence of hazardous materials and the requirement for compliance with local, state, and federal regulations regarding removal. The property management agent is to encourage the owner to contact the local Department for Environmental Protection office to review such regulations and requirements prior to making a decision to retain improvements. (See [ROW-1106-3](#), "Owner Retention & Removal of Improvements.")

REMOVAL BY**CONTRACTOR**

When a contractor is to remove improvements, DEA shall be responsible for inspection and removal of all hazardous materials from improvements prior to demolition by the contractor. Before releasing a parcel for demolition by contract, the property management agent shall request Asbestos Containing Material (ACM) inspection and abatement by DEA as outlined below under "Request for ACM Inspection & Abatement."

If other hazardous materials are found, the property management agent shall contact DEA before proceeding to ensure proper removal and disposal of any hazardous materials.

Prospective contractors shall be advised by the property management agent that all known hazardous materials have been removed. If unknown hazardous materials or any other contaminants are discovered during removal activities, the contractor shall immediately stop work and notify KYTC. No additional removal activities shall be performed on the improvements until KYTC provides written authorization to proceed.

**DIVISION OF
ENVIRONMENTAL
ANALYSIS**

KYTC shall inspect all acquired improvements, other than those retained by the owner, for the presence of ACM. The DEA is responsible for ACM inspection and abatement activities.

**DIVISION OF
ENVIRONMENTAL
ANALYSIS (CONT.)**

ACM inspections may be performed any time with the permission of the property owner and the occupants. However, abatement normally cannot be performed until KYTC obtains physical possession of a property.

When the roadway contractor is to remove improvements, DEA shall remove any ACM prior to release of the improvements to the roadway contractor. The roadway contractor shall not perform inspection and abatement activities.

**REQUEST FOR ACM
INSPECTION &
ABATEMENT**

The district right-of-way supervisor shall request ACM inspection and abatement by memorandum to the Director of the Division of Environmental Analysis, with a copy to the Relocation Branch Manager or designee.

ACM inspection and abatement requests are to include the following information:


- Project data including county name, item number, state and federal project numbers, and parcel numbers
- Statement indicating whether the request is for both inspection and abatement or for inspection only
- Parcel data including parcel number, owner's name, property address, a description (including size) of each building or miscellaneous item to be inspected, the date the parcel was acquired (for inspection requests) or vacated (for abatement requests), and an anticipated vacancy date if the parcel has not been acquired or vacated
- Date each parcel may be inspected and the name and phone number of the person to contact to obtain keys to the buildings and to advise when the work is to be performed
- Request that the DEP 7036 form, *Notification of Asbestos Abatement/Demolition/Renovation*, be prepared for all parcels and submitted to the Natural Resources Cabinet's Division for Air Quality 10 days prior to removal and that a copy be sent to the district to use with TC 62-218, *Solicitation for Removal of Improvements*
- Two sets of current right-of-way plan sheets identifying the location of each building or item to be inspected

**REQUEST FOR ACM
INSPECTION &
ABATEMENT (CONT.)**

Once the initial memorandum and plan sheets have been submitted to DEA, subsequent requests for inspections or abatement on the project may be submitted by email.

Copies of all memoranda and emails are to be submitted to the Relocation Branch Manager or designee and to the district environmental coordinator.



	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>Rodent Control</p>

NEED FOR RODENT CONTROL MEASURES

On all projects involving acquisition of improvements, the property management agent shall determine the need for rodent-control measures and the extent of such need (for an entire project, for certain parcels, or for a portion of a parcel).

Rodent-control measures shall be taken on improvements located within the right of way and elsewhere that may cause an infestation problem.

If rodent control is necessary, measures to remedy the situation shall be taken, to the extent possible, prior to removal of improvements. When appropriate, the district may make rodent control part of an improvement removal contract.

IMPROVEMENT REMOVAL CONTRACT

When rodent control is part of an improvement removal contract, the contractor shall take measures to control rodents prior to removal of improvements. The contractor shall subcontract with a licensed exterminator, the cost for which shall be included in the contractor’s bid. The contractor shall be allowed 10 days between the award date and the work order date to have this work completed. A paid receipt from the licensed exterminating company performing the work shall document satisfactory completion of rodent control measures.

CONTROL PRIOR TO IMPROVEMENT REMOVAL CONTRACT

When rodent control measures are needed prior to award of an improvement removal contract, the property management agent shall coordinate with the state, county, or city health department to provide the needed services.

**CONTROL PRIOR TO
IMPROVEMENT
REMOVAL**

CONTRACT (CONT.)

If local agencies are unable to provide needed services, the district may obtain bids from licensed exterminators and contract for rodent extermination. The district shall maintain records regarding the methods used to select a licensed exterminator and the fee to be paid for rodent control.


Note: Work shall comply with state and local laws and regulations whether performed by local agencies, contract exterminators, or removal contractors.

DOCUMENTATION

Regardless of how the work is accomplished, the file shall be documented to support the property management agent's original inspection and determination that rodent control is or is not necessary, the method by which contractors have been obtained, and the cost thereof.

The property management agent shall furnish copies of the original inspection report and any follow-up rodent control activity to the Relocation Branch Manager or designee.



	<p><i>Section</i></p> <p>REMOVAL OF IMPROVEMENTS</p>
	<p><i>Subject</i></p> <p>Performance Bond Requirements</p>

PERFORMANCE BOND A performance bond is required to ensure proper removal of improvements within the specified time. The district right-of-way supervisor and property management agent shall establish bond requirements for owner retention before initiation of negotiations. Salvage values shall not be considered when establishing the amount of bonds.

Performance bond requirements for improvements removed by contract shall be performed in accordance with the Division of Purchases.

Performance bond requirements for improvements retained by property owner shall be performed in accordance with the district right-of-way supervisor.

In no instance is a performance bond to be less than it would cost the Kentucky Transportation Cabinet (KYTC) to have the improvement removed should the improvement be stripped of all salvageable material and abandoned.


CONDITION UPON REMOVAL

Removal shall be complete, and land shall be left in a shovel-clean condition. Basements, cisterns, septic tanks, or other safety hazards shall be made safe by proper backfilling or other appropriate remedies. Water and monitoring wells shall be temporarily covered. All work shall be in accordance with the TC 62-218 form, *Solicitation for Removal of Improvements*.

FORFEITURE OF BOND

If land is not shovel-clean within the specified time, the performance bond shall be forfeited, and KYTC may remove improvements. The district right-of-way supervisor is responsible for granting any extensions of time due to extenuating circumstances.



	<p><i>Section</i></p> <p>REMOVAL OF IMPROVEMENTS</p>
	<p><i>Subject</i></p> <p>Inspection</p>

PERIODIC INSPECTION The property management agent shall periodically inspect removal activities performed by owners or contractors employed through solicitations. The agent shall make an adequate number of inspections to ensure timely removal and compliance with specifications.


DOCUMENTING INSPECTIONS The property management agent shall maintain a written record of all inspections, including the following in each entry:

- Date and time of inspection
- Ground conditions at the site
- Removal activities performed at the time of inspection
- Description of the progress made toward removing the improvement

Upon clearance of a parcel and district acceptance of the site preparation, the property management agent shall:

- Obtain a photograph of the cleared site and include it in the written record of inspections
- Place a copy of the inspection report in the district file
- Forward a copy to the Relocation Branch Manager or designee



	<p><i>Section</i></p> <p>REMOVAL OF IMPROVEMENTS</p>
	<p><i>Subject</i></p> <p>Owner Retention & Removal of Improvements</p>

EXECUTING AGREEMENT

During negotiations, the Kentucky Transportation Cabinet (KYTC) may give owners the opportunity to retain and remove improvements for their salvage value. If negotiations are successful and owners elect to retain and remove improvements, their salvage value shall be deducted from their right-of-way payments. KYTC shall predetermine this option as a viable and safe action.

Any agreement between owners and the negotiator shall be reflected in the TC 62-83A form, *Memorandum of Understanding*, and the TC 62-77 form, *Record of Contacts*. The owners shall also execute the TC 62-41 form, *Improvement Removal Contract*, outlining terms and conditions of the removal.


Equitable title to an improvement passes to KYTC with legal possession of the property and remains with KYTC until the improvement is removed. If an improvement is tenant-occupied, KYTC shall give the tenant ample time to relocate. The tenant shall actually vacate before the district issues a letter authorizing a property owner to remove an improvement.

When payment for right of way is delivered, KYTC shall remind property owners of the time period for removal of improvements and the exact date upon which that time period begins. During the establishment of building removal deadlines, KYTC shall give consideration to the 90-day notice of the expiration date.

The district shall discontinue utility service to all acquired improvements when payment is made for the property or when the improvement is vacated, whichever is later.

Owners may begin removal of an improvement upon receipt of a letter from the district authorizing its removal.



	<p>Section</p> <p>REMOVAL OF IMPROVEMENTS</p>
	<p>Subject</p> <p>Solicitation for Removal of Improvements</p>

KYTC REMOVAL OF IMPROVEMENTS

If an owner does not retain an improvement and it is not needed as replacement housing for another displacee, the district shall remove improvements pursuant to procedures outlined below.

SOLICITATION REQUIREMENTS

The district shall prepare solicitation for removal of improvements as project conditions dictate. The property management agent shall assemble and electronically submit a proposed solicitation to the Relocation Branch Manager or designee. The district file shall include a copy of the proposed solicitation, along with the following:

- TC 62-218 form, *Solicitation for Removal of Improvements*
- Photographs of improvements
- Cost estimate memorandum
- Highlighted plan sheets of improvements to be removed
- Map, physical address, and directions to improvements to be removed

Upon Central Office review and approval, the Division of Purchases shall solicit bids pursuant to procedures outlined in the *Purchases Guidance Manual* ([PUR-300](#), "Competitive Procurements").

Prospective bidders shall be informed that removal of any improvement from the right of way shall be in accordance with the solicitation, which shall include the following:

- TC 62-218 form, *Solicitation for Removal of Improvements*
- Photographs of improvements
- Highlighted plan sheets of improvements to be removed
- Map, physical address, and directions to improvements to be removed

NOTICE TO BIDDERS The Division of Purchases shall provide notice to the low bidder promptly after the district property management agent accepts a bid upon district right-of-way supervisor approval. The successful bidder's notice shall advise that the Division of Purchases shall receive the following items before the district can issue a work order:

- Payment of amount due to the state, when applicable
- Performance bond
- Certificate of insurance

AWARD OF CONTRACT Once it receives the required items from the successful bidder, the Division of Purchases awards the contract and emails copies of the contract to the successful bidder, the district property management agent, and the Relocation Branch Manager or designee.

