



**The
Office of Rural Affairs
Presents**



Acquisition Laws & Rules

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)
- 49 CFR Part 24
- HUD Handbook 1378 - Tenant Assistance, Relocation & Real Property Acquisition
- Section 104(d) of the Housing & Community Development Act

Environmental

Complete all environmental reviews, Requests for Release of Funds and clearance related paperwork **before**:

- Any commitment of TxCDBG funds for activities; and
- Any commitment of non-TxCDBG funds that would have an adverse environmental impact or limit the choice of alternatives.

Acquisition of Real Property

- Acquisition procedures apply to any acquisition of real property for programs and projects where there is Federal financial assistance in any part of project costs.
- Applies to:
 - ✓ Parcels of private or public property acquired for the project
 - ✓ Permanent and temporary easements
 - ✓ Property leased for a period of 15 years or more

Eminent Domain

- **What is Eminent Domain?**
 - **The ability of the government to seize private property for public use after providing just compensation to the owner**
 - **Limited by 5th Amendment protections**
- **Who has Eminent Domain authority?**
 - **Municipalities and Counties – conferred under the Local Government Code.**
 - **Water Supply Corporations and Water Districts – conferred by the Texas Water Code.**
 - **Political Subdivisions and various governmental entities.**

Limited Eminent Domain Authority

Acquiring entity does not have eminent domain authority, for instance:

- Property owner is a governmental entity, such as a school district.
- Economic Development project - The acquiring entity's eminent domain authority is limited by law. (Govt. Code 2206.001)

09/11/2013 11:28

Voluntary vs. Involuntary

Voluntary - Communities with eminent domain authority but will not use:

- Several sites available – not site specific
- Community *will not acquire the property if negotiations fail* and informs the owner in writing;
- Community informs the owner of the property's estimated market value
 - May use appraisal

09/11/2013 11:28

Voluntary vs. Involuntary

Involuntary - Subject to threat or use of eminent domain:

- Usually occurs when the acquisition is site specific
- More notice requirements
- Appraisals required to be performed by Licensed/Certified Appraisers

09/11/2013 11:28

Voluntary vs. Involuntary

Common Pitfall of Voluntary vs. Involuntary:

- A common misconception is that a “willing seller” or “amicable agreement” or “donation” means a transaction is “voluntary.”
- Go through requirements of 49 CFR 24.101(b)(1)-(5) to determine if voluntary

09/11/2013 11:28

Acquisition Steps - Voluntary

Voluntary Acquisition

1. Determine parcels needed for project and submit Initial Acquisition Report (Form A600) to TDA.
 - Chief local official must certify that acquisition meets all conditions qualifying it as Voluntary per 49 CFR 24.101(b)(i)-(iv).
 - Appraisal requirement not applicable.
2. Notify owner in writing of interest in property and that eminent domain authority will not be used to acquire land.
3. Notify owner in writing of estimated market value. Market value is synonymous with fair market value.

Acquisition Steps – Voluntary (Cont.)

Voluntary Acquisition

4. Parties may negotiate the purchase price.
5. Ensure environmental review is completed and that TDA has authorized use of grant funds.
 - Failure to comply with HUD regulations regarding environmental could result in disallowed costs.
6. Execute sale, lease, or donation agreement and record the deed with the county.

Acquisition Steps - Involuntary

1. Determine parcels needed for project and submit Initial Acquisition Report (Form A600) to TDA.
 - Requires TDA approval.
 - If estimated value is \$10,000 or less, request TDA approval for waiver valuation.
2. Notify property owner of interest in property and provide owner rights brochures.
3. If an appraisal of property is required, notify owner of right to accompany the appraiser.

Acquisition Steps – Involuntary (Cont.)

- 
4. Have property appraised, if required.
 - Appraiser must be licensed/certified by state law (Occupations Code)
 - Fee appraiser must be competitively procured according to TxCDBG policy and Professional Services Procurement Act.
 5. Appraisal **must** then be reviewed by a Review Appraiser who is also licensed/certified by state law
 6. Make just compensation offer based on appraisal or according to fair market value if waiver valuation.
 - Provide owner basis for the offer of just compensation.

Acquisition Steps – Involuntary (Cont.)

Involuntary Acquisition – (Cont.)

7. Parties may negotiate the purchase price.
 - If negotiated price exceeds just compensation amount, prepare an Administrative Settlement statement (submit to TDA).
8. Ensure environmental review is completed and that TDA has authorized use of grant funds.
 - Failure to comply with HUD regulations could result in disallowed costs.
9. Execute sale, lease, or donation agreement and record the deed with the county.

