



# APPEALING A RELOCATION DECISION

What to expect and how to prepare

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**For federally authorized projects involving eminent domain actions, the rights of property owners to recover their relocation expenses are clearly stated in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. At the state and local level, regulations tend to mirror the Uniform Act but often vary in crucial details. Reimbursement for relocation expenses is handled separately from the eminent domain process. When disputes arise regarding relocation assistance, an understanding of the appeals process is vital.**

What is a relocation appeals case? In simple terms, it is an appeal of an administrative decision, usually based on recommendations made by a relocation agent working for an agency or utility regarding the extent of benefits provided to people or businesses displaced by a right of way project.

In relocation appeals cases, disputes most often center on eligibility for benefits or the extent of benefits provided. Although a great deal of deference is usually given to an agency's determination, the law recognizes that there can be legitimate disagreements when it comes to unique areas of benefits eligibility or the degree to which expenditures for certain benefits are reasonable and necessary. This makes an understanding of the Uniform Act crucial to the process. Familiarity with the Administrative Procedure Act (APA) is also important, as it governs the way in which federal administrative agencies propose and establish regulations, and sets up a process for review agency decisions. A similar Model State Administrative Procedure Act was promulgated by the National Conference of Commissioners on Uniform State Laws, and a majority of states have adopted, at least in part, some version of the Model APA.

The decision to grant or deny an appeal will typically rest with a hearing examiner or a panel of arbitrators. Most often, a single examiner will preside over a case. Tasked with ensuring decisions made by agencies and utilities are consistent with the law, a hearing examiner's job is to provide a fair and impartial review of the facts.

Examiners have full authority over the hearing including administering oaths, issuing subpoenas, deciding procedural questions, receiving evidence, holding conferences and, ultimately, making the final determination of what benefits will be provided. In these ways, hearing examiners are similar to judges. However, examiners do not have the authority to change or make law. Nor do they have the discretion to exercise "equity," which allows judges to balance fairness and hardship against the rule of law. So, no matter how sympathetic the displaced person or business may

be, without both the facts and the law on their side, they may not be granted the relief they seek. Likewise, no matter how noble an agency's project may be, relocation decisions must always comply with the law.

### Understanding the Process

Relocation appeal hearings should follow a structured format reflecting the seriousness of the legal issues involved, as well as the economic and social consequences for the parties. In most cases, key phases in the process include filing the appeal, a pre-hearing conference with an examiner, discovery, preparation of exhibits and witnesses, a hearing before an examiner or panel, and the examiner's issuance of a decision. Preparation of your case should mirror that same basic structure.

### Filing the Appeal

The first thing to understand is the process for filing an appeal. Familiarity with a jurisdiction's procedural rules is fundamental. For example, what's the deadline? Depending on the jurisdiction, the complainant may have 15 days or less from the date of the final notification of an agency's decision to file. Who should receive the appeal? Is a specific format to be used? Are there restrictions on filing electronically? Is a fee due at the time of filing? Jurisdictions may reject appeals not properly filed. Most agencies want people to receive a fair hearing, as well as avoid disputes over how appeals are processed. If the process is unclear, it is in everyone's best interest to get things clarified by the agency's administrator or legal counsel.

In all but very few instances, a relocation case will be limited to the specific issues raised in the complainant's written appeal. As with other administrative appeals, the ruling in relocation benefits case is based strictly on the record made at hearing and applicable law. It is vital that the record be complete, including all relevant information needed to make the claim, as well as a copy of the decision being appealed. The agency's decision is central to the appeal, so it is crucial to review it carefully along with any related governing codes or laws.

### The Prehearing Conference

After filing the appeal, the next step is to prepare a prehearing submittal, often referred to by attorneys as a brief or memorandum of law. Essentially, a brief is a position statement that presents the rationale for why a claim should be granted or denied. Although a brief gives the parties a chance to tell their story and make their case come alive, it must also be clear, concise and specific. For example, it should be clear whether you are asking the examiner to reverse a decision or order payment of additional costs. Remember, you want the hearing examiner to be able to easily connect

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the dots. A well-organized and succinct presentation of the facts and law relevant to your position is key.

In complex or high value cases, the hearing examiner should set a date for a prehearing conference and specify what they will want to address at that time. At the prehearing conference, the hearing examiner will meet with the parties to the appeal and seek to clarify the issues, review procedures and set out time lines. Expect to discuss what issues are on appeal, how long the presentations are likely to take, the number of potential witnesses, what they will testify to, if there is potential for resolution, whether scheduling of site visits is needed, and how and when the decision will be rendered.

**Recommendation:** Lay out the facts, state your objections, cite the relevant law and respectfully request the relief you're seeking in clear and cogent language.



Under the Americans with Disabilities Act, certain witnesses may be given the opportunity to testify via Skype, phone or by deposition.

### The Discovery Process

Parties to the relocation appeal typically have the right to request information and documents from each other. Normally this exchange of documents and information is conducted without intervention of the hearing examiner. Discovery is less formal in the hearing process than in court proceedings. However, it is important to note that if you fail to disclose information as requested, the hearing examiner could prohibit you from using that information or impose other sanctions that could, effectively, hinder your case.

During discovery, try to reach agreement with the opposing party regarding the lists of exhibits to be submitted. As much as possible, keep the focus on information relevant to your case. There is often a temptation to submit an exhibit list that includes everything from the agency's records. Don't fall into that trap. A mountain of paper may make all the evidence seem meaningless and distract from the heart of the case. Also, try to reach agreement with your opposition on how many witnesses will be called, the length of

their testimony, when they will appear and whether they must be physically present at the hearing.