**ISSUANCE OF
WORK ORDER**

Prior to issuing a work order, the district property management agent and, when available, the district environmental coordinator shall meet with the successful bidder to:

- Review the improvements and items to be removed
- Notify the Environmental and Public Protection Cabinet (EPPC), Division of Air Quality, 10 days prior to issuance
- Provide the contractor with a set of plans for all parcels included in the contract
- Advise the contractor to obtain the TC 95-10 form, *Kentucky Overweight or Over Dimensional Permit Worksheet*, from the Division of Motor Carriers before moving an improvement on or across any highway or structure maintained by the Kentucky Transportation Cabinet (KYTC)
- Review portions of the TC 62-218 form, *Solicitation for Removal of Improvements*, covering disposal of materials, recovery of refrigerant, open burning, cesspool and cistern removal, basement floor and basement and foundation wall removal, and security of drilled or dug water wells and monitoring wells
- Have all meeting attendees sign the TC 62-17 form, *Pre-Improvement Removal Meeting Certification*

After the pre-authorization meeting has been held, the district property management agent shall issue a written work order. Upon issuance, a copy of the work order and a signed *Pre-Improvement Removal Meeting Certification* shall be kept in the district file.

**HAZARDOUS
MATERIALS**

If unknown hazardous materials or any other contaminants are discovered during removal activities, the contractor shall immediately stop work and notify the district property management agent. The contractor shall perform no additional removal activities on such improvements until KYTC provides written authorization to proceed.

When a removal contractor notifies the district of the discovery of hazardous materials or any other contaminants, the right-of-way supervisor shall immediately request inspection and abatement by the Division of Environmental Analysis pursuant to **ROW-1104**, "Hazardous Materials."

**CONTRACT
COMPLETION**

When the contractor has successfully completed all work and the district property management agent has conducted a final inspection, the agent shall notify the contractor, in writing, that the district has accepted the work and shall request submittal of the TC 31-519 form, *Standard Invoice*.

**PAYMENT TO
CONTRACTOR**

The district property management agent shall prepare and have the contractor sign and submit the *Standard Invoice* for payment. When the right-of-way supervisor has approved an invoice, the district shall request payment electronically and submit to the Relocation Branch Manager or designee a copy of the invoice, along with the following:

- Copy of the work acceptance letter specified in "Contract Completion" above
- Copy of the DEP 7036 form, *Notification of Asbestos Abatement/Demolition/Renovation*, submitted to the Kentucky Division for Air Quality
- Copies of all disposal receipts for the contract
- Copies of rodent control receipts, if required
- Copy of the district property management agent's record of inspections with photographs of the cleared sites
- An updated copy of the TC 62-201 form, *Project Summary of Improvements*, for the project on which the parcels are located
- A completed TC 62-220 form, *Performance Evaluation—Demolition Services*


RELEASE OF

PERFORMANCE BOND

The Central Office Relocation Branch Manager or designee shall submit copies of the following items to the Division of Purchases, which shall release the contractor's performance bond:

- Notice of Contractor Completion
- TC 31-519 form, *Standard Invoice*
- TC 62-220 form, *Performance Evaluation—Demolition Services*



	<p><i>Section</i></p> <p>RENTAL OF IMPROVEMENTS</p>
	<p><i>Subject</i></p> <p>After Right of Way Is Acquired</p>

OVERVIEW Generally, improvements are removed as soon as practical after right of way is obtained. However, if occupants wish to remain beyond the Kentucky Transportation Cabinet's (KYTC) date of possession, and if the property is not needed for construction purposes for an extended time, improvements may be rented on the basis of a month-to-month agreement.

FEASIBILITY OF RENTING The district right-of-way supervisor shall consider the following factors to determine the feasibility of renting an improvement:

- Nearness of the project's clearance date, or the parcel's need for utility relocation
- Cost to maintain the improvement in a decent, safe, and sanitary condition versus its potential rental income
- Benefits to be derived versus management costs
- Availability of desirable tenants
- Need for temporary replacement housing
- Its potential to be sold if sold immediately in its present condition

PROPERTY RENTAL OR VACATION When an improvement is rented, the property management agent shall promptly forward copies of the TC 62-26 form, *Rental Agreement*, and the TC 62-84 form, *Rental Record*, to the Relocation Branch Manager or designee. When an improvement is vacated, the agent shall promptly send a completed copy of the *Rental Record* to the Central Office.

TENANT OCCUPANTS When KYTC obtains possession of a property, tenants shall immediately begin paying rent to KYTC. The district shall advise both owners and tenants that rent payments are to be made to KYTC from that time forward.

OWNER OCCUPANTS The date by which an owner is to vacate the property and, if applicable, the date the owner is to begin paying rent shall be reflected in the TC 62-83A form, *Memorandum of Understanding*, and the TC 62-77 form, *Record of Contacts*. Copies of these forms shall be provided to the property management agent.

Owners are given 30 days rent-free to vacate an improvement after KYTC obtains legal possession. The district right-of-way supervisor may allow an owner a longer period of time if it is in KYTC's best interest and if sufficient time remains before the project's scheduled clearance date. The supervisor may give the owner up to 60 additional rent-free days to vacate (a total of 90 rent-free days).

RENTAL AGREEMENTS All *Rental Agreements*, (TC 62-26 forms), contain a 30-day termination clause to assure the improvement will be vacant when its removal is necessary. Each rental is executed on a *Rental Agreement* and recorded on a *Rental Record*, TC 62-84. The property management agent shall retain signed copies of these documents in the parcel file and promptly forward copies to the Relocation Branch Manager or designee. The lease agreement with these persons shall include a provision acknowledging that the occupancy does not create an entitlement to relocation assistance upon termination of the occupancy.

An owner shall execute a *Rental Agreement* if the owner expects to vacate after the rent-free period expires (see "Owner Occupants" above). The agreement shall be executed when the owner is paid for the property, with rent beginning when the rent-free period ends (a maximum of 90 days).

A *Rental Agreement* shall be executed with tenants when KYTC obtains possession of a property, with rent immediately being payable to KYTC. If the owner of the property has been paid and the tenant has not had an RHP offer made, then the 90-day notice starts on the day of the RHP offer.

Any lease or rental agreement shall contain a "non-merger clause" providing that the terms of the agreement shall survive the execution of any subsequent deed of conveyance executed by the parties.

RENTAL RATES Rental rates are fixed at economic rent as determined by a district appraiser or replacement housing evaluator. The district right-of-way supervisor may accept a lesser amount if an improvement cannot be rented for economic rent and there is a need to prevent a situation attractive to vandalism.

RENTAL RATES (CONT.) If a lesser amount is accepted, the parcel file shall contain documentation as to why. Normally for a tenant occupant the rental rate will remain the same as the tenant was paying when the property was acquired.

**RENT COLLECTION &
DISPOSITION**

Rent payments are due on the first day of each month and shall be in the form of a certified check, a cashier's check, or a money order made payable to the Kentucky State Treasurer. **Cash or personal checks shall not be accepted.** The property management agent shall promptly forward rent checks to the Relocation Branch Manager or designee for prompt submittal to the Division of Accounts. If the project has federal funds in the right-of-way phase, the federal share of the proceeds is credited to projects eligible under Title 23 of the United States Code. The state share is credited to the appropriate account.


The property management agent shall maintain current and accurate rent receipt records for each parcel on the *Rental Record*, TC 62-84.

DELINQUENT RENT

When rent payments are delinquent 30 days or more, the right-of-way supervisor may request the district attorney to prepare an eviction notice. The Director for the Division of Right of Way and Utilities and the Office of Legal Services (Central Office) are to determine when court action for the collection of delinquent rent is justified.

The improvement may be advertised for removal unless needed as replacement housing.



	<p><i>Section</i></p> <p>RENTAL OF IMPROVEMENTS</p>
	<p><i>Subject</i></p> <p>Before Right of Way Is Acquired</p>

POLICY

Prior to a property’s acquisition (residential or nonresidential), the Kentucky Transportation Cabinet (KYTC) may lease vacant property scheduled to be acquired by KYTC (or property that is vacated after initiation of negotiations on the parcel), when doing so will be less costly for KYTC than relocating a potential subsequent tenant.

These leases require prior written approval of the Director of the Division of Right of Way and Utilities.

**RECOMMENDATION
FOR PAYMENT OF
PROTECTIVE RENT**

The right-of-way supervisor shall be responsible for recommending payment of protective rent, subject to the following:

- Before recommending payment of protective rent, consideration shall be given to the district’s ability to promptly initiate negotiations and, if necessary, proceed with condemnation.
- When KYTC is paying protective rent for a property prior to the beginning of appraisal work on the project, the right-of-way supervisor shall ensure maximum coordination among appraisal, acquisition, and relocation assistance in order to facilitate timely acquisition of that property.
- Priority shall be given to ordering and reviewing an appraisal, presenting an offer to purchase to the owner, carrying out subsequent negotiations, and obtaining a prompt closing or right of entry.

RENTAL AMOUNT The rental amount shall not exceed the market rent for like units within the area or community, and shall be negotiated, taking into account the following factors:


- The rent payment is assured.
- No one will actually occupy the property; therefore no clean-up, painting, or improvements will be needed.
- The owner shall be responsible for maintenance.
- The owner shall pay all water, gas, electrical, or other utility expenses which may be assessed against the property.
- Negotiations shall begin at a monthly rent no higher than the most recent monthly rent paid for the property.

The district shall document the reasoning used and facts considered in determining the need for a protective lease, which will be made on a month-to-month basis.

The right-of-way supervisor shall be responsible for having a TC 62-102 form, *Protective Rental Agreement*, executed with prior written approval of the director.

CLAIM SUBMITTAL The claim for payment shall be submitted to the Central Office Acquisition Branch as outlined in [ROW-1006](#), “Protective Rent Payments.”




	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>Purpose, Authority, & Policy</p>

PURPOSE This chapter establishes uniform procedures for the relocation of human remains when such remains must be moved from right of way acquired for a Kentucky Transportation Cabinet (KYTC) project.

AUTHORITY [600 KAR 3:020](#) and [901 KAR 5:090](#)

POLICY The Division of Right of Way and Utilities shall coordinate with the Division of Environmental Analysis to ensure that the provisions of the [Native American Graves Protection and Repatriation Act \(NAGPRA\)](#) and of the [National Historic Preservation Act \(NHPA\)](#) are carried out and that historically significant cemeteries are appropriately handled. The Division of Right of Way and Utilities shall ensure, to the extent practical, that all human remains are removed from the right-of-way limits prior to releasing the parcels to the roadway contractor.



	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>General Information</p>

POLICY

The district right-of-way supervisor shall designate an experienced and capable agent to coordinate relocation of human remains. The grave relocation agent shall acquire a thorough understanding of all policies and procedures to ensure contractors comply with state, county, and local health laws and the terms and conditions of the contract.

When physically possible, the district shall consider relocating remains to the remainder of the disinterment cemetery. If the disinterment cemetery remainder will be landlocked or too small, remains shall be relocated to the closest perpetually maintained public cemetery unless the next of kin prefers another location. When the next of kin wants remains relocated to another location, any additional cost shall be borne by the next of kin.

To the extent possible under these procedures, the district shall attempt to honor reasonable requests of the next of kin. Any request to deviate from these procedures shall be justified by the district right-of-way supervisor and approved by the Director of the Division of Right of Way and Utilities.

Note: If a brief memorial or religious service is requested by deceased next of kin, permission for the service should be granted. Any associated costs with said service shall be the responsibility of the next of kin.

