

RELOCATION INCENTIVES

The Texas Department of Transportation Creates a Winning Formula



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The issue of late occupants – those entering occupancy of rental properties after the 90-day tenants had vacated, but prior to State acquisition of the property – has often been a source of contention. Many governmental agencies have the capability to control the late occupant dilemma by offering landlords a lost rent payment to keep residential rental units vacant during the time the 90-day tenant has vacated the property and the time the agency acquires possession of the property.

In Texas, the State's Property Code prohibits State agencies from providing any relocation assistance entitlements not specifically authorized in the "Uniform Relocation Assistance and Real Property Acquisition Act of 1970, and amendments thereto." With the Federal Highway Administration (FHWA) willing to participate in many new relocation entitlements, State law still prohibits payment for any relocation benefit not specifically included within the Uniform Act and its amendments.

For many years, the Texas Department of Transportation (TxDOT) had noted that late occupants normally required replacement-housing rental payments exceeding those of the original tenant, yet also routinely

delayed clearing the right of way due to the need to compute additional replacement-housing supplements and issue additional vacating notices. The cost of the additional tenant was not merely limited to another replacement-housing payment, but also to the increased cost of department personnel time and often right of way consultant fees associated with a second displaced person. Delays were compounded on occasion when late occupants occupied a multi-family unit and were not immediately detected, or were detected after the State had already acquired the property clear for utility adjustments and construction.

Facing one of the largest relocation projects in the history of the TxDOT with the widening of Interstate Highway 10 (Katy Freeway) in the Houston District, the Relocation/Valuation Branch of TxDOT's Right of Way Division was challenged with developing an innovative way to reduce late occupants within the confines of State law. The key was to produce a viable solution that would be acceptable to the FHWA and be considered an authorized payment within the Uniform Act. TxDOT classified the proposed benefit as a moving expense since Subpart D, Section 24.301(g)(7) allows "Other moving related expenses that are not listed as ineligible under Section 24.301(b), as the Agency determines to be reasonable and necessary."

The decision was then made to pursue a payment directly to the displaced 90-day tenant that would encourage continued occupancy of the displacement dwelling until the State's possession of the property. In addition to providing the affected displacee with additional funds to assist in their eventual relocation, the incentive payment would also assist the landlord in retaining tenants. Landlords who had long complained that TxDOT was "running away their paying tenants prior to acquisition," and sometimes hindering relocation efforts by not providing necessary tenant information or allowing immediate access to the property, would now know that TxDOT was willing to offer financial assistance that would help retain tenants until the property was acquired.

This resulted in a payment entitled "continued occupancy incentive payment." To be eligible for this payment, a 90-day tenant must have voluntarily agreed to remain in occupancy of the displacement dwelling until the property was acquired by the State through either negotiations or eminent domain. The payment would not jeopardize any other relocation payment authorized under the Uniform Act, and required that the originally approved replacement-housing rental supplement be revisited and revised (if necessary) prior to the actual move to assure comparable housing within the displaced person's financial means was still available. The payment would be made in a lump sum upon the displacee vacating the property, and there was no provision for a partial payment if the displacee changed their mind and decided to vacate the dwelling prior to State possession of the property.

Prior to initiating this pilot program, the FHWA was contacted with details of the proposed payment. The payment was found to be in compliance with the Uniform Act, and written permission for its use was granted by the FHWA in July 2003. They considered the payment a fair and simple incentive to decrease exposure to late occupants, and supported the fact that this payment was being made directly to the displacee rather than the landlord.

Now that the continued occupancy incentive payment pilot program had been cleared for use, the question of the amount of the payment had to be discussed and based on tangible information. First, past information regarding average rental assistance payments paid to late occupants was established to ensure that the amount of the incentive payment would result in a substantial cost savings to taxpayers. For the past three years, the average late occupant payment in the Houston District was found to be \$13,462. The second step was to determine the average rental cost for residential properties located on the project. This amount was found to be approximately \$825 per month. Since all displacees are given at least 90 days to move from the displacement property, a decision was made to make the incentive payment equal to approximately three months of rent at the displacement location.

Thus \$2,500 was selected as the entitlement under the program ($3 \times \$830.00 = \$2,475$, rounded to \$2,500).

With the procedures and payment amount in place, the Houston District agreed to participate in the initial use of this program for the Katy Freeway project. While implemented on a project-wide basis with a total of more than 800 displacees, the ultimate test of the program's value would be realized on an apartment complex containing 97 displaced 90-day tenants. The results were surprising, both in the number of displacees opting to participate and the estimated tax savings for the citizens of Texas.

Of the 97 displacees, 79 of them (81%) took advantage of the continued occupancy payment. Based on the average late occupant rental payment and the State's cost for the project consultant to relocate a second displacee from the same unit, the taxpayer savings—by utilizing the continued occupancy payment—was estimated at \$15,415 per residential unit, or \$1,217,785 for the entire apartment complex. This total assumes that all units vacated under the normal procedures would be re-leased, but does not reflect administrative costs that would have been associated with the review and approval of a possible 79 additional rental supplements for late occupants.

This pilot program was also utilized in TxDOT Tyler District in 2004, where 100% participation resulted in an estimated taxpayer savings of \$1,533,983. The majority of residences involved in the Tyler project were government subsidized. The continued occupancy payment not only provided the same benefits as in Houston, but also provided the Department of Housing and Urban Development with additional time to bring additional comparable housing online to ensure that low income tenants could move to replacement housing without losing government benefits.

In September 2007, TxDOT officially incorporated the continued occupancy incentive payment into their Right of Way Manual as a standard payment option. The amount of the payment will continue to be adjusted on a project by project basis depending on the average rents for the area, and the time period will be expanded to four months to reflect not only the 90-day notice requirement, but also the additional 30-day notice requirement once the State has possession of the property.

Given the dynamic nature and challenges facing both Texas and other rapidly growing states regarding transportation issues, this incentive payment represents a valuable tool to minimize overall costs on a project involving relocation assistance. It also provides additional financial benefits to the tenant and sends a message to landlords that TxDOT is attempting to assist retaining tenants within the limits of State law.

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