**Recommendation:** Be proactive. Work with your opposition to accomplish as much discovery as possible informally or by agreement.

### Relevant Witnesses

When drawing up a witness list, keep the focus on providing the hearing examiner with factual information useful to your case. Peripheral witnesses who might provide interesting color commentary can do just as much harm as good.

It is important that witnesses also know what to expect and what is expected of them. A witness's purpose is to relate relevant facts, help explain exhibits, and/or provide insight regarding why specific decisions were made. Be certain each witness is credible, will provide information necessary to your case and be comfortable testifying at the hearing. If your witnesses are providing testimony related to multiple claims, be sure their testimony is organized so that it follows the presentation of your case.

Testifying under oath, even in an administrative hearing, can be intimidating. Make sure your witnesses understand they are there to provide objective information in answer to questions—not argue for a particular outcome. That's a job for the advocates.

**Recommendation:** Be aware of requirements placed on agencies under the Americans with Disabilities Act (ADA) regarding reasonable accommodations for witnesses with disabilities. Examples include allowing witnesses to testify via skype, phone or by deposition.

### What to Expect at the Hearing

Administrative appeals are akin to court hearings but are intended to be less formal and more expeditious than traditional litigation. Hearings may take place in conference rooms, city council chambers or other meeting spaces. Despite there being fewer protocols, relocation appeal hearings are legal proceedings resulting in decisions that carry the force and effect of law. All participants in the appeal must show respect and decorum during the hearing process.

Often, a hearing will begin with opening remarks from the examiner stating the purpose of the appeal. This is typically followed by an opening statement from each party, presentation of evidence including exhibits and witness testimony, cross examination and closing arguments.

An experienced hearing examiner will establish an efficient, straightforward process that clearly defines participants' responsibilities and respects the rights of all involved. The examiner will encourage brief but comprehensive presentations, expect forthright answers to questions, and have limited tolerance for participants who approach the hearing as a verbal wrestling match.

**Recommendation:** Do not make the mistake, as some do, of underestimating the seriousness of the hearing or potential legal outcomes. Be on time and be prepared.

### The Decision

Hearing examiners may render their decision in different ways. At one end of the spectrum, an examiner may enter a decision without explanation. The ruling, which carries the force of law, may be as simply stated as: "Displaced Business is awarded \$15,000." Although they are not laws, regulations have the force of law, since they are adopted under authority granted by statutes, and often include penalties for violations.

More commonly, an examiner will issue a "reasoned decision," which includes an explanation of the ruling. This can be seen as a reflection of the APA, as it requires agencies to articulate a satisfactory explanation for its actions, including rational connection between the facts found and the choice made. Although the APA does not speak directly to relocation appeals, it is generally looked to for guidance.

Much less often, a hearing examiner will issue a "reasoned decision with findings of fact and conclusions of law," similar to what a trial judge might do. This provides greater and more specific context for the ruling. If the parties

to the relocation appeals case request findings of fact and conclusions of law, hearing examiners usually require the parties to submit proposed findings and conclusions for the examiner's review. This adds to cost of the appeal expense and, generally, is not necessary.

### Finding Impartiality

A relocation hearing is intended to be an impartial, decision-making process. However, the appearance of impartiality is not a strict legal requirement. In point of fact, choosing a hearing examiner is up to the condemning authority. Although the intent of the APA was to prevent government agencies from overreaching and ensure fair and impartial review of their rules and actions, the law did not demand wholly independent oversight. That has contributed to decades of debate. In 1954, for example, an Indiana Law Journal article stated: "The current controversy concerning the Civil Service Commission's role in administering the hearing examiner program under ... the Administrative Procedure Act points up what may be an inherent weakness of this Act. This weakness is the concept of a semi-independent hearing examiner..."

On more than one occasion, I have found myself before an examiner who is an agency executive or management employee. In those instances, the condemning authority has argued such an appointment is in the best interest of all parties because it reduces the overall cost of the hearing. However, to claimants, a hearing examiner from within a condemning authority hardly appears impartial. No matter how fair minded the examiner may be, claimants may well feel the process is stacked against them. That leads to increased tension between parties, and can result in an unnecessarily contentious and ultimately costly process.

For the condemning authority, the better practice is to hire an independent hearing examiner, preferably someone with extensive legal experience in eminent domain, relocation, and the intricacies of the Uniform Act as it affects

both residential and business properties. Relocation regulations often appear arcane to even otherwise experienced attorneys and judges. It is easy (and understandable) for individuals unfamiliar with relocation law to overlook key interpretations and subtle nuances of the Uniform Act. Ideally, a hearing examiner would have experience adjudicating legal disputes and, because their decisions can be challenged in court, he or she would have a solid grasp on what constitutes sufficient grounds for appeal.

Temperament is also important. Although the outcome of a relocation appeals hearing has the full weight of law, individuals (and even agencies) sometimes choose to represent themselves. For many people, it may be their first time participating in a legal proceeding. A hearing examiner should be comfortable working with those uninitiated in law, adept at communicating complex legal issues in plain language and sensitive to the needs of diverse populations.

### Last Thoughts

Before any relocation hearing, it is a good idea to step back and take an objective look at your case. Consider whether the information, exhibits, and witnesses you intend to present at the hearing are, in fact, relevant to your appeal. Remember, more is not necessarily better. This is an administrative appeal and is intended to be an expeditious process. A hearing examiner will not be impressed by quantity over quality. ★



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