DISTRICT RESPONSIBILITIES

The district is responsible for coordinating the relocation of all human remains and other contents of the grave pursuant to these procedures. The grave relocation agent shall perform grave relocation activities in a timely manner to ensure clearance of the construction project. The agent shall maintain accurate and well-organized records reflecting the current status of all grave relocation activities. Unless otherwise noted, original documents shall be maintained in the Central Office grave relocation project file, with copies maintained in the district grave relocation file.

DISTRICT**RESPONSIBILITIES****(CONT.)**

The District Office shall:

- Prepare grave relocation
- Accept solicitations and submit to the Division of Right of Way and Utilities
- Secure disinterment and reinterment permits
- Monitor grave disinterment and reinterment
- Submit final reinterment plats to the State Registrar, Office of Vital Statistics, Cabinet for Health and Family Services
- Prepare and submit payment and final grave relocation records to the Division of Right of Way and Utilities

HISTORIC CEMETERY

Archaeological excavation of the cemetery shall occur only after the Division of Environmental Analysis (DEA) determines the cemetery to be potentially eligible for the National Registrar of Historic Properties (NRHP). Excavation of the cemetery shall occur after DEA has worked with the district right-of-way grave relocation agent to notify next of kin and complete other responsibilities. DEA will be responsible for obtaining the required permits from the Office of Vital Statistics.

After excavation and laboratory analysis, remains shall be reinterred in accordance with this manual. (See *Environmental Analysis Guidance Manual, Chapter 900, "Cultural Resource Assessment."*)

INADVERTENT**DISCOVERY OF****HUMAN REMAINS**

If human remains are inadvertently discovered, the district shall follow this procedure:

1. Immediately stop work in the area
2. Advise the person who discovered the remains to:
 - a) Immediately notify the coroner, or deputy coroner, and a law enforcement agency (pursuant to [KRS 72.020](#))
 - b) Take immediate steps to secure and protect the remains, including, as appropriate, stabilization or covering of the remains
3. Document pertinent information as to the kinds of human remains inadvertently discovered, their conditions, and the circumstances of their inadvertent discovery
4. Promptly provide the district environmental coordinator with written notice of the information contained in Step 3, and provide a copy of the notice to the Relocation Branch Manager

**INADVERTENT
DISCOVERY OF
HUMAN REMAINS
(CONT.)**

Note: The district environmental coordinator shall ensure that the provisions of the Native American Graves Protection and Repatriation Act and of the National Historic Preservation Act are carried out.

The activity that resulted in the inadvertent discovery may not resume until written notice to proceed is received from the Division of Environmental Analysis.

**CENTRAL OFFICE
RESPONSIBILITIES**

The Central Office shall:

- Review grave relocation solicitations and submit to Division of Purchases
- Provide technical assistance to the districts

**FUNERAL DIRECTOR'S
CONTRACT**

When the Division of Right of Way and Utilities is authorized to relocate remains, they shall be removed by a licensed funeral director contracted by the Commonwealth of Kentucky. A funeral director's contract shall specify all work included within the request for proposal (RFP), other than work that a reinterment cemetery may require its staff to perform.


GRAVE DATA SHEET

Promptly after right-of-way acquisition is authorized, the grave relocation agent shall complete the TC 62-52 form, *Grave Data Sheet*, listing all human remains and monuments to be relocated. The *Grave Data Sheet* shall be kept current by updating data as remains are relocated. The district shall retain copies of this form in the district grave relocation project file and provide the original to the Relocation Branch Manager.

PHOTOGRAPHS

The grave relocation agent shall take photographs of the disinterment cemetery, with emphasis being placed on the portion to be relocated. The agent shall take the photographs early in the acquisition process and keep them in the district grave relocation project file. The agent shall take photographs of each monument to be relocated to adequately document its condition prior to relocation and shall take photographs of anything else that may become controversial.



	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>Preparing to Relocate Human Remains</p>

ENVIRONMENTAL ASSESSMENT

Upon authorization to proceed with acquisitions, the district right-of-way supervisor shall confirm that the Division of Environmental Analysis has assessed all affected cemeteries for their historical significance and the presence of Native American graves.

If an assessment has been completed, the right-of-way supervisor shall request the assessment report from the district environmental coordinator and provide a copy of the assessment results along with the following information to the Relocation Branch Manager. If no assessment has been completed, the supervisor shall provide the following information with a request for assessment to the district environmental coordinator, with copies to the Relocation Branch Manager:

- Number of cemeteries within the right-of-way limits
- Location of each cemetery affected by the project
- Number of graves affected in each cemetery
- Description of each cemetery and how it is affected by the project
- Plat of the disinterment cemetery showing:
 - ◆ Accurate location
 - ◆ Boundary (by distance and bearings) of the entire cemetery
 - ◆ Way the proposed right of way will affect the cemetery
 - ◆ Graves to be relocated
 - ◆ Each grave number
 - ◆ Name of the remains in each grave, when known; else a designation of the remains as “Unknown”

Note: The Division of Highway Design is to provide the plat in accordance with the [Highway Design Guidance Manual](#).

**ENVIRONMENTAL
ASSESSMENT (CONT.)**

- General information such as:
 - ◆ Owner of the property
 - ◆ Owner of the cemetery
 - ◆ Owners' relationship to those interred
 - ◆ Statement indicating whether it will be possible to relocate remains to the remainder of the disinterment cemetery
 - ◆ Name and location of the nearest perpetually maintained public cemetery
 - ◆ Any other pertinent information
- The grave relocation agent's estimate of cost for the grave relocation project, prepared as outlined in "Identifying Reinterment Cemetery" (below)

The Division of Environmental Analysis shall assess each affected cemetery to determine the historical significance of the cemetery and the remains interred therein. Following assessment, the Division of Environmental Analysis shall advise the district of the method by which remains shall be removed. The district shall retain assessment results and any subsequent directives from the Division of Environmental Analysis in the district's grave relocation project file and shall provide copies to the Relocation Branch Manager.

**GRAVE REMOVAL
BY ARCHEOLOGY**

The Division of Environmental Analysis may contract with an archaeologist to relocate remains or may authorize the Division of Right of Way and Utilities to relocate remains. When the division is authorized to relocate remains, a funeral director licensed by the Commonwealth of Kentucky (Commonwealth) shall remove them.

**IDENTIFYING
REINTERMENT
CEMETERY**

When physically possible, the district shall consider relocating remains to the remainder of the disinterment cemetery. If the disinterment cemetery remainder is landlocked, too small, or not desired by the next of kin, the remains, when economically feasible, shall be relocated to the closest perpetually maintained public cemetery. If the next of kin wish to relocate remains to another location, any additional cost associated with a location other than the closest perpetually maintained public cemetery shall be borne by the next of kin.

IDENTIFYING**REINTERMENT****CEMETERY (CONT.)**

The grave relocation agent shall contact the closest perpetually maintained public cemetery to determine the cost of reinterment sites, the cost to set monuments, and the type(s), if any, of reinterment containers and monuments that may be required. The agent shall document whether the Kentucky Transportation Cabinet's (KYTC) contract funeral director will be permitted to perform work in the reinterment cemetery.

The grave relocation agent shall use information gathered from the reinterment cemetery and information on the TC 62-52 form, *Grave Data Sheet*, to estimate the total cost of the grave relocation project. The agent's total project cost estimate shall provide a breakdown of the costs attributable to the funeral director's contract and those associated with the reinterment cemetery. The cost breakdown shall include unit costs, extended costs, and total costs.

PUBLIC NOTICE

Upon determining the presence of unknown remains, or remains where the next of kin cannot be located, the grave relocation agent shall place a public notice in all local newspapers that are published at least weekly. The notice shall advise of KYTC's intent to relocate a number of graves on the designated project. If an extremely large number of graves is being disinterred, the advertisement shall be run in the major newspaper serving the area. The notice shall be published once a week for 60 days and include:

- Project's identification—county, item number, project number, and facility's common name
- Name and location of the cemetery to be relocated
- Request for assistance from anyone having knowledge of the cemetery, of any persons buried in the cemetery, or of their next of kin
- Name of the grave relocation agent to contact
- Mailing address and telephone number of the district office

If no next of kin come forward, and after the 60-day notice has expired, the grave relocation agent shall submit an affidavit and resolution to the county fiscal court for authorization to relocate the graves.

Note: Next of kin or fiscal court authorization does not constitute right of entry. Right of entry must be obtained from the property owner.

The district shall retain copies of public notices, the agent's affidavit, and the fiscal court authorization in the district grave relocation project file and shall provide copies to the Relocation Branch Manager when submitting a proposed solicitation.

CONTACTING**NEXT OF KIN**

The grave relocation agent shall make every effort to contact next of kin early in the acquisition process. Personal contact shall be made with the next of kin to fully explain grave relocation procedures, to answer any questions they may have, and to obtain authorization to disinter and reinter remains. Authorization shall be obtained from all members of the nearest class of next of kin and is effected by execution of the TC 62-55 form, *Consent & Authorization*.

The district shall retain the original TC 62-55 form in the district grave relocation project file and shall forward copies to the Relocation Branch Manager when submitting a proposed solicitation.

RESERVED SPACES

If a living spouse has a reserved space adjoining the deceased in the disinterment cemetery and requests a reserved space adjoining the deceased in the reinterment cemetery, this space shall be provided. A reserved space in the reinterment cemetery is provided in lieu of any payment to the spouse for the reserved space in the disinterment cemetery.

Consideration shall be given to reasonable requests for additional reserved spaces based on the facts in each situation. Requests for additional reserved spaces shall be justified by the district right-of-way supervisor and approved by the Director of the Division of Right of Way and Utilities.

Note: When next of kin request additional space, documentation of reserved spaces in disinterment cemetery is required.

RIGHT OF ENTRY-**DISINTERMENT SITE**

The grave relocation agent shall obtain a release from the owner of the property for KYTC and its contractor to enter upon said property to remove remains and monuments. To affect release, the owner shall execute the TC 62-65 form, *Consent & Release*, unless a deed has been executed or right of entry has been obtained.

Note: Right of entry shall be obtained prior to beginning disinterment.

The district shall retain the original TC 62-65 forms and copies of executed deeds or right-of-entry agreements in the district grave relocation project file and shall forward originals to the Relocation Branch Manager when submitting a proposed solicitation.


RIGHT OF ENTRY-

REINTERMENT SITE

The grave relocation agent shall obtain a release from the reinterment cemetery for KYTC and its contractor to enter upon said property to reinter remains and set monuments. To effect release, the owner shall execute the TC 62-64 form, *Reinterment Agreement*, whether reinterment will be in a public cemetery or on private property.

The district shall retain the original TC 62-64 forms in the district grave relocation project file and shall forward originals to the Relocation Branch Manager when submitting a proposed solicitation.



	<p><i>Section</i></p> <p>SOLICITATION FOR RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>Preparing a Solicitation</p>

PREPARING A SOLICITATION

The grave relocation agent prepares solicitations as project conditions dictate. A solicitation shall include but may not be limited to the following:

- *Solicitation for Relocation of Human Remains*
- TC 62-52 form, *Grave Data Sheet*
- Plat of the disinterment cemetery
- Plat or sketch of the reinterment cemetery
- Photos of all monuments and markers
- TC 62-64 form, *Reinterment Agreement*, to enter reinterment cemetery
- TC 62-55 form, *Consent & Authorization*, signed by next of kin for permission to relocate remains
- TC 62-65 form, *Consent & Release*, if required
- Next of kin written requests, if applicable
- Public Notice, if required
- Affidavit of grave relocation agent for public record, if required
- Fiscal Court Order or Resolution, if required
- Grave relocation agent’s estimate of the cost for the grave relocation project, prepared as outlined below under “Funeral Director’s Contract” (If done by archeology, this will be in their scope of work.)

