

CHAPTER 2

APPRAISAL AND APPRAISAL REVIEW POLICIES AND PROCEDURES

2.01 GENERAL

- 2.01-1 FEE APPRAISER QUALIFICATIONS AND APPROVAL
- 2.01-2 APPROVED FEE APPRAISER LIST
- 2.01-3 STAFF APPRAISERS
- 2.01-4 SELECTION OF APPRAISERS
- 2.01-5 USING STATE CERTIFIED FEE APPRAISERS/REVIEWERS
- 2.01-6 CONTRACTS AND FEES
- 2.01-7 INFORMATION FURNISHED APPRAISERS
- 2.01-8 RATING OF APPRAISERS
- 2.01-9 ACQUIRING PROPERTY FROM LOCAL AGENCIES
- 2.01-10 CONDEMNATION
- 2.01-11 COMPLIANCE WITH THE UNIFORM STANDARDS OF PROFESSIONAL PRACTICE
- 2.01-12 COMPLIANCE WITH THE PREVAILING WAGE ACT

2.02 APPRAISALS

- 2.02-1 MINIMUM APPRAISAL REQUIREMENTS
- 2.02-2 WAIVER OF APPRAISAL AND APPRAISAL FORMATS
- 2.02-3 NUMBER OF APPRAISALS
- 2.02-4 COMPARABLE SALES
- 2.02-5 AFTER VALUES AND DAMAGES
- 2.02-6 BENEFITS
- 2.02-7 SPECIALTY SUPPLEMENTAL ESTIMATES OF COST/VALUE
- 2.02-8 PROBABILITY OF REZONING - HIGHEST AND BEST USE
- 2.02-9 ACCESS RIGHTS
- 2.02-10 TENANT-OWNED IMPROVEMENTS AND PERSONAL PROPERTY
- 2.02-11 VALUATION OF SIGNS
- 2.02-12 NURSERY STOCK
- 2.02-13 VALUATION OF EXCESS LAND
- 2.02-14 INFLUENCE OF PROPOSED IMPROVEMENT ON VALUE
- 2.02-15 COMPENSATION FOR ACQUIRING RAILROAD AND UTILITY OPERATING RIGHT OF WAY
- 2.02-16 TEMPORARY USE PERMITS
- 2.02-17 APPROACHES TO VALUE
- 2.02-18 UNIT RULE
- 2.02-19 VALUATION OF CONTAMINATED PROPERTY
- 2.02-20 NONCOMPENSABLE ITEMS OF DAMAGE

2.03 APPRAISAL REVIEW IN THE DISTRICT

- 2.03-1 REVIEWING APPRAISER QUALIFICATIONS
- 2.03-2 RESERVED FOR FUTURE USE
- 2.03-3 RESPONSIBILITY AND AUTHORITY
- 2.03-4 INSPECTION OF SUBJECTS AND SALES
- 2.03-5 DATA TO BE CONSIDERED
- 2.03-6 EXAMINATION OF APPRAISAL REPORTS
- 2.03-7 REVIEW OF SPECIALTY SUPPLEMENTAL ESTIMATES
- 2.03-8 APPROVAL AND DOCUMENTATION
- 2.03-9 CORRECTIONS AND REVISIONS
- 2.03-10 REVIEWER'S CERTIFICATION

- 2.03-11 UNECONOMIC REMNANTS
- 2.03-12 SUBMITTAL OF APPRAISALS TO CENTRAL OFFICE

2.04 APPRAISAL REVIEW IN THE CENTRAL OFFICE

- 2.04-1 GENERAL
- 2.04-2 RESPONSIBILITY
- 2.04-3 INSPECTION
- 2.04-4 EXAMINATION OF APPRAISAL REPORTS
- 2.04-5 CORRECTIONS AND REVISIONS
- 2.04-6 SUBMITTAL OF APPRAISALS TO THE FEDERAL HIGHWAY ADMINISTRATION

2.05 LAND ECONOMIC STUDIES

- 2.05-1 GENERAL
- 2.05-2 ORIGIN OF DATA
- 2.05-3 EARLY PREPARATION
- 2.05-4 GATHERING SALES
- 2.05-5 SCREENING
- 2.05-6 THE INTERVIEW
- 2.05-7 THE ROUGH DRAFT
- 2.05-8 COMPUTATION
- 2.05-9 THE FINAL COPY
- 2.05-10 PRINTING PROCEDURE

CHAPTER 2 EXHIBIT INDEX

CHAPTER 2

APPRAISAL AND APPRAISAL REVIEW POLICIES AND PROCEDURES

2.01 GENERAL

Private property shall not be taken for public use without payment of just compensation (Ill. Const. 1970, Art. 1 Sec. 15). Appraisals and the waiver of appraisal procedure are utilized by the Illinois Department of Transportation, Division of Highways, to establish a basis for determining just compensation. The division is released from the obligation of obtaining an appraisal or waiver of appraisal when an owner has been informed of the right to receive just compensation, and they choose to donate the property or rights to be acquired. When an appraisal is prepared, the owner or the owner's designated representative must be given an opportunity to accompany the appraiser during inspection of the property.

2.01-1 FEE APPRAISER QUALIFICATIONS AND APPROVAL

Fee appraisers must have the necessary background and experience, ability and enterprise to gather the necessary facts, correlate and analyze them, demonstrate good judgment in forming opinions of fair market values, and their appraisal reports must meet our minimum requirements. They must be able to interpret highway plans and be capable of determining the effect of the proposed improvement on the properties being appraised. Appraisers must be willing to prepare and testify to unbiased opinions of value without being an advocate for the department. When called upon for service as expert witnesses, they must be capable of presenting, in a forthright and thorough manner, all of the facts considered in preparing the appraisal, and to defend, in a logical and convincing manner, the conclusions, which they have reached.

Fee appraisers must be approved by the Central Bureau Engineer of Land Acquisition prior to receiving assignments to prepare appraisals. Fee appraisers, who are not on the approved appraiser list, but the district wishes to use for appraisal work, must be interviewed by the district engineer, or authorized representative. At the interview, fee appraiser qualifications and appraisal requirements of the Division of Highways will be fully explained. Copies of appraisal report forms with instructions for their use will also be reviewed with the appraiser.

Prospective fee appraisers must complete the standard "Application for Assignment" ([Exhibit 2.01-1](#)) and furnish evidence that they meet requirements, including the prescribed Appraisal Principles Examination, when considered necessary.

After the interview, the district engineer, or representative, will review the application, qualifications of the appraiser and the Appraisal Principles Examination when necessary. A copy of each shall be submitted to the Central Bureau Engineer of Land Acquisition, only if the district engineer wishes to make assignments to the appraiser and feels that the appraiser is qualified and willing to do acceptable work.

After a review, the Central Bureau Engineer of Land Acquisition will notify the district engineer whether or not assignments may be made to the appraiser. When the appraiser is approved, the Central Bureau Engineer of Land Acquisition will send a letter informing the appraiser of approval to prepare appraisals for the division.

When an appraiser is approved, the first assignment should include only a few parcels. If,

after a review of appraisal reports, the work appears to meet the minimum requirements, additional assignments may be made to the appraiser. When appraisals do not meet our requirements, the reviewer will inform the appraiser, and if satisfactory work cannot be obtained the district engineer should initiate action to have the appraiser's name removed from the approved list.

In order to be approved, an appraiser must meet certain educational and experience requirements. If the appraiser is a state certified or licensed appraiser, all or some of these requirements will be waived. In addition to the application, the following qualification criteria will be used to determine if the appraiser should be approved.

- If the appraiser is a state certified general or residential appraiser, the experience and education requirements are satisfied. The appraiser is not required to submit a sample appraisal, but must submit a copy of their current state license with the application.
- If the appraiser is a state licensed residential appraiser, the education requirements are satisfied. The appraiser is not required to submit a sample appraisal, but must furnish documentation of two years experience in preparing written appraisal reports, and a copy of their current state license with the application.
- If the appraiser is neither state certified nor licensed, the following qualifications will apply:
 - Must have at least two (2) years experience in preparing written appraisal reports. A background of one of the following is preferred:
 - § Handling real estate transactions
 - § Handling real estate loans
 - § Property management (including farm management)
 - § Training in a field related to real estate
 - Must furnish the following:
 - § A sample appraisal that, after a review, convinces a Division of Highway reviewing appraiser that the fee appraiser can prepare appraisal reports that will meet our minimum requirements
 - § Show proof of successful completion of two (2) appraisal courses such as those given by the Appraisal Institute or an accredited college; or, successfully complete an examination on appraisal principles and theories that has been prepared and graded by the Division of Highways

The "Appraisal Principles Examination" is not included as an exhibit. It shall be kept in the district office files and shall not be made available to the public.

2.01-2 APPROVED FEE APPRAISER LIST

The division shall maintain a list of approved fee appraisers. The list is an in house document for the division's use in selecting appraisers. It is not intended to be used as a general reference of qualification for any other purpose. The list should be reviewed continually and anytime an appraiser does not perform satisfactorily, the appraiser should be removed from the list. If the division does not intend to make additional assignments to an appraiser for a

period of a year or more, the appraiser should be placed on the inactive list. If an appraiser is on the inactive list for three consecutive years, the appraiser will be deleted from the approved list and will have to reapply to do work for the division.

2.01-3 STAFF APPRAISERS

In order to provide the required need for staff appraisers, any employee of the division may be assigned to prepare appraisals consistent with their ability, qualifications and experience.

2.01-4 SELECTION OF APPRAISERS

The selection of appraisers is of utmost importance, and consideration should be given to the following before making the appraisal assignment.

- The appraiser's qualifications
- The type of property to be appraised
- The complexity of the appraisal problem
- The availability of the appraiser
- The effectiveness of the appraiser as an expert witness
- Other factors that may be of importance

Appraisers should normally be selected from the area or district in which the project is located. There will, however, be cases when it is necessary or advisable to select appraisers from another area. The type and complexity of properties on the project and availability of appraisers qualified for the assignment influence these decisions. Selection of appraisers is made by the district engineer or authorized representative. A fee appraiser must be on the list of approved fee appraisers to be eligible for assignments.

The requirements of this section are not applicable to the selection of valuation witnesses by counsel for the department in condemnation proceedings.

2.01-5 USING STATE CERTIFIED FEE APPRAISERS/REVIEWERS

When an appraisal problem requires a detailed appraisal and it is assigned to a fee appraiser, the appraiser shall be a certified general or certified residential real estate appraiser, if there is federal funding in any phase of the project. On projects with no federal funding, a certified general or residential appraiser should be used to prepare detailed appraisals when assigned to a fee appraiser. Staff appraisers and staff reviewers will not require certification to prepare or review detailed appraisals.

A detailed appraisal is defined as a complex appraisal problem that requires thorough documentation to support the values and conclusions contained in the report. An appraisal is considered detailed if one of the following circumstances is applicable.

- Damages, excluding non-complex cost to cure, exceed \$10,000.
- Acquisition involves the taking of a principal building.

- The highest and best use is different than present use or zoning.
- On acquisitions involving only land or land with minor improvements, a staff reviewing appraiser will determine if the appraisal problem is complex.
- Some other examples of complex appraisal problems are:
 - A complex specialty report is required.
 - Market data is inadequate and consideration must be given to the cost and/or income approaches as appropriate.
 - A complicated valuation problem is involved.

The selection of fee appraisers and fee reviewers for detailed appraisals shall be in accordance with the following classifications:

- State Certified Residential Real Estate Appraiser - This category limits the appraiser to appraising or reviewing residential property containing 1-4 living units, and vacant single-family land zoned residential, which will accommodate no more than four living units.
- State Certified General Real Estate Appraiser - This category allows the appraiser to appraise or review any type of real estate.

Fee reviewers shall be certified to review detailed appraisals on projects, which have federal funds in any phase of the project. On projects with no federal funding, a certified reviewer should be used to review detailed appraisals. Fee reviewers with certified residential real estate appraiser classification are limited to reviewing the types of properties listed under this classification above.

If an excess land parcel was acquired with federal funds, a fee appraiser must be certified when the appraisal problem is complex and requires a detailed appraisal. If a principal building is located on the excess land or when a staff reviewing appraiser determines that the appraisal problem is complex, a detailed appraisal will be required.

The acquisition of access rights are valued on a before and after basis, and the difference is considered a damage to the remainder. If the damage is over \$10,000, the appraisal problem will be considered complex and require a detailed appraisal.

2.01-6 CONTRACTS AND FEES

The work performed by fee appraisers, fee reviewing appraisers, and specialty appraisers is considered a construction-related service. The division does not require formal advertisement for the solicitation of bids unless a contract exceeds \$30,000 per fiscal year on a project. Contracts expected to be over \$30,000 must go through the consultant selection process and awarded in accordance with Departmental Order 6-8. Contracts should only be entered into with qualified appraisers, reviewers, and specialty appraisers. The Central Bureau of Land Acquisition's contract generator for appraisal, appraisal review, and specialty appraisal services shall be used for all contracts. When a contract is amended, the contract generator's amendment shall be used. Contracts can be amended to add new parcels, delete parcels, revise existing parcel rates, and extend the contract termination date. Except for specialty appraisal contracts, the district must specify the appraisal form to be used on each parcel.

Fees are to be on a parcel by parcel basis and should be determined by the complexity of appraisal problems, number of parcels assigned, travel distance for the appraiser, amount of

information furnished by the district, amount of information the fee appraiser must obtain, etc. This data is also considered when estimating fees for up-dates and revisions. Fees for updates and revisions cannot be based on a flat percentage of the original fee. Separate fees can be paid for preparation of market data, market analysis, etc.

In a limited number of cases where special use properties or highly complex appraisal problems are encountered, a per diem rate contract with a stated limit may be used. The overall limit should not be exceeded except by a supplemental agreement. Prior approval must be obtained from the Central Bureau Engineer of Land Acquisition for the use of a per diem rate contract. Fees for pretrial conferences and court appearances shall be based on a per diem rate as required in the contract.

Prior to entering into a contract with a fee appraiser, reviewing appraiser, or specialty appraiser, a qualified individual from the district will view the project to determine the number and type of appraisals needed and estimate a fee per parcel. In exceptional cases, due to a lack of time, the estimate may be made after requesting a contract but must be made prior to receiving the contract from the fee appraiser. This estimate must be in writing and must be retained in the project file. A predetermined schedule of fees for different types of properties may be used. Estimates are not required on parcels to be assigned to staff appraisers.

When a written contract is submitted by the fee appraiser, it will be reviewed by the district land acquisition engineer, or delegated representative, and approved by the district engineer if found to be acceptable. Upon approval, the contract becomes a binding contract and all of the provisions in the contract must be met. Bills for fee appraising, reviewing and specialty appraising services may be processed for payment when the reviewing appraiser is satisfied that the appraisal report meets basic requirements of the assignment. Reviewers are not required to certify appraisals before bills are processed.

Contract amendments for revisions to a contract including the term of the contract must be sent to the Central Bureau of Land Acquisition (CBLA) prior to submitting the payment request. Contracts are not required for valuation witnesses retained by the division or by a Special Assistant Attorney General (SAAG). They are also not required for cost to cure or mineral estimates. However, where the witnesses are retained or the division obtains estimates, the district files shall contain, as a minimum, a letter of assignment stating the fees for such service. SAAGs may use any form of contract that they choose.

2.01-7 INFORMATION FURNISHED APPRAISERS

When assignments are made, the district shall furnish, or otherwise make available, to staff and fee appraisers as much of the following information as is pertinent:

- Appraisal report forms ([Exhibits 2.02-2A\[BRW 742\]](#), [2.02-2C\[BRW 229\]](#) and [2.02E\[BRW 2063\]](#))
- Instructions for completing the appraisal report forms ([Exhibits 2.02-2B](#), [2.02-2D](#), and [2.02-2F](#))
- Right of way plans
- Sketches of the whole property showing location of improvements, property dimensions on small holding and other significant topographic features
- Plats and descriptions along with areas of the taking and remainders when applicable
- Plan and profile and cross section sheets

- Information as to how the particular properties will be affected by the proposed improvement, including construction features to be undertaken to mitigate damages
- Information pertaining to generally noncompensable items of damage under Illinois law ([Section 2.02-20](#))
- Information pertaining to benefits to the remainder ([Section 2.02-6](#))
- All available title information
- Comparable sales the district may have
- The rights to be appraised
- Any other information that may be necessary or beneficial to the appraiser

2.01-8 RATING OF APPRAISERS

Fee appraisers and fee reviewers will be rated at the end of each fiscal year. Only the fee appraisers and reviewers who received payments from the department for services provided during the fiscal year need to be rated. Interim ratings should be prepared when circumstances such as poor initial work indicate a need to formally inform the fee appraiser or fee reviewer. Individual fee appraisers and fee reviewers who sign appraisal reports and review certifications are rated rather than companies. Ratings are prepared on BRW 891 ([Exhibit 2.01-8](#)). If continued selection is not recommended on the rating report, the fee appraiser or fee reviewer will be removed from the Approved Fee Appraisers List. Each rated appraiser and reviewer must receive an "Overall Performance" rating. Copies of all ratings must be provided to the appraiser being rated and to CBLA by July 15 of each year.

Staff appraisers are rated annually on the "Performance Management System" forms, which are made a part of the individual's confidential personnel record.

2.01-9 ACQUIRING PROPERTY FROM LOCAL AGENCIES

The procedures for acquiring property in public use or ownership are in [Chapter 8](#). The procedures call for preliminary estimates and valuations that will be prepared and/or reviewed by the appraisal units in the district and CBLA.

2.01-10 CONDEMNATION

As soon as possible after an assignment to a SAAG has been made, a meeting should be arranged between the SAAG and a representative of the district engineer to review the valuation evidence. It is strongly recommended the SAAG and valuation witness discuss the valuation evidence before any valuation testimony is presented. At this time, the SAAG may request updates of existing appraisals. New appraisals or opinions of value also may be obtained. Opinions of value, which are obtained for court testimony, may be prepared in any detail desired by the district engineer or SAAG. It is highly recommended the administrator and the attorney obtain the opinion of the reviewing appraiser as to the reasonableness of the value estimate. Waiver of appraisals should not be used as a basis to give valuation testimony in condemnation proceedings. They generally do not contain sufficient information for court testimony. The district should not have the existing appraisals updated until requested to do so by the SAAG. The "as of" date is the date the complaint is filed.

