



The ABC's of Property Management

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There are many facets of property management. To some, it seems easy, fun and difficult all at the same time. To others, it is just plain difficult. However, property management is an important part of acquiring right of way and providing support to your agency. It requires some elbow grease, a budget, a friendly smile and the knowledge of when to hold them and when to fold them.

Keep Your Eye on the Ball

The goal of property management is to maximize the earning potential and minimize the liability of the agency's property for as long as possible. One possible way to do this is by renting the property. Granted, in the short term, the agency must spend additional time and staff resources on tenant agreement negotiations and rent collection. However, the payoff comes in the long term when revenue becomes consistent and there are minimal maintenance costs.

Right of Way - Where Does it Come From?

The first component of property management is having property to manage, so where does the property come from? State and local agencies acquire right of way for transit projects, once this occurs, the management part begins. Right of way comes in many shapes and sizes. It may come in the form of vacant or improved land and may be occupied or unoccupied.

What To Do Once You Own It?

Once property is acquired by an agency, it needs to be managed. This involves directing others: "Don't trespass, mow my grass, pick up my trash and pay me." An agency typically desires to keep a low profile to prevent trespassing, illegal dumping, and to reduce safety and liability risks. In order to accomplish this, an agency MUST: 1. maintain vegetation growth at a reasonable height (jungles are not permitted within the city limits). 2. Inhibit trash accumulation (even if it comes from neighboring properties). Why are these musts? For starters, these actions will prevent the receipt of a notice of violation from the city and possible financial penalties. Additionally, it will keep your agency's name out of the news. After all, who needs free publicity about overgrown weeds?

Getting Dirty or Staying Clean

How does a small agency without a facilities maintenance staff get the trash picked up, vegetation cut, windows boarded up, etc.? This is the physical aspect of property management and is called "Getting Dirty or Staying Clean." Ongoing maintenance activities often require the right of way agent to obtain labor bids from a local handyman and a landscaping service for the tasks that the agent cannot do in house. These services are not elaborate. They need only include the basics of boarding up windows, painting over graffiti, post and cable installation, cutting vegetation and collecting any trash. It is recommended that the agent work with these services to develop routine maintenance schedules to maintain the vegetation once a month and perform other miscellaneous tasks. The contractors' frequent visits will also help the right of way agent keep an eye on their assets.

Can We Make Money if We Have to Keep it Once We Own it?

An agency's schedule may change, creating delays from the time they buy a property until the time the agency is ready for demolition and construction. Delays have many hidden costs and stresses. Delays increase the amount of time and resources that an agency will need to manage the property. These incremental costs may be deducted out of the right of way budget, which, unfortunately, does not increase. Whenever delays occur, it is important to try and offset the increase in expenses and extra resources by renting the property "as is."

As delays can be unpredictable, some flexibility may be necessary through the use of an interim lease term agreement referred to as the tenant agreement. The tenant agreement has a one-year commitment with the option to renew month to month after the first year. The tenant agreement also includes a right of termination clause, by either party, of 30 days or less without cause and with the tenant assuming all liability and risk. Remember, the duration of the delay can be hard to foresee, but the right of way agent wants to always think short term in the event plans change. If the property is a vacant parking lot, an agency might advertise or talk with neighbors to find a willing tenant to rent the parking lot.

Once a tenant is found, the challenging part of property management begins, when it must be determined what to charge. An agency could charge a monthly rent based on fair market value, or an agency could charge a percentage of the gross profits, such as 90% (start high, you can always go lower). However, the gross rent scenario requires having some faith in the tenant to make sure that the agency is getting paid their percentage of the “real” gross.

What Do You Mean I Still Have to Pay?

If the tenant was not the owner of the acquired property, the agency should make a fair attempt to maintain the same rental terms as the prior landlord. This includes the amount of rent to be paid. In most cases, the previous rent is below market rate. This is reasonable because of the interim lease term.