The district grave relocation agent shall submit the entire solicitation to the Relocation Branch Manager, or designee, for review. Upon approval the branch manager shall forward the entire solicitation to the Division of Purchases for final bidding and contracting.


FUNERAL DIRECTOR'S

CONTRACT

Work included in a funeral director's contract may include but not be limited to:

- Disinterment and reinterment of all human remains and all other contents of the grave
- Provision of reinterment containers and grave liners as required by the reinterment cemetery
- Relocation and resetting of all gravestones, markers, and monuments from their present locations to their new locations
- Furnishing and setting of new grave markers
- Reasonable restoration of disturbed areas including the refilling of all disinterred graves and seeding or placing sod on all areas disturbed during the grave relocation process
- Provision for access to the reinterment cemetery



	<p>Section</p> <p>SOLICITATION FOR RELOCATION OF HUMAN REMAINS</p>
	<p>Subject</p> <p>Central Office Review of Solicitation</p>

REVIEW PROCEDURES

The grave relocation agent shall submit a proposed solicitation to the Relocation Branch Manager, along with the following additional documents. The district grave relocation project files are to contain a copy of the proposed solicitation and the following documents:

- Memorandum fully describing the situation and the district's recommendation for relocation of remains
- Copies of the TC 62-55 form, *Consent & Authorization*

Note: All members of the nearest class of next of kin are to authorize relocation of remains.

- Copies of the TC 62-65 form, *Consent & Release*

Note: The owner of the disinterment site shall execute this form to release the Kentucky Transportation Cabinet (KYTC) and its contractors to enter upon the site to disinter remains.

- Copies of the TC 62-64, *Reinterment Agreement*

Note: The owner of the reinterment site shall execute this form to release KYTC and its contractors to enter upon the site to reinter remains.

- Copies of public notices published pursuant to [ROW-1203](#) (under "Public Notice") for unknown graves or remains where the next of kin cannot be located
- Copy of the grave relocation agent's affidavit and the county fiscal court resolution, if required
- List of remains for whom next of kin could not be located
- Plat of the disinterment cemetery showing an accurate location, boundary (by distance and bearings) of the entire cemetery, the way the proposed right of way will affect the cemetery, the graves to be relocated, the grave numbers, and the name of the remains in each grave, when known

REVIEW PROCEDURES**(CONT.)**

Note: When the remains are unknown, the plat is to designate the remains as “Unknown.” The Division of Highway Design is to provide the plat in accordance with the *Highway Design Guidance Manual*.


- Plat or sketch of the reinterment cemetery that shows the proposed reinterment grave site number and the name of the remains being relocated, when known

Note: When the remains are unknown, the plat or sketch is to designate the remains as “Unknown” and is to list the remains’ disinterment grave number.

- Description of how to reach each disinterment and reinterment cemetery
- Grave relocation agent’s estimate of cost for the grave relocation project
- TC 62-52 Grave data sheet

Upon review and approval by the Central Office, the Division of Purchases shall solicit bids pursuant to procedures outlined in the KYTC *Purchases Guidance Manual* (**PUR-300**, “Competitive Procurements”).



	<p><i>Section</i></p> <p>SOLICITATION FOR RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>Notice to Contractors</p>

NOTICE TO BIDDERS

The Division of Purchases shall provide written notice to the low bidder promptly after the district grave relocation agent accepts a bid. The successful bidder’s notice shall advise that a performance bond and certificate of insurance shall be received by the Division of Purchases before a work order will be issued.


**SECURING
DISINTERMENT &
REINTERMENT
PERMIT**

Promptly after the district grave relocation agent approves acceptance of a bid, the Relocation Branch Manager, or designee, shall secure a disinterment and reinterment permit from the Office of the Registrar of Vital Statistics. A copy of the permit, which authorizes relocation of graves included in the contract, shall be provided to the district. The district shall retain a copy of the permit in the grave relocation project file and attach a copy to the contractor's work order.

**ISSUING WORK
ORDER**

Upon receipt of the disinterment and reinterment permit and items outlined above in “Notice to Bidders,” the district grave relocation agent shall issue a work order to the contractor. The agent shall attach a copy of the disinterment and reinterment permit to the work order. Upon issuance, a copy of the work order and all items specified in “Notice to Bidders” shall be provided to the Relocation Branch Manager, or designee.



	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>District Supervision of Contract</p>

**INSPECTION &
CONTROL**

The grave relocation agent shall be present at all times when remains are being disinterred, transferred, and reinterred and when monuments and grave markers are being removed, transferred, and set. The agent shall ensure work is accomplished in compliance with the contract. The contractor shall not engage in the above-mentioned work when the agent is not present.

The grave relocation agent shall inspect each reinterment container to ensure it meets requirements specified in the solicitation and shall keep a daily record of grave relocation activities. The agent shall record very specific contents of each grave on the TC 62-52 form, *Grave Data Sheet*. In addition, the agent shall accurately maintain the disinterment and reinterment plats, including a complete list of grave numbers and names. The next of kin of the deceased being relocated shall be permitted to be present, and, if desired, a brief religious service may be held. All others except those associated with the contractor shall be excluded from the work site.

The grave relocation agent shall inspect the contents of each grave and shall have final authority to determine whether or not a grave exists and what constitutes the remains.

**RECORD OF
GRAVE RELOCATION**

The grave relocation agent shall record a chronological detailed record of each disinterment, transference, reinterment, and when monuments and grave markers are being removed, transferred, and set. The record shall include:

- Date
- Time
- Place of the meeting
- List of all persons present by name and title
- The events which occurred (in detail)

**RECORD OF
GRAVE RELOCATION
(CONT.)**

The records of grave relocation shall be inclusive of all pertinent items discussed, questions asked, and answers given. If an answer to a question is not readily available, the grave relocation agent shall include the answer in the record of a subsequent meeting. The grave relocation agent shall include as much information as possible.

**UNMARKED
GRAVES**

In cemeteries where there are no markers or where the existence of graves is uncertain because markers have been moved, it may be necessary to dig to ascertain the existence of graves. The grave relocation agent shall mark the disinterment plat with a crosshatch grave symbol to reflect that no grave was found following digging. Contracts shall include provisions to pay contractors for digging to ascertain the existence of graves, even when graves are not found.

STAKING


The grave relocation agent shall ensure that each reinterment grave in nonestablished cemeteries is staked and properly numbered. The stake shall remain in position until the grave is permanently identified.

PHOTOGRAPHS

The agent shall take photographs as the funeral director is working and shall photograph monuments after the funeral director has set them in the reinterment cemetery. These photographs shall be kept in the district grave relocation project file.

Note: Upon completion of grave relocation activities all photographs shall be submitted to Central Office to be placed in the grave relocation project file.



	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>Contractor Requirements</p>

GENERAL REQUIREMENTS

The contractor shall be present during all phases of the actual disinterment and reinterment of remains and shall not subcontract any portion of the work without prior written approval of the Director of the Division of Right of Way and Utilities. The contractor shall assume all risks of damage to property or injury to persons resulting from work performed under the contract. The contractor shall also be responsible for all work specified in the contract and for all tools, appliances, and equipment needed to disinter, reinter, transport, and reset monuments, grave markers, and gravestones.

DISINTERMENT

All disinterment work shall be accomplished in a manner reflecting proper respect for the deceased and the next of kin. During inclement weather disinterment shall be accomplished under a tent or other suitable enclosure.

Mechanical equipment may be used to begin excavation in a disinterment cemetery, but the contractor shall dig by hand to remove all remains. Excavations shall be to the dimensions necessary to properly remove all remains (minimum 6 feet deep by 3 feet wide by 4 feet long). The remains removed for reinterment shall include all of the body, clothing, jewelry, personal effects, casket or coffin, soil discolored from decomposition, and any other material placed in the grave at the time of the original burial. The district right-of-way supervisor shall have the final authority to determine what constitutes the remains.

If no remains are found, the district right-of-way supervisor shall determine whether any additional excavation is necessary.

Some graves may contain a burial vault made of steel, concrete, fiberglass, or a similar type of material. The contractor shall make every effort to remove material from the grave intact and without damage. The contractor shall replace any vault damaged during removal by the contractor. If a vault is not damaged but the family wants to replace it, replacement shall be at the family's expense.

DISINTERMENT**(CONT.)**

When possible, mechanical equipment may be used to facilitate removal of vaults. Care is to be taken to prevent damage to adjacent graves or monuments during such removal.

REINTERMENT**CONTAINERS**

The contractor shall furnish a good-quality reinterment container for each body or remains relocated. Pursuant to [901 KAR 5:090](#), disinterred human remains shall be enclosed in a container constructed of strong material and of sufficient size to hold the remains without altering their shape or size.

If the human remains are not thoroughly decomposed, the container shall be sealed to prevent the escape of liquids or gas. Reinterment containers shall meet specifications outlined in the solicitation.

Each reinterment container shall have affixed to the head end a rustproof 2-inch by 4-inch plate on which shall be inscribed the name of the deceased (when known), the name of the disinterment cemetery, and the grave's disinterment number.

Upon removal from the grave, the vault shall be marked (with paint or permanent marker, for example) at the head end to show the grave number and name. Such marking shall correspond with the reinterment cemetery plat and the TC 62-52 form, *Grave Data Sheet*.

**REMOVAL &
TRANSPORTATION
OF REMAINS**

All remains—including jewelry, identification markers, coffin, or other containers—shall be removed from each grave and transferred to the container provided for that purpose. This container shall be sealed with a cover, and identification plates shall be properly attached. Reinterment containers shall be covered (with a tarpaulin, for example) while being transported to the designated cemetery for reinterment. If it is necessary to hold the remains overnight, they shall be transported to a licensed funeral home for safekeeping.

REINTERMENT

New graves in the reinterment cemetery shall be spaced so as to provide each with a typical plot. Mechanical equipment may be used to excavate new graves.

Pursuant to [901 KAR 5:090](#), excavation depth shall be as follows:

REINTERMENT (CONT.)

- When the outer burial container is made of concrete, metal, fiberglass, or other impervious material and is hermetically sealed, all parts of the container shall be buried to a depth of at least two feet below the level of the natural surface of the ground. All other burials shall be at least three feet below the level of the natural surface of the ground measured from all parts of the outer container.
- When impenetrable rock is encountered, the local health department may, upon proper application, grant a variance to the depth of burial requirements. When a depth waiver is secured from the local health department, excavation shall stop at the depth specified in the waiver.
- These depth-of-burial requirements apply to all reburials except that thoroughly decomposed human remains may be reburied to such a depth so that no part of the container is less than two feet below the natural surface of the ground.
- The depth of burial requirements does not apply where interment is in a mausoleum.