There will be instances when the department may determine not to include the valuation of the whole property in the appraisal assignment. This occurs when the taking is minor and a

valuation of the whole property would involve more time and expense than the appraisal problem warrants. Examples of this may include:

- Valuation of a fee taking/permanent easement/temporary easement from an active railroad line which involves hundreds of miles of track, switching equipment, switching yards, etc.
- Minor fee taking/permanent easement/temporary easement from a property where the major improvements contributing to value are located such that the taking does not impact their function, or there may be little or no unity of use between the major improvements and the area of the taking (excepting cost to cure damages consideration for items such as fencing, signs, landscaping and other similar items).

In these instances, the taking will not impact the improvements either negatively or positively. It is the reviewing appraiser's responsibility to make the initial determination that any proposed appraisal assignment fits this situation. The appraiser is still responsible for conducting a sufficient analysis to concur that the taking is of such a minor nature that it is unnecessary to include a detailed before and after valuation of the whole for the particular appraisal assignment.

When condemnation is necessary, the appraisal should be revised to include the value of the whole property before and after the acquisition, or as instructed by the SAAG. This revision will utilize existing data on the whole property in the appraiser's file and any new information obtained for this purpose. ([See Section 2.02-1 MINIMUM APPRAISAL REQUIREMENTS](#)).

When the SAAG has had a chance to completely analyze the case and study the evidence including the state and property owner testimony, a settlement may be recommended. There are several reasons for recommending settlement. One that is often used is updated appraisals that reflect increases in values between the date the appraisals were originally prepared and the date the petition is filed. Other reasons for settlement are:

- Legal interpretation of assumptions made in appraisals obtained by the division
- Quantity and quality of data available to the appraiser
- The effectiveness of the appraiser as a witness
- Additional appraisals, including those of the landowner
- Interest payments to which an owner may be entitled under state law
- Uncertainty as to the highest and best use of the property before the taking, and, when appropriate, after the taking
- Complex severance damages or other valuation problems that necessarily produce uncertainties as to value
- Uncertainty as to interpretations of state law concerning the measure or compensability of particular elements of value or damage, or concerning the admissibility of evidence necessary to prove facts in issue
- Recent court or jury awards for eminent domain takings in the area
- Other factors which would justify settlement

When settlement is based on a subsequent appraisal, the division must be furnished a copy of the appraisal that contains data to document and support the opinions of value and/or damages.

2.01-11 COMPLIANCE WITH THE UNIFORM STANDARDS OF PROFESSIONAL PRACTICE

The department, the Office of Banks and Real Estate, and the Illinois Appraisal Committee have agreed on a process that allows appraisers who are required to follow the Uniform Standards of Professional Practice (USPAP) to prepare appraisals for the department without violating USPAP. All appraisals, appraisal waivers, appraisal reviews and other types of valuations prepared for the department, or local agencies which require the appraiser to follow the department's appraisal requirements, have to comply with USPAP. When the department's appraisal requirements are contrary to the applicable USPAP Standards, compliance with USPAP is achieved by invoking the Jurisdictional Exception (JE). The JE requires the appraiser to identify the jurisdictional authority that justifies the JE and the part or parts of the USPAP Standards that have been disregarded.

The department has developed a Jurisdictional Exception Certification and checklists for Standards 1, 2, and 3. See [Exhibit 2.01-11](#). They are also available on the department's website. The certification, which identifies the authority that justifies the JE, has to be completed and included in each valuation or appraisal review. The checklists for Standards 1 and 2 (appraisals) and Standard 3 (appraisal review) are used to identify the part or parts of these standards that were disregarded. The appropriate checklist has to be completed for each valuation and maintained in the appraiser's work file. The shaded boxes or listed appraisal formats on the checklists indicate the Standard Rules of USPAP with which IDOT expects compliance. If the box isn't shaded, the appraiser will have to determine whether or not they complied with that Standard Rule. If an appraiser chooses not to use the department's documents, the appraiser is still responsible for identifying the part or parts of the USPAP that were disregarded and the authority that justifies the JE.

2.01.12 COMPLIANCE WITH THE PREVAILING WAGE ACT

The Illinois Attorney General has determined that the Prevailing Wage Act (820 ILCS 130/0.01 et. seq.) is applicable to any work paid for with public funds involving highway construction. This includes work performed by a property owner as a result of the payment by the department to move, alter, relocate, etc., any improvements as a consequence of the proposed highway construction. Compensation included in Appraisals and Appraisal Waivers for labor costs must be based on paying the Prevailing Wage. Anyone providing the department with cost estimates must be instructed to use the Prevailing Wage in determining labor costs.

2.02 APPRAISALS

2.02-1 MINIMUM APPRAISAL REQUIREMENTS

The following minimum appraisal requirements apply to all appraisal report forms:

- Standard appraisal report forms, prepared in accordance with the instructions for their use, will be used except in cases when the standard forms do not fit the appraisal problem. The form and content of the forms cannot be changed. The automated appraisal forms can be accessed from the IDOT website at <http://www.dot.state.il.us/>.
- When the standard forms do not fit the appraisal problem, narrative reports or other forms will be accepted. These types of reports must be supported and documented to a

degree compatible with the instructions for the standard forms or with the appraisal problem.

- The minimum total compensation for a fee or dedication acquisition whether by appraisal or by waiver is \$300. The minimum total compensation for a temporary or permanent easement per parcel is \$300 for each parcel whether by appraisal or by waiver. See [Section 2.02-15](#) for the minimum payment requirements for the acquisition of easements on railroad and utility operating right of way.
- The appraiser shall not give consideration to, nor include in the report, any allowance for relocation assistance benefits.
- The owner or designated representative must be given an opportunity to accompany the appraiser when inspecting the property.
- In estimating the value of the property before taking, the appraiser shall disregard any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner. Any decrease or increase in value caused by the acquisition of a part of the property, however, must be considered in estimating the value of the remainder after taking.
- Appraisal reports must be in ink, typewritten, or computer-generated and staff or fee appraisers shall independently prepare them.
- A revised Certificate of Appraiser, BRW 742-18 ([Exhibit 2.02-2A](#)) or BRW 229-4 ([Exhibit 2.02-2C](#)) is required when there is a change by the appraiser that affects the total compensation or changes the date of valuation.
- There will be instances when the department may determine not to include the valuation of the whole property in the appraisal assignment. This occurs when the taking is minor and a valuation of the whole would involve more time and expense than the appraisal problem warrants. Examples of this may include:
 - Valuation of a fee taking/permanent easement/temporary easement from an active railroad line which involves hundreds of miles of track, switching equipment, switching yards, etc.
 - Minor fee taking/permanent easement/temporary easement from a property where the major improvements contributing to value are located such that the taking does not impact their function, or there may be little or no unity of use between the major improvements and the area of the taking (excepting cost to cure damages consideration for items such as fencing, signs, landscaping and other similar items).

In these instances, the taking will not impact the improvements either negatively or positively. It is the reviewing appraiser's responsibility to make the initial determination that any proposed appraisal assignment fits this situation and is so indicated at the time of the assignment. In the case of a fee appraisal, it will be shown on the contract. The appraiser is still responsible for conducting a sufficient analysis to concur that the taking is of such a minor nature that it is unnecessary to include a detailed before and after valuation of the whole for the particular appraisal assignment. If condemnation is necessary, the appraisal should be revised to include the value of the whole property before and after the acquisition, or as instructed by the SAAG. This revision will utilize existing data on the whole property in the appraiser's file and any new information obtained for this purpose. (See [Section 2.01-10 CONDEMNATION](#)).

- Opinions of value, which are obtained for court testimony, may be prepared in any detail desired by the district engineer or the SAAG. It is highly recommended, however, that the administrator and the attorney obtain the opinion of the reviewing appraiser as to the reasonableness of the value estimate. If these opinions of value are later used as the basis for settlement, the division must be furnished a copy, which contains data to document, and support their opinions of value and/or damages.

2.02-2 WAIVER OF APPRAISAL AND APPRAISAL FORMATS

In addition to the above, the following are minimum requirements for appraisals and waiver of appraisals:

Waiver of Appraisals – 49 CFR 24.102(C)(2) states the following: “An appraisal is not required if the owner is donating the property and releases the Agency from this obligation {of an appraisal}, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$10,000 or less {as amended}, based on a review of available data”. When acquisitions are minor, permanent damages are not expected to exceed \$3,000 and the total parcel compensation is \$10,000 or less, the following procedures may be utilized. These procedures do not apply to temporary use permits.

- Appraisals and appraisal reviews are not required, except when waiver of appraisal offers are rejected.
- The minimum payment for a fee or dedication acquisition is \$300. The minimum payment for each temporary or permanent easement is \$300. See [Section 2.02-15](#) for the minimum payment requirements for the acquisition of easements on railroad and utility operating right of way.
- The waiver of appraisal estimate is not an appraisal, and criteria for an appraisal are not required. Sufficient valuation analysis of the subject whole property and the part to be acquired must be performed to make the determination of minor impact. They may be prepared individually or grouped with other parcels in a memorandum or spreadsheet format. No specific detail is required.
- The estimate must contain a statement that "based on a review of available data, appraisals are unnecessary because the valuation problem is not complex."
- Sales data, such as required in an appraisal, is not required; however, general information regarding sales of similar property should be in the project files. Reference may be made to sales data in other project files that is similar to subject project.
- If the estimate includes compensation for damages, the amount of damages must be specified.
- Farmland Preservation data must be provided when applicable. See instructions for BRW 742-1, Line 7 ([Exhibit 2.02-2B](#)) for required information.
- It is not necessary to meet with the owner(s) or enter the property for the purpose of preparing this type of estimate.
- The estimator should normally be an appraiser, qualified for the degree of difficulty of the assignment.

- The estimator may make the offer to the owner(s) after the district engineer or a designated representative, who has final authority to determine the amount, approves the offering amount.
- In the event the offer is refused, the appraiser/estimator could immediately proceed with preparing an appraisal at the same call. However, a district may separate the estimate, offer and appraisal functions if they choose.
- The district engineer or his authorized representative may subsequently adjust the approved offering amount administratively when a reasonable settlement is obtainable. A notation should be made in the files that the revised amount was approved.
- Waiver of appraisals should not be used as a basis to give valuation testimony in condemnation proceedings.

Valuation Finding (BRW 2063) - This format is intended for use on uncomplicated takings when the total compensation is not expected to exceed \$10,000.00. It may include non-complex cost to cure and nominal permanent damage to the remainder. Permanent damage to the remainder should not exceed \$5,000. Completion of the BRW 2063 appraisal form ([Exhibit 2.02-2E](#)) is the minimum requirements for this format. Instructions for completing this format are located in [Exhibit 2.02-F](#).

Abbreviated Format (BRW 229) - This format should be used when the appraisal problem is not complex as defined in [Section 2.01-5](#). There is no limit on the total compensation. The compensation may include non-complex cost to cure and permanent damage to the remainder. Permanent damage should not exceed \$10,000. Completion of all pages of the BRW 229 appraisal form ([Exhibit 2.02-2C](#)) is the minimum requirement for this format. Instructions for completing this format are located in [Exhibit 2.02-D](#). Making reference to specific sales can support values. It is not intended that a "direct comparison" be made. Sales data sheets, (BRW 742-19 of [Exhibit 2.02-2A](#),) should be available for sales referred to. After-values are to be supported by a narrative explanation of the effect of the taking on the remainder property.

The appraisal must contain a brief description of the following:

- **The Neighborhood** - The neighborhood description can be given by reference to other parcels on the project or by including a brief description in the appraisal.
- **The Whole Property** - A brief description of the use and type of improvements must be given. A detailed description and listing are not required.
- **The Part Taken** - The description of the part taken shall be given by listing items included in the take and attaching a copy of the plat showing the part taken.
- **The Remainder** - The remainder description may be given by reference to the description of the whole property before the taking when the remainder is essentially the same except for the part taken. An explanation of the items of minor damage as required above will describe any changes on the remainder as compared to the before description. If there are no damages to the remainder, the appraiser should so state, which will indicate that the remainder description is essentially the same as the before description. Any substantial change of the remainder caused by the taking would involve a more complex appraisal problem and the procedures below should be followed.

Detailed Appraisal Format (BRW 742). This format is intended for use on complex appraisal problems as defined in [Section 2.01-5](#). Completion of the applicable pages of the BRW 742 appraisal form ([Exhibit 2.02-2A](#)) is the minimum requirement for this format. Instructions for completing this format are located in [Exhibit 2.02-2B](#). In addition to the appraisal requirements in [Section 2.02-1](#), the minimum criteria for a detailed appraisal are:

- A stated purpose of the appraisal
- A stated intended use of the appraisal
- A description of the scope of work
- A definition of the estate being appraised
- A statement of the assumptions and limiting conditions affecting the analyses, opinions, and conclusions in the appraisal - Typical assumptions and limiting conditions can be grouped together. Extraordinary assumptions are defined in USPAP as assumptions, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. This type of assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis. An extraordinary assumption may be used in an assignment only if the following are met.
 - It is required to properly develop credible opinions and conclusions.
 - The appraiser has a reasonable basis for the extraordinary assumption
 - Use of the extraordinary assumption results in a credible analysis.
 - The assumption is disclosed in conjunction with each affected opinion or conclusion.
- An adequate description of the physical characteristics of the property being appraised - In case of a partial acquisition, an adequate description of the remaining property is required.
- A statement of the known and observed encumbrances
- A highest and best use analysis of the property being appraised and any remaining property after the acquisition. The analysis must include consideration of any easements, leases or other title encumbrances. If the present use is not the highest and best use, the basis for deciding that the property is legally and economically available and adaptable for a use other than the present use and that there is a demand must be shown.
- A five-year sales history of the property
- Under 49-CFR 24.103 (a) (3), the department can make appraisal assignments for the sales comparison approach only. This type of appraisal assignment should be based on the type of property being appraised and the availability of sufficient market sales data that reliably supports the fair market value. When the sales used in the sales comparison approach require large individual or overall adjustments, the cost and income approaches may be included in the appraisal if the approach is applicable. The cost approach is applicable if the property is improved with newer improvements. The income approach is applicable if the property is subject to a valid arm's-length lease. As

a general rule, the cost and income approaches are used as a check on the sales comparison approach, but the appraiser should not rely on either one exclusively. An explanation for not using the other approaches is not necessary. The appraiser should inform the district when it is necessary to use other than the sales comparison approach. Only in very unusual situations should the cost and income approaches be developed in lieu of the sales comparison approach. When this happens, the lack of a sales comparison approach shall be thoroughly explained.

- When improvements are affected by the acquisition, a detailed description and valuation of the improvements are required.

2.02-3 NUMBER OF APPRAISALS

Except for donations, as explained in [Section 2.01](#), at least one appraisal is required for all parcels. Generally, staff appraisers will prepare valuations of minor acquisitions; however, fee appraisers may be assigned these minor acquisitions when they are included with the assignment of other parcels on the project or when staff appraisers are not available. At least two appraisals or opinions of value are normally obtained on parcels in contested condemnation cases.

When the appraisal problem is complex as defined in [Section 2.01-5](#), an additional appraisal may be obtained. When two appraisals have been obtained and there is a wide divergence in the appraisals or if the reviewing appraiser feels the compensation is substantially outside the range of appraisals received, additional appraisals may be obtained with concurrence from the Central Bureau Land Acquisition Engineer. Concurrence shall be received before they are requested from the appraiser. This concurrence may be verbal, but a memorandum must be in the district files.

When condemnation is imminent, up to two additional appraisals may be obtained. Condemnation will be considered imminent when there has been no answer within the allotted time to the "Final Offer" letter or when the final offer has been refused. It is recommended that any additional appraisers or valuation witnesses be retained before the condemnation petition is filed in order that they can view the property on that date.

The above does not apply to opinions of value for court testimony, which may be obtained by either the district engineer or the SAAG. When the opinions of value are obtained by the district, the files should be documented to show that these were obtained for court testimony rather than for negotiating purposes and payment for the fees should be coded as a court cost rather than appraisal fees.

2.02-4 COMPARABLE SALES

It is essential that all the current sales within the project area be known. All of the appraisers to whom assignments are given and the reviewing appraiser should have knowledge of these sales. The district may choose to gather this data, especially on larger projects or for condemnation cases, which could involve large awards, and make it available to all appraisers who have assignments. (This does not relieve the appraiser from the responsibility of checking for additional sales.) This can be accomplished by the use of local abstracters, local realtors, appraisers, etc. Payment can be made for this service.

The information required on all sales must, as a minimum, include all of the data shown on BRW 742-19 ([Exhibit 2.02-2A](#)) as well as any other data pertinent to the analysis and evaluation of the sale. Allocation of the sale price to land and improvements is optional. Photographs are required on all sales and must include all principal above ground improvements or unusual features affecting the value of the sale, and these must be attached to the comparable sale form.

Verification of the sale price and other factual data concerning the sale and property may be accepted from others who have verified such data. Factual details include such items as sale price, date of sale, grantee and grantor, property identification, size, number of rooms, access, income data, and financing of the sale. Each appraiser must, however, inspect the sale property. If condemnation is necessary, all witnesses should personally verify the sales with a party involved in the transaction.

When the appraisers and reviewers are unable to verify the pertinent facts of sales and this information is crucial to the appraisal, the district should contact the SAAG assigned to the project for an opinion regarding use of the sales. The SAAG may also be able to take action not available to the appraiser to obtain the pertinent facts of the sale. This procedure could also be helpful with sales data, which involves contracts or trades. These efforts should help ensure the appraisers have acceptable sales data to support their valuations, and that such sales data will be admissible in future proceedings.