However, sometimes an agency might have a tenant who constantly has trouble paying rent on time. As an incentive to encourage the tenant to pay on time, an agency might include a provision in the Tenant Agreement to increase the rent if the rent is paid late. For example, Wally’s rent was \$800/month and, from talking with the previous landlord, the agency knew that he always paid late. The provision in the agency’s tenant agreement that Wally will sign would increase Wally’s rent to a new rate of \$1,000/month if he pays the agency late. The increase is then enforced for the remainder of the term, and late fees are still applicable. The reasoning is that if the tenant had such a hard time coming up with \$800/month which was below market, \$1,000/month would be even more difficult and would provide the tenant with more incentive to pay on time. This has proven to be successful on many occasions. Tenants like Wally appreciate having an interim lease with an agency. They are then motivated to pay because they cannot find a better deal elsewhere.

As agencies do not want to negotiate against themselves, they may charge a fair market rent at the onset. However, a successful negotiating point which allows an agency to reduce the rent below fair market is the tenant agreement clause providing for a short-term rental with the ability to terminate in 30 days or less without cause. By renting unused property, an agency generates revenue and reduces management expenses.

Why Move if You Don’t Have To?

When an agency acquires property with displaced occupants that have not yet moved, they become the agency’s tenants. An agency might also have extra space in that property, such as a commercial office building, that they would like to rent to others. An agency then faces balancing the needs of a displaced person or business that continues to occupy but is eligible to receive relocation assistance versus a new tenant that is ineligible to receive relocation assistance. Subsequent delays encourage the original displaced occupants to remain on site, as the short-term tenant agreement rental rates tend to be cheaper and familiar surroundings tend to be more appealing.

An agency must attempt to immediately have the displaced occupant who decides to remain sign the tenant agreement prior to the acquisition. The displaced occupant is still eligible to claim relocation benefits per 49 CFR Part 24, but as long as they remain

an occupant of the building they must now comply with an agency’s tenant agreement terms.

One of the key differences that the tenant experiences with the change in ownership of the property is that the tenant must rent the property “as is.” The tenant must assume all risk and liability, and they become responsible for certain maintenance of the property like plumbing, landscaping, heat and air conditioning, and cleaning up graffiti. A benefit to the agency of renting “as is”, is that the agency rarely has the funds or desire to spend money on the maintenance of a property that is slated for demolition once the permission and funding come through. In the end, all agencies like to keep their money and make more of it where they can.

No Pay, No Stay

Even if you start out with a tenant who does pay on time, they may have a few months where they are not able to pay, and alternatives must be initiated. There is a persistent inner discord that exists for property managers as they concede certain realities of their business can vary greatly from ideal circumstances. The reality is that some tenants pay the requisite amount on time, some pay late, and some never pay, all the while demanding massive amounts of maintenance. A perfect situation would involve everyone paying the right amount on time with no special requests. The reality is that most tenants will have some sort of difficulty at least once during the term of their lease. It is helpful to contact the tenants who have difficulty paying on time one to two weeks before their payment is due with a reminder of the payment amount and due date. They appreciate the interaction with a person, although this requires additional staff time. The phone call also aids the right of way agent in determining what is really going on with the tenant. The agent might also use the exchange as an opportunity to discuss devising a payment plan to assist the tenant, if necessary.

A late rent payment increase and an insufficient fund fee are good tools to include in all tenant agreements in the event the situation changes. Typically, everyone who has trouble paying on time has a story and unfortunately, an agency cannot afford to allow free occupancy. We’ve all known and have possibly worked with at least one person with a soft spot who wanted to give the farm away. The motto “no pay, no stay” is one that should be frequently repeated within any agency.

Extra Eyes and Ears

Another step to help safeguard an agency’s property is to send an “authority to trespass” notice to the local police department and city attorney. This notice should identify the property address and county identification number. It should indicate that the agency recently became the owner of the property, include the names of each tenant still in occupancy and note the projected date when each tenant expects to vacate. The notice should authorize the police department to enter the property in order to conduct law enforcement duties. This is putting your tax dollars to work and getting extra eyes and ears in the area. Updates should be sent when additional properties are added to the agency’s ownership or when the tenant occupancy status changes. ●