# CHAPTER 6
# ACQUISITION

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# CHAPTER 6
# ACQUISITION

## 6.0 Introduction and Purpose

TxCDBG funded projects are subject to both the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 et seq. ("URA"), and the federal regulations found in 49 C.F.R. Part 24. The URA provides for uniform and equitable treatment of persons displaced from their homes, businesses or farms as a result of rehabilitation, demolition or private acquisition carried out under federally assisted programs. The URA also establishes equitable land acquisition policies.

Relocation requirements of the URA are discussed in the relocation guidelines available on the HUD website.

**The purpose of the URA is:**

1. To ensure that owners of real property acquired for federal and federally assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally-assisted land acquisition programs.
2. To ensure that persons displaced as a direct result of federal or federally assisted projects are treated fairly, consistently and equitably and do not suffer disproportionate injuries as a result of projects that benefit the public as a whole.
3. To ensure that acquiring/condemning authorities implement these regulations in an efficient and cost effective manner.

**General Requirements**

HUD's Handbook 1378 provides thorough guidance to real property acquisition under URA. If there are questions whether any of the following apply to a specific situation, please consult your contract specialist.

Acquisition rules apply whenever an acquiring entity:

- undertakes the purchase of property directly;
- provides a nonprofit or for-profit entity with funds to purchase the property;
- hires an agent or consultant to act on its behalf in acquisition;
- undertakes acquisition on or after a TxCDBG application submission date unless the acquiring entity demonstrates that the acquisition was unrelated to the proposed activity;
- undertakes an acquisition before the application submission date and the acquisition was intended to support a subsequent TxCDBG activity.

Each property owner must be properly informed of their rights, as required by law, and the acquiring entity must document compliance with the laws and regulations. Each property owner is entitled to the payment of just compensation for their land, even if they are a direct beneficiary of the project.

Before requiring the property owner to surrender possession of the real property, the acquiring entity must pay the agreed purchase price to the owner.

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant of the property, the acquiring entity must offer to acquire the uneconomic remnant along with the portion of the property needed for the project. 49 C.F.R. §24.102(k)

# 6.1 Terms and Definitions

**Acquiring Entity / Acquiring Agency**
The term "acquiring entity" and "acquiring agency" are used interchangeably and refer to the entity (in most cases, the Grant Recipient or benefitting utility) performing the acquisition or under whose authority the acquisition is performed. Ultimately, the Grant Recipient is responsible for ensuring compliance with all URA requirements, and the term Grant Recipient is used throughout this chapter. This does not, however, prevent another entity such as a water supply corporation from acquiring real property for the grant-funded project. All URA rules are applicable regardless of the type of entity completing the acquisition activity.

**Eminent Domain**
Eminent domain refers to the power of the government to take private property and convert it to public use. The Fifth Amendment to the US Constitution provides that government may only exercise this power if it provides just compensation to the property owner.

Important Note: The State of Texas' eminent domain authority is delegated by statute to state agencies, political subdivisions (cities, counties and special districts) and some private entities. Governmental entities have eminent domain authority over properties that are located both inside and outside their taxing jurisdiction. All municipalities in Texas (home rule, general law and special law) are provided the authority of eminent domain under Section 251.001 of the Local Government Code; authority for counties to exercise eminent domain is found in Section 261.001 of the Local Government Code.

**Condemnation**
Condemnation refers to the legal process used for taking property under the authority of eminent domain. The use of the term should not be confused with its use in declaring a property to be uninhabitable or unsafe.

**Real Property**
Real property in the context of acquisition refers to permanent interest in real property. Acquisition rules apply to TxCDBG projects whenever:

1. Fee simple title to the property is acquired;
2. Permanent easements are acquired;
3. Properties subject to a life estate are acquired; and,

4. Property that is leased for a term that allows an extension of 50 years or more, is acquired.

Property leased for less than 50 years is not considered acquired property. Improvements constructed on property that is not publicly owned or recorded as a right-of-way or easement are not eligible TxCDBG projects.

# 6.2 Methods of Acquisition

After determining whether an acquisition is voluntary or involuntary, an acquiring entity may acquire real property through one of the following methods:

1. donation
2. just compensation purchase
3. negotiated purchase
4. condemnation

**Donation:** A transaction may be considered a donation if the owner agrees to give, rather than sell, property to the acquiring entity. Donations may be made in either voluntary or involuntary acquisitions.

**Just Compensation Purchase:** The acquisition price is determined through a valuation process, such as an appraisal or valuation through property tax records or appraisal district records.

**Negotiated Purchase:** Negotiated purchase is the acquisition of property at a price different from the value that was determined through just compensation. In cases of purchase through negotiation, the reasons for the purchase must be explained in a document called an administrative settlement.