It will be acceptable for the appraiser to either attach the comparable sales to the appraisal report or to have them bound in a comparable sales booklet. When several parcels are assigned, the latter method is preferred. If this is done, the sales should be numbered, and the number of the sale referred to by the appraiser when the direct comparison method is used in the sales comparison approach. The sales in the booklet should be plotted and numbered on a map, and the map should be made a part of the booklet.

2.02-5 AFTER VALUES AND DAMAGES

The amount of damage or benefit is determined by subtracting the "Value of the Remainder After Taking" from the "Value of the Remainder Before Taking." The valuation of the remainder after the taking involves the same valuation process used to determine the value of the whole property. After the highest and best use has been determined, the appraiser must make every effort to obtain sales to support the valuation of the remainder after the taking. Sales used to support the value of the whole before the acquisition can be used to value the remainder if they are the most comparable to the remainder. The appraiser should make a diligent search for the best after value sales available. Land Economic Studies can be taken into consideration when making adjustments to the sales used to determine the value of the remainder.

Analysis of cost to cure may be included in estimating the market value of the remainder. The remainder property is appraised in its uncured condition. Cost to cure should not exceed what damages would be if cost to cure were not applied. Cost to cure should be considered in terms of how the market reacts to a property in need of repair or other corrective action.

When the appraiser determines that the remainder will not be damaged or benefited, a thorough explanation of this finding, along with an estimate of the after value as explained in the instructions for BRW 742-15 ([Exhibit 2.02-2A](#)), will be sufficient to meet requirements for an after value for the BRW 742 appraisal format. A summary explanation in BRW 229-3 will be sufficient for the BRW 229 appraisal format.

2.02-6 BENEFITS

Illinois is not a true "before and after" state because the property owner must always receive compensation for the part taken. Special benefits may be used to offset damages to the remainder. These type of benefits can be considered if they are real and substantial, capable of measurement and computation and not conjectural or speculative. General benefits cannot be used to offset damages to the remainder. For more information on benefits, see ILLINOIS EMINENT DOMAIN PRACTICE (1992 Supplement) presented by the ILLINOIS INSTITUTE FOR CONTINUING LEGAL EDUCATION and the ILLINOIS ATTORNEY GENERAL'S

CONDEMNATION MANUAL (2000). If legal advice is needed, the district should contact the Office of Chief Counsel for direction.

2.02-7 SPECIALTY SUPPLEMENTAL ESTIMATES OF COST/VALUE

When the appraisal problem involves the valuation of machinery, equipment and other specialty items, the services of a specialty appraiser may be required to aid in estimating the contributory value of these items. The minimum requirements for specialty reports are as stated in the instructions for preparation of these reports ([Exhibit 2.02-7](#)).

The appraiser of the real property must review the contents of the specialty report to determine that no duplications of items have been included in the report. Normally, the conclusions of the specialty appraiser represent the contributory value of the specialty items, but it is the appraiser's responsibility to analyze and consider the enhancement, if any, to the whole property and incorporate the contributory value into the whole property.

Valuations of coal, oil, sand, gravel and effects of contamination are often highly technical and are obtained from persons or companies active in these fields. Opinions of value received from these experts are not reduced to a form or check off appraisal; however, the reports must contain data to support the conclusions presented.

Cost and cost to cure estimates are estimates of cost that are not otherwise available to the appraiser. They are usually obtained from persons or companies that are involved in the related business. Since these estimates are used only as a source of cost by the appraiser, and are incorporated into the analysis and conclusion of value in the appraisal report, they are not required to meet the requirements of the "Specialty Report." When the estimate is for the cost of items that are a part of the property, these estimates are not arbitrarily added to the value of the property. The appraiser shall incorporate the estimate into the report, giving consideration to its contribution to the value of the whole property. The important difference between specialty reports and cost estimates is that the specialty reports contain value conclusions whereas the cost estimate is simply an estimate of cost.

Supplemental estimates are normally obtained by the district engineer; however, in appropriate instances, the fee appraiser responsible for the appraisal of the whole property may employ the specialist. When the specialist estimate is of a complex nature, the appraiser should obtain approval from the district engineer before employing the specialist. Uncomplicated estimates can be obtained by the appraiser without approval when the cost is not paid separately by the department. Any estimate that would require compensation in addition to the fee quoted in the proposal must have prior approval from the district engineer.

Two estimates may be obtained when the estimate is of a complex nature. If more than two estimates are required for reasons such as divergence, prior concurrence shall be received from CBLA.

The estimates obtained by the division must be reviewed in accordance with the procedures described in [Section 2.03-7](#). Each accepted estimate shall be made available to appraisers for consideration.

2.02-8 PROBABILITY OF REZONING - HIGHEST AND BEST USE

Appraisers must justify conclusions of rezoning and highest and best use that differ from present zoning or use by providing thorough explanations of factors they considered. Following are some of the factors that may be considered when making decisions regarding rezoning and highest and best use.

- Physical characteristics of subject property
- Available utilities to serve the proposed use, including cost of providing utilities
- Location of subject property
- Change of actual uses in the area
- Growth patterns in the area
- Demand for certain uses in the area
- Sales of similar properties at prices reflecting anticipated rezoning
- Age of the zoning ordinance
- Provisional nature of subject property's zoning classification
- Rezoning of nearby properties to show the flexibility of the zoning ordinance
- Comprehensive and master plans
- Ordinances or deed restrictions affecting the property
- Prior decisions by municipality to approve or disapprove applications to rezone property
- Length of time property has been zoned

These issues are discussed in *ADVANCED ISSUES IN ILLINOIS EMINENT DOMAIN PRACTICE* (1990) as presented by THE ILLINOIS INSTITUTE FOR CONTINUING LEGAL EDUCATION.

2.02-9

ACCESS RIGHTS

The question of what is considered to be "reasonable" access is often a problem, and each case must be considered on its own merits. See [Section 4.07](#) for additional information on the acquisition of access rights. In all cases where there are questions concerning access rights, the appraiser should ask the district office to obtain legal advice.

If the acquisition of access rights is expected to exceed \$5,000 and the appraisal is assigned to a fee appraiser, the appraiser shall be state certified if there is federal funding in any phase of the project and should be state certified on all other projects. See [Section 2.01-5](#) for limitations on the types of properties a state certified residential real estate appraiser could appraise.

2.02-10 TENANT-OWNED IMPROVEMENTS AND PERSONAL PROPERTY

Tenant-owned improvements are defined as buildings, structures or other improvements that would be considered to be real estate if owned by the owner of the real property on which they are located. Except for appraisal waivers, it is the responsibility of the appraiser to determine the presence of tenant-owned improvements on the subject property affected by the acquisition. The appraiser must offer the tenant-owner, if known, an opportunity to accompany the appraiser during the inspection of the property if the tenant-owned improvements will be affected by the acquisition. The appraiser shall identify any affected tenant-owned improvements in the appraisal. Appraisals shall not contain separate allocations of the value of

tenant-owned improvements located upon real property to be acquired. The “unit rule” requires the value of improved property be considered as a “whole” property, without assignment of separate values for the land and individual improvements. If the record owner signs an affidavit disclaiming all interest ([Exhibit 3.01-4B](#)) in the tenant-owned improvements to be acquired or relocated, the reviewing appraiser will be requested to provide a listing of the tenant-owned improvements affected and a reasonable allocation. When the reviewing appraiser is unable to provide the listing and allocation, the appraiser who prepared the appraisal will be contacted in writing and requested to provide the listing and allocation in writing. This is for the purpose of negotiations only and satisfying federal requirements. It is important that any correspondence between the department and an appraiser clearly state that the listing and allocation are requested for negotiations only. The allocation should not be attached to the appraisal. It should be kept in the acquisition file. When an allocation is required, the allocated value of tenant-owned improvements is the amount, which the improvements contribute to the fair market value of the whole property, or the fair market value of such buildings, structures or improvements for removal from the real property, whichever is the greater. The allocation to the landowner and tenant or tenants should not exceed the value of the total part taken as part of the whole. Damages to tenant-owned improvements also require allocations if the owner signs an affidavit.

Salvage value is the probable sale price of improvements, components or scrap, if offered for sale on the condition that such items will be removed from the property at the buyer’s expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis. Demolition costs for all affected tenant-owned improvements remaining on the site after the sale of portions of such improvements would also be considered. Value for removal is the salvage value of improvements, components or scrap.

Salvage value avoids valuing the part taken (land owner and tenant interests) in excess of "the fair market value of the part taken as a part of the whole before the taking," which is required by Illinois law. The value of the whole property should include salvage value, if any. In the market value concept, when improvements do not represent the highest and best use of the land, salvage of existing improvements contribute to the value of the whole property to the extent the value of salvageable items exceeds demolition costs.

Personal Property - It is necessary to identify items of real and personal property to prevent duplication of paying to move items under relocation payments that have been included as acquired in the valuation process. It is recommended that districts proceed on the following basis to make necessary determinations.

- If lead-time permits, the reviewing appraiser and relocation manager should inspect properties prior to appraisal assignments and compile lists of items to be considered as real and personal property. These lists should be provided to appraisers at the time of assignment.
- If lead-time is not sufficient, the reviewing appraiser and relocation manager should inspect properties together after appraisals are received and jointly compile lists of personal property. Items of personal property that have been included in appraisals as realty must be deleted, either by a revision from the appraiser or by a reviewing appraiser's documentation.

Lists of personal property should be attached to review certifications. Legal advice from the Office of Chief Counsel should be obtained for all questionable items of real or personal property.

Signs located on right of way to be acquired are either on-premise or off-premise signs and are classified as personal property. **On-premise signs**, are defined as signs that advertise a business located on the property where the sign is located. Although considered personal property, on-premise signs can be considered in the appraisal process or handled under the department's relocation program. Except for legal non-conforming (red tag) signs, **off-premise signs** will be handled under the department's relocation program. There could be exceptions to the above that may warrant the district's consultation with the Central Bureau of Land Acquisition. **Legal non-conforming (red tag) signs** cannot be relocated. The district should attempt to acquire these signboards under the Highway Advertising Control Act of 1971 once it becomes apparent that the sign will have to be removed because of any future highway improvement. If the signboard cannot be acquired under the above program, the signboard will have to be acquired as part of the right of way acquisition and considered in the appraisal. The department cannot pay for illegal signs.

Legal sign sites may enhance the value of a property as a result of their desirability for this use. Appraisers should give consideration to a sign sites effect, if any, on the value of the whole property based on the property's highest and best use.

Valuation of On-Premise Signs

Most signs can be relocated to the remainder property. Except for very small signs, the appraiser shall include a sign relocation estimate in the appraisal. The estimate should be given consideration in arriving at the value of the subject property's remainder after the taking as affected by the acquisition. The cost to relocate a sign cannot exceed the loss in value that would result if such relocation was not undertaken. When the relocation is complex, such as an extreme modification of the sign or the relocation is very costly, the appraiser will provide an analysis in the appraisal as to whether the relocation cost is less than the loss in value that would result if the sign was not relocated. The contributory value of the sign(s) shall be included in the value of the whole property.

If a sign must be acquired, the appraiser will include the contributory value of the sign in the value of the whole property and the part to be acquired. Appraisals shall not contain separate values for the acquisition or relocation of these types of signs. Appraisers should request a copy of the sign lease for any sign affected by the acquisition. The lease should be included in the appraisal. If the sign is registered or permitted under the Highway Advertising Control Act of 1971, as amended, a copy of the registration or permit should be included in the appraisal. If the sign owner desires to retain and remove the sign, the owner may do so for the "owner retention value." The retention value will be determined by the district property manager as explained in [Section 5.02-3](#) of the LAPP. If the record owner signs an affidavit disclaiming all interest in the sign(s), the reviewer or appraiser will be requested to provide a reasonable allocation of the total compensation due the tenant-owner. This is for negotiation purposes only. See [Section 2.02-10](#) for additional information. If condemnation is necessary to acquire a parcel including signs, the SAAG assigned to the case should be consulted in regard to the method of valuing the sign owner's interest in the parcel.

Valuation of Signs Acquired Under the Highway Advertising Control Act of 1971, as Amended

The department's Sign Valuation Manual and forms will be used to value these types of signs. See the valuation manual for specific valuation requirements.

When in-ground nursery stock is located on the right of way to be acquired, the appraisal shall contain the number, and size of each specie. Nursery stock that has been removed from the ground and put up for sale will be considered personal property. There are several methods for valuing nursery stock; however, it is the consensus of most landscape architects that the wholesale "in-place" price is equitable to both the owner and the division. It is recommended that the assistance of the district landscape architect be obtained in identifying, valuing, and reviewing the value of all nursery stock to be acquired. Also see [Section 5.02-2](#) and [Exhibit 5.02-2.C](#) for additional information and the procedures to be followed in disposing of nursery stock acquired.

605 ILCS 5/4-501 authorizes the acquisition of remainders under certain conditions. (See [Sections 2.03-11 and 4.16](#)). When the department determines it should acquire the remainder as an uneconomic remainder (See [Section 2.03-11 for definition](#)), the review appraiser will prepare a file memorandum, with assistance from the original appraiser, that will document an allocation of the contributory value of the remainder acquired that is not needed for the construction of the project. It is the negotiator's responsibility to notify the District Property Manager of such an uneconomic remnant/remainder acquisition so this information can be incorporated into the department's NORWAY inventory, if required. (See [Section 5.09-1](#)). This allocated value is included in the NORWAY inventory for historical purposes and does not necessarily represent market value. It is for internal documentation purposes only.

- ILCS 5/4-508 requires excess land be disposed of for no less than its fair appraised (market) value. The minimum fair market value of an excess land parcel is \$300. The release of easements or access rights to the original donor(s) or heirs of said donor(s) do not require appraisals since no payment is required. Appraisals are required on all other property to be disposed of regardless of whether it is to a former owner, public sale, exchange or release through the legislative process and whether or not it is a fee ownership, an easement or for restoration of access rights (See [Section 5.09](#)).
- Waiver of appraisal estimates are not considered appraisals so they cannot be used to value disposals.
- The minimum requirements for these appraisals shall be the same as for property to be acquired.
- There may be instances when the property to be disposed of has been recently acquired. In these instances, it will be permissible for the district reviewing appraiser, who reviewed the appraisals for the acquisition of the property, to write a documentation based on the original review in support of the value of the excess land. When this is done, it will not be necessary to obtain a separate appraisal on the excess land. The time between the original review and the documentation should not exceed six months in an active real estate market and one year otherwise.
- Two appraisals may be obtained when a complicated problem is involved or when requested by CBLA.
- Appraisals must be approved by a district reviewing appraiser and the district engineer.
- All valuations of property to be disposed of will be reviewed by the Central Bureau of Land Acquisition prior to finalizing the agreement with the prospective owner for the exchange, sale or release of property or rights.

- If an excess land parcel was acquired with federal funds, a fee appraiser, if used, must be certified when the appraisal problem is complex and requires a detailed appraisal. If a principal building is located on the excess land or when a staff reviewing appraiser determines that the appraisal problem is complex, a detailed appraisal will be required. See [Section 2.01-5](#) for limitations on the types of properties a state certified residential real estate appraiser could appraise.

Determining Highest and Best Use

All appraisals shall be based on the highest and best use of the excess land. The property may have the highest and best as a “stand-alone” parcel or assemblage to an adjoining property. In determining the highest and best use, the appraiser shall take into consideration whether the use is physically possible, legally permissible, financially feasible, and the most profitable. If both uses are possible, the use that will provide the greatest net return to the department will be used by the appraiser.

Valuation of Stand-Alone Parcels

If the excess land is owned in fee by the department and the highest and best use is a “stand-alone” parcel, the appraiser will use comparable sales to determine the fee value of the parcel.

Valuation of Assemblage Parcels

If the excess land is owned in fee by the department and the highest and best use is assemblage with an adjoining property, the appraiser will have to determine if the value of the excess land has been enhanced by the assemblage. Enhancement is created when adjoining parcels have a greater unit value assembled than they do separately. If there is no enhancement, the excess land should be appraised using values of similar adjacent property. If there is enhancement, the excess land parcel should be valued at the enhanced unit value. When there are multiple adjoining owners and the excess land will be sold at public auction or by sealed bid, the excess land should be appraised as unenhanced. Assemblage costs can be considered by the appraiser, but have to be thoroughly explained and documented in the appraisal.

Valuation of Dedicated Land

When the department is releasing a dedication of right of way for highway purposes, the appraiser will first determine the fee value of the dedicated land by using comparable sales of similar types of property rather than using the fee value of the abutting property. If the abutting property has sold within the past five years and is comparable to the dedicated, it should be considered by the appraiser. For example, if the land to be released is tillable and can be farmed in conjunction with the abutting land, the fee value should be based on sales of tillable land in the area. A factor has been added to the percentages in [Exhibit 2.02-13](#) to cover the fact that reshaped land may not be as productive as other tillable land. Land that has had the pavement removed and has been reshaped will be considered as tillable unless it has been overgrown with trees or other heavy growth or unless the abutting land is not tillable, such as permanent pasture or woodland. In these cases, sales of similar pasture or woodland will be used to establish the fee value. The size and shape of the dedicated land shall be disregarded by the appraiser.

After the fee value for the dedicated land has been established, the appraiser shall apply the appropriate percentage from [Exhibit 2.02-13](#) under LAND TO BE RELEASED except for where the adjoining property is developed or the pavement remains in place. The listed percentages cannot be adjusted. Adjustments for the effect of use potential on market value when the

adjoining land is developed (residential, commercial, and industrial properties) and pavement remains in place (agricultural property) should be considered by the appraiser. Explanations of adjustments should lead to an understanding of why adjustments are warranted, and how the fee value is affected.

