

# ELIGIBILITY OF REESTABLISHMENT PAYMENTS



## Scenario:

*A bakery business that is the sole occupant of a property is required to move for a project. As a displaced business, the bakery is eligible to receive moving and reestablishment payments. The owner of the bakery also owns the displacement real property and has the property set up as a separate legal entity. The bakery (lessee) pays rent to the property entity (lessor).*

## Question 1:

**Is the lessor entity eligible for a separate reestablishment expense payment, since a business operation that exists solely of leasing real estate to others at the displacement site is eligible for a reestablishment expense payment?**

## Answer:

It depends. In this scenario, the property owner, both as the bakery and the “landlord,” appears to be two separate legal entities that, according to the Uniform Act, meet the definition of a person (in 49 CFR 24.2(a)(21)), small business (49 CFR 24.2(a)(24)) and business (49 CFR 24.2(a)(4)). It also appears that both legal entities must vacate the displacement site as displaced persons in accordance with 49 CFR 24.2(a)(9), and may therefore both be eligible for a reestablishment payment.

However, the property owner may lease the real property to their own bakery business for financial reasons, such as personal liability protection and/or estate purposes. The lease may be set up merely as a financial arrangement between the owner’s real property and business property, and may not be considered a separate business activity or use of the acquired property. The bakery may be the only use of the real estate, and may be the only business displaced by the acquisition of the property. If so, the property owner may be eligible to claim a re-establishment expense payment only for the displacement of the bakery (as the owner of the bakery).

Allowing a second reestablishment expense payment for the same space to the same owner (even as two separate legal entities) may be considered a duplicate payment. For purposes of relocation assistance, leasing to yourself (or an alias) does not necessarily make you separately eligible for a re-establishment expense payment. Any property owner could legally lease their home or business to themselves and legally be their own landlord. This arrangement would not necessarily qualify the lessor/lessee for additional payments.

It is important to check with the displacing agency to obtain its policy regarding qualifications to determine a landlord business.

When performing advisory services, the following questions could be asked in order to determine whether a business that leases to others exists at the site:

1. Does the property owner rent the entire property to someone else?
2. Does the property owner occupy part or all of the displacement property? Are there multiple owners of the property? Of the business?
3. Is the leasing or rent activity a legitimate business?
4. Does the income from the lease or rented site contribute materially to the owner’s income?

## Question 2:

**What if there are multiple occupants on the property?**

## Answer:

URA regulations allow for re-establishment expense claims by non-occupant businesses, such as the business of leasing real property to others. In the above scenario, if the acquired property was a multi-tenant building leased out by the owner to other businesses in addition to the owner’s bakery use, and the property owner purchased a replacement rental property, the owner could make a second re-establishment claim for the displaced business of leasing the property to others. The reestablishment expense payment could qualify for reasonable and necessary expenditures towards the replacement rental space.

As provided under the regulation at 49 CFR 24.304 and clarified in FHWA Q&A (see §24.304 at <http://www.fhwa.dot.gov/realestate/ua/uafaqs.htm>), the business of leasing real estate to others is considered to be a small business for the purposes of the regulations of the Uniform Act.

Ultimately, each situation should be evaluated on a case by case basis. In the end, it is up to the displacing agency with concurrence from the funding agency to determine its policy regarding a landlord business and its right to claim benefits.