**Condemnation:** An acquiring entity should use condemnation only as a last resort, and must request and obtain approval from TDA in advance before commencing condemnation procedures. Acquiring entities must comply with Chapter 2206 of the Texas Government Code and all other applicable law. **Given the short term of the TxCDBG contract periods, TDA does not typically approve the use of condemnation in the acquisition of property.** In addition, the use of CDBG funds to support an economic development project that primarily benefits a private entity is prohibited. See Section 407 of the Consolidated Appropriations Act, 2014, as well as similar provisions in previous appropriations.

# 6.3 Step-by-Step Procedures

**Step 1 – Determine property to be acquired**

Prior to beginning an acquisition process, the Grant Recipient must have a clear understanding of the grant-funded project and the property that must be acquired for the project to be successful.

**Step 2 – Complete Form A600 Initial Acquisition Report and determine the type of acquisition to be completed**

Acquisition will be either voluntary or involuntary. The terms relate to whether or not the acquiring entity possesses the authority of eminent domain (condemnation), and if the transaction occurs as a result of the use or threat of use of that authority. URA provides different protections to property owners depending on whether acquisition is voluntary or involuntary.

**Voluntary Acquisition**

Voluntary acquisitions are negotiated between the property owner and the acquiring entity without the threat of eminent domain or condemnation. For acquiring entities with the authority of eminent domain, acquisitions must meet the following conditions to be considered voluntary: -- 49 C.F.R. § 24.101(b)(i)-(iv).

1. No specific site is needed and any of several properties could be acquired for project purposes.
2. The property is not part of an intended, planned or designated project area where other properties will be acquired within specific time limits.
3. The acquiring entity must inform the owner in writing of the property's market value.
4. The acquiring entity must inform the owner in writing that the property will not be acquired through condemnation if negotiations do not reach an amicable agreement.

Purchases of property owned by federal, state, local governments or quasi-governmental entities such as school districts are considered voluntary acquisitions.

**In no case is it permissible for an entity to subsequently undertake the acquisition under threat or use its eminent domain authority if initial negotiations for a voluntary acquisition fail.** If the agency cannot ensure the applicable requirements of 49 C.F. R. §24.101(b)(1)-(5) are satisfied, then such acquisitions must be pursued as an involuntary acquisition under the full requirements of 49 C.F.R. Part 24 Subpart B.

**Involuntary Acquisition**

Involuntary acquisition occurs when the project is site specific and the acquiring entity will exercise eminent domain or condemnation powers to acquire the property when negotiation fails. The URA requirements that govern involuntary acquisitions are in place to protect the rights of private citizens whose property is being acquired by the government and to ensure that they are treated equitably and uniformly. An appraisal may be required, depending upon the value of the property and complexity of determining value**.**

A common misconception is that a "willing seller" or "amicable agreement" means a transaction is voluntary. If the authority for condemnation through eminent domain is present and it is not revoked, or if the project is site-specific, the transaction cannot be voluntary.

Once the type of acquisition is determined, submit the Initial Acquisition Report **(Form A600)** to TDA and follow the steps in the appropriate section below. Form A600 and Form A601 are fillable PDF forms available on the TDA website.

**Comment [SB1]:** Forms revised.

## 6.3.1 Step-by-Step Procedures for Voluntary Acquisitions

**Step 3 – Determine Market Value of the Property**
The Grant Recipient may use a market estimate such as a tax valuation to determine value. An appraisal is not required for voluntary sales.

**Step 4 – Notify Owner of Property Rights**
Voluntary acquisitions can occur only when an acquiring entity lacks the authority to condemn (eminent domain) or when it revokes its intent to use it by specific written notice to the property owner.

The Grant Recipient must notify the owner in writing, prior to making a purchase offer, of the following (49 C.F.R. § 24.101(b)(i)-(iv)):

- the property's market value, known as just compensation; and
- the Grant Recipient or acquiring entity will not acquire the property if an amicable settlement cannot be reached. (See Samples for appropriate language based on the Grant Recipient's eminent domain powers.)

**Step 5 – Determine Price**
The owner may choose to donate the property, or may accept the just compensation amount.

The owner may also decline the offer of just compensation and negotiate a different price. The owner must be given reasonable opportunity to present material and information which the owner believes is relevant to determining the value of the property, and to suggest modifications in the proposed terms and conditions of the purchase. The purchase price may differ or exceed the amount offered as Just Compensation when reasonable efforts to negotiate an agreement have failed and an acquiring entity official approves such settlement as reasonable, prudent, and in public interest.

Once a final price is determined to be acceptable by both parties, an Administrative Settlement with written justification shall be prepared, which states pertinent information, including trial risk and other factors that support such a settlement. Relocation payments are not acquisition costs and cannot be used to support an administrative settlement. 49 C.F.R. § 24.102(i): When a Negotiated Purchase is completed, the Administrative Settlement document must be submitted to TDA with the Form A601 upon completion of acquisition.

