REAL ESTATE, PERSONAL PROPERTY OR FIXTURE?

Making the right call requires cooperation

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Business relocations are often difficult for both the displacee and the relocation professional, even with the increased benefit levels under MAP-21. There are legitimate expenses for non-residential owner-occupant displacees that relocation regulations do not cover or only partially cover. At the end of the day, there may be significant amounts of money that may have to come out of the owner-occupant displacee's pocket.

Starting Early

One way to better understand these expenses and prepare for them is through early, close cooperation between the real estate appraiser, fixture and equipment (F&E) appraiser and the negotiation and relocation agents. This coordination should begin at the appraisal stage. Section 49 CFR Part 24.102(e) of the Uniform Relocation Act stresses the importance of appraising both the real estate and fixtures for business property acquisitions.

> **Summary statement.** Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:
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> (1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
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> (2) A description and location identification of the real property and the interest in the real property to be acquired.
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> (3) An identification of the buildings, structures and other improvements (including *removable building equipment and trade fixtures*) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer [italics added].

The separation of real estate items from removable fixtures can be very difficult, but the decision to place an item in one category or the other can have lasting effects on the displacee. This makes it important for the displacee, real estate appraiser and F&E appraiser to meet with the acquisition and relocation agents during the initial inspection of the property. This practice is in agreement with 49 CFR 24.102 (c):

> **Appraisal, waiver thereof, and invitation to owner.**
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> (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in §24.102 (c)(2), and *the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser* during the appraiser's inspection of the property [italics added].

During this initial inspection of the property, all right of way professionals involved can discuss the nature and function of items in order for the appraisers to make the best informed decision as to whether the item is part of the real estate or a fixture. Discussions with the displacee can help everyone understand the consequences of declaring an item part of the real estate or a fixture.

How to Decide

When the first written offer is made, it is incumbent on the negotiator to clearly delineate those items included in the real estate compensation and those items that are being purchased as fixtures. If done properly, the displacee will have a clear idea of whether he or she wants to sell the fixtures or whether it makes more economic sense for the owner to keep and ultimately use relocation benefits to relocate and reinstall the items. The displacee should be reminded that, even if a fixture is salvaged back after sale to the Agency, relocation benefits cannot be used to relocate or reinstall it. Similarly, once an item is declared part of the real estate, the item is no longer eligible for benefits to be relocated and reinstalled. The contributory value of a particular item to the overall real estate value may be relatively small. The item's worth to the business owner, however, may be far more than its contributory value to the real estate.

Often, an aging improvement may be very necessary for the business's operation, and a similar replacement item for the new site item may be very expensive. If the item is declared part of the displacement real estate, the business owner must pay for a duplicate replacement item at the new site if the improvement does not already exist there. Because relocation benefits do not cover capital assets, the business owner will have to pay out of pocket for the item.

For example, a displaced automobile mechanic's shop may include hoists that lift the cars so that they may be repaired. If the hoists are declared part of the real estate, the cost of replacing them at the new site may be cost prohibitive for the owner. Likewise, if the hoists are declared removable fixtures, the owner must understand that selling them to the Agency may not be the best economic move.

The owner should also be reminded that he or she should consider using substitute personal property benefits for obsolete non-real estate items at the displacement site that they may wish to replace at the new site. Benefits for substitute personal property are calculated as per 49 CFR 24.301 (g) (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:
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> (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
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> (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.

This benefit should be carefully reviewed with the owner to determine if the owner should sell the fixture or reinstall it or replace it with a similar item at the new site. Through early coordination of this type, all the right of way professionals involved in the acquisition and relocation processes can help the displacee make the most economically-beneficial decisions. ✪

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