CHANGE IN SITE

If the next of kin elect to reinter remains in a location other than the designated reinterment site, such change shall be requested in writing by the next of kin and approved in writing by the Director of the Division of Right of Way and Utilities.

RELIGIOUS SERVICES

A brief religious service desired by the next of kin shall be allowed.

EXISTING MONUMENTS**OR MARKERS**

The contractor shall remove all monuments, headstones, footstones, gravestones, and grave markers, including all metal markers and ornaments of value, from existing graves and transport and reset them at the proper reinterment sites. All such items shall be clearly marked during relocation to ensure their replacement at the correct graves. The contractor shall take all precautions to protect such articles from damage during the operation and shall replace at his or her expense any such items that are damaged or broken during the operation.

NEW MONUMENTS

The contractor shall provide a monument for each unmarked grave. At a minimum, the monuments shall be of good-quality granite, a minimum of 18" long by 8" tall by 4" thick, and shall be inscribed with:

**NEW MONUMENTS
(CONT.)**

- Deceased's name (when known) or "Unknown"
- Year of birth and year of death (grave number for "Unknown")
- Name of the disinterment cemetery

Note: New monuments must conform to the reinterment cemetery bylaws.

**SETTING OF
MONUMENTS**

All grave stones and monuments shall be set at the proper reinterment site on concrete foundations that extend beyond the monument bases by at least two inches on every side. Forms are not required for the foundations, except where the ground's contour requires that part of a foundation be above ground, provided reasonably neat lines can be excavated. The depth and thickness of concrete foundations shall be at least twice as thick as the monument bases, and in all cases shall be sufficiently thick to properly support the monuments. Monuments shall be installed in accordance with these instructions and the solicitation.

**BACKFILLING,
GRADING, & SEALING**

The contractor shall open and close all disinterment graves. For safety reasons, all disinterred grave sites shall be backfilled each work day. When all graves have been removed from the disinterment site, the general area shall be returned to its natural ground elevation and shall be left in a neat and clean condition. The contractor shall seed areas disturbed in the disinterment site when specified in the solicitation.

Each grave shall be individually dug, and, where good sod exists, it is to be removed for replacement. Upon refilling, the grave shall be thoroughly compacted and the sod replaced. Where no sod exists, the contractor shall fertilize, seed, and straw the reinterment area, and any other disturbed areas in the reinterment cemetery, to the satisfaction of the grave relocation agent.

FENCING

In cases where fencing existed originally and is to be replaced at the reinterment cemetery, the contractor shall be responsible for supplying and erecting a fence of equal or better quality at the new site. Any fencing needed shall be specified in the solicitation.


**SHRUBS &
DECORATIVE PLANTS**

The contractor is responsible for replacing existing shrubs and decorative plants on an item-for-item basis as specified in the solicitation.

ACCESS Access may be provided to all reinterred graves. The Division of Right of Way and Utilities shall consider approval for the construction of a road to provide necessary access. Provisions for such construction shall be included in the solicitation.

SANITATION The contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use by his or her employees as may be necessary for human waste. Any acceptable type of portable sanitary facility will suffice.



	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>Contract Completion & Payment</p>

**CONTRACT
COMPLETION**

Unless otherwise specified in the solicitation, the contractor may submit an invoice requesting payment of 90 percent of the proposal amount when work has been successfully completed and accepted.

When the contractor has successfully completed all work and the grave relocation agent has conducted an initial inspection, the right-of-way supervisor shall notify the contractor that the work has been conditionally accepted. The notice is to request submittal of the TC 31-519 form, *Standard Invoice*, for payment of 90 percent of the contract amount. Final acceptance and payment shall be made as outlined below under “Final Inspection & Payment.”

**PAYMENT TO
CONTRACTOR**

The contractor shall prepare, sign, and submit an acceptable TC 31-519 form for payment. When the right-of-way supervisor has approved the invoice, the district shall request payment through remote data entry and submit to the Relocation Branch Manager a copy of the invoice along with the following items:

- Copy of the supervisor's notice to the contractor accepting work completed pursuant to the contract
- TC 62-52 form, *Grave Data Sheet*, reflecting work completed pursuant to the contract
- Plat or sketch of the reinterment cemetery showing the sites to which remains (by name when known) were actually relocated

Note: When the remains are unknown, the plat or sketch shall designate them as “Unknown.” The plat or sketch shall list the proper disinterment grave number and identify the reinterment cemetery's name and reinterment plot number.

- Copy of the contractor's bid, page 1 of the contractor's proposal
- Record of grave relocation chronology


**FINAL INSPECTION
& PAYMENT**

After a reasonable time, not to exceed 180 days, the grave relocation agent shall inspect reinterment sites to determine whether substantial sod has been established or whether sinkage of the graves has occurred. The district shall notify the contractor to correct any deficiencies prior to payment of the final 10 percent of the contract amount. The contractor's notice shall be in writing, with a copy forwarded to the Relocation Branch Manager.

After all deficiencies are corrected and the grave relocation agent conducts a follow-up inspection, the right-of-way supervisor shall notify the contractor that the work has been accepted. The notice is to return the contractor's performance bond and, when applicable, request submittal of the TC 31-519 form for payment of the remaining 10 percent of the contract amount. The contractor shall prepare, sign, and submit an acceptable TC 31-519 form, *Standard Invoice*, for payment.

When the right-of-way supervisor has approved an invoice, the district shall submit to the Relocation Branch Manager a copy of the invoice and the supervisor's notice accepting work completed pursuant to the contract.




	Chapter RELOCATION OF HUMAN REMAINS
	Subject Final Notice to Office of Registrar of Vital Statistics

FINAL NOTICE

Upon submission of the final inspection and payment, to the Relocation Branch Manager, the district grave relocation agent shall provide a copy of the TC 62-52 form, *Grave Data Sheet*, and a plat or sketch of the reinterment cemetery showing the actual reinterment site number and the name of the remains relocated, when known, to the Office of the Registrar of Vital Statistics with written notice that the grave relocation project has been completed. Complete copies shall be maintained in the district office and original documents in Central Office files.



	<p><i>Chapter</i></p> <p>ADMINISTRATION & PROJECT CLEARANCE</p>
	<p><i>Subject</i></p> <p>Policy</p>


POLICY

The Division of Right of Way and Utilities shall conduct surveys of property owners and displaced persons affected by right-of-way projects in addition to participating in periodic reviews of district office operating procedures to promote and ensure quality control of the acquisition and relocation process and compliance with *The Uniform Act*.

The division shall advise appropriate personnel as soon as practical when a project is clear for construction and shall process necessary documents to ensure excess money from a project is made available for assignment to other projects.

If possible, the district should immediately contact the Acquisition Branch in order to process all necessary documentation to “close” the right-of-way phase of the project. The district right-of-way supervisor shall note in the right-of-way database if right-of-way closure is not possible due to pending “condemnation” cases and notify via email the Acquisition Branch Manager in Central Office.



	Chapter ADMINISTRATION & PROJECT CLEARANCE
	Subject Clearance of Projects

OVERVIEW

Right-of-way projects sometimes include multiple construction sections. When the Kentucky Transportation Cabinet (KYTC) schedules a project or section for construction, the district right-of-way supervisor shall prepare and submit a TC 62-226 form, *Right of Way Certification*, to the Director of the Division of Right of Way and Utilities at least one month prior to the date of the plans, specifications, and estimate (PS&E). Before right of way can be reported clear, all improvements located within project limits shall be removed or approved for removal by the roadway contractor.

According to [23 CFR 635.309](#), all interstate projects and selected non-interstate projects require the submission of a right-of-way certification to the Federal Highway Administration (FHWA) for approval prior to authorization of construction. Right-of-way certification for all other NHS projects shall be submitted to FHWA as informational copies.

Refer to the most recent Oversight Agreement between KYTC and the FHWA division office that outlines which projects are to be monitored at the PS&E stage by FHWA as required by [23 USC 106\(c\)\(3\)](#).

**RIGHT OF WAY
CERTIFICATION**

A TC 62-226 form, *Right of Way Certification*, shall be used with both state and federal projects. The right-of-way supervisor shall submit a right-of-way certification with the appropriate conditions checked and explain any of the following items, if applicable:

- Total number of parcels on the project
- Total number of residential relocations
- Total number of nonresidential relocations
- Number of parcels purchased and paid
- Number of parcels acquired by IOJ (Interlocutory Order Judgment) and date paid
- Number of parcels not acquired and explanation of each parcel

**RIGHT OF WAY
CERTIFICATION
(CONT.)**

- Number of parcels acquired or have IOJ but not been paid and explanation of each parcel
- Number of relocates not relocated and explanation of each parcel
- Number of billboards
- Number of cemeteries
- Statement verifying either of the following, as applicable:
 - ◆ That all persons displaced have been or will be relocated to decent, safe, and sanitary housing
 - ◆ That no persons were displaced as a result of the project
- Payments to property owners not completed (including expected payment dates)
- Property owners granted permission to remain in improvements for a specified length of time (including the specific date they are to vacate)
- Encroachments still on the right of way (along with an explanation of why they remain on the right of way and their ultimate disposition, including how and when they will be removed)
- Disposition of any underground storage tanks or hazardous materials
- Statement verifying either of the following, as applicable:
 - ◆ That there are no water or monitoring wells located within the area to be acquired for this project
 - ◆ That water or monitoring wells have been acquired
- Any other special or unusual situation


The district right-of-way supervisor shall thoroughly explain all exceptions to enable preparation of the division's right-of-way project certification (a requirement of the FHWA and Division of Highway Design PS&E submissions prior to letting).

The district right-of-way supervisor shall closely monitor all exceptions and submit revised certification letters as exceptions are cleared.

**RIGHT-OF-WAY
CERTIFICATION
(CONT.)**

If a project extends beyond the original letting date, the district right-of-way supervisor shall revise and resubmit certifications with exceptions to the Director of Right of Way and Utilities, without undue delay. Revised certifications shall be submitted one month prior to the project's new PS&E date.



	<p><i>Chapter</i></p> <p>ADMINISTRATION & PROJECT CLEARANCE</p>
	<p><i>Subject</i></p> <p>Project Credits</p>

OVERVIEW

The Acquisition Branch of the Division of Right of Way and Utilities processes project credits through the Division of Accounts for proper disposition and deposit.

If the project has federal funds in the right-of-way phase, the federal share is credited to projects eligible under [Title 23](#) of the United States Code. The state share is credited to the appropriate account.


EXCESS PROPERTY ON FEDERAL PROJECTS

When federal funds are used to acquire right of way and excess property is acquired, KYTC shall require a before-and-after value appraisal.

The Kentucky Transportation Cabinet (KYTC) will bill the Federal Highway Administration (FHWA) only for the amount paid to acquire that portion of the property actually used for highway purposes (including damages, if any, to the remainder).

When excess property is sold, the Acquisition Branch assures proper credit to the appropriate project.



	<p><i>Chapter</i></p> <p>ADMINISTRATION & PROJECT CLEARANCE</p>
	<p><i>Subject</i></p> <p>Citations</p>

POLICY

Central Office personnel shall provide oversight and random reviews of work products submitted for payment. The Central Office shall promptly return work products and documents that are in error or that do not comply with policy and procedures to the district right-of-way supervisor for correction. Any documents or work products completed that do not comply with current policy and procedures or that violate current federal regulations and that are not correctable shall be processed as nonparticipating items. The supervisor shall be advised of the noncompliance incident.