**Step 6 – Execute Agreement**
The Grant Recipient and the property owner must execute a sales or donation agreement and the deed must be filed as required by State regulations.

**Step 7 – Report Acquisition Parcel Information**
The Grant Recipient must prepare and submit to TDA an A601 form for each parcel, (include any administrative settlements as necessary).

## 6.3.2 Step-by-Step Procedures for Involuntary Acquisitions

**Step 3 – Obtain TDA approval**
Involuntary acquisition requires TDA approval prior to pursuing the property; Form A600 includes a request for this approval. The TDA response must be maintained in the local files.

**Step 4 – Notify Owner of Property Rights**
As soon as feasible, the acquiring entity must notify the owner in writing of its interest in acquiring the property and the basic protections provided to the owner under URA and HUD regulations.

The Grant Recipient must provide the owner with the following, prior to making a purchase offer:

- Notice to Owner For Involuntary Acquisition (See Samples for appropriate language)
- "When a Public Agency Acquires Your Property" - This HUD booklet describes important features of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
- "The Texas Landowner's Bill Of Rights" - This booklet, as required by Texas law, explains the rights and protections available to landowners.

**Step 5 – Determine Market Value of the Property**

An appraisal may be required for property acquired under involuntary procedures. The appraisal requirement is contingent upon three factors: any proposed use of condemnation, the estimated value of the property to be acquired and difficulty of the valuation. Appraisal standards are addressed in **49 CFR *24.103***

**Required Appraisals**
An appraisal is required where any of the following conditions apply:

1) The anticipated value of the proposed acquisition is expected to exceed $10,000, unless granted prior approval by HUD/TDA and the acquiring agency offered the owner the option of an appraisal;
2) Possible damages to the remainder property exist;
3) Questions on highest and best use exist;
4) The valuation problem is complex;
5) The use of eminent domain is anticipated;
6) Hazardous material/waste may be present; or
7) For other reasons the agency determines an appraisal is required.

In addition, if the owner requests an appraisal, then the appraisal procedure is required.

In the event that an appraisal is necessary, the Grant Recipient will be directed to consult with an attorney for guidance with respect to the procedures of the URA. The appraisal procedures require that an appraiser and a qualified review appraiser be retained in compliance with applicable procurement law. The property owner must be invited to

accompany the appraiser and be given the opportunity to present facts and information which may affect the valuation. See 49 CFR § 24.102(c)(1).

**Appraisals Not Required**
If a formal appraisal is determined not to be required, the process of estimating value using other means is considered a "waiver valuation."

- If the property valuation is simple and less than $10,000, no formal appraisal is required.
- If the owner is donating the property and releases the acquiring/condemning authority from its obligation to appraise the property, no formal appraisal is required, 24 CFR § 102(c)(2).
- If the value of the property exceeds $10,000, but is less than $25,000, TDA will consider written requests for waiver of appraisal.

**Notification**
The Grant Recipient must provide the market value of the property to the owner in writing prior to making a purchase offer.

- If the need for an appraisal has been waived, the Grant Recipient must send Notice using language found in Guideform 3-"Informational_Notice when eminent domain is Retained". If the value of the property exceeds $10,000, include language giving the owner the opportunity to decline a formal appraisal.
- Just compensation determination statement signed by an acquiring entity official.

**Step 6 – Determine Price**
The owner may choose to donate the property, or may accept the just compensation amount.

The owner may also decline the offer of just compensation and negotiate a different price. The owner must be given reasonable opportunity to present material and information which the owner believes is relevant to determining the value of the property, and to suggest modifications in the proposed terms and conditions of the purchase. The purchase price may differ or exceed the amount offered as Just Compensation when reasonable efforts to negotiate an agreement have failed and an acquiring entity official approves such settlement as reasonable, prudent, and in the public interest.

Once a final price is determined to be acceptable by both parties, an Administrative Settlement with written justification shall be prepared, which states pertinent information, including trial risk and other factors that support such a settlement. Relocation payments are not acquisition costs and cannot be used to support an administrative settlement. 49 C.F.R. § 24.102(i): When a Negotiated Purchase is completed, the Administrative Settlement document must be submitted to TDA with the Form A601 upon completion of acquisition.

If negotiations are unsuccessful and the use of eminent domain has been approved by TDA, the acquiring agency must complete all required procedures. Please refer to your local attorney for specific guidance.

**Step 7 – Execute Agreement**

The Grant Recipient and the property owner must execute a sales or donation agreement; include specific language in the sales/donation document for the owner to decline the offer of an appraisal. The deed must be filed as required by State regulations.

**Step 8 – Report Acquisition Parcel Information**
The Grant Recipient must prepare and submit to TDA an A601 form for each parcel, (include any administrative settlements as necessary).

