

Displacement and Life Estates

Careful planning can maximize chances of a smooth relocation

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This is the second in a two part series of articles examining which relocation benefits under Federal Highway Administration funded projects are potentially available to residential life estate holders. The nature of a life estate is one in which an individual can occupy, use and enjoy a certain property for the length of that individual's life as a life tenant.

A life estate may be created in various ways. The grantor of the life estate may be the fee owner who elects to give a third party the right to occupy a property while they are alive. At the end of the grantee's life, the property usually goes back to the original grantor or their heirs or assigns. A grantor may also sell the fee interest to their property to someone else but reserve a life estate for themselves. The property would then go to the third party buyer upon their death.

Untangling Applicable Laws

The specific characteristics of a life estate are defined by state statutes and therefore vary state by state. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and its implementing regulations, do not define the life estate other than to say that it is a "less-than-full-fee interest in real property" (49 CFR §24.101 (c) (1)).

Therefore, calculating relocation benefits for displaced life estate holders will depend on how state laws apportion ownership of the subject property. This apportionment should be reflected accurately in the appraisal, along with the proper compensation going to each interest holder in the property. Benefit computation relies on the amount of just compensation to the life estate holder.

However, regardless of which state the life estate holder is being displaced in, FHWA guidance states that under 49 CFR §24.2 (a) (20):

The replacement housing payment (RHP) computation should be sufficient to enable the displaced person to relocate as an owner with an interest at least equivalent to the interest held prior to the acquisition of the property by the agency. The payment computation will

be based on the total amount of the acquisition payment for a dwelling comparable to the acquired dwelling.

Therefore, if an individual household is the sole occupant of the subject property via a life estate, the household would be potentially eligible for an RHP and a moving payment.

Determining Potential Benefits

Take, for example, a situation where state law apportions 50 percent of the displacement property's value to the non-occupant fee owner and 50 percent to the life estate holder. The fair market value of the displacement dwelling is \$200,000, so the life estate holder's acquisition proceeds would be \$100,000.

With a comparable replacement dwelling available at \$220,000, research for this article has found two alternative approaches to calculating the RHP. One approach states the potential purchase price differential is \$120,000 (\$220,000 less \$100,000). Incidental costs would be limited to the closing and related fees associated with the value of the comparable dwelling selected by the agency. As always, any approach to calculating benefits is subject to agency approval. The second approach states that the price differential is only \$20,000 (\$220,000 less \$200,000). This is the more traditional approach. Incidental costs are always part of the RHP and would be calculated as indicated above. They must be actual, reasonable and necessary and non-recurring.

Again, it is important for the relocation professional to understand the basis of the acquisition offer and any applicable state laws before preparing the replacement housing calculations. They also must ensure the displacee is lawfully present in the United States (if federal funding is used) and is otherwise eligible. In addition, the relocation manager should discuss the matter with the



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funding source and agency sponsor to make sure that the agency has a written policy on relocation benefits for life estate holders and that the calculations fall within that policy.

Assess the Alternatives

FHWA guidance also offers an alternative to providing the life estate holder replacement housing benefits. “As an alternative, the agency may acquire a dwelling and provide a life estate to the displaced person. All such agreements should clearly establish the responsibilities and rights of each party.”

However, this option carries with it a host of practical considerations that should be addressed. Some of these include:

- Whether state laws governing the displacing agency allow it to buy property for private persons.
- Who at the displacing agency would have to approve such a purchase.

- How long such an approval and purchase would take to get.
- Whether the project schedule allows the time for approval and completion of such a purchase.
- How the displacing agency will dispose of the property after the death of the displacee.
- Determining who is responsible for insurance, property taxes and maintenance of the property.
- The anticipated number of remaining years of life for the displacee.

The relocation of a residential life estate holder does not occur often. Relocation of a life tenant can be quite complex and this article does not discuss all the possible challenges. However, careful planning along with understanding the nature of a life estate holder can lead to a successful relocation. ✪



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