

Reestablishing a Non-Occupant Owner

Determining who qualifies for benefits and why

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One of the most common, but misunderstood, set of benefits that the relocation professional must administer are reestablishment benefits available to non-occupant owners. For this reason, it is important to have a comprehensive understanding of the benefits available to this type of displacee and how they should be analyzed for a federally-funded transportation project.

How They Qualify

Non-occupant owners who lease space to others are eligible for relocation benefits. The Federal Highway Administration (FHWA), the lead agency for the administration of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), has stated that off-site landlords leasing space to others should be considered a small business. (See FHWA Uniform Act FAQs and 49 Code of Federal Regulations Part 24 (49 CFR 24). A small business is defined as one having not more than 500 employees working at the site being acquired or displaced by a program or project, where the site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for purposes receiving a reestablishment expense payment. [49 CFR 24.2(a)(24)].

As a small business, non-occupant landlords are eligible for reimbursement of the "actual, reasonable, and necessary expenses for the reestablishment of a rental property. The agency should provide

the same advisory services to real estate leasing operations as performed for other businesses including providing information on suitable replacement properties."

49 CFR 24.304 further defines the reestablishment benefits due to off-site landlords:

24.304 Reestablishment expenses—nonresidential moves.

- (a) Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:
 - (1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
 - (2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
 - (3) Construction and installation costs for exterior signing to advertise the business.
 - (4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting.
 - (5) Advertisement of replacement location.
 - (6) Estimated increased costs of operation during the first two years at the replacement site for such items as:
 - (i) Lease or rental charges;
 - (ii) Personal or real property taxes;
 - (iii) Insurance premiums; and
 - (iv) Utility charges, excluding impact fees.
 - (7) Other items that the Agency considers essential to the reestablishment of the business.

Most non-occupant landlords use the reestablishment benefits (up to \$25,000) for repairs, improvements, modifications to the replacement property, or for redecorating. As always, the relocation professional should carefully analyze the reestablishment needs of the off-site landlord in order to maximize the benefits available. Other benefits for non-occupant owners include the movement of personal property and location searching expenses up to \$2,500.

Determining Eligibility

Best practices will require proof from the non-occupant owner that they are truly in the business of renting space to others and that the rental income has been reported on their tax returns. In addition, the replacement site must be purchased in order to rent space to others and not simply for investment purposes. Some displacing agencies will also require objective proof that the replacement rental site is being rented out and will want to see tenant leases.

There are also many expenses that are not compensable for non-occupant owners under 49 CFR 24.304.

- (b) Ineligible expenses. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:
 - (1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.
 - (2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
 - (3) Interest on money borrowed to make



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the move or purchase the replacement property.

- (4) Payment to a part-time business in the home which does not contribute materially (defined at §24.2(a)(7)) to the household income.

In addition, FHWA has determined that any other non-impacted rental properties owned by the non-occupant owner prior to the initiation of negotiations are not eligible for reestablishment benefits. Furthermore, FHWA has determined that subleasing of space is not a business activity that should receive reestablishment benefits. There are two main reasons for this decision. One is that often, subleasing is simply an expedient way to defray costs of the prime lessor's excess space and does not count as a bona fide business activity. The other reason is because the prime lessor may be eligible for reestablishment expenses, and extending reestablishment benefits to the sublessor could represent a duplicate payment. Careful documentation is needed to clearly show the status of the displacee as the prime lessor, and to ensure that only eligible parties are compensated. As always, individual state laws may allow additional reestablishment benefits. Also, any questions about reestablishment benefits should be directed to the project's funding source. ☀

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