Valuation of Dedicated Land and Access Rights

When access rights are released along with the dedicated land, the appraiser will value the dedicated land as stated above and apply the appropriate percentage from [Exhibit 2.02-13](#) under EASEMENT AND ACCESS RIGHTS TO BE RELEASED. The percentage will be based on the highest and best use of the abutting land after the release of the access rights and cannot be adjusted. A before and after appraisal on the abutting property is required if the access rights are needed to develop the property. If the access rights are not needed to develop the abutting property, the access rights would only have a nominal value and a before and after appraisal is not required, but should be addressed in the appraisal. The values of the dedicated land and the access rights are added together to determine the total amount for the release of dedicated land and access rights. If the value of the access rights is expected to exceed \$5,000, the appraisal is considered complex and the BRW 742 appraisal format will be used.

Valuation of Access Rights Only

When only access rights will be released, the appraiser will value the property to which the access rights to the highway are being restored before and after the release of the access rights. The difference will be the amount to be received for the release. If the difference is expected to exceed \$5,000, the appraisal is considered complex and the BRW 742 appraisal format will be used.

Valuation of Easements

When a permanent easement is released, the appraiser will value the property to which the easement will be restored before and after the release of the easement. The difference will be the amount to be received for the release of the easement. If the difference is expected to exceed \$5,000, the appraisal is considered complex and the BRW 742 appraisal format will be used.

2.02-14 INFLUENCE OF PROPOSED IMPROVEMENT ON VALUE

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the proposed public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the value of the property before taking. Any decrease or increase in value caused by the acquisition of a part of the property, however, must be considered in estimating the value of the remainder after taking.

2.02-15 COMPENSATION FOR ACQUIRING RAILROAD AND UTILITY OPERATING RIGHT OF WAY

With few exceptions, operating property is that property used in the operation of a railroad or a utility line. For railroads, it would include mainlines, branch lines and yards. It would also include depots, control towers, siding, substations and other facilities presently being used in the operation of a railroad or a utility line.

It would not include spur tracks and sidings into places of business regardless of who owns the land and trackage. It would also not include hookups from a utility line to a home or place of

business. These are necessary for the operation of the home or business rather than the operation of a railroad or a utility line.

- Compensation for Acquiring Operating Property From a Utility Company Other Than a Railroad
 - **Land Owned in Fee** - When a utility company owns the fee title to its operating right of way, the division will compensate the utility company for the right of way needed on the basis of an appraisal. There is a minimum payment of \$300 as in [Section 2.02-1](#).
 - **Land Owned as an Easement** - If a utility company has only an easement for its operating right of way and can continue to operate its facilities either in, above, below, or adjacent to the highway use, there will be no compensation paid to cross or longitudinally utilize any part of the right of way.
 - **Work of a Temporary Nature** - Permission to do work of a temporary nature on utility operating right of way, will be included in the utility agreement handled by the Bureau of Design and Environment. When there is no utility agreement to be handled by the Bureau of Design and Environment, permission to do work of a temporary nature on the utility's operating property will be obtained by district land acquisition and a minimum payment of \$300 will be paid for each temporary easement.
 - **Additional Compensation** - Adjustments to existing utility facilities located in the area involved and the reimbursement to the utility companies for any reimbursable costs are the responsibility of the Bureau of Design and Environment. There may be cases, however, when a proposed highway improvement will take part of unimproved or improved operating right of way of a utility company for which the company is preparing detailed plans or has plans completed for the construction of additional or expansion of existing operating facilities.

The following procedures I apply when acquisition from a utility company will result in additional construction costs to the company for planned future facilities and will apply whether the utility company owns the fee or has an easement.

- As soon as it can be determined that the highway improvement will interfere with such planned facilities, pertinent information should be obtained from the utility company, be reviewed by the district engineer and forwarded to the Central Bureau Engineer of Land Acquisition with a finding by the district that such proposed construction is imminent and not speculative. This should include a certification by the utility company outlining in detail the planned facilities together with evidence to show the construction thereof follows some tangible planning scheme and is in accordance with good engineering practices. This data will be reviewed by the Central Bureau Engineers of Design and Environment, and Land Acquisition. If it is concurred that the proposed construction is imminent and not speculative, the district engineer will be informed to request the utility company to furnish the following in order to establish the amount of compensation.
 - An estimate of the cost to construct the proposed facility or expansion as planned through the proposed right of way
 - An estimate of the cost to construct the proposed facility or expansion made necessary by the acquisition of the proposed right of way for the improvement- (This would include salvage but not betterments or increased maintenance costs.)

- The difference in cost between these two estimates
 - When the necessary estimates have been obtained, they should be reviewed by the district engineer and forwarded with the district engineer's recommendations to CBLA. At this time, the district engineer should also recommend whether or not to retain a consulting engineering firm to independently furnish substantially the same information.
 - CBLA will obtain the concurrence of the Engineer of Design and Environment to the estimates and recommendations and return the estimates, along with any suggestions to the district engineer, who will then proceed to obtain the necessary rights or interests required for the highway project from the utility company.
- Compensation for Acquiring Operating Property From a Railroad
 - **Land Owned in Fee** - When a railroad company owns the fee title to its operating right of way, the division will compensate the railroad company for the right of way needed on the basis of an appraisal. A minimum payment of \$300 applies as in [Section 2.02-1](#). No compensation of any kind shall be made for the acquisition of such right of way to construct a grade separation facility where an existing highway grade crossing is eliminated.
 - **Land Owned as an Easement** - If a railroad company only has an easement for its operating right of way and can continue to operate its facilities either in, above, below or adjacent to the highway use, there will be no compensation paid to cross or longitudinally utilize any part of the right of way.
 - **Processing Fee** - If a railroad demands a fee to process the documents covering the permanent acquisition, the fee should be handled by district land acquisition as a right of way incidental cost. When the fee does not exceed \$1,000, justification of the amount will not be required. If the fee exceeds \$1,000, payment will be made after receipt from the railroad of the executed document and an invoice with all expenses itemized. Such invoices shall be prepared to meet the criteria established by the Bureau of Design and Environment for engineering force account work.
 - **Work of a Temporary Nature** - Permission to do work of a temporary nature on railroad operating right of way will be included in the railroad agreement handled by the Bureau of Design and Environment. If the railroad demands a fee for processing, it must submit an invoice covering all its costs. This would be processed with the costs submitted by its engineering department for handling by the Bureau of Design and Environment in the agreement as an engineering cost.

When there is no railroad agreement to be handled by the Bureau of Design and Environment, permission to do work of a temporary nature on the railroad's operating property will be obtained by the district land acquisition and a minimum payment of \$300 will be paid for each temporary easement. If the railroad demands a fee for processing, it must submit an invoice covering all its cost to district land acquisition for handling as a right-of-way incidental cost after receipt of the document.

All invoices for processing fees, if any, shall be prepared to meet the criteria established by the Bureau of Design and Environment for engineering force account work.

- **Additional Compensation** - It is the policy of the division to provide in its construction plans for the accommodation of any justified future expansion of railroad facilities. This eliminates any need for consideration of additional construction costs in the right-of-way payment.
- **Rights or Interests to be Acquired** - The railroad or other utility company will be expected to execute the necessary documents to cover the rights or interests required for the highway project in accordance with the standards set forth in [Section 4.06](#). [Section 4.30-1](#) sets forth the procedure to be utilized in the event condemnation is necessary.

2.02-16

TEMPORARY USE PERMITS

The term "Temporary Use Permit" is used to describe a license, which with respect to real property is a permission given to the division to do a particular act or series of acts on the land of another person without possessing any estate or interest in the land. Permits are revocable at will by the owner. Examples are permits for sloping lawns, extending back slopes beyond the proposed highway right-of-way lines or reconstruction of driveways. The land will normally be restored to its original shape and condition, unless a new shape is more beneficial to the property or the owner agrees to a different treatment.

Temporary use permits are intended for situations where the area is not needed for construction of the highway improvement and are generally beneficial to the property. Compensation for use of the land is not intended.

When there are damages from the work to be done in the temporary use permit area, an appraisal as well as the normal appraisal review and approval will be made. If, however, the work to be done in the area does not damage the property, a qualified person will view the properties affected and prepare a memorandum or letter expressing opinion that certain parcels will not be damaged and appraisals are not necessary. This is to be done on a parcel-by-parcel basis, but the memorandum may include more than one parcel. (If there is also a permanent taking, the appraiser should include such opinion regarding the temporary use permit in the appraisal.) Such memorandum or letter must be approved by the district engineer prior to negotiations for the permits.

If only a temporary use permit is needed from the property owner, it will not be necessary to offer the owner or representative the opportunity to accompany the appraiser on the inspection of the property, nor will it be necessary to furnish the owner with a "Summary of Right of Way Acquisition" ([Exhibit 3.0I-3A](#)). The consideration shown on the permit will satisfy the requirement for a written offer.

Administrative settlements may be utilized for permits in the same manner as for acquisitions. If negotiations are unsuccessful, delete the parcel from the plans and LAS.

2.02-17

APPROACHES TO VALUE

Under 49-CFR 24.103 (a) (3), the department can make appraisal assignments for the sales comparison approach only. This type of appraisal assignment should be based on the type of property being appraised and the availability of sufficient market sales data that reliably supports the fair market value. When the sales used in the sales comparison approach require large individual or overall adjustments, the cost and income approaches may be included in the appraisal if the approach is applicable. The cost approach is applicable if the property is improved with newer improvements and the highest and best use is as improved. The income approach is applicable if the property is subject to a valid arm's-length lease. As a general rule, the cost and income approaches are used as a check on the sales comparison approach, but the

appraiser cannot rely on either one exclusively. Special use property does not have to be valued by the sales comparison approach. Based on the nature and use of the property, a market does not exist for this type of property. The appraiser must notify the district if a property has a special use. If the district is unsure whether the property is special use, the Office of Chief Counsel should be contacted for direction.

2.02-18

UNIT RULE

All appraisals involving the acquisition of right of way must comply with the “unit rule.” The “unit rule” requires the appraiser to value a property as a whole property (fee simple) rather than by the sum of values of the various interests which it may have been carved, and not value the different property components separately and add them together to determine the value of the whole property, the value of the part taken, and the value of the remainder. The property components should only be considered in the light of how they enhance or diminish the above values. The part taken has to be valued as part of the whole property and not a separate tract unrelated to the whole property. Improvements included in the part taken have to be valued as part of the part taken and not separately.

2.02-19

VALUATION OF CONTAMINATED PROPERTY

The appraiser will note any contamination in the appraisal and appraise the property clean under the following circumstances:

- The project is “risk-managed” and a Preliminary Site Investigation (PSI) was not conducted since the levels of contamination or amount of soil management is insignificant compared to the value of information gained from performing a PSI.
- The PSI does not contain any remediation costs since the property is not contaminated with regulated substances in excess of allowable limits for Tier 1 residential.
- A No Further Remediation (NFR) letter has been issued by the Illinois Environmental Protection Agency (IEPA) and the part to be acquired appears to be in compliance with the NFR letter after a visual inspection by a staff or fee appraiser. The appraiser will take into consideration any limitations on the use of the property contained in the NFR letter. The NFR letter is usually recorded in the chain of title.
- IEPA has inspected and determined the property is in compliance with the NFR letter. When the staff or fee appraiser inspection indicates the area is not in compliance, district land acquisition shall contact the Bureau of Design’s Geologic and Waste Assessment Unit and request an IEPA inspection.

The district will furnish the appraiser a copy of the PSI and the appraiser will take into consideration remediation costs under the following circumstances:

- The PSI indicates the property is contaminated with regulated substances in excess of the allowable limits for Tier 1 residential. If the IEPA file contains assessment and/or remediation data, but the NFR letter has not yet been obtained, the statewide consultant will evaluate the IEPA file and prepare separate remediation cost estimates based on the present land use level for the whole property and the part taken.
- If the IEPA file contains no assessment and/or remediation data at the time the PSI is prepared, district land acquisition will file a freedom of information request with IEPA before the appraisal is prepared. When there is assessment and/or remediation data in the IEPA file, a copy of the information will be forwarded to the Central Bureau of Land Acquisition. The Central Bureaus of Land Acquisition and Design and Environment will

review the material to determine if it is cost effective for the district to hire a professional engineer to prepare remediation estimates. If it is determined to be cost effective, the professional engineer would evaluate the information and provide a description and location of the contamination and separate estimates of remediation for the whole property and the part taken based on the property's present land use level. The professional engineer can be hired as a specialty appraiser. The information and costs are then given to the appraiser for consideration in the appraisal. If it is determined not to be cost effective to hire a professional engineer, the remediation cost for the part taken in the PSI and other pertinent information concerning the contamination will be provided to the appraiser. The appraiser will take the information into consideration in valuing the whole property and the part taken. The area of the property outside the part taken will be considered clean.

- When there is no assessment and /or remediation data in the IEPA file, the remediation cost for the part taken in the PSI and other pertinent information concerning the contamination will be provided to the appraiser. The appraiser will take this information into consideration in valuing the whole property and the part taken. The area of the property outside the part taken will be considered clean.

When the department's acquisition negatively impacts the property's conditional status, a professional engineer will prepare a cost estimate of placing the property back into conditional status. The estimate will be provided to the appraiser for consideration in determining the value of the remainder.

2.02-20 NONCOMPENSABLE ITEMS OF DAMAGE

Certain elements of damage that may adversely effect the market value of the remaining property are noncompensable under Illinois law. For information on noncompensable items of damage, see ILLINOIS EMINENT DOMAIN PRACTICE presented by the ILLINOIS INSTITUTE FOR CONTINUING LEGAL EDUCATION and the ILLINOIS ATTORNEY GENERAL'S CONDEMNATION MANUAL. If legal advice is needed, the district should contact the Office of Chief Counsel for direction.

2.03 APPRAISAL REVIEW IN THE DISTRICT

2.03-1 REVIEWING APPRAISER QUALIFICATIONS

STAFF REVIEW APPRAISERS - There shall be a sufficient number of qualified staff review appraisers in each district to accomplish the workload. Minimum requirements for staff review appraisers are:

- Attainment of at least the grade of Realty Specialist II with verified activities in real estate
- A minimum of two (2) years verified experience in the appraisal of real estate
- Attendance at, and a passing grade received on examination given in connection with each of the following four required basic courses, as presented and conducted by the Appraisal Institute or the equivalent thereof
 - Appraisal Principles (Course 110)
 - Appraisal Procedures (Course 120)
 - Basic Income Capitalization (Course 310)

- Standards of Professional Practice, Part A (Course 410)
Equivalent: Standards of Professional Practice (Course APP1) by the Real Estate Education Company
- Completion of a minimum of one year in service as a review appraiser-in-training subsequent to completion of requirements above
- Attendance at, and a passing grade received on examinations given in connection with three of the following elective courses or the equivalent thereof - These courses may be taken in any order as long as eligibility requirements of the course sponsor are satisfied.
 - Advanced Income Capitalization (Course 510)
 - Principles of Rural Appraising by the American Society of Farm Managers and Rural Appraisers (ASFMRA)
 - Residential Case Study (Course 210)
Equivalent: Single Family Residential Appraisal (Course APP III) by the Real Estate Education Company
 - Condemnation Appraising: Basic and Advanced (Courses 710 and 720)
 - The Appraisal of Partial Acquisition (Course 401) by the International Right of Way Association (IRWA)
 - Advanced Applications (Course 550)
 - Report Writing and Valuation Analysis (Course 540)
 - General Applications (Course 320)
 - Appraisal and Appraisal Review for Federal-Aid Highway Programs (NHI Course 14126) by the Federal Highway Administration
 - Eminent Domain Training for Attorneys and Appraisers (NHI Course 14136) by the Federal Highway Administration

The Appraisal Institute and other real estate appraisal organizations, universities, and colleges have previously offered and/or currently offer courses, which may be substituted for some of the above-mentioned courses. The determination of equivalency and approval to take an equivalent course in lieu of those set out above must be obtained from CBLA.

After satisfactory completion of requirements of the first three dot points above, the Central Bureau Engineer of Land Acquisition may approve and designate a candidate for the designation review appraiser as a review appraiser-in-training subject to certain conditions or requirements, as may be appropriate in each case.

After satisfactory completion of all requirements above, the Central Bureau Engineer of Land Acquisition may approve and designate a review appraiser-in-training as a review appraiser.

Review appraisers are expected to maintain an education program by attending real estate appraisal related courses and seminars on a regular basis and attend certain meetings and seminars conducted by the staff of the Central Bureau Engineer of Land Acquisition.

The reviewing appraisers may consider all pertinent value information that is available including appraisals obtained by the district, appraisals obtained by the property owner, their own data bank, independent estimates, etc. On the basis of additional value information, they may, and should, adjust their estimated value at any time prior to settlement. Any adjustments must be documented and supported.

Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the value of the property before taking. Any decrease or increase in value caused by the acquisition of a part of the property, however, must be considered in estimating the value of the remainder after taking.

The reviewing appraiser shall examine all appraisal reports to determine that they:

- Are completed in accordance with state policies and procedures and also meet the minimum appraisal requirements.
- Follow accepted principles and techniques in the evaluation of real estate in accordance with existing state law.
- Contain all the information and documentation necessary to support the conclusions and estimates of value.
- Include consideration of everything taken, all compensable items of damage and all benefits but do not include compensation for items non-compensable under state law.
- Are consistent with the appraisals on other similar parcels in the value and damages to the remainder.

All specialty supplemental estimates obtained by a district should be reviewed by a reviewing appraiser before distribution to the appraisers. The review should include a field inspection of the property and a determination that the estimate has been prepared in conformance with the division's requirements. The specialty appraiser is normally an expert in the area of items, which are compensable as realty, but the reviewer must check the report for concurrence that all items, which are compensable are included, and that the report does not include items, which are not compensable under Illinois law.

An exception to the requirements given in [Section 2.02-7](#) is permitted when a reviewing appraiser is knowledgeable in both disciplines. The reviewer may review and incorporate into a final estimate of just compensation the separate reports on the real property and the specialty items.

When a fee appraiser has retained a specialist and incorporated the specialist's report in the appraisal report, the review of the combined report will be in accordance with normal review procedures.