When federal-aid project expenditures are declared nonparticipating by the Federal Highway Administration (FHWA), appropriate action shall be taken immediately.

If the Kentucky Transportation Cabinet (KYTC) rejects the citation, the rebuttal shall be submitted to the FHWA. If the citation is accepted, a memorandum to this effect shall be submitted to the FHWA Division Administrator and the right-of-way officer, with copies to the Office of Budget and Fiscal Management.

Copies of all documents having direct bearing on nonparticipating items shall be sent to the Division of Accounts.

Note: Sanctions always include suggestions or recommendations for correction, and an implementation plan shall be developed, delivered, and audited.



	<p><i>Chapter</i></p> <p>ADMINISTRATION & PROJECT CLEARANCE</p>
	<p><i>Subject</i></p> <p>Quality Assurance Reviews</p>

POLICY Quality assurance reviews are intended as a means of internal oversight for program delivery within the various functions of the Division of Right of Way and Utilities. These reviews may focus on any function of the right-of-way program.

REVIEW TEAM Central Office right-of-way staff members shall semi-annually review district office operating procedures to promote and ensure quality assurance of the acquisition process and compliance with [The Uniform Act](#).

The review team shall consist of at least one of each of the following, unless otherwise authorized by the Director of the Division of Right of Way and Utilities and the local FHWA representative:

- Central Office branch manager (team leader)
- District Right of Way Section Supervisor (from another district)
- FHWA representative

SCHEDULING OF REVIEWS During the last quarter of each year, the Division of Right of Way and Utilities and FHWA shall select districts to be reviewed the following year. Districts scheduled for review shall be advised well in advance of the review date to ensure appropriate personnel are available.

Note: The scheduling of routine reviews does not preclude an unscheduled review of any district’s operating procedures.

REVIEW GUIDELINES Each Central Office right-of-way branch manager, working with FHWA, shall establish criteria for the review of the district as it relates to the discipline of the branch. The review team members shall use the criteria relating to their areas of responsibility. These criteria shall not take away from the individualism of the team members who conduct the review.

REVIEW

GUIDELINES (CONT.)

Reviews may include the district's project files, interviews with selected district personnel, and methods used to assure compliance with established policy and procedures. In some cases, reviews may also include property owner interviews.

Each review shall include an entry and exit conference with appropriate district personnel in which the findings are reported.

The review team shall provide a written report to the Director of the Division of Right of Way and Utilities. The director will provide a report to the chief district engineer, the project development engineer, and the district right-of-way supervisor.

The final report shall identify the current findings and any deficits. When deficiencies are found, they shall be discussed during closeout with the right-of-way supervisor. The final report shall include recommendations and an implementation strategy for making any needed changes.

The final report shall be submitted in an approved format.

**TIMELINE FOR
FINAL REPORTS**


The team leader shall be responsible for preparing the final report and scheduling follow-up reviews for implementation strategies.

Within 15 working days after the completion of the review, the team leader shall arrange and conduct a meeting with the other team members for the purpose of preparing their individual reports relative to their areas of the review.

Within 15 working days after the team members have completed their individual reports, the review team shall submit the final report to the Director of the Division of Right of Way and Utilities.

Right-of-way staff members shall not accept an assignment on the review team if they are unable to comply with the report completion schedule. The team leader shall ensure adherence to the report submission schedule.



	<p><i>Chapter</i></p> <p>SALE & DISPOSAL OF SURPLUS REAL PROPERTY</p>
	<p><i>Subject</i></p> <p>Purpose, Authority, Policy, & Definitions</p>

PURPOSE The purpose of this chapter is to establish uniform procedures to:

- Review real property acquired through the right-of-way acquisition process
- Dispose of those properties that can be declared surplus to the needs of the Kentucky Transportation Cabinet (KYTC)

AUTHORITY The authority for the procedures utilized by KYTC in selling and disposing of surplus real property may be found in the following:

- [23 CFR 710.409](#)
- [23 CFR 710.403](#)
- [KRS 45A.045](#)
- [KRS 45A.080](#)
- [KRS 48.710](#)
- [200 KAR 5:306](#)
- [KRS 416.670](#)
- FHWA Stewardship and Oversight Agreement

POLICY The Division of Right of Way and Utilities is responsible for disposing of all real property or real property interests owned by the Commonwealth of Kentucky for the use and benefit of KYTC that is surplus to KYTC’s needs. This property includes but is not limited to:

- Right of way acquired in excess of actual needs of highway projects
- Surplus right of way
- Highway maintenance facilities
- Minerals
- Easements

POLICY (CONT.) The sale of this type of property shall follow standard business practices that render the highest return for the taxpayers of Kentucky. Disposal actions shall also meet all Commonwealth of Kentucky and federal regulations when applicable. This chapter is not intended to include relinquishments, which are defined as transfers of highway facilities for continued highway use.

DEFINITIONS **Access rights:** Property rights acquired with the purchase of right of way for the control and safety of the traveling public when a road is built

Note: The disposal of these rights shall meet the same requirements as any other disposal. For guidance relative to release of access control, see KYTC's [Permits Guidance Manual](#).

Bid packet: Documents assembled for distribution to prospective bidders

Excess property: Property that is:

- Acquired in connection with a state-funded or federally funded road project, which at the time of acquisition was not needed for right-of-way purposes
- Designated as excess by separate description in the deed to the Commonwealth
- Always outside the proposed right-of-way limits
- Severed from another remainder, denied reasonable access, or changed by the acquisition to the point it has no utility or value to the present owner


Note: Though federal funds may be used to purchase right of way, normally there is no federal participation in the acquisition of excess property.

Surplus property: Property declared surplus to the needs of KYTC by an Official Order of the Secretary of the Kentucky Transportation Cabinet or the Commissioner of the Department of Highways.

Note: Before declaring property surplus to KYTC's needs, a review shall be completed to determine that:

- It is no longer needed for the purpose for which it was acquired
- It will not be needed for KYTC-related purposes in the foreseeable future
- Disposal of the property will not create a hazardous situation for the public



	<p><i>Section</i></p> <p>DISPOSAL OF EXISTING STATE RIGHT OF WAY</p>
	<p><i>Subject</i></p> <p>Review</p>

REVIEW

Sometimes after a highway project has been completed, the district and Central Office determine that a portion of the existing right of way can be used more suitably by an adjoining property owner or by another public agency. Before it can be disposed of, the property must be declared surplus to the needs of the Kentucky Transportation Cabinet (KYTC).

The district shall review the real property acquired for right-of-way purposes for potential disposal due to either the:

- Elimination of the facility from state maintenance
- Recommendation of conveyance of property to private ownership or to another public agency

If it appears that the property can be declared surplus, a joint district office-Central Office review shall be made. FHWA review and approval may be required for property purchased with federal funds. (See current stewardship agreement.) If it is determined that the property is to be retained, the person initiating the request shall be advised in writing by the district surplus property staff that the property is not available for sale and will be retained by KYTC.

PUBLIC ENTITY REQUESTS

A public entity may be given priority over other potential applicants to acquire surplus real property owned by KYTC if the transfer is determined to be in the Commonwealth’s best interests and if the requested property remains in public use.

If the conveyance of surplus property is to be made for less than fair market value, the requesting public entity shall ordinarily agree that said property shall be conveyed so long as the property is employed for a public use and shall be conveyed pursuant to the terms of a restrictive reversion clause covenant.

The fair market value of any real property interest to be conveyed to a public entity shall be determined and disclosed on the instrument of conveyance.

PUBLIC ENTITY**REQUESTS (CONT.)**

If the requesting public entity intends to pay fair market value for the property to be conveyed, the request should ordinarily be processed with the same requirements as a private request (see below).

PRIVATE REQUESTS

An individual making a request to purchase right of way from KYTC shall complete Section 1 of the TC 62-8 form, *Application to Purchase State Right of Way*. The person requesting the property shall ascertain whether he or she is the only fronting adjacent property owner. If the applicant is not the only fronting adjacent property owner, the applicant shall obtain a waiver of right to purchase from any and all fronting adjacent property owners.

The applicant shall be informed that:

- Current fair market value will be charged
- Personnel in KYTC's district office and Central Office will review the request, as well as the Federal Highway Administration (FHWA), to determine if the property was acquired as right of way on the interstate highway system or the Appalachian Development Highway System
- A survey and legal description may be required

Any request to waive fair market value on federal-aid projects requires:

- Public interest determination
- Prior approval of the FHWA

Exceptions to the general requirement for charging fair market value are set out in [23 CFR Part 710.403\(d\)](#). The deed shall provide for reversion of the property for failure to continue public ownership and use.

Upon completion of the sale of the property, the new owner, at his or her expense, is required to do the following within 90 days:

- Place right-of-way monuments at the new property corners
- Replace any required fencing

Note: Verification should be performed by the district permits section.

**JOINT DISTRICT OFFICE –
CENTRAL OFFICE
REVIEW**

The district office and Central Office shall conduct a joint review of a property when it appears the property can be declared surplus. This review shall be coordinated by the district right-of-way staff unless the chief district engineer determines that a staff member in another area coordinates requests for that district. FHWA review and approval is required for property purchased with federal funds. (See current stewardship agreement.)

The following areas shall review the request and complete the appropriate page of the TC 62-7 form, *Checklist for Disposal of Surplus Property*:

- Project Development
 - ◆ Central Office Division of Highway Design—Location Engineer
- Engineering Support
 - ◆ Central Office Division of Maintenance—Permits Branch
- Project Delivery & Preservation
 - ◆ Central Office Division of Maintenance—Field Engineer
- District environmental coordinator, who evaluates environmental effects of disposal action involving federal funds, as provided in 23 CFR Part 771, and completes the following forms:
 - ◆ TC 58-47, *Surplus Property - Notification of Environmental Conditions*
 - ◆ TC 58-46, *Categorical Exclusion Impact Summary Sheet*

If the joint district office-Central Office review indicates that the property can be declared surplus, the person making the request shall be notified and requested to provide:

- Plat prepared, stamped, and signed by a registered land surveyor and legal description of the property to be conveyed in hard copy and editable electronic version.

The plat shall depict the application area along with the applicant's adjacent property lines at the point they intersect with the existing right-of-way line. At this point of intersection, the applicant's property line, as shown on the plat, shall be perpendicular to the centerline of the highway. All bearings and distances shall be tied to the highway centerline and station numbers.

**JOINT DISTRICT OFFICE –
CENTRAL OFFICE
REVIEW (CONT.)**

The plat shall locate items such as:

- ◆ Access points
- ◆ Utilities
- ◆ Easements
- ◆ Fencing, if applicable

Specific information regarding the following shall be provided:

- ◆ Affected drainage
- ◆ Encroachments
- ◆ Level of the application area as it relates to the existing highway grade
- ◆ Any other pertinent information

Any alteration made to the application area by permit prior to disposal shall be noted on the plat and plan sheet, and a copy of the-issued permit shall be provided.

