

How to Deal with Last-Minute Displacees

Compensating subsequent residential tenant occupants



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When it comes to the tricky issue of subsequent residential tenant occupants, there are some required and best practices that a relocation professional can use to effectively relocate the occupant when efforts to avoid the problem have failed.

Who Are They?

A subsequent residential tenant occupant is defined as one that is in lawful possession of the premises only after the first written acquisition offer (but before the Agency gained control of the property) and did not occupy the dwelling solely for the purpose of obtaining relocation benefits.

As was discussed in the March/April issue of Right of Way Magazine, unless the landlord is completely unscrupulous and says nothing about the project, the subsequent residential tenant occupant probably has some idea that the dwelling is affected by a federally-funded project in some way. He may not understand the ramifications of his tenancy under federal relocation regulations, but probably has some basic understanding of the project. So the question remains: Why would anyone move into a building that soon will be acquired by a public agency?

There may be a variety of reasons. Property owners who disagree with the Agency's offer or who simply oppose the project may offer lower rents to subsequent occupants in order to maintain cash flow. Maintaining cash flow becomes particularly important to many landlords as other pre-offer tenants become eligible for relocation benefits and begin to leave.

The first step in working with a subsequent occupant is to establish an accurate date of residency. A signed lease with the landlord is the best evidence of that date. Sometimes, landlords with smaller or more rundown buildings may not issue the subsequent occupant a written lease, knowing that eventually the Agency will acquire the building through eminent domain. In that case, it is important that the relocation agent work carefully with the acquisition agent to review rent rolls collected from the landlord and tenant estoppels, if any.

Determining Payment

Once residency is proven, the relocation agent should thoroughly interview the tenant. Rental supplements for subsequent tenant occupants are based on either their rent or their income (see 49 CFR 24.2(a)(6)(viii) (C) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act). (For a displaced person not eligible to receive a replacement housing payment because of their failure to meet length of occupancy requirements, comparable replacement rental housing is considered to be within the displaced person's financial means if an Agency pays that portion of the replacement dwelling monthly housing costs that exceed the base monthly rent for the displacement dwelling as described in §24.402(b)(2) of the Uniform Act.) Such rental assistance must be paid under §24.404, Replacement Housing of Last Resort. The base monthly rental for the displacement dwelling is the average monthly cost for rent and utilities at the displacement



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dwelling, or if little or no rent was paid, fair market rent. In situations where the displaced person's household income is classified as "low income," 30% of the gross household income should be used to determine the base monthly rental amount.

More specifically, the U.S. Department of Housing and Urban Development's releases an Annual Survey of Income Limits for the Public Housing and Section 8 Programs, which can be found at <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>. If a tenant household meets the income limits on the HUD survey, the relocation agent can then go to the next step of calculating 30% of the displaced person's average monthly gross household income. If the tenant household has more than eight persons, the relocation agent would calculate the low income limit as follows: 8% of the low income limit for a four person family should be added to the low income limit for an eight person family for each family member in excess of eight persons. For example, the low income limit

for a 10 person family would equal the eight person low income limit plus 16% (2 persons x 8%) of the four person income limit. The low income limit for an 11 person family would equal the eight person low income limit plus 24% (3 persons x 8%) of the four person income limit, etc. Income limits are rounded to the nearest \$50. Agencies may round income limits for nine or more persons to the nearest \$50, or may use the actual numbers at their discretion.

In order to determine 30% of the displaced person's average monthly gross household income, the agent should find out the tenant's income for the reasonable period prior to displacement, as determined by the Agency, in order to document the tenant's financial means. The agent should also keep in mind that certain items cannot be counted toward determination of income, which include income and payments made through various federal programs. For a full listing of all the exclusions to income determination, see FHWA Guidance at

http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/exclusions.cfm. It is always a good idea to periodically review this list for any possible additions.

Once income has been established, calculation of a potential rental supplement can proceed under 49 CFR 24.402(b)(2). It should also be noted that many agencies require subsequent occupants to remain in the displacement site until the Agency gains control over the property through close of escrow or court order. Also, subsequent occupants are entitled to moving and advisory services benefits.

The relocation professional should always remember that subsequent occupants may have limited resources (which may be why they responded to an offer of lower rent in the first place) and/or have credit issues. The agent should be prepared to address these and other issues associated with this type of tenant. ⚡

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