

DEMYSTIFYING THE PROCESS

How to determine reimbursement eligibility when reestablishing as a different enterprise



As all relocation professionals know, the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (URA), allows reimbursement to displaced businesses for certain reestablishment and moving expenses. But what happens when a displaced business reestablishes itself as a completely different type of commercial enterprise?

Consider the following scenario. Tommy and his wife Jenny own and operate a tax preparation service, whose office is being displaced by a large interstate highway project funded by the Federal Highway Administration. Unfortunately, Tommy and Jenny's business had been unprofitable over the last few years due to an overabundance of tax preparation services in his city. After conducting research into other types of local businesses, Tommy discovered that his city has only a few donut shops. He was eager to open a new donut shop particularly due to the influx of right of way consultants caused by the highway-widening project. Tommy's research further indicated that right of way professionals consume up to 8,675,309 donuts a year nationally. He knew a good opportunity when he saw it!

EXPENSES CLAIMED

As part of the advisory services required for all displacees, Tommy's relocation agent discussed the likely types of eligible and ineligible expenses with him prior to his new business investment. The agent stressed the importance of gaining the agency's pre-approval on claims, especially if there might be any question as to their eligibility.

Tommy, however, was very eager to build his donut empire. Without notifying his relocation agent, Tommy purchased a

replacement site near the State Department of Transportation building and the offices of several right of way consulting companies. He then turned in claims for the following expenses:

- (1) \$5,000 for installing special wiring for different types of restaurant equipment (his tax office did not require special wiring)
- (2) \$5,000 to modify the replacement site to accommodate the computer system from the displacement site
- (3) \$1,000 for installing and connecting of a new turbo-charged industrial strength dishwasher to the upgraded utilities and existing water line (the dishwasher was, of course, not at the displacement site)

GETTING REIMBURSED

Which, if any, of Tommy's claims should be paid and why? As always, we start with the applicable regulations. In this case, it is 49 CFR Part 24, § 24.304 Reestablishment Expenses – Non-Residential Moves (see Applicable Regulations on page 41). In addition to the payments available under §24.301 and §24.303 of this subpart, a small business (as defined in § 24.2(a)(24)), farm or non-profit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing at a replacement site.

The Federal Highway Administration has offered specific guidance on this type of relocation (http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/policy_and_guidance/uafaqs.cfm). Regardless of whether the nature, character, or type of business

RELOCATION

established after displacement is different from the business displaced by acquisition, the business is still eligible for a reestablishment payment (78. § 24.304). A change in a displaced business does not affect eligibility for actual, reasonable and necessary reestablishment expenses incurred in reestablishing a business. In some instances, it is not economically feasible to relocate a particular business operation and a change in the nature, character or type of business may be the most practical solution for the business operator. Expenditures of funds for reestablishing the business must be reviewed for acceptability. Costs of new or used equipment purchased to serve the changed business operation are not eligible for reimbursement as reestablishment expenses.

Similarly, general repairs or improvements to the replacement property made to the structure because of the personal choice of the business operator are ineligible. The costs of utility upgrades and necessary and reasonable modifications to the real property to accommodate the changed business may be eligible when properly supported. All reestablishment payments are limited by the \$10,000 statutory maximum. Therefore, it appears that Tommy's first two claims are reimbursable under 49 CFR Part 24, §24.304.

But what about the cost to install personal property (a turbo-charged dishwasher) not relocated from the displacement site? The applicable regulations can be found in URA 49 CFR Part 24, § 24.301 Payment for Actual Reasonable Moving and Related Expenses, as noted in the applicable regulations on the following page..

Because the dishwasher was not personal property relocated from the displacement site, the cost of installing it is not covered by either §24.304 or §24.301. Similarly, because there was never a dishwasher at the displacement site, it is not an item of substitute personal property under 49 CFR § 24.301, and thus no payment can be derived from this section.

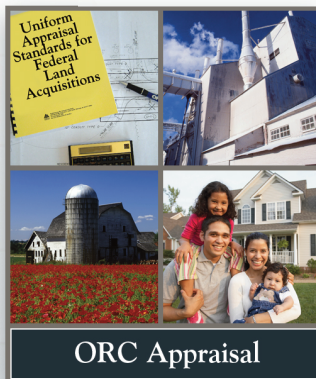
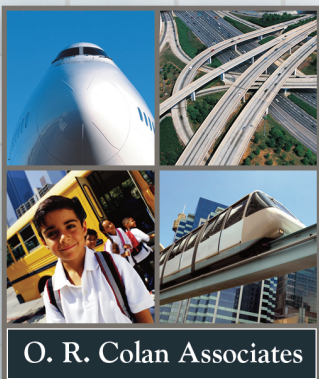
SUMMARY

Tommy and Jenny accepted this determination of the eligibility of their claims and now operate a successful chain of donut shops. However, the business has been impacted due to the number of right of way agents beginning to switch to a gluten free diet. As a result, Tommy and Jenny's Research and Development Department is currently working on creating a gluten-free donut.



The O. R. Colan Group of Companies

Founded on vision and innovation in 1969 by Owen Richard Colan to serve the emerging needs of public agencies, our group of companies continues with our strong culture of innovation today, meeting the national needs of more specialized and diverse real estate markets and services.



POSITIONS OPEN!

- Senior Manager, OH
- Appraisal Manager, OH
- Senior Manager, TX
- Appraisers, OH
- Acquisition Agents, TX
- Relocation Agents, TX

If you are interested in one of these positions, please send your resume to recruiter@orcolan.com or apply online at www.orcolan.com/cs/careers.com.

O. R. Colan Associates is an Equal Opportunity Employer.

11121 Carmel Commons Blvd. • Suite 200 • Charlotte, NC 28226 • Phone: 800.616.1627 • Contact stoth@orcolan.com

To learn more about the O. R. Colan Group of Companies, please visit us on the Web: www.ORColan.com

APPLICABLE REGULATIONS: EXCERPTS FROM THE URA

▶ First and Second Claims

49 CFR Part 24, § 24.304 Reestablishment Expenses – Non-Residential Moves.

(a) Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:

- (1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
- (2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
- (3) Construction and installation costs for exterior signage to advertise the business.
- (4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting.
- (5) Advertisement of replacement location.
- (6) Estimated increased costs of operation during the first two years at the replacement site for such items as:
 - (i) Lease or rental charges
 - (ii) Personal or real property taxes
 - (iii) Insurance premiums
 - (iv) Utility charges, excluding impact fees
- (7) Other items that the Agency considers essential to the reestablishment of the business.

(b) Ineligible expenses. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary or otherwise eligible.

- (1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures.
- (2) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.
- (3) Interest on money borrowed to make the move or purchase the replacement property.
- (4) Payment to a part-time business in the home which does not contribute materially (defined at § 24.2(a)(7)) to the household income.

▶ Third Claim

49 CFR Part 24, § 24.301 Payment for Actual Reasonable Moving and Related Expenses.

(g) Eligible actual moving expenses.

(1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property and connections to utilities available within the building. It also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property...

(16) Purchase of substitute personal property. If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.