# 6.4 Acquisition and Other Program Requirements

Procurement: Attorneys (except those employed under a retainer to a locality), appraisers, title companies and other professionals whose services are required for acquisition must be procured under TxCDBG rules for procurement of professional services.

Environmental Review: Environmental reviews must be completed prior to completion of acquisition activities.

Release of Funds:

- No TxCDBG construction funds will be released until the Initial Acquisition Report (Form A600), confirming any requirement for acquisition or the absence of acquisition, has been submitted to TDA.
- All acquisition activities must be fully documented, completed, executed and recorded, prior to the execution of any related construction contracts.
- If acquisition is required, then Form A601 must also be completed and submitted to the contract specialist before construction funds may be released.

Contract Amendments: Addition or deletion of acquisition activities to the TxCDBG contract must be approved by TDA.

Recordkeeping: The Grant Recipient is responsible for demonstrating compliance with URA requirements, regardless of who actually performs the duties. All records and notices and their date of delivery must be maintained locally for TDA and HUD monitoring purposes.

- Forms A600 and A601 as applicable, must be submitted to TDA and retained in the local file.
- All records and notices and their date of delivery must be retained in the local file.
- All mailed communications should be “USPS Certified, Return Receipt Requested” or similar, or hand delivered with a notation on a copy by a witness to the delivery. The acquiring entity’s records must contain the complete record and demonstrate compliance.

# 6.5 Best Practices

Whether acquisition is voluntary or involuntary must be determined at the beginning of the process so the proper procedures and notifications are performed. Failure to follow the proper procedure for the type of acquisition may result in financial penalties, including possible contract termination. The careful completion and submittal of the A600 form is an important early step to assure compliance.

TDA recommends the acquiring entity begin title research early in the acquisition process to correct title issues that may cause delays.

TDA also recommends acquisition matters be completed prior to construction activities being bid to avoid delays caused by last minute acquisition changes.

When a project includes multiple activities and only some of the activities require acquisition, the grant recipient must consult with TDA to determine which activities may occur prior to completing acquisition.
It is likely that the process of obtaining an appraisal and review appraisal will cause delays in the acquisition process. This may prevent completion of the performance statement activities within the contract period. In this circumstance, the project as contracted will need to be re-evaluated to determine its feasibility. Contact TDA for technical assistance.

The use of condemnation procedures is not compatible with TxCDBG projects. The use of condemnation procedures generally requires an extended time to accomplish and is not an eligible cause for contract extension.

# 6.6 References and Guideforms

Federal guidance for procuring appraisals may be found in HUD Handbook 1378 Real Estate Acquisition and Relocation Policy and Guidance on the HUD website, which includes guidance and sample language for require notices:

- Chapter 6 Recordkeeping and Reports to guide localities in the Acquisition process
- Appendix 19 Preparing an Appraisal Scope of Work
- Appendix 20 Agreement for Appraisal Services.
- Appendix 31 Informational Notice VOLUNTARY ACQUISITION for Agencies **WITHOUT** Eminent Domain Authority.
- Appendix 32 Informational Notice VOLUNTARY ACQUISITION for Agencies **WITH** Eminent Domain Authority, where it will **be REVOKED.**
- Appendix 30 Notice of Interest INVOLUNTARY ACQUISITION for Acquisition where Eminent Domain Authority **IS RETAINED.**

The following documents are included in this chapter and available on the TDA website:

- State of Texas Publication: “The Texas Landowners Bill of Rights”
- HUD publication: “When a Public Agency Acquires Your Property”

## Sample
## Just Compensation Determination Statement

***Note:*** *This Statement should be modified as conditions require and may accompany the initial letter of interest.*

TxCDBG Contractor:_____ TxCDBG Contract No. _____

The__(acquiring entity)_____ proposes to purchase a portion of your property at (_____address_____), as follows:
_____

The __(acquiring entity)_____ has established just compensation for this property as_$_____ The __(acquiring entity)_____ hereby offers the just compensation amount of $_____ for the purchase of your property.

The amount offered is the full amount that____(a.e.)_____ believes to be just compensation for the subject property or interest therein is not less than the market value of the described property. The basis for determining the value is shown below.

**Just Compensation:** $_____ (an amount representing just compensation for the real property to be acquired the amount considered to be the market value of the portion to be acquired as part of the whole property -plus- if applicable, an amount representing damages and benefits to the remaining portion of the property

**Basis for Determination:** _____(Insert formula used in calculating value.)
_____

**Donation:**
A donation of the property is an option that may be exercised and this statement may serve as documentation in support of the valuation for tax purposes.

**Costs:**
The _____(a.e.)_____ will be responsible for any costs or fees relating to this acquisition.

_____ _____ _____
Name of local official; Signature date