- Current fair market value appraisal of the property prepared by an appraiser prequalified by KYTC

The purpose of the appraisal is to find:

- ◆ Contributing value of the surplus to the adjacent tract
- ◆ Separate “stand alone” or entity value of the surplus property

The applicant shall be advised that he or she is required to pay the higher of the two values. [ROW-602](#), “Appraisal Standards,” provides further details concerning this process under the side heading, “Surplus Property.”

The appraiser shall be advised of all restrictions to be included in the deed, such as:

- ◆ Restricted Use
- ◆ Easements
- ◆ Restricted or prohibited access
- ◆ Prohibition of the erection of billboards

Note: Any proposed sale that is noncomplex and valued at \$10,000 or less may be calculated by a qualified KYTC employee and approved by the right-of-way section supervisor using the Minor Acquisition Review (MAR) process outlined in [ROW-602](#), “Appraisal Standards.”

**JOINT DISTRICT OFFICE –
CENTRAL OFFICE
REVIEW (CONT.)**


When use of the MAR process is appropriate, the following shall be used to determine fair market value:

- Layout and plan profiles with the property under consideration marked in yellow
- Aerial locational map with comps. and subject clearly marked
- Color photographs of the property showing the requested area in relation to the adjoining highway
- Supporting comparable sales data

The district shall forward 2 complete packets (original and one electronic copy) of the following to Central Office:

- Complete TC 62-222
- Completed TC 62-7 form, *Checklist for Disposal of Surplus Property*
- Plat prepared by a registered land surveyor and description of the property to be conveyed, in hard copy and 8 ½ X 14 format
- Layout and plan profiles with the property under consideration marked in yellow
- Color photographs of the property showing the requested area in relation to the adjoining highway
- Aerial map with approximate property lines highlighted in yellow
- TC 62-8 form, *Application to Purchase State Right of Way*, signed and completed by the applicant, the district surplus property agent, and the chief district engineer
- Complete copies of the right-of-way deeds
- Complete copies of the applicant's deeds to the adjoining property
- The name and official corporate title of the individual who will sign on its behalf (if the applicant is an entity or corporation, check Kentucky Secretary of State website) and provide copy of the organizational search.
- Current marital status and how the disposed surplus property will be held (if the applicant is an individual)



	<p><i>Section</i></p> <p>DISPOSAL OF EXISTING STATE RIGHT OF WAY</p>
	<p><i>Subject</i></p> <p>Encroachment Permit</p>

ISSUANCE OF ENCROACHMENT PERMIT


The district permits engineer shall inform an encroachment permit applicant that he or she must also submit the TC 62-8 form, *Application to Purchase State Right of Way*, if intending to purchase the affected right of way. The granting of the encroachment permit does not imply that the purchase will automatically be approved.

The applicant shall be advised that work activities shall not commence on the right of way until the:

- TC 62-8 form has been submitted
 - ◆ If the right of way is improved with or without issuance of an encroachment permit prior to the date the TC 62-8 form is submitted, the right of way shall be appraised in its improved condition.
- Encroachment permit has been issued
 - ◆ If encroachment-permitted activities are incomplete at the time the deed is to be executed, the property closing shall be delayed until the permitted activities have been completed and released to the satisfaction of the district permits engineer.
 - ◆ If the encroachment-permitted activities are not completed to the satisfaction of the Kentucky Transportation Cabinet (KYTC) within the period of the permit, appropriate personnel shall conduct an evaluation regarding disposition of the property.

Note: If the purchase of specific property requires improvements before the property can be determined surplus, an approved permit must be completed and released to the satisfaction of KYTC prior to the execution of a deed for the property.



	<p><i>Section</i></p> <p>DISPOSAL OF EXISTING STATE RIGHT OF WAY</p>
	<p><i>Subject</i></p> <p>Central Office Action</p>

**CENTRAL OFFICE
ACTION GUIDELINES**

Requests recommended by the chief district engineer (CDE) and referred to the Division of Right of Way and Utilities shall be reviewed for compliance with Kentucky Transportation Cabinet (KYTC) policy and procedure.

If the requested right of way was acquired as interstate right of way, a conveyance to a public entity for less than fair market value on a federal-aid project, or right of way acquired for part of the Appalachian Development Highway System (APD), the requested design change and the appraisal shall be forwarded to the Federal Highway Administration (FHWA) for review and approval of the disposal. (See current stewardship agreement.)

Upon approval by appropriate Central Office personnel and by the FHWA, when applicable, and upon completion of the appraisal review, a purchase agreement may be prepared, and the applicant shall be notified of the amount of payment that is to be received for the property.


Upon receipt by the Division of Right of Way and Utilities of a purchase agreement signed by the purchaser and the required good faith deposit, an Official Order shall be prepared to declare the property surplus to KYTC’s needs. The Official Order shall be forwarded for execution to the Secretary of the Kentucky Transportation Cabinet. If the property was acquired with highway bond-issue funds (parkways, resource recovery roads, economic development roads, etc.), the request shall be submitted to the Turnpike Authority of Kentucky for review and approval at its semiannual meeting. (See [ROW-1405](#), “Sale of Bond-Funded Excess/Surplus Property.”)

Upon approval of the Secretary of the Kentucky Transportation Cabinet and upon the assent of the Turnpike Authority of Kentucky, when applicable, the following shall be sent to the Finance and Administration Cabinet for final approval:

**CENTRAL OFFICE ACTION
GUIDELINES (CONT.)**

- KYTC Official Order declaring the property surplus to the needs of KYTC
- Finance Official Order approving KYTC to proceed with the execution of the disposal of the property
- KYTC-approved appraisal of the property
- Proposed deed of conveyance for the subject property
- Approved survey accurately depicting the property to be conveyed
- TC 62-8 form, *Application to Purchase State Right of Way*, signed by the appropriate CDE recommending the disposal
- Adjoining property owner waiver, if applicable



	<p><i>Section</i></p> <p>DISPOSAL OF EXISTING STATE RIGHT OF WAY</p>
	<p><i>Subject</i></p> <p>Disposal of Property Acquired by Highway Purpose Deed & Other Disposals</p>

HIGHWAY PURPOSE

DEED

Requests for the disposal of property acquired by highway purpose deed and no longer needed for Kentucky Transportation Cabinet (KYTC) use due to realignment shall be reviewed in the same manner as other private requests. Disposals may be made by request as in turnbacks or relinquishments to other government agencies.

OTHER DISPOSALS

When KYTC initiates the release of existing right of way, the degree of review and administration varies depending on the nature of the case. The following phases and requirements generally prevail with necessary modification:

Example 1—If deed specifically states and requires a reversion upon abandonment, the review is outlined as follows.


- A joint district office–Central Office review using the TC 62-7 form, *Checklist for Disposal of Surplus Property*, is conducted as outlined in [ROW-1402-1](#), "Disposal of Existing State Right of Way: Review."
- The district submits to the Central Office:
 - ◆ Completed TC 62-7 forms
 - ◆ Reproducible plat and plan sheets
 - ◆ Copy of the right-of-way deed
 - ◆ Names and addresses of the persons to whom the described property is to be conveyed
- The Division of Right of Way and Utilities:
 - ◆ Reviews the request
 - ◆ Prepares documents to declare the property surplus
 - ◆ Submits the request for final approval to the:
 - Secretary of the Kentucky Transportation Cabinet
 - Secretary of the Finance and Administration Cabinet
 - FHWA, if federal funds were used to purchase the property (See current stewardship agreement.)

OTHER DISPOSALS
(CONT.)

Example 2—A street or roadway is removed from state maintenance by Official Order of the Secretary of the Kentucky Transportation Cabinet

No further KYTC review is necessary. Specific requirements are governed by the nature of the conveyance. These transactions may be initiated by memorandum to the Division of Right of Way and Utilities.



	<p><i>Chapter</i></p> <p>SALE & DISPOSAL OF SURPLUS REAL PROPERTY</p>
	<p><i>Subject</i></p> <p>Procedure for Disposal of Excess Property</p>

RECORDS

Frequently, parcels of excess property are acquired in conjunction with the purchase of right of way for a highway project. When excess property is purchased, the district Right of Way Section shall maintain individual parcel files containing the following documents:

- TC 62-85 form, *Notice of Excess Purchase*
- 8½" x 11" reproducible plat
- Legal description, in hard copy and electronic form
- Right-of-way acquisition deed
- TC 62-209 form, *Payment Summary*
- A new program number (if needed for federal projects)

The district shall retain excess property parcel files on a project basis, except those traded pursuant to “Trade of Excess Property on Active Project” (see below), until two years after the highway construction project has been completed. The district shall maintain an inventory of all excess property purchased and shall check accumulated project records against the acquisition plans to confirm the total number of excess parcels acquired.

Note: When excess property is acquired, the district shall forward a copy of the completed excess file to the Central Office Relocation Branch, where excess property data is added to a statewide inventory.

AFTER CONSTRUCTION

The district right-of-way supervisor shall begin a review of a project’s excess property purchases two years after completion of the construction project. This review shall include but not be limited to a review of each excess property purchased on the project and completion of the TC 62-7 form, *Checklist for Disposal of Surplus Property*. All properties recommended for disposal may be incorporated on one form. However, any parcel to be retained shall be indicated on a separate, adequately documented TC 62-7 form.

AFTER CONSTRUCTION**(CONT.)**

The district shall forward excess property parcel files to the Division of Right of Way and Utilities when parcels are recommended for disposal. Files forwarded to the Division of Right of Way and Utilities shall contain all documents specified above in "Records." Files for excess property parcels recommended for disposition shall be accompanied by completed TC 62-7 forms and two sets of plans with parcels outlined in red.

MANDATORY RESALE OF

CONDEMNED PROPERTY See [KRS 416.670](#), referred to as the "eight-year law."

RETENTION OF**EXCESS PROPERTY**

The chief district engineer shall notify the Division of Highway Design of any parcel of excess property determined to be of some present or future use to the Kentucky Transportation Cabinet (KYTC). The Division of Highway Design will make the necessary notation on the record plans, designating this as existing right of way. The right of way inventory record shall indicate all such transactions and reasons for retention.

TRADE OF**EXCESS PROPERTY****ON ACTIVE PROJECT**

Excess property on an active project may be traded for rights of way on the same project if excess to project needs. To initiate the trade, the right-of-way supervisor shall recommend that the excess property be declared surplus. The project engineer and chief district engineer shall concur in the supervisor's recommendation and submit it to the Relocation Branch Manager for Central Office approval. Upon completion of the transaction, the district shall submit to the Division of Right of Way and Utilities, along with a prepared deed to be executed:

- TC 62-85 form, *Notice of Excess Purchase*
- Description and plat of the tracts of land to be traded, in hard copy
- Value determinations for each tract
- Mailing address, marital status, and social security number of the grantees, along with any other information needed to properly prepare a deed of conveyance
- Memorandum with signature lines for chief district engineer and project manager

Note: Approval of the Director of Right of Way and Utilities is required prior to discussion of "non-excess" exchanges.

**TRADE OF EXCESS
PROPERTY ON ACTIVE
PROJECT (CONT.)**

The value determination can be the appraised after value, when its value can be abstracted from the appraisal. When several excess tracts are combined, additional documentation in the form of a review value finding may be required. Central Office shall have the deed prepared, executed, and returned to the district.

**EXCESS PROPERTY
RECOMMENDED,
APPROVED, &
AUTHORIZED FOR SALE**

All parcels of excess property shall be recommended for disposal in the form of a joint Official Order signed by the Commissioner of the Department of Highways and the Secretary of the Transportation Cabinet. The purpose of the order is to declare the parcel surplus to future needs and to request the Secretary of the Finance and Administration Cabinet to authorize disposal to another public agency or by public sale. The receipt of an approved Official Order from the Secretary of the Finance and Administration Cabinet constitutes authority to sell the property. FHWA review and approval is required for property purchased with federal funds. (See current stewardship agreement.)

FIELD REVIEW

Representatives of the district office and the Central Office shall make a field review of the property to:

- Take photographs and become as familiar with each tract as possible
- Identify each tract at strategic corners to simplify future signing and showing of the property
- Identify landmarks that may be used to inform the public of the property location
- Obtain the names of adjacent property owners and identify the most widely circulated newspaper in the area
- Collect sales data and other necessary information such as access, zoning, conditional uses of the property, type of terrain, improvements, encroachments, utility easements, availability of public utilities, and crop and feed grain allotments

**SALE BY PRIVATE
NEGOTIATION**

Normally, excess property shall be disposed of by sealed bids or public auction. Occasionally, sales may be conducted by private negotiations when circumstances indicate the public interest would best be served. Such sales are made to fronting adjacent owners, agencies, or municipalities where such action and future use would directly benefit the public. All such sales shall be approved on an individual basis.

No sale may be considered final until approved by the Secretary of the Finance and Administration Cabinet.

SALE BY SEALED BID Upon receipt of the approved Official Order from the Finance and Administration Cabinet, the district or Central Office shall assemble all data necessary to prepare the TC 62-6 form, *Invitation for Bids: Sale of Excess/Surplus Property*. A legal description and plat of the property shall accompany each invitation.

Before setting a bid-opening date or distributing bids to prospective bidders, the district or Central Office shall submit a proposed bid packet to the division's property management section. Upon Central Office review and approval, the district or Central Office shall solicit bids pursuant to established KYTC procedures.

Invitations shall be made available to bidders at the district office, Central Office, or other appropriate locations. Copies of the invitation shall be mailed to persons who have expressed an interest in acquiring the property or to persons otherwise believed to be interested.

An envelope stamped "SEALED BID" on both the front and the back, with the district's or Central Office's address (including street and room number), the bid invitation number, and the date and time when bids are to be opened, shall be attached to each invitation.

All bids received shall have the "time and date received" noted on the envelope. Bids shall be filed by invitation number in a secure place to protect the integrity of the bidding process. No information shall be disclosed as to the number of bids received or the identity of the bidders.

BID ADVERTISEMENT Pursuant to [KRS 45A.080\(3\)](#), the district or Central Office shall give adequate public notice of an invitation for bids. The notice may include posting on the Internet or publication in a newspaper or newspapers of general circulation in the state as determined by the Secretary of the Finance and Administration Cabinet not less than 7 days before the date set for the opening of the bids and any reverse auction.

The district shall have the notice posted on the Internet or published in a newspaper with the largest circulation in the area of the subject property. The notice shall be posted at least 7 days prior to the opening of bids and shall contain the following information:

- Notice that the sale is by sealed bid
- Bid invitation number
- Name of the using agency
- General description of the properties to be sold, including parcel number and general location of the property
- Date, time, and place at which bids are to be opened
- Place or phone number from which the bid invitation may be requested

**BID ADVERTISEMENT
(CONT.)**

- Notice that the Commonwealth reserves the right to reject any and all bids
- Notice that KYTC can make accommodations for persons with disabilities if given 48-hour notice prior to the bid opening

OPENING OF BIDS

Bid openings shall be public meetings to which bidders and other interested parties are cordially invited. The opening of the bids shall be witnessed by at least two representatives of KYTC. As bids are opened, they shall be recorded on a TC 62-43 form, *Bid Summary*.

HIGHEST BIDDER

The high bidder for each parcel, whose bid equals or exceeds the appraised value, shall be notified in writing by the district that his or her bid is being recommended to the Finance and Administration Cabinet for approval. His or her deposit will be held in the KYTC Trust Account pending the final results of the sale. All other checks of deposit received shall be returned immediately by certified mail to the bidder with an appropriate explanation.

The high bidder for each parcel whose bid fails to equal or exceed the appraised value shall be notified in writing that one of the following recommendations is being made to the Finance and Administration Cabinet:

- That the bid did not equal the appraised value and that all bidders will be asked to submit another bid
- That the bid, although not equal to the appraised value, is being recommended for approval
- That the bid, although high, is not sufficiently near the appraised value and that a recommendation is being made to enter into private negotiations for the amount of the appraised value

Once sealed bids are accepted, every effort shall be made to dispose of the property as a result of such sale. When it is determined that the cost of another sale would exceed the difference between the high bid and the property's appraised value, the final recommendation listed above shall be made to the Finance and Administration Cabinet.


On small, insignificant tracts of land that may fail to receive a bid, a recommendation shall be made to enter into private negotiations at the appraised value.

**HIGHEST BIDDER
(CONT.)**

When approved by the Secretary of the Transportation Cabinet, deeds are prepared and sent to the Office of Legal Services. Upon approval as to form and legality, copies of the bid, appraisal, and deed are sent to the Finance and Administration Cabinet and the Office of the Governor for final approval.

The district shall coordinate delivery of the deed, which is to be recorded in the county court clerk's office. The Division of Right of Way and Utilities shall process money received to the Division of Accounts for credit to the appropriate account.



	<p><i>Chapter</i></p> <p>SALE & DISPOSAL OF SURPLUS REAL PROPERTY</p>
	<p><i>Subject</i></p> <p>Sale by Public Auction</p>

PROCEDURES

Excess or surplus property shall be sold by public auction when it is determined to be in the best interest of the Commonwealth. The determination to sell property by this method shall be based on but not limited to the size, shape, value, and location of the property and the amount of interest shown by the general public in acquiring the property. When the best method of sale is by public auction, qualified employees of the Commonwealth are to conduct the sale if possible. However, if qualified employees are unavailable or if the property is of such a nature that the Kentucky Transportation Cabinet (KYTC) requires professional services, KYTC is to enter into a contract with a realtor or auctioneer to conduct the sale.

All sales of excess or surplus property by KYTC by public auction shall be made under the procedures outlined here and in [ROW-1403](#), "Procedure for Disposal of Excess Property."

ADVERTISING & PROMOTION

All advertising and promotion of the sale shall be the responsibility of the district or Central Office. Each advertisement shall contain the following:

- Notice that the high bidder shall be required to sign a purchase agreement and post a predetermined deposit
- Notice that KYTC can make accommodations for persons with disabilities if given 48-hour notice prior to date of the auction

ADVERTISEMENT PLACEMENT

Pursuant to KRS 45A.080(3), the district or Central Office shall give adequate public notice of an auction.

The district shall have the notice posted on the Internet or published in a newspaper with the largest circulation in the area of subject property. The notice shall be posted at least 7 days prior to the date set for public auction.

PURCHASE

AGREEMENT


On the date of sale, at least two representatives of KYTC shall be present to assist in handling the sale. The high bidder shall be required to post a deposit and sign a TC 62-9 form, *Purchase Agreement Public Sale*.

The TC 62-9 form shall be sent to the Secretary of the Transportation Cabinet for approval. When approved, the deed shall be prepared and sent with the TC 62-9 form and appraisal to the Finance and Administration Cabinet for final approval.

DEEDS

The district shall coordinate delivery of the deed, which is to be recorded in the county court clerk's office. The Division of Right of Way and Utilities shall process money received to the Division of Accounts for credit to the appropriate account.




	<i>Chapter</i> SALE & DISPOSAL OF SURPLUS REAL PROPERTY
	<i>Subject</i> Sale of Bond-Funded Excess/ Surplus Property

PROCEDURES

All sales of excess or surplus property located on bond-funded projects shall be made according to the same procedures previously set out, with all receipts being credited to the appropriate account according to the prevailing bond indenture. Concurrence shall be obtained from the Turnpike Authority of Kentucky prior to such sale.

The chairperson of the Turnpike Authority of Kentucky executes the deed of conveyance when title to the property has been transferred to the authority.



	<p><i>Chapter</i></p> <p>SALE & DISPOSAL OF SURPLUS REAL PROPERTY</p>
	<p><i>Subject</i></p> <p>Credit of Proceeds from Sale of Property</p>

OVERVIEW Upon receipt, proceeds from the sale of surplus property shall be submitted through the Division of Right of Way and Utilities to the Division of Accounts, where appropriate credit shall be given as indicated in the following sections.


FEDERALLY FUNDED PROJECTS The Division of Accounts credits the federal share of proceeds to projects eligible under [Title 23](#) of the United States Code. The state share shall be credited to the appropriate account.

BOND-FUNDED PROJECTS If any portions of the bonds are still outstanding, the Turnpike Authority of Kentucky shall be credited with 100 percent of the proceeds. After the bonds are paid off, proceeds shall be deposited to the Road Fund.

MAINTENANCE SITES & BUILDINGS Proceeds from the sale of surplus maintenance sites and related buildings shall be credited to the appropriate account.

FINANCE CABINET The [Finance and Administration Cabinet’s Division of Real Properties](#) shall be notified of the deed book and page number of the recorded deed when the transaction is completed.



	<p><i>Chapter</i></p> <p>SALE & DISPOSAL OF SURPLUS REAL PROPERTY</p>
	<p><i>Subject</i></p> <p>Disposal of State-Owned Lots & Buildings</p>


INSPECTION When Kentucky Transportation Cabinet (KYTC)-owned lots or buildings are to be sold or demolished, the Division of Facilities Support shall inspect the property and salvage all items of value to KYTC.

REVIEW When KYTC maintenance and repair shops are vacated, the chief district engineer (CDE) shall submit to the Division of Right of Way and Utilities a recommendation for their disposal. If documents are in order, steps shall be taken to properly dispose of the property and, if necessary, have an appraisal made.

PRIORITY OF DISPOSAL Any other state or local government agency shall be given first priority to acquire such properties if the intended use shall be in the public interest. If an interest is indicated, the Finance and Administration Cabinet may authorize private negotiations.

SALE OF SURPLUS LOTS Joint Official Orders signed by the Secretary of the Transportation Cabinet and the Secretary of the Finance and Administration Cabinet shall be prepared declaring the property surplus and authorizing the method of disposal. Where environmental issues are present, the deed will so reflect.



	<i>Chapter</i> SALE & DISPOSAL OF SURPLUS REAL PROPERTY
	<i>Subject</i> Surplus Property Sales Records

SALES RECORDS

Sale files for each parcel of property sold shall be maintained in the Division of Right of Way and Utilities for at least three years after the date of the sale. After three years, records shall be forwarded to the [Kentucky Department for Libraries and Archives](#) for retention per retention schedule.

An inventory of all property sold shall be maintained in the Division of Right of Way and Utilities for future reference. Records of sales for this inventory shall be accumulated on a fiscal-year basis.

