

# Right-of-Way

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# Federal Rules & Regulations

- ❖ The 5<sup>th</sup> Amendment to the US Constitution states “. . . nor shall private property be taken for public use, without just compensation.”
- ❖ All of our R/W activities are governed by the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, a/k/a the **Uniform Act**.
  - This act was passed into law on January 2, 1971 as Public Law 91-646 to ensure that persons whose real property is acquired or who move as a result of projects receiving Federal funds, **will be treated fairly and equitably**.
  - The Uniform Act is codified in title 42 of United States Code Chapter 61 and further defined in 49 Code of Federal Regulations (CFR) part 24 & 23 CFR part 710.

# Required Steps:

- ▶ Project need identified
- ▶ Project alignments are proposed
- ▶ Environmental Document is completed
- ▶ Project alignment is selected
- ▶ Design is completed to a level sufficient to determine property impacts
- ▶ Project General Information Notices issued

## ❖ Just Compensation

- “...nor shall private property be taken for public use, without just compensation.”  
(5<sup>th</sup> Amendment)

## ❖ How is Just Compensation determined?

- An appraisal performed by a licensed appraiser to determine fair market value is usually the best measure of just compensation.

## ❖ Federal Requirement (49 CFR Part 24)

- “. . . the amount shall not be less than the approved appraisal . . . .”

# Acquisition

- ❖ Acquire expeditiously by negotiations. (Owner allowed no less than 30 days to consider offer.)
- ❖ Afford owner opportunity to accompany appraiser.
- ❖ Establish just compensation amount.
- ❖ Disregard increase or decrease in value caused by project.
- ❖ Provide written statement and summary of basis for just compensation.

# Acquisition (continued)

- ❖ Owner retains property until paid the fair market value or that amount is deposited in court.
- ❖ Owner receives at least 90 days occupancy permitted after acquisition offer made.
- ❖ If owner continues occupancy as a tenant, NDOT rents at market rate.
- ❖ Coercion prohibited.
- ❖ Fully-informed owner may donate property to agency.

# Negative Equity Acquisitions

- ▶ Displaced persons “shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons” (42 USC 4621(b))
- ▶ FHWA’s temporary Programmatic Waiver allows NDOT to acquire homes with negative equity without impacting the owner’s replacement housing payment (RHP).

# Criteria to qualify

- ▶ Negative equity
  - Encumbered by mortgage or other qualified liens in an amount above the current market value
- ▶ Need to pay off mortgage a direct result of the project.
- ▶ Are not in default and continue to meet monthly payment obligations (default situations will be handled on a case by case basis)



# Example Calculation Just Compensation with negative equity

- \$200,000 (Mortgage Amount)
- \$150,000 (Just Compensation Offer)
- \$50,000 (Increase–Administrative Settlement)

# Example Calculation of Replacement Housing Payment (RHP)

$$\begin{array}{r} \$170,000 \text{ (Comparable Replacement Dwelling)} \\ - \$150,000 \text{ (Just Compensation Offer)} \\ \hline \$20,000 \text{ (RHP Eligibility)} \end{array}$$

# Total Benefits for this example

- ▶ The property owner receives:
  - \$150,000 Just Compensation offer to be applied toward mortgage balance
  - \$50,000 Administrative Settlement to zero out mortgage balance
  - \$20,000 Replacement Housing Payment to purchase a replacement dwelling
  - Plus relocation benefits

# Relocation

- ❖ The Uniform Act applies if displacement of people, businesses, farms or non-profit organizations becomes necessary. NDOT must assure that displaced persons are afforded the proper assistance and provided all the payments to which they are entitled.

# Relocation Process

## ❖ Uniform Act Requirements

### ➤ Commercial and Residential

- Notices
  - General information
  - Notice of Relocation Eligibility
  - Ninety-day Notice
  - Thirty-day Notice

**Note:** No person shall be required to relocate until a replacement dwelling has been located.

# Relocation Process (cont'd)

## ❖ Uniform Act Requirements

### ➤ Residential Relocation

- Payments for Moving & Related Expenses
- Rental Assistance, Down Payment Assistance or Replacement housing payments
- Alternative Residential Relocation Benefits
- Planning, Advisory Services & Coordination
  - Assistance in finding and relocating to a “Comparable Replacement Dwelling”



# Relocation Process (continued)

## Residential Comparable Replacement Dwelling

### ❖ Defined as:

- Decent, Safe, and Sanitary (DSS)
- Functionally equivalent
- Adequate in size to accommodate the occupants
- In an area not subject to unreasonable adverse environmental conditions
- In a location not less desirable
- On a site that is typical in size
- Currently available
- Within the financial means of the displaced person



# Relocation Process (continued)

## Residential Comparable Replacement Dwelling

- ▶ If no comparable housing is available this program provides assistance. Based on:
  - the availability of comparable replacement housing in the project area
  - the individual circumstances of the displaced person



# Relocation Process (continued)

## Residential Comparable Replacement Dwelling

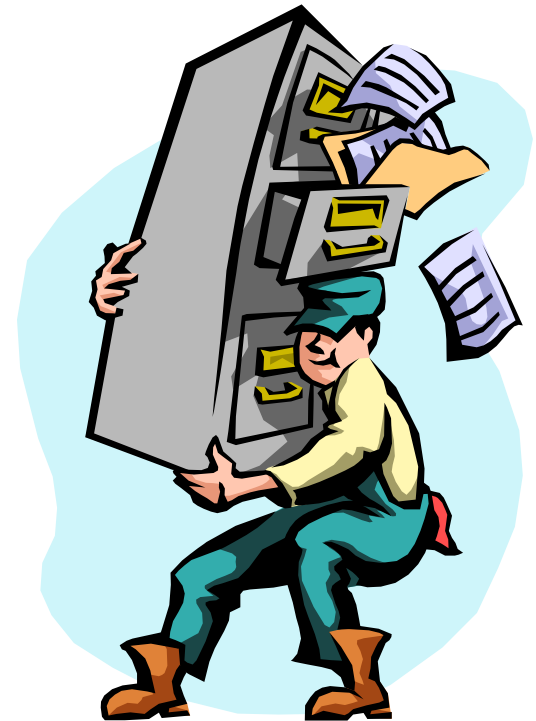
### ❖ Steps

- Is informed of the comparable replacement dwelling's location
- Has sufficient time to negotiate
- Is assured of receiving the relocation assistance in sufficient time



# Relocation Process (continued)

- ❖ Uniform Act Requirements
- ❖ Commercial Relocation
  - Planning, Advisory Service & Coordination
  - Commercial Relocation Payments
    - Payments for Moving & Related Expenses
      - Actual
      - Fixed



# The End...

I hope you have found this presentation to be helpful.

Thank you for your time.