Where an appraisal represents market value and it is properly supported, the reviewing appraiser may approve the appraisal. If the reviewer does not agree with values in any of the appraisal received, an additional appraisal may be requested, or an estimate of value may be prepared by the reviewer. If the reviewer chooses to prepare an estimate of value, data or properly supported values in appraisals reviewed may be referred to by the reviewer to support the estimate of value. The reviewer's independent data and properly supported valuation analysis should also be included when necessary to support the approved estimate of value.

The reviewing appraiser must add documentation when not in agreement with any of the values in the appraisals received, or when there is a wide divergence in the appraisals received, and one of the appraisals is approved. Regardless of the number of appraisals obtained on a parcel, the approved compensation must be supported by either an approved appraisal, or appraisal plus reviewer's documentation.

When preparing an estimate of value, the reviewer should have at least one acceptable appraisal when only one is required and two acceptable appraisals when two are obtained. Refer to [Section 2.02-3](#) regarding number of appraisals required. A properly supported appraisal review documentation will qualify as an acceptable appraisal when the reviewer does not accept values and or documentation in appraisals received. An appraisal, which meets minimum requirements, but does not agree with the reviewer's opinion of value, also qualifies as an acceptable appraisal.

All unacceptable appraisals will have to be made acceptable by the appraiser. This should be done before the reviewer arrives at a conclusion of value or as soon as possible after completing the project assignment. Fees should not be paid until appraisals meet basic requirements of the assignment. If an appraiser is delinquent in correcting appraisals, CBLA may delay processing of invoices for payment of such appraisal fees even if the district has submitted them.

When it becomes necessary to acquire additional land from a parcel after the original right of way has been acquired, it will be acceptable for the reviewing appraiser to document the original review in order to estimate the value of the additional land required. This will be limited to a reasonable period of time after the original taking.

All appraisals have to meet division requirements as discussed above. Corrections should be requested from appraisers as necessary. Reviewing appraisers may supplement appraisal reports with corrections of math errors and by adding documentation in support of appraiser's findings. Reviewers may also supplement comparable sales data and appraisal reports when the following factual data have been omitted.

- Project and/or parcel number
- Owner and/or tenant's names
- Parties to transaction, date of purchase and deed book references on sale of subject property and comparable
- Statement that there were no sales of subject property in past five years
- Location, zoning or present use of subject property or comparable sales

Reviewing appraisers should initial and date corrections or additions to comparable sales data or appraisal reports.

Fee appraisers may receive additional compensation for revisions caused by changes in plans or changes in appraisal requirements, but will not receive additional compensation for corrections. Any time an appraiser changes the value or the "as of" date of the appraisal, a revised certificate (BRW 229-4, [Exhibit 2.02-2C](#) or BRW 742-18, [Exhibit 2.02-2A](#)) must be submitted along with revised appraisal documentation.

2.03-10 REVIEWER'S CERTIFICATION

Except for donations as explained in [Section 2.01](#) and waiver of appraisals, the reviewing appraiser must complete BRW 316 (Right of Way Appraisal Review Certification), [Exhibit 2.03-10](#), on all parcels showing the consideration regardless of whether it is the original or a supplemental review, and a copy must be attached to all appraisals reviewed.

The district engineer must approve all estimates of value made by a reviewing appraiser before offers are made to property owners. The district engineer signs the review certification when in agreement with the reviewing appraiser. An administrative documentation establishing the amount to be offered may be prepared when the district engineer does not agree with the reviewing appraiser.

When appraisals for state highway projects are obtained and reviewed by local public agencies, they shall be submitted to the district office where they will be reviewed by the district engineer, or a designated representative, prior to an offer being made. If the district engineer concurs, the local public agency will be advised, and the offer can then be made.

2.03-11 UNECONOMIC REMNANTS

The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the department has determined has little or no value or utility to the owner. Indicators of uneconomic remnants that require careful consideration by the reviewing appraiser are significant damages to the remainder, a change in highest and best use or a change in the intensity of the highest and best use, land-locking, or other significant impacts to the remainder property.

Reviewing appraisers should identify remainders they consider uneconomic in a review documentation, which should be attached to the Review Certification, or when practical they may identify uneconomic remnants by a note on the certification itself.

2.03-12 SUBMITTAL OF APPRAISALS TO CENTRAL OFFICE

Immediately upon approval by the district engineer, one copy of the following appraisals, including those obtained and reviewed by a local public agency for a state highway project shall be submitted to the Central Bureau of Land Acquisition. Two copies will be submitted if there is federal aid in the right of way. Offers may be made after these appraisals have been submitted.

All appraisals have to be properly certified by a qualified reviewing appraiser or administratively documented by the district engineer or a designated representative. Original copies of appraisals and review certifications are to be kept in the district or local agency files.

- Total compensation exceeds \$50,000.
- Total Compensation is under \$50,000 but damages excluding non-complex cost to cure exceed \$10,000.

- On local agency projects with federal-aid in the right of way, one copy of all approved appraisals shall be sent to CBLA for submittal to the FHWA when:
- Total compensation exceeds \$50,000.
- Total compensation is under \$50,000 but damages excluding non-complex cost to cure exceed \$10,000.

2.04 APPRAISAL REVIEW IN THE CENTRAL OFFICE

2.04-1 GENERAL

The selection of Central Office reviewing appraisers is made by the Central Bureau Engineer of Land Acquisition. For minimum requirements see [Section 2.03-1](#). All staff reviewing and fee reviewing appraisers must be approved by the Central Bureau Engineer of Land Acquisition.

2.04-2 RESPONSIBILITY

Central Office reviewing appraisers shall be responsible for the following:

- Reviewing appraisal reports, review documentation, and settlement reports received from the districts to see that they are in accordance with department policies and procedures. Appraisal reports, appraisal review documentations and settlement reports will be reviewed on a "spot check" basis.
- Representing the Central Bureau Engineer of Land Acquisition on "Plan in Hand" field inspections
- Giving assistance to the districts, when requested, in selection of appraisers, appraisal assignments, complex appraisal problems, training of appraisers, reviewing appraisals for fair market value, etc.
- Providing liaison between the districts, central bureaus, other state and federal agencies in appraisal or related matters
- Assisting the Central Bureau Engineer of Land Acquisition in the review and establishment of appraisal policies and procedures
- Reviewing district right-of-way appraisal and review operations for compliance with policies and procedures
- Providing replies to FHWA requests for information and documentation from the district reviewing appraiser or fee appraiser, as required
- Coordinating field reviews and inspections in the districts with FHWA right-of-way officers in order to assist in answering questions concerning appraisal policies and procedures
- Researching and preparing reports pertaining to appraisal matters
- Performing other duties as assigned or required

2.04-3

INSPECTION

Central Bureau of Land Acquisition reviewing appraisers should view project areas being appraised. The extent of the physical inspection will vary and will depend upon the complexity of the appraisal problem and the amount of assistance, if any, requested by the district.

2.04-4

EXAMINATION OF APPRAISAL REPORTS

Central Bureau of Land Acquisition reviewing appraisers shall review appraisals on a "spot check" basis. All appraisals will be initialed and dated to indicate that the reviewer reviewed them.

The reviewers will prepare an appraisal review for appraisals given a thorough review. A thorough review includes the determination that the appraisals:

- Are completed in accordance with division policies and procedures and meet the minimum appraisal requirements.
- Follow accepted principles and techniques in the evaluation of real estate in accordance with existing state law.
- Contain all the information and documentation necessary to support the conclusions and estimates of value.
- Include consideration of everything taken, all compensable items of damage and all benefits but do not include compensation for items non-compensable under state law.
- Are consistent with appraisals and appraisal reviews on other similar parcels in value and damage to the remainder.

2.04-5

CORRECTIONS AND REVISIONS

If discrepancies are noted, the reviewing appraisers will either return the reports to the district for correction, call the district for corrections, or add the necessary documentation required to support the value estimate. If the latter is done, a copy of the documentation will be sent to the district, and the district reviewing appraiser should initial the documentation to show concurrence and place it in the files. All appraisals that are reviewed and required corrective action will be noted in the appraisal review.

2.04-6 SUBMITTAL OF APPRAISALS TO THE FEDERAL HIGHWAY ADMINISTRATION

When appropriate, CBLA reviewing appraisers shall submit the necessary copies of appraisal reports and review documentation to the division office of FHWA when they are found to be acceptable. Copies of administrative documentations and settlement reports, however, are not submitted to FHWA.

2.05

LAND ECONOMIC STUDIES

2.05-1

GENERAL

Land economic studies are prepared for the purpose of showing the actual damage or benefit, occurring to the remainder of a property as the result of the acquisition of land for a public improvement. They are used primarily by staff and fee appraisers to assist in determining adjustments to the comparable sales used to value the remaining property in a partial taking in connection with appraisals for transportation projects.

Land economic studies are originated with a district obtaining information on sales of remainder properties from which right of way has been acquired in their respective areas, and then investigating all aspects of the sale. The district obtains sale information from many sources such as property owners, realtors, appraisers, newspapers, county records, etc. After sales are identified, only the procedures required to produce studies from an area when no sales are known will be discussed.

After an area is chosen, right-of-way plans are obtained. From these plans, lists are made of the parcels, which appear to have promise for further investigation. These lists include information such as the parcel number, the name of the owner, the tax identification number, the township, range and section where the parcel is situated, the year of the state's acquisition, and whether acquired by negotiation or condemnation.

The year the state acquired each parcel is used as a beginning point when going through the records in the courthouse or other sources. Quick takes or condemnation cases are indicated to show that the entry of the transaction between the state and the property owner will not be recorded in the form of a deed.

Once the lists have been completed, a trip is made to the county courthouse to "run the records." This process is a long and sometimes monotonous procedure. Normally a name is taken from the prepared list of property owners along the proposed right of way. That name will be found in the grantor's index indicating the sale of property to the state. After that, when the name reappears at this specific location, it normally indicates a sale of all or part of the land to another individual or firm.

Many different instruments are used, but the one most frequently employed for land economic studies is the warranty deed. If this is the case, a check is made in the Deed Book and on the right-of-way plans to discover if the property sold by the owner coincides with the property, which borders on the right of way. If this is affirmative, a special form is completed ([Exhibit 2.05-4](#)). This special form is for reference purposes and includes the grantor's and grantee's name and address, parcel number, date when recorded, consideration indicated, the acreage involved, the book and page number where the sale is found in the Deed Book, the amount of revenue stamps affixed to the deed, and the date the form is completed. In addition, a detailed legal description of the land involved in that transaction is recorded on this form for easy reference purposes. After sales have been located for a particular parcel, the number of sales can be written near the owner's name on the list.

If an owner's name does not appear again after the initial sale of land to the state of Illinois, then the word "none" can be placed beside the owner's name to indicate that there were no recorded sales of these remainders.

Another source of information and verification of sales data is the Real Estate Transfer Declaration, which must be presented to the Recorder of Deeds or Registrar of Titles at the time a deed is presented for recordation. This document or a copy thereof may also be found with the Supervisor of Assessments, Assessor or Board of Assessors of the County where the property is located.

When the list is completed, it is taken back to the office for a second screening . The sale forms prepared at the courthouse are examined to determine the most promising sales.

The sales are divided into different categories - borrow pits, interchanges, residential, commercial, industrial, agricultural, etc. Some will be used immediately; others later, and some will not be used because they may not indicate true market transactions. The legal descriptions of the land are then checked to see if they agree with the right-of-way plans and appraisals.

To be a useful study, the sale should indicate a damage or benefit, which can be attributed to the right-of-way acquisition. Sales around interchanges, or of remainders affected by division of property, irregular shape, proximity to the highway, reduction in size, landlocking, less desirable access, etc., often provide information for useful studies.

The parcels, which are selected during the second screening, are then prepared for the next step. An interview is conducted with the grantor and/or grantee on each transaction. This interview has five main purposes: verify the sale price, visually inspect the property, discover if any improvements were added to the property from the time the state bought the land to the time when the owner sold the remainders, determine the reasons for buying or selling the land along with the use to which it is or will be put, and determine if there have been subsequent changes in zoning or other factors which had an effect on the sale price. A form is used for the interview to ensure that all necessary information is recorded ([Exhibit 2.05-6](#)). Other items, which the interviewer should have, are a county plat book, a plat of each piece of property from the approved appraisal, and the sale papers complete with the legal description.

The interviewer should present an amiable attitude. During the first few minutes of the personal interview, the interviewer may be required to listen to criticisms concerning some state operation. An understanding ear should be given, then business should be introduced as subtly as possible. Often during an interview, additional information can be gathered on recent sales in a specific area. It is always a good idea to ask about these because there could be some unrecorded contract for deed sales.

Once the interviews are completed, and the forms returned to the office, the land economist analyzes and selects the suitable sales based on the interview data. Thus, the interview procedure is perhaps the best indicator of sales, which will make a bona fide study.

After the most promising studies have been chosen, the appraisals for each parcel are obtained. [Exhibits 2.05-7A](#) and [2.05-7B](#) represent the urban and rural land economic study preliminary forms, respectively. These papers are in prearranged paragraph form with blank spaces for the variable information. The parcel information extends from before the time the state purchased land to the sale under study. Most of the information for these preliminary forms can be gathered from the appraisals and local realtors.

Most land economic studies show a resulting benefit or a damage. A benefit occurs when a subsequent sale indicates that a new highway improvement actually increased the value of the property. Conversely, a damage has usually occurred when a recent sale shows that, after the highway improvement, the remainder sold for less.

As part of the land economic study, a photograph is taken of the rural properties by aerial surveys. This picture is then detailed by outlining the property lines, the land taken, the location

of the highway and property, the acreage involved, and any township or county roads adjacent to the subject land. See [Exhibit 2.05-7C](#).

2.05-8 COMPUTATION

The damages or benefits to a particular tract of land are computed based on the approved appraisal, a time adjustment and the subsequent sale price. The amount for the part acquired by the state is deducted from the total before value to arrive at the value of the remainder before taking, to which a time adjustment is applied, creating an adjusted value of the remainder before taking. Time adjustments are obtained from local sources and will vary depending on location and length of time between the state's acquisition and the subsequent sale. The difference between the adjusted value of the remainder before taking and the subsequent sale price is the indicated damage or benefit to the property. This difference is then divided by the value of the remainder before taking to show the percentage of damage or benefit.

2.05-9 THE FINAL COPY

When the land economic study preliminary form is finished, it is to be typed and proofread. Any mistakes are corrected and the final copy is completed. A cover sheet is made, consisting of an outline of the state of Illinois with the interstate system traced across the state. The particular county where the study is located is identified on the map with diagonal lines. Each study's number is followed by the state highway district where it is located (for example, No. 187-2) The type of study (agricultural, residential, industrial or commercial) and the characteristics causing the damage or benefit, such as proximity, shape, division, landlocking and size are indicated at the top of the cover sheet. Near the bottom of the cover page is the byline of the state.

2.05-10 PRINTING PROCEDURE

The final stage of the creation of a land economic study is publication. A memorandum is sent to the Central Bureau Engineer of Land Acquisition for approval. If approved, a printing request is forwarded to the appropriate bureau and the actual printing is then done.

All of the finished copies are then sent to the Central Office Bureau of Land Acquisition where they are distributed for information and use. Extra copies are kept in the appraisal unit's files. The land economic studies are for the use of all staff and fee appraisers and other interested parties. These studies are used as a tool by appraisers in estimating after values and benefits more accurately.

It is our desire to maintain a close relationship with all staff and fee appraisers in the State of Illinois. Also, a working relationship is generated with other states by sending samples and complete sets of studies to their respective land economic sections. It is anticipated that all will benefit by this type of cooperation and exchange of information.

CHAPTER 3

NEGOTIATION POLICIES AND PROCEDURES

3.01 NEGOTIATION POLICIES

- 3.01-1 GENERAL
- 3.01-2 ADMINISTRATIVE SETTLEMENTS
- 3.01-3 ACQUISITION PROCESS AND PAYMENT TO OWNERS
- 3.01-4 ACQUISITION OF TENANT OWNED IMPROVEMENTS

3.02 THE NEGOTIATOR

- 3.02-1 GENERAL
- 3.02-2 PUBLIC RELATIONS
- 3.02-3 PRINTED INFORMATION
- 3.02-4 GROUP MEETINGS
- 3.02-5 ASSIGNMENTS

3.03 QUALIFICATIONS OF STAFF NEGOTIATORS

- 3.03-1 QUALIFICATIONS FOR FEE NEGOTIATORS
- 3.03-2 RATING OF NEGOTIATORS

3.04 PREPARING FOR NEGOTIATION

- 3.04-1 ANALYSIS OF THE PROJECT AND PARCEL
- 3.04-2 DESIGN AND CONSTRUCTION FEATURES
- 3.04-3 APPRAISALS
- 3.04-4 RIGHT OF WAY PLANS
- 3.04-5 TITLES, DEEDS, CLOSING AND CONDEMNATION
- 3.04-6 NEGOTIATOR'S PORTFOLIO

3.05 NEGOTIATING

- 3.05-1 ESTABLISHING CONTACT
- 3.05-2 KNOWLEDGE OF THE OWNER
- 3.05-3 PERSONS IN ATTENDANCE
- 3.05-4 PRESENTATION
- 3.05-5 TITLE INFORMATION
- 3.05-6 USE OF RIGHT OF WAY PLANS
- 3.05-7 CONSTRUCTION FEATURES
- 3.05-8 CONVEYANCE INSTRUMENTS
- 3.05-9 METHOD OF NEGOTIATIONS
- 3.05-10 RETENTION OF IMPROVEMENTS
- 3.05-11 DATE OF POSSESSION
- 3.05-12 EXPENSE TO OWNER
- 3.05-13 CLOSING ON THE FIRST CONTACT
- 3.05-14 SUBSEQUENT CONTACTS
- 3.05-15 ITEMS WHICH MAY ASSIST IN CLOSING
- 3.05-16 EXPLANATION OF LEGAL RIGHTS, OBLIGATIONS, ETC.
- 3.05-17 UNECONOMIC REMNANTS

3.06 NEGOTIATOR'S REPORT

CHAPTER 3 EXHIBIT INDEX

CHAPTER 3 NEGOTIATION POLICIES AND PROCEDURES

3.01 NEGOTIATION POLICIES

The following policies govern the acquisition of real property for state and local public agency highway improvement projects. Uniformity of application will assist field review, central office guidance, insure federal reimbursement and maintain a high standard of integrity and professionalism in the acquisition of private property for public use.