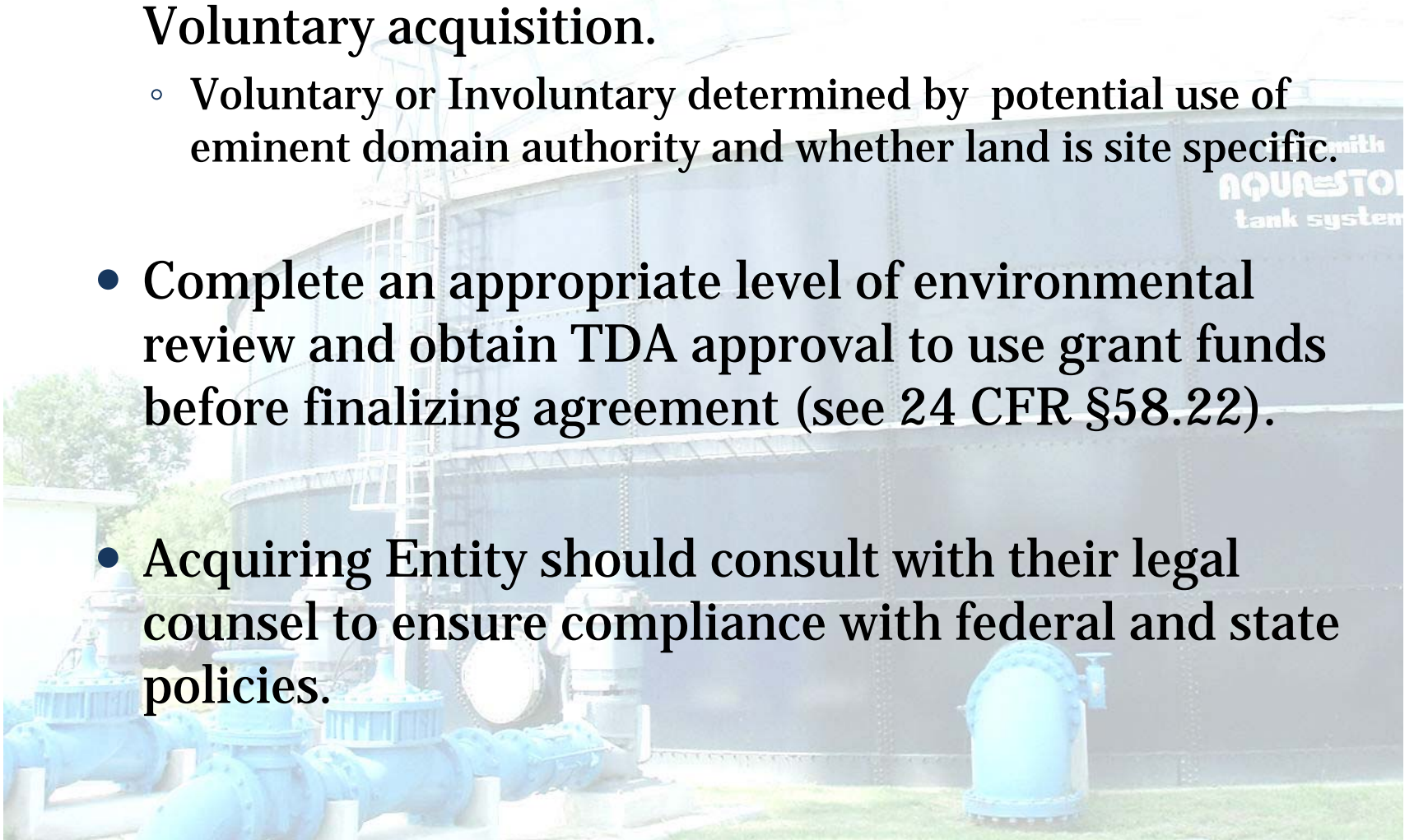
Donation of Real Property

When notifying the property owner of interest in acquiring land, the Acquiring Entity may invite an owner to donate property.

- Applies to both Voluntary and Involuntary procedures.
- All applicable notices are still required, including notice of just compensation value.
- Owner must waive right to an appraisal in writing.

Common Pitfalls

- Do not assume that owner's willingness to donate/sell land automatically constitutes Voluntary acquisition.
 - Voluntary or Involuntary determined by potential use of eminent domain authority and whether land is site specific.
- Complete an appropriate level of environmental review and obtain TDA approval to use grant funds before finalizing agreement (see 24 CFR §58.22).
- Acquiring Entity should consult with their legal counsel to ensure compliance with federal and state policies.



Common Pitfalls – (Cont.)

- **Ensure that a complete Initial Acquisition Report (Form A600) has been filed with TDA.**
 - Include description and map.
 - Form must be certified by the Chief Elected Official or designee.
 - File updated report with TDA if acquisition is later necessary for the project.
- **Include acquisition in the scope of activities of TxCDBG Contract Performance Statement.**
- **Accurately determine if Acquiring Entity has eminent domain authority.**

