

Relocation Q&A

SCENARIO

A public agency's facility is located in a densely populated area and is operating within code regulations with no plans or projects for expansion. The agency was approached by a local broker representing the owner-occupant of a neighboring two-unit apartment building. The owner lives in half the building and the other half is vacant. The property is actively being marketed on the open market.

While the property is not necessary for the operations of the public agency, either now or in the foreseeable future, the agency did its due diligence, considered the property an opportunity acquisition and informed the owner-occupant in writing, that if at this time an agreement could not be reached for the purchase of the property, the agency would walk away and would not condemn the property to complete the acquisition. The agency used its capital funds budget, which is not subject to federal grant assurances, to acquire the property.

Q: Does this acquisition by the public agency fall under the Uniform Relocation and Assistance and Real Property Acquisitions Act of 1970, as amended (Uniform Act)?

A: No; the acquisition is not associated with a federal or federally-assisted project (24.101)(a)(b) because the purchase and the purpose (project) for which the land is acquired is funded solely with agency capital funds.

Q: What if the scenario changed to the agency using federal funds in the acquisition of the property or the land will be used for a federally assisted project or program; would the acquisition fall under the Uniform Act?

A: According to 49 CFR 24.101(b)(1), the requirements of Subpart B – Real Property Acquisition do not apply to this acquisition since the agency does not have a specific need to acquire this property nor the site (24.101)(b)(1)(i); the property is not part of an intended, planned, or designated project where all or substantially all of the property within the area is to be acquired within specific time limits (24.101)(b)(1)(ii); and the owner was informed in writing that the property is not under threat of condemnation (24.101)(b)(1)(iii). The agency must still inform the owner in writing of what it believes to be the market value of the property (24.101)(b)(1)(iv).

Q: Is the owner-occupant considered a displaced person in accordance with the Uniform Act and thus entitled to relocation benefits?

A: No; the agency does not need the property as part of a development project (one that will expand or change operation and require additional private property to be acquired) and the agency is not acquiring the property under condemnation or threat of condemnation. This may be considered a voluntary acquisition and the agency has provided its assurance, in writing, that it is offering what the agency believes is fair market value for the property and will not use its powers of eminent domain to acquire the property if no mutual agreement to purchase is reached. (24.101)(a)(2)

Q: What would be the outcome if the other half of the two-unit apartment building was leased to a tenant?

A: Tenants are not a direct party to transaction of selling the owners property; however, it certainly does affect tenants. When an agency makes a voluntary acquisition and the tenants will be displaced, then the agency shall comply with the Uniform Act when displacing those tenants (24.2(a)(9)(ii)(E) or (24.2) (H). This may result in relocation assistance benefits to the tenants.

Best Practices

- Tenants in occupancy at the initiation of negotiations or when the property is acquired are displaced persons under the Uniform Act and must be provided relocation assistance and payments. The initiation of negotiations for tenants on property that qualifies as a voluntary transaction is the date of the written agreement between the agency and the selling owner.
 - Consult your agency's federal (or state, if appropriate) agency oversight office for compliancy responsibilities to owners and/or tenants under a voluntary acquisition and adherence to the Uniform Act.
- This scenario is also applicable to voluntary acquisition of real property occupied by a business, e.g. an owner (same entity in use of the property or there is a different legal entity as the tenant) voluntarily sells to an agency.

Remember that the Uniform Act will apply when the acquiring agency:

- Seeks reimbursement from a federal agency for the acquisition of the property or the land is acquired for a federally assisted project.
- Uses federal (or in some cases state) funds in any phase of a project that affects or will affect the acquired property or site. It is a misnomer that an agency may use federal funding for the planning phases of a project with intentions of using its own capital funds for an acquisition and not be subject to the Uniform Act.
- **IMPORTANT NOTE:** The Uniform Act allows for the transaction exemption, but if there is any current or planned Federal funding of a project that may use the acquired land then the acquiring agency will be required to certify Uniform Act compliance and must fully document that the acquisition met the voluntary transaction requirements under 49 CFR 101(b) for federally assisted projects. When in doubt, or when the funding agency will not confirm that the voluntary transaction exemption applies, many agencies will acquire and relocate all occupants under the full Uniform Act requirements to preserve possible federal participation.



Federal Program Highlights

- For Federal Aviation Administration (FAA) funded airport projects, whether or not eminent domain is to be used does not determine if an owner's sale is a voluntary transaction. For example, on noise programs where an airport chooses not to condemn (or does not have right of eminent domain for noise), FAA still does not consider the acquisition for a noise buy-out project to be a voluntary transaction given all or substantially all of the property within the defined project area is to be acquired. The selling owner may decide to participate in the noise buy-out and if they sell they are considered a displaced person.
- FAA can and does participate in the acquisition of property that does qualify as a voluntary transaction under 49 CFR 24.101(b). FAA applies the voluntary transaction to its purchase assurance noise mitigation programs where a home is purchased, sound insulated and then resold. This type of project meets all the qualifications for a voluntary transaction as the property owner need not sell and the airport need not acquire any particular property for the project.
- On a Federal Highway Administration highway program, 23 CFR 710.203 lists the conditions that must be met for federal participation in the costs of acquiring real property, with the exception of early acquisitions which are addressed in §710.501. Per §710.501, an Agency may acquire real property for corridor preservation, access management or other purposes at any time it has the legal authority to do so. However, for federal participation, such as using the acquired property as credit for Agency's share of a federal-aid project or requesting reimbursement, the example would have to meet the conditions 23 CFR 710.501 or 710.503.

The International Relocation Assistance Committee has a motto: "It Depends." This is certainly true in this scenario because it depends on the project type as much as whether or not condemnation was involved in determining if either displacement and/or the Uniform Act will apply.

You can download the FHWA's Uniform Act FAQs from the FHWA Real Estate website at: www.fhwa.dot.gov/realestate/ua/uafaqs.htm