3.01-1 GENERAL

Negotiations shall be conducted by qualified staff employees of the state and its political subdivisions or by qualified fee negotiators employed under the conditions described in this section as well as in [Section 3.03-1](#).

Counties, municipalities or other local governmental agencies may be used to acquire right of way on the state highway system provided such acquisition conforms to the state's land acquisition policies and procedures and the process has prior approval of the department.

In all cases, it is the responsibility of the district engineers and their staff to ensure that right of way acquisition is in conformity with the state procedures.

The negotiator shall maintain adequate records of property owner negotiations by recording in writing ([Section 3.06](#)), on a parcel basis, immediately after each contact with the property owner, the date and place of contact, persons present, offers made, counter offers, reasons settlement could not be reached, and any other pertinent data. Upon termination of negotiations, the record shall become a part of the project parcel file. A Negotiator's Report Form is attached as [Exhibit 3.01-1A](#).

Prior to the first contact with a property owner the negotiators shall sign a statement (1) that they understand that the parcel is to be secured for use in connection with a federal-aid or state highway project; and (2) that they have no direct or indirect present or contemplated future personal interest in the parcel or will in any way benefit from the acquisition of such property. When negotiations are successful, the negotiators shall sign a statement that (1) the written agreement secured embodies all of the considerations agreed upon between the negotiator and the property owner; and (2) the agreement was reached without coercion, promises other than those shown in the agreement, or threats of any kind whatsoever by or to either party. Both certifications are included as a part of the Negotiator's Report ([Exhibit 3.01-1A](#)).

When right of way is acquired by negotiation, the complete agreement between the department's Division of Highways and the property owner shall be embodied in written instruments appropriately executed.

Negotiations for the acquisition of right of way parcels acquired for state or local public agency highway projects will not be carried on by the same person making the appraisal or the person who reviewed the appraisal on the property being acquired, except under the following circumstances:

- In cases of minor acquisitions involving compensation of \$10,000 or less, the estimator of a parcel may also act as the negotiator on that same parcel under the appraisal waiver procedure set out in [Section 2.02-1](#); or

- In cases of acquisition by and for local public agency highway improvement projects, the estimator of a parcel may also act as the negotiator on the same parcel where the compensation for such parcel is \$10,000 or less. (Also, see [Section 8.03-2](#).)

On projects with federal participation in the right-of-way cost, the person who negotiates the parcel is restricted from delivering the payment to the landowner.

The employment of private individuals or firms to negotiate for the acquisition of right of way for state highway improvement projects or local agency federal-aid projects shall be by written contract in the form provided in the department's land acquisition contract generator. These contracts must be approved in advance by the district engineer.

Approvals are limited only to those exceptional cases where it is clearly shown that such procedure is in the public interest; that the individuals or firms to be employed are qualified to perform the services, and (1) the acquiring agency does not maintain an organization adequate for acquiring such right of way as part of its normal operating staff, or where the acquiring agency's workload significantly exceeds its normal workload; (2) the amount of the fee is not determined on a percentage basis; and (3) the fee is just and reasonable for the work to be performed.

3.01-2 ADMINISTRATIVE SETTLEMENTS

If an agreement is not reached through the state's normal negotiation procedures, prior to the filing of condemnation proceedings, the district engineer may review the parcel file, giving full consideration to all pertinent information. This information should include the appraiser's and reviewing appraiser's estimate of fair market value, recent awards by condemnation juries for similar property in the same area, and the amount of the state's probable testimony should the case be litigated. The district engineer or the district engineer's designee should then determine whether a settlement should be attempted at an amount other than that previously offered the property owner. However, such settlements shall not be used solely as a mechanism to avoid condemnation proceedings.

Where a settlement is made on the basis of an administrative determination and such settlement varies from the state review appraiser's estimate of fair market value, the parcel file shall contain a statement approved by the district engineer that sets forth the reasons for such settlement. A copy of the administrative settlement must be submitted with the warrant request on all parcels, except for minimum payment or appraisal waiver parcels.

Where a settlement is made on the basis of an administrative determination and the parcel was appraised under the minimum payment procedure ([Sec. 2.01.1](#)) the settlement can be made for an amount greater than \$10,000 with proper justification and documentation.

3.01-3 ACQUISITION PROCESS AND PAYMENT TO OWNERS

Every reasonable effort shall be made to expeditiously acquire the real property by negotiation. It is desirable that each property owner residing within the state or their representative be personally contacted by a negotiator representing the acquiring agency to discuss its offer and explain the full effect of the taking.

On the initial contact, whether in person or by letter, the negotiator will provide the property owner with a copy of the offer/introductory letter shown as [Exhibits 3.05-1A](#) and [3.05-1B](#). Whether the person providing this letter is a fee or staff negotiator will dictate which form of these letters will be used. When utilizing the minimum payment procedure, [Exhibit 3.05-1C](#) or [3.05-1D](#) is to be used. Except under the minimum payment procedure, the property owner must also be provided with a written statement ([Exhibit 3.01-3A](#)) and summary of the basis for the amount that was established as fair market value. In the event the fair market value is revised

by the reviewing appraiser, the revised offer and written summary statement will again be presented to the appropriate party. The negotiator must record the dollar amount of all offers in the negotiator's record that is part of the parcel file. In no event shall negotiations be deferred or any other coercive action taken to compel an agreement on the price to be paid for the property. At some point during negotiations, if it appears likely that the power of eminent domain will be needed, the negotiator should explain the provisions of 735 ILCS 5/7-102.1 and the requirement to provide them with a 60-day ([Exhibit 3.05-16B](#)) notice by certified mail prior to the filing of a condemnation proceeding. Although the 60-day notice is the only statutory requirement that exists before the department can file an eminent domain action, it is the department's policy to provide the land owner with a Final Offer Letter ([Exhibit 3.05-16A](#)) prior to the time the complaint is actually filed.

Not later than at the time of the written offer, each owner is to be supplied with a written explanation of (1) their right to receive full payment, prior to vacating the property, both in the event settlement is reached through negotiation and in the event settlement is through condemnation proceedings; and (2) the steps available if the state's offer is rejected. These written explanations must be furnished in a brochure, letter or other written form or document ([Section 3.02-3](#)). There is no authority in Illinois to obtain possession of property by a partial payment. Possession can only be obtained by full payment of the agreed consideration, full payment of a judgment of the court, or deposit of the preliminary amount for a just compensation set by the court.

As an alternative, the district engineer may authorize sending a letter of offer by U.S. Mail in which case all the information and material required at the time a personal contact is made must be included in or attached to the letter of offer. This material should always be sent by certified mail, return receipt requested, for proof of delivery. This initial phase of negotiations will require; (1) an offer letter containing details of the acquisition, the effect of the acquisition on the property, and the name, address and telephone number of the representative of the district to be contacted concerning the acquisition; (2) copy of completed "Basis for Computing Approved Compensation and Offer to Purchase" ([Exhibit 3.01-3A](#)); (3) instruments of conveyance and other supportive or title curative documents; (4) plat of property showing the area to be acquired and (5) other materials such as pamphlets, brochures, title information, maps and plans that the property owner may require including the brochures "Illinois Highways and Your Property" and "Eminent Domain . . . Your Rights Under the Law." If the property owner has not contacted the district within seven (7) working days after the offer letter is mailed, the negotiator shall make a follow-up contact (telephone or personal) and then continue with the usual negotiation procedures. This method (letter of offer) may not be used on parcels where relocation is involved.

Settlements below or above the estimate of fair market value must be supported. A bona fide offer by an informed person to sell for less than fair market value (including an offer to donate property) could comprise such support. To be an informed person, the owner will be provided with all the facts concerning the acquisition, including the right to receive full compensation, in money, for land and damages, if any, in accordance with the law of this state. [Exhibit 3.01-3B](#), once signed by the landowner will constitute a waiver of the landowner's rights to just compensation and is used when property is donated to the state. No donation letter is required in those cases when a developer donates property in conjunction with an entrance or other improvement they request.

The statutes of Illinois (30 ILCS 545/2) require title running to the People of the State of Illinois be approved by the Attorney General when the consideration for the purchase of right of way exceeds \$10,000 prior to authorizing a public work to commence. When the consideration for purchase of right of way is less than \$10,000, a title approval shall be made by a representative of the department. A right of entry, temporary use permit or license cannot qualify as a sufficient title under this statute to enable authorization of the work.

When the negotiator presents information to a property owner who may be eligible to receive benefits under the department's Relocation Assistance and Payments Program, it will be noted in the Negotiator's Report, [Exhibit 3.01-1A](#), and Relocation Assistance Unit Record, BRW 333.

The Internal Revenue Service requires the department to report real estate transactions acquired by fee simple title, dedication, or permanent easement of \$600 or more. This will require that the negotiator obtain the tax identification number and addresses of all those parties in interest other than corporations and government agencies. If there are multiple owners, the negotiator should also request an allocation of the payment so the 1099-S forms will reflect the actual payment going to each payee. The department is not required to report real estate transactions involving corporations and government agencies.

The Taxpayers Relief Act of 1997 has now excluded the seller of a principal residence from the requirement of filing a 1099-S form after the sale. For the sale of a principal residence to be exempt, a written certification must be signed by each owner ([Exhibit 3.01-3C](#)).

The Chief Counsel has determined that the provisions of Administrative Order No. 1 apply to negotiated acquisitions in the amount of \$250,000 or more. Use Basis for Computing Approved Compensation and Offer to Purchase ([Exhibit 3.01-3D](#)). Any offer of \$250,000 or more must be made contingent on final department approval. Use Receipt for Warranty Deed/Closing Statement Receipt for Deed and Designation of Funds ([Exhibit 4.09-2A](#) and [4.09-3A](#)).

When a property owner agrees to sell property for \$250,000 or more, the district shall submit a brief approval request to the Central Bureau of Land Acquisition ([Exhibit 3.01-3E](#)). It is recommended that it be faxed. The Central Office will be responsible for obtaining the four approval signatures. An approved copy will be returned to the district for inclusion in the parcel file.

3.01-4 ACQUISITION OF TENANT OWNED IMPROVEMENTS

The acquisition of tenant-owned improvements from a tenant owner can be accomplished under certain circumstances. It is important that acquisitions involving tenant-owned improvements are closely coordinated with the department's appraiser to avoid any possible violation of the "unit rule." The "unit rule" was established in Illinois case law. It requires the value of improved property be considered as a whole, without assignment of separate costs for the land and individual improvements. (The Department of Transportation, Plaintiff-Appellee, v. First Bank of Schaumburg, as Trustee, Defendant-Appellant, First District [4th Division] No. 1-91-2497)

In these cases, the offer of just compensation to the record owner must be made based on an appraisal that considers the existence of any tenant-owned improvements but does not violate the "unit rule" by valuing those improvements separately.

When the offer is made to the record owner, the specifics regarding any tenant-owned improvements can be determined. At this time, the negotiator will inform the record owner that it is possible, for negotiation purposes, to request that the department make an allocation of values between the land and the tenant-owned improvements, if the record owner is willing to sign an affidavit disclaiming all interest ([Exhibit 3.01-4B](#)) in the improvements to be acquired. If the record owner executes the disclaimer, the negotiator will go back to the appraisal unit/section and ask for a reasonable allocation of values between the land owner's interest and the tenant-owned improvements. The negotiator will then make new offers to each party based on this allocation. The amount offered for the tenant-owned improvements will be made utilizing the "Tenant-Owned Improvement - Basis for Computing Approved Compensation and Offer to Purchase" ([Exhibit 3.01-4A](#)). If the record owner refuses to disclaim all interest in the

improvements, negotiations will be conducted solely with the record owner. The tenant's interest will still have to be released before title approval is given.

If all parties agree with the values allocated, they execute the instruments necessary to convey their respective interests to the department.

If the fee owner executes the disclaimer and either the record owner or the tenant owner cannot agree to the amounts allocated and offered for their respective interests, both parties will be informed that the department will initiate condemnation proceedings to acquire the needed property, and that the court, in said proceedings, shall have exclusive authority to hear and determine all rights in and to the just compensation deposited in such proceedings. Separate 60-day notices will be sent to both the record owner and the tenant owner. The 60-day notice for the tenant owner should be by [Exhibit 3.05-16C](#). If the department is aware of tenant-owned improvements and the record owner has refused to sign the required disclaimer and condemnation is necessary, the tenant owner will be given a copy of the 60-day notice, by certified mail, that is provided to the record owner.

The compensation allocated for the tenant-owned improvements will be offered to the tenant owners by providing them with an offer letter ([Exhibits 3.05-1E](#) and [3.05-1F](#)) and a Tenant-Owned Improvement - Basis for Computing Approved Compensation and Offer to Purchase ([Exhibit 3.01-4A](#)) that contains the allocation of values proposed. The tenant's interest in the improvements will be acquired by obtaining a quitclaim deed from the tenant owner for the full amount allocated for the improvements. If the tenant owner is a corporation, partnership, church, school, trust, etc., the same acquisition procedures in Chapter 4 addressing those entities for fee acquisitions will also apply to the tenant owner.

Separate warrants may be drawn in favor of the record owner and the tenant owner.

3.02 THE NEGOTIATOR

Negotiators should be ever mindful of the great trust that has been placed in them. Normally, they are the first, and sometimes sole, representative of the Department of Transportation that most property owners meet face to face. The department, its personnel, its functions, organization and operations are usually judged by property owners on the basis of their judgment of the negotiator's method of operation and conduct. Therefore, negotiators must be polite and congenial and have the traits of honesty, integrity, competence, good judgment and fairness.

3.02-1 GENERAL

The ultimate duty of the negotiators is to acquire right of way. It is their presentation of the work of the engineers and technicians, the appraisers and the policy makers of the department that determines whether or not the needed right of way is to be acquired and the proposed highway improvement made on schedule without recourse to condemnation.

3.02-2 PUBLIC RELATIONS

The general public relations policy of the department calls for the promotion of understanding, acceptance and support of the overall highway program.

Highways serve the nation and the state in the movement of people, machines, and goods. The citizens who pay for these highway facilities through special taxes have expectations in terms of cost, safety, convenience and service which have a direct relationship to their home, business, community, state and nation.

If the public understands the need for a safe, efficient, maximum service - potential highway system, acceptance would seem assured. However, the negotiator as a member of the staff, as the representative of the department, and as a public servant, must assume the responsibility for the full process of communication in addition to the role of interpreter and persuader. The negotiator's work then must be directed toward public service.

3.02-3 PRINTED INFORMATION

Two pieces of printed information must be presented to the property owner of land to be acquired, as well as any owners of tenant-owned improvements, no later than the time the written offer to purchase is presented: 1) The booklet "Illinois Highways and Your Property," prepared by the Illinois Department of Transportation and, 2) "Eminent Domain ... Your Rights Under the Law," prepared by the Illinois Attorney General.

3.02-4 GROUP MEETINGS

A negotiator will not normally be called upon to make a presentation by way of an official appearance at a hearing, before a neighborhood group, civic group or governmental body, or before any assemblage of interested parties. If the occasion should arise, the appearance should be governed according to the following guidelines:

- Demeanor and conduct should be above reproach and a credit to the department.
- Statements made on behalf of the department must be based on fact.
- Statements must be conditioned by the negotiator's specific responsibility and authority. Organizational limitations can only be learned by careful study and by analysis of the rules, regulations and policies of the department and/or through counseling with superiors.

Every statement made by a right of way negotiator is "on the record" so that the negotiator cannot avoid responsibility for acts and words during the negotiations regardless of whether before a group or in the privacy of the owner's home. Public presentations often involve a great deal more pressure, and public attention is more directly focused when there is an appearance before a public group. Any statements in public should reflect the desire of the negotiator to be of service, and such statements should be factual, impartial, and objective. Argumentative presentations should be avoided.

3.02-5 ASSIGNMENTS

A negotiator who has worked on a project from its inception will be best prepared to give complete and accurate answers and explanations to affected property owners and acquire the needed right of way most expeditiously. A working familiarity with the locale and its people offers a decided advantage to any negotiator. If workloads and scheduling will permit, it would seem prudent to allow a negotiator to concentrate on a particular project from its initial stages through completion. When this is not possible, assignment should be to a particular segment and failing this, to as many parcels as possible.

3.03 QUALIFICATIONS OF STAFF NEGOTIATORS

Staff negotiators of the department are classified as one of the grades of Realty Specialists I through V. Requirements for each grade are shown in [Exhibit 3.03](#).

Fee negotiators must be approved by the Division of Highways prior to receiving assignments to negotiate. A list of approved fee negotiators will be maintained for the division's use in selecting negotiators who can meet our negotiation needs. It is not intended to be used as a general reference to show proof of qualification for any other purpose. This list should be reviewed continually. Anytime a fee negotiator does not perform satisfactorily, or if the Division of Highways does not intend to make additional assignments to a negotiator, his/her name should be deleted from the list.

Fee negotiators, who are not on the approved negotiator list, but whom the district wishes to use for negotiation purposes, must be interviewed by the district engineer, or his or her authorized representative. At the interview, the fee negotiator's qualifications and the requirements of the Division of Highways will be fully explained. Copies of the negotiator forms with instructions for their use will also be reviewed with the fee negotiator.

Prospective fee negotiators must complete the standard "Application for Assignment" ([Exhibit 3.03-1](#)) and furnish proof that they meet the requirements.

After the interview, the district engineer, or someone representing the district engineer, will review the application and the proof furnished, and submit a copy of each to the Central Bureau Land Acquisition Engineer only if the district engineer wishes to make assignments to the negotiators and feels that they are qualified and willing to do acceptable work. After a review in the central office, the Central Bureau Land Acquisition Engineer will notify the district engineer whether or not assignments may be made. When the negotiators are approved, the Central Bureau Land Acquisition Engineer will also send a letter informing them that they have been approved to negotiate for the division. Once approved for assignments in one district, the Central Bureau Land Acquisition Engineer may authorize their use in other districts.

When negotiators are approved, their first assignment should include only a few parcels. If, after a review their work appears to meet the minimum requirements, additional assignments may be made to the negotiator. When minimum department requirements are not met, the district will inform the negotiator. If satisfactory work cannot be obtained, the district engineer should initiate action to have the negotiator's name removed from the approved list.

Fee negotiators must have the necessary background and experience, ability and enterprise to acquire real estate based on appraisals obtained and approved by the Division of Highways. The negotiators must have the ability to interpret highway plans and be capable of explaining the effect of the proposed highway improvement to the landowners of the properties being acquired. When called upon to testify in condemnation proceedings, they must be capable of presenting in a forthright and thorough manner all of the facts regarding each acquisition.

In order to be considered for negotiation assignments a negotiator must have the following qualifications:

- Must have at least two (2) years of verified responsible experience in negotiating for all types of less complex rural and urban property or comparable experience. A background of one of the following is preferred:
 - Title search and clearance work
 - Handling real estate transactions
 - Handling real estate loans

- Property management (including farm management)
- Training in a field related to real estate
- Must furnish the following:

Proof of satisfactory completion of three recognized negotiation courses equivalent to those sponsored by the International Right-of-Way Association or three recognized appraisal courses equivalent to those given by the Appraisal Institute or any combination of the same for a total of three such courses. Other comparable real estate courses, at the discretion of the employing agency, may be substituted instead of or in combination with the above.

- Possess a Bachelor's Degree from an accredited college or university in business administration, law, economics, engineering, agriculture, sociology, or related fields; or high school graduate with experience; or must have a combination of such college training and experience.

3.03-2 RATING OF NEGOTIATORS

Fee negotiators must be rated no less than annually. Interim ratings should be prepared when circumstances, such as poor initial work, indicate a need to formally inform the negotiator. Ratings are prepared by utilizing [Exhibit 3.03-2](#) of this manual. Copies of all ratings must be provided to the negotiator being rated as well as the Central Bureau of Land Acquisition by July 15 of each year.

Staff negotiators are rated annually on the "Performance Appraisal Form," which is made a part of the individual's confidential personnel record.

3.04 PREPARING FOR NEGOTIATION

Success in negotiating will often be in direct ratio to the degree of preparation. With this thought in mind, the following guidelines may prove helpful.

3.04-1 ANALYSIS OF THE PROJECT AND PARCEL

The first step is to study all of the available project data to learn the origin of, the destination of, the route of, the necessity for, and the benefits to be derived from the construction of the proposed highway improvement. This includes an office study of all maps, drawings, and other information which has been compiled on the project and a visual field inspection on site along the route of the proposed improvement to obtain a working familiarity with the topography and present use of the land to be traversed. This can best be accomplished by a joint effort between the project engineer and the negotiator.

When making a field review, the negotiator should attempt to learn as much as possible about the ethnic, cultural, ecological and socio-economic make-up of the neighborhood in which the project is located.

The negotiator must have certain knowledge of each parcel. In addition to having a working familiarity with the right of way plans and the approved appraisal, it is essential that the negotiator be familiar with the land itself; the neighborhood, the number, extent and ownership of improvements (including special land improvements); property boundaries; barriers, both natural and man made i.e., fences, rivers, creeks, ditches, etc.; the take; the remainder, if any; the existing road system and its relation to the parcel in question; the location of comparable

sales with reference to the subject parcel and the general effect of the acquisition on the property including specific benefits, if any.

3.04-2 DESIGN AND CONSTRUCTION FEATURES

In order for the negotiator to study the project in the office and on the site, it will be necessary to become thoroughly familiar with the plans and profiles and consult with the District Studies and Plans Section to obtain an explanation of unusual design features. With this information, the negotiator will then be able to provide the owner with a proper description of the proposed highway improvement, its necessity and its advantages.

The negotiator should be prepared to discuss intelligently and understandably certain highway construction and design features that may effect the valuation and/or usage of the property. The following list is suggested:

- Access limitations and control to be imposed
- Existing and proposed means of ingress and egress
- Frontage roads to be provided, if any
- Elevations of the facility in relation to the existing terrain
- Cut and fill, if any
- Driveways - existing and proposed
- Fencing - owner or State responsibility for erection and maintenance – type
- Easements required for construction or channel change or for other uses
- Changes in drainage patterns, if any
- Other features.

Complete knowledge, truthfulness, full disclosure and discussion of all facts relative to construction and design features are necessary and will do much to instill in the owner a justifiable feeling of confidence and trust in the negotiator.

3.04-3 APPRAISALS

It is necessary that the negotiator have knowledge of the appraisal process. Appraisal reports, but primarily the approved appraisal, must be studied in conjunction with the layout of the project so that the negotiator understands the taking, damages and/or enhancements involved and be better prepared to answer questions regarding the appraisal. The appraisal is not to be shown or surrendered by the negotiator during negotiations unless specifically authorized by the district engineer. The appraisal portion of this manual, found in [Chapter 2](#), should be read thoroughly and will be of assistance to the negotiator.

3.04-4 RIGHT OF WAY PLANS

Right of way plans are developed, along with detailed construction plans, to define areas necessary to construct and maintain the highway improvement. The preparation and composition of right of way plans are discussed in [Chapter 1](#) and negotiators should read and familiarize themselves with the provisions. The negotiator will then be able to speak

authoritatively and knowledgeably with the property owner when reviewing plans, individual plats, and how the proposed highway improvement affects the property.

3.04-5 TITLES, DEEDS, CLOSING AND CONDEMNATION

The negotiator must be thoroughly familiar with the Acquisition Policies and Procedures that can be found in [Chapter 4](#). They set forth, in detail, matters relating to titles, closings, deeds and other conveyance documents, and condemnation.

3.04-6 NEGOTIATOR'S PORTFOLIO

Success in negotiation is usually directly related to the degree of preparation. In addition to making a thorough study of the project and the particular acquisition involved, the negotiator will make a determination of the instruments of conveyance required to effect a proper and complete transfer of the real property interest sought. In order to accomplish this task in the most efficient and expeditious manner, it will be necessary to prepare a negotiator's portfolio, which contains all of the necessary instruments for conveyance and any other materials such as pamphlets, brochures, title information, maps and plans to be used.

3.05 NEGOTIATING

Negotiation officially commences when the negotiator approaches the property owner by personal contact or by letter to formally discuss the details of the proposed transaction and the price to be paid therefore. The normal end of negotiation is that time when the consideration has been paid and the state has obtained possession of the property sought. There is no clear-cut method of forecasting the proper method to be utilized in negotiating; however, the following guidelines may be useful.

3.05-1 ESTABLISHING CONTACT

By the mere fact that the transaction involves the selling of real property interests, the property owner is entitled to be approached with respect and in a businesslike manner. It is only natural that an owner may resent being first contacted when totally unprepared or, perhaps, not in a proper frame of mind to discuss the proposed acquisition.

The negotiator may save valuable time and perhaps embarrassment by arranging the time and place of the first contact. The owner should be contacted by telephone as a means of introduction to the negotiator and to establish a time and place for the first face-to-face meeting, at which time this important transaction can be formally and thoroughly presented to the property owner.

The establishment of a time and place for a discussion of the actual transaction should take into account the wishes and desires of the property owner and should be at his or her convenience, within a reasonable time, and at a reasonably convenient location.

Owners should not be contacted at their place of business unless it is the business property that is proposed to be purchased or unless requested by the owner. The meeting will ordinarily be held at the owner's residence; if, however, it is desirable to meet at the state land acquisition office, a private office should be made available.

It is mandatory that all appointments be promptly kept. An arrival at the correct time will assist the negotiator in becoming established as efficient and trustworthy and create a better atmosphere for business relations.

In the interest of good public relations, an introductory letter ([Exhibits 3.05-1A](#), [3.05-1B](#), [3.05-1C](#), or [3.05-1D](#)) should be mailed no earlier than five days before the first meeting with the property owner, or delivered when the negotiator first meets with the property owner.

If it is determined that a letter of offer should be made in lieu of a personal face-to-face contact, then care should be taken to include all the pertinent data and information in the communication in order that the property owner is fully informed of the proposed improvement, its effect on the property, and compensation to be paid.

3.05-2 KNOWLEDGE OF THE OWNER

It is always easier to discuss matters with someone who has a common interest, occupation, or hobby or with one who has the same acquaintances or is a member of the same social organization. It is therefore desirable to open your discussion with conversation, which may ascertain as much information as possible about the person.

3.05-3 PERSONS IN ATTENDANCE

The first conference should include, if at all possible, all persons who have an interest in the fee title to the property. This first meeting is usually the only time that full details of the proposed construction, appraisal and payment procedures and responsibilities of each party are discussed. Subsequent contacts may be confined to more specific details of particular concern to the owners. If the district presents separate offers to the fee owner and tenant owner, contact with the tenant owner should be made as soon as possible after the first conference with the fee owner.

It is not appropriate or desirable for disinterested parties to be in attendance at the first meeting as there may be discussions regarding valuation, marital status, liens or other items that may tend to be embarrassing before a third party. The exception to the above would normally be in the case of elderly people who may desire to have a relative or advisor present to assist them in their decisions.

3.05-4 PRESENTATION

It is improbable that any two negotiation sessions will follow exactly the same pattern even when presented by the same negotiator. The complexity or simplicity of the acquisition, the owner's education and experience level, even the time and place, are factors which will shape the form and style of presentation. The usual and desired pattern, however, calls for a simple, uncomplicated, businesslike presentation by the negotiator of all the facts surrounding the transaction with appropriate questions or comments from the property owner, and this usually after some preliminary discussion of mutual acquaintances, hobbies, occupation, etc., whereby the negotiator attempts to establish rapport.

It is desirable to outline the sequence of events that have brought about the meeting, the necessity for a better highway facility, the reasons for the various survey activities and the qualifications of the appraisers. The right of way map, the conveyance instruments, and pertinent details of construction should all be presented at opportune and appropriate moments.

3.05-5 TITLE INFORMATION

It is advisable to confirm information regarding title matters as soon as possible during the first meeting. This can usually be accomplished at some appropriate time before the value is discussed. The discussion regarding ownership might occur during the preliminary period to help establish a businesslike atmosphere. Other title questions could then be inserted when the occasion presents itself.

There will be instances, however, when it will be advisable to hold title questions concerning marital status or heirship when the negotiator receives some indication of friction or resentment because of such questions. It may also prove embarrassing to probe into judgments or liens against the property in the presence of a third person.

3.05-6 USE OF RIGHT OF WAY PLANS

The right of way plan is an important aid to negotiation and should be shown to the property owner early in the first meeting. From the study of the right of way plan and from your explanatory reference to recognizable landmarks, the property owner can be more readily oriented to the property required for right of way. It generally helps to place the map with the top facing north since most people can more easily orient themselves in this position. The areas within the right of way have been carefully computed using accepted methods of land survey computation; however, the negotiator should be familiar with approximate checking methods of computing areas in the owner's presence, if necessary. It is also important that the negotiator be prepared to explain a conversion to metrics and a use of the dual system on some right of way plans and transfer documents.

If the negotiator has colored, or in some other manner coded, the parcels to be acquired, and outlined the subject property, the owner can readily see:

- The breadth and extent of the properties required for this project and the numbers of friends and neighbors who are being affected by the right of way acquisition
- The parcels already acquired. Knowledge that other properties have been acquired may make a favorable impression on the owner and assist in negotiating the acquisition of the property.
- That the property is outlined for ready reference and is not considered as being only one among many
- It is important to note that each property owner is entitled to know exactly what type of right of way plans are being discussed. Preliminary plans must be clearly labeled PRELIMINARY to alert the property owner to possible future changes. This would also apply to preliminary construction plans if presented to the landowner for review.

3.05-7 CONSTRUCTION FEATURES

The construction plans may be advantageously employed to show the relationship between the highway and the remaining land, the means of ingress and egress, proximity to the improvements, drainage patterns, relative elevation of the highway to the existing terrain, general details, etc.

There will be instances in which the appraisers have recognized damages because of the acquisition and design of the highway and the negotiator should point out the cause of damage and that it has been taken into consideration. The negotiator should do this before it occurs to the owner, if at all possible. If not, the owner may form an impression that vital information is being withheld.

3.05-8 CONVEYANCE INSTRUMENTS

The instruments of conveyance can be shown while discussing the right of way map, or immediately following. It may be advisable to read the calls in the description and to trace the same on the right of way map when a partial acquisition is involved. The negotiator can supplement the description by relating them to known physical landmarks so the owner can graphically recognize the land to be acquired and the land remaining, if any. It will seldom be

necessary to explain all the printed matter in the instrument unless the owner expresses an interest, in which event the negotiator should be prepared to do so.

3.05-9 METHOD OF NEGOTIATIONS

Department policy provides that the first time an offer is made to the owners it must be for no less than the approved fair market value of the property as determined by the reviewing appraiser.

Under this method, the department's negotiator does not offer the landowner anything more or less than the figure that has been ascertained through independent appraisal and appraisal review by the District Land Acquisition Bureau/Section.

The negotiator must show, through expert support and without the advantage of increasing the offer, the fairness of the department's offer. This can be accomplished by reaffirming the appraisal process and by explaining to the owners the need for the proposed highway improvement.

The department's offer to purchase is not inflexible. If additional items of value are brought to light or other oversights noted during the course of negotiations, the negotiator should report the same for consideration. All counter offers should also be reported and responded to in writing. The district engineer may increase the offer over and above the established fair market value under the administrative settlement procedures of [Section 3.01-2](#) of this manual.

3.05-10 RETENTION OF IMPROVEMENTS

All improvements within the area required for highway right of way must be removed by one of several means. The usual procedures are:

- Retention by the property owner for a predetermined price
- Public sale, by sealed bids or at public auction for not less than a minimum predetermined price
- By the road contractor as part of the overall contract
- By a demolition contract (under separate contract)

If practicable and in the best interest of the department, the negotiator should attempt to conclude negotiations with the property owners on the basis that the owners retain and remove improvements. A complete written agreement between the Division of Highways and the owners will then be executed setting out the requirements and responsibilities. The negotiator should be familiar with the procedures set out in [Chapter 5](#) entitled Property Management Procedures relative to this matter in order to discuss the subject as it arises.

3.05-11 DATE OF POSSESSION

Department policy provides that the construction of projects shall be scheduled so that, to the greatest extent practicable, no person lawfully occupying the real property shall be required to move from their home, farm or business without at least 90 days written notice from the state or political subdivision having responsibility for the acquisition. For further information see [Chapter 6](#), Relocation Assistance Procedures, that is a valuable reference for negotiators even though it may not be one of their functions to provide such assistance. If construction schedules permit, occupancy may be continued under a rental agreement. Since the negotiators are normally in a position to advise on this, they should be familiar with [Chapter 5](#) entitled Property Management Procedures.

3.05-12

EXPENSE TO OWNER

The negotiator should be very explicit in detailing the expenses or deduction to be incurred by the property owner for the consummation of the transaction such as taxes, judgments, lessees' interest, etc.

3.05-13

CLOSING ON THE FIRST CONTACT

The complexity of the proposed taking will determine the negotiator's actions and behavior in closing on the first contact. On minor acquisitions, for road widening projects and the like, it may be advisable to proceed with the objective of closing the transaction with one call. Generally, however, it will take more than one meeting with the property owner to reach agreement.

3.05-14

SUBSEQUENT CONTACTS

Before leaving the first meeting with the property owner, the negotiator should establish a date, by mutual agreement, for a second appointment and should leave a card, which lists a telephone number and address should the owner desire to contact the negotiator in the interim period. The number and frequency of contacts to be made are left to the discretion and judgment of the negotiator, except to the extent that they may be governed by established deadlines for the completion of the acquisition of right of way.

3.05-15

ITEMS WHICH MAY ASSIST IN CLOSING

The following items, which differ somewhat from other types of real estate transactions, may be of benefit in closing an acquisition by the state.

- In the normal real estate transaction the seller must furnish proof of title by obtaining title insurance or bringing the abstract up to date. The state bears the expense of this title search and the title insurance.
- It is usually incumbent upon the owner to pay for the cost of preparing the necessary instruments to transfer title, including charges for the preparation of mortgage releases. The state provides these instruments at no cost to the owner. However, should it be necessary for an owner to actually incur expense in transferring title to the state for such items as penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the property, recording fees or mortgage release fees, the owner is entitled to reimbursement by the state.
- The majority of real estate transactions are handled through real estate brokers on a percentage fee basis. There are no brokerage fees in the transaction with the state.
- In most transactions the owner must give possession of the property at the time compensation is paid or shortly thereafter; however, in some cases in state acquisition, occupancy may be continued under a rental agreement. See [Section 3.05-11](#) of this manual.
- In some cases the seller does not receive the full consideration for some indefinite period of time or must accept a second mortgage in order to complete the transaction. With the state, it is a full cash sale.
- In many cases the owner must be absent from work to show the property to prospective purchasers and to assimilate the information and various documents needed. The state negotiator will discuss these transactions at the owner's convenience and will do much,

if not all of the leg work necessary so that the owner will be inconvenienced as little as possible, and loss of time from work, if any, is minimal.

- The owners may have the option of retaining any of the improvements located on the property by accepting the established retention value from the state.
- A relocation assistance program, administered by the state, is designed to reduce the cost and inconvenience to eligible families, businesses, and farm operations displaced.

3.05-16 EXPLANATION OF LEGAL RIGHTS, OBLIGATIONS, ETC.

Often a discussion of legal rights has to do with condemnation proceedings. It is a basic premise that the negotiator never threatens condemnation, even by inference or implication. The negotiator's responsibility and function are to explain the condemnation process and pointing out that the condemnation process is based upon certain constitutional and legislative provisions.

It is expected that there will be instances when condemnation appears to be the only recourse after honest efforts to reach agreement have failed. In such a case, the negotiator may be asked to describe the usual course of events in such proceedings, such as the "final offer" letter ([Exhibit 3.05-16A](#)) the request for condemnation, the filing of the complaint, etc. In doing so, the negotiator must emphasize that (1) a negotiated settlement can be reached even after such proceedings are initiated; and, (2) that at least 60 days before filing a complaint to initiate condemnation proceedings the department shall send a letter by certified mail, return receipt requested, to the owner of the property to be acquired giving the property owner the following information: 1) amount of compensation for the taking and the basis for computing it; 2) a statement that the department continue to seek a negotiated settlement with the property owner; and, 3) a statement that in the absence of a negotiated settlement it is the intent of the agency to initiate condemnation. ([Exhibit 3.05-16B](#)) However, after the complaint for condemnation has been filed in the court of record, and notice served, all contacts with the property owner must be authorized by the Special Assistant Attorney General in charge of the case.

3.05-17 UNECONOMIC REMNANTS

An uneconomic remnant is the remaining portion of real property, after a partial acquisition, which is determined by the department to have little or no value or utility to the owner.

When, in the judgment of the acquiring agency, either inaccessible or accessible remnants of land from which right of way is being acquired are determined to be uneconomic remnants, it is department policy that simultaneously with making of the offer to the owner to purchase the needed right of way, the department's negotiator shall also offer to purchase the uneconomic remnants. In the case of any accessible uneconomic remnant, such offer to purchase shall be contingent upon the owner furnishing the department with a written request to purchase said remnant. Offers to purchase such remnants may be made separately (See [Exhibit 3.05-17](#)) or may be merged into the offer for the needed right of way. Remnants may be acquired by separate deed or may be acquired by the deed for the needed right of way. (Also see [Section 4.16](#))

It is the negotiator's responsibility to notify the District Property Manager of such an uneconomic remnant/remainder acquisition so this information can be incorporated into the department's NORWAY inventory. (See [Section 5.09](#))

3.06

NEGOTIATOR'S REPORT

Negotiators are required to maintain in the parcel file a current written record including, but not limited to, the pertinent points of each discussion or contact with the property owner, the date(s) and place(s) of such contact, offers made, the owners reaction thereto, and the signature or initials of the negotiator following each entry on the record ([Section 3.01.1](#)). This will prove beneficial to the negotiator and others within the department and the Federal Highway Administration in reviewing the history of the negotiation and in the analysis of negotiation procedures.

To assist in monitoring right of way activities to ensure compliance with Title VI of the Civil Rights Act of 1964, the negotiator should check the classification in the Title VI (Non-Discrimination) block in the Negotiator's Report. Also indicate in the proper blank the sex of the first-named owner of record shown on the Title Commitment or other evidence of ownership (M-Male, F-Female). In the case of a trust, corporation, or business entity where no individuals are named, no entry is required.

The inclusion of information regarding heirs and other owners of interest and their addresses, sales of property which the appraisers have not considered, counter-offers by the owner, points of discussion related to controversial or over-looked items, special considerations regarding the owners acquisition of the subject property or any of the comparable properties, and other details of title or value can be invaluable in subsequent discussions with the owner, for eminent domain proceedings if required, and future negotiations with others. If it becomes necessary for a different negotiator to take over the acquisition of a parcel, then notation of the change in negotiators should be made on said Negotiator's Report ([Exhibit 3.01-1A](#)). In any event each entry on the Negotiator's Report must be identified by the signature or initials of the negotiator making the entry.

CHAPTER 4

ACQUISITION POLICIES AND PROCEDURES

4.01 ACQUISITION POLICIES AND PROCEDURES - GENERAL

4.02 INTEREST TO BE ACQUIRED

4.03 FACTORS WHICH MAY AFFECT EXECUTION AND OWNERSHIP

- 4.03-1 OWNERS
- 4.03-2 MARITAL STATUS
- 4.03-3 DIVORCED PERSONS
- 4.03-4 JOINT TENANCY OR TENANCY IN COMMON
- 4.03-5 ESTATES
- 4.03-6 CONDOMINIUM PROPERTY
- 4.03-7 LIMITED LIABILITY COMPANY
- 4.03-8 CORPORATE PROPERTY
- 4.03-9 PARTNERSHIPS
- 4.03-10 CHURCH PROPERTY
- 4.03-11 SCHOOL PROPERTY
- 4.03-12 POWER OF ATTORNEY
- 4.03-13 REQUIRED SIGNATURES - ACKNOWLEDGMENTS - RELEASES
- 4.03-14 TRUSTS
- 4.03-15 DISCLOSURE OF BENEFICIAL INTERESTS
- 4.03-16 GUARDIANS

4.04 ENCUMBRANCES

- 4.04-1 MORTGAGE LIENS
- 4.04-2 REAL ESTATE TAX LIENS
- 4.04-3 LIENS OF SPECIAL ASSESSMENTS
- 4.04-4 LIENS OF OTHER STATE AGENCIES OR DEBTS OWED THE STATE
- 4.04-5 OTHER ENCUMBRANCES

4.05 MINERAL INTERESTS

- 4.05-1 OIL AND GAS - PRODUCING FACILITIES WITHIN THE PROPOSED RIGHT OF WAY
- 4.05-2 OIL AND GAS - NO PRODUCING FACILITIES WITHIN THE PROPOSED RIGHT OF WAY
- 4.05-3 OTHER MINERALS

4.06 PROPERTY OR RIGHTS OWNED BY UTILITY COMPANIES

4.07 ACQUISITION FOR FREEWAYS

- 4.07-1 FULL FREEWAYS
- 4.07-2 MODIFIED FREEWAYS
- 4.07-3 OTHER BUREAU RESPONSIBILITIES

4.08 INSTRUMENTS OF CONVEYANCE, ET AL

- 4.08-1 DAMAGE WAIVER

4.09 CLOSING DOCUMENTS - GENERAL

- 4.09-1 AFFIDAVIT OF TITLE
- 4.09-2 RECEIPT FOR WARRANTY DEED
- 4.09-3 THE CLOSING STATEMENT

- 4.10 TITLE EXAMINATION**
 - 4.10-1 TITLE INSURANCE SERVICES
 - 4.10-2 CLOSING TITLE
 - 4.10-3 RECORDING THE INSTRUMENTS
 - 4.10-4 ESCROW TITLE CLOSINGS
- 4.11 REAL PROPERTY OWNED BY THE STATE AND UNDER THE CUSTODY AND OF OTHER STATE AGENCIES**
- 4.12 REAL PROPERTY OWNED BY THE FEDERAL GOVERNMENT**
- 4.13 ACQUISITION OF PRIVATELY OWNED LANDS OR INTERESTS IN LANDS BY FEDERAL CONDEMNATION ACTION**
- 4.14 ACQUISITION OF LAND FOR RELOCATION OF RAILWAY TRACKS OR PUBLIC UTILITY FACILITIES**
- 4.15 ACQUISITION OF PROPERTY TO REPLACE PROPERTY OF PUBLIC AGENCY**
- 4.16 ACQUISITION OF REMNANTS AND REMAINDERS**
 - 4.16-1 INACCESSIBLE REMNANTS
 - 4.16-2 ACCESSIBLE REMNANTS OR REMAINDERS
- 4.17 JOINT IMPROVEMENT AGREEMENTS - GENERAL**
 - 4.17-1 TITLE TO RIGHT OF WAY - STATE HIGHWAY PROJECTS
 - 4.17-2 TITLE APPROVAL TO LAND - STATE HIGHWAY PROJECTS
 - 4.17-3 STANDARD AGREEMENT PROVISIONS-STATE HIGHWAY PROJECTS
 - 4.17-4 TITLE TO RIGHT OF WAY-LOCAL AGENCY HIGHWAY PROJECTS
 - 4.17-5 STANDARD AGREEMENT PROVISIONS LOCAL AGENCY HIGHWAY PROJECTS WITH FEDERAL PARTICIPATION
 - 4.17-6 COMPLIANCE REVIEW CHECKLISTS
 - 4.17-7 COMPLIANCE REVIEWS BY DISTRICT
- 4.18 ENTRY ON LANDS TO MAKE SURVEYS**
- 4.19 LAND ACQUISITION STATISTICS**
- 4.20 ADVERTISING SIGNS**
 - 4.20-1 USE OF RIGHT OF WAY FOR ADVERTISING SIGNS
- 4.21 PROCEDURE FOR REVIEWING STATUS OF ABANDONED RAILROAD RIGHT OF WAY**
- 4.22 ACQUISITION OF RIGHT OF WAY FOR FUTURE USE**
- 4.23 URBAN RENEWAL PROJECTS**
- 4.24 - 4.29 RESERVED FOR FUTURE USE**
- 4.30 CONDEMNATION**
 - 4.30-1 REQUEST FOR CONDEMNATION
 - 4.30-2 APPOINTMENT OF A SPECIAL ASSISTANT ATTORNEY GENERAL
 - 4.30-3 ASSIGNMENT TO A SPECIAL ASSISTANT ATTORNEY GENERAL
 - 4.30-4 IMMEDIATE POSSESSION (QUICK TAKE PROCEDURES)
 - 4.30-5 PREPARATION FOR TRIAL
 - 4.30-6 COOPERATION DURING TRIAL

- 4.30-7 COURT ORDERS, DISCLOSURES OF BENEFICIAL INTERESTS IN CORPORATIONS, PARTNERSHIPS AND TRUSTS AND TITLE INSURANCE POLICY
- 4.30-8 DOCUMENTATION OF CONDEMNATION AWARDS AFTER SETTLEMENT
- 4.30-9 DOCUMENTATION OF CONDEMNATION AWARDS AFTER CONTESTED TRIAL
- 4.30-10 APPEALS
- 4.30-11 INVERSE CONDEMNATION
- 4.30-12 EMINENT DOMAIN CHECKLIST

CHAPTER 4 EXHIBIT INDEX

CHAPTER 4 ACQUISITION POLICIES AND PROCEDURES

4.01 ACQUISITION POLICIES AND PROCEDURES - GENERAL

Authority for the acquisition and disposition of real property required for highway purposes is established and governed by statute 605 ILCS 5/4-501 to 5/4-511 inclusive. Eminent Domain is utilized to accomplish such acquisition through court action in the event an agreement cannot be reached with the property owner (735 ILCS 5/7-101 to 5/7-129 inclusive).

4.02 INTEREST TO BE ACQUIRED

The department may acquire the fee simple title, or such lesser interest as may be desired, to any land, rights or other property necessary for highway purposes by purchase or through eminent domain proceedings. Except in those instances that involve contaminated properties and other very unusual cases, fee title is acquired to right of way within the proposed highway right of way lines on all routes. For any departmentally approved acquisition of contaminated property a dedication for highway purpose ([Exhibit 4.08I](#) and [4.08J](#)) shall be obtained rather than fee simple title (see [Chapter 10](#)).

Permanent easements are obtained outside the proposed highway right of way lines to cover the construction and/or installation of appurtenant highway facilities of a permanent nature. Installation of an outfall storm sewer, rip-rapping of stream channels, or channel changes are examples where future entry for maintenance or reconstruction purposes would necessitate a permanent easement.

Temporary construction easements or temporary use permits are also obtained outside the proposed highway right of way lines to perform various types of work incidental to construction of the highway improvement project. Because of distinct differences between a temporary construction easement and a temporary use permit, the type of work to be performed will determine which is to be used.

Temporary construction easements ([Exhibit 4.08M](#)) are grants of an estate or interest in the land and as such are irrevocable. It is strongly recommended that temporary easements be recorded so as to run with the sale of the land. Acquisition of temporary construction easements should be accomplished in the same manner as the acquisition of a fee taking or a permanent easement with respect to appraisal and acquisition requirements. Temporary construction easements should always be obtained for such things as detour roads, borrow pits, removal of remainders of buildings situated partially on acquired right of way, channel changes requiring infrequent or no future maintenance, etc., where the specified use is essential to completion of construction of the proposed improvement.

The term "temporary use permit" ([Exhibit 4.08M1](#)), is used to describe a license which, with respect to real property, is a permission given the department to do a particular act or series of acts on the land of another without possessing any estate or interest in the land. A license with respect to real property does not generally run with the land and may be terminated. "Temporary use permits" should not be recorded. Consequently, the acquisition of temporary use permits should be confined to those areas of construction such as for sloping of lawns, extending back slopes beyond the proposed highway right of way lines, or reconstruction of driveways, where (1) a nominal amount of money is involved, (2) the probability of termination is minimal, and (3) the effect of termination is acceptable, i.e., would not jeopardize completion of the highway improvement.

Although located outside or beyond the proposed highway right of way lines, all easements or permits are considered as right of way parcels and are to be reported as "right of way" required for construction of a project for purposes of obtaining authorization to advertise the project for letting.

4.03 FACTORS WHICH MAY AFFECT EXECUTION AND OWNERSHIP

Prior to the initial contact by the negotiator, a thorough study must be made of the title requirements in order to expedite the acquisition process and to insure a proper conveyance of the interest sought. In this connection it should be noted that Illinois law requires any legal instruments prepared in Illinois, including deeds and other instruments relating to real estate be prepared by or under the supervision of a licensed Illinois attorney (705 ILCS 205/1).

Consequently, a determination will be made as to (1) the instruments needed to convey the interest sought and the form thereof, (2) the signatures required and the form thereof, and (3) what other instruments will have to be executed or what action taken to obtain good title.

It is impractical to list all of the factors affecting the execution and ownership; however, those normally encountered will be discussed.

4.03-1

OWNERS

All instruments of conveyance must recite the full consideration which includes the value attributed to damages to the remainder. The state of Illinois does not accept less than a warranty deed when acquiring fee title except acquisitions from a railroad, public utility, trust or contract buyer. In these cases a quitclaim deed is acceptable provided the granting clause contains "after acquired title" language. This after acquired title clause may read as follows:

"all the existing legal and equitable rights of the Grantor in the premises described herein and shall extend to any after acquired title in the described premises."

The statutes require warranty deeds, quitclaim deeds and mortgages to have the names of the parties typed or printed below the signatures. A blank space of 3x5 inches shall also be on the form for use by the recorder (55 ILCS 5/3-5018).

If the grantor conveys under a form of name different from that under which title was acquired, such disparity must be accounted for in (1) the granting clause, (2) the signature block, and (3) acknowledgment of the instrument, by showing both the name under which the grantor presently is conveying as well as that under which title was acquired. The grantor should be identified in the same manner in all three places where the grantor is identified in the deed. The following typical grantor names illustrate this:

- Albert J. Doe, AKA (also known as) A. John Doe, and Betty Doe, his wife - Other variations of the AKA abbreviation are FKA (formerly known as) and NKA (now known as)
- Mabel Smith, who acquired title as Mabel Doe, and Richard Smith, wife and husband
- Elsie Davis, a widow and surviving joint tenant of Michael Davis, deceased
- Button Company, an Illinois corporation, successor to Zipper, Inc., a Missouri corporation, qualified to do business in Illinois

The legal age for conveyance purposes is 18.

4.03-2

MARITAL STATUS

It is essential to disclose in the granting clause and the acknowledgment the correct legal marital status of all grantors. The correct marital status in Illinois is disclosed by the use of the words, "a single person, never married; widow; widower; husband and wife; divorced and not remarried" as appropriate. Spouses of title holding grantors must execute the instruments if the property is a homestead. If the "property is not a homestead," said instrument should so reflect immediately after the legal description. Determining whether or not the property is a homestead is often difficult and the safe procedure is to obtain the signature of the non-title holding spouse of the grantor even though an affidavit indicating that there is no homestead may be acceptable.

4.03-3

DIVORCED PERSONS

When an acquisition involves divorced individuals, the possibility of the property being considered a homestead, as described in [Section 4.03-2](#), should be covered as well as examination of the court's decree.

If a man holds title to property solely in his own name, and his wife dies, the children do not thereby become heirs, and the title remains in the husband. This is also true if the wife holds title to property solely in her own name. Sometimes property is held by owners, such as a wife and husband, as joint tenants, in which case, upon the death of either owner, the surviving spouse or other owners' become the sole owner. This condition exists if the record title is held as follows: "John Jones and Mary Jones, his wife, as joint tenants and not as tenants in common." Under *Cooper V. Martin* (1923) 308 Illinois 224, it was held that the exact language of the statute 765 ILCS 1005/1, is not necessary so long as a clear intention to create a joint tenancy is indicated. If the property is owned by John Jones and Mary Jones, his wife, then each owns an undivided one-half interest as tenants in common, and upon the death of either, that half descends to the deceased spouse's heirs unless devised to others by will. Whether title is held in "joint tenancy" or "tenancy in common," all living title holders must be signatories. If one owner has died, the nature of the tenancy must be determined.

When an acquisition involves land held by a decedent's estate, a copy of the decedent's last will and testament, and a copy of the court order appointing the personal representative for the estate, subject to probate, must be obtained.

When a court has jurisdiction over the estate, court approval may be required for any sale of property. The will may grant the executor the power of sale. A representative, in his/her capacity as such, executes an Executor's Deed ([Exhibit 4.08Z](#) and [4.08Z-1](#)) conveying the property to the state. If independent administration has been ordered, the personal representative can generally convey real property without court order.

The will must be examined to determine the disposition of the property. The surviving spouse remains an interested party. The devisees also receive their interest as of the moment of death but subject to debts, taxes, and costs of administration. There is a period, after the will is filed for probate, for the filing of claims and to contest the will; and a period, after the will is filed for probate, for the surviving spouse to renounce the will and take the statutory share. A title company may require additional documentation to waive potential claims arising in this area.

Open estates are subject to federal and state estate taxes. These are interests which must be satisfied to clear title. Sometimes an affidavit stating that the personal property has a value which is sufficient to meet all claims will be satisfactory to the title insurance company to waive these obligations.

For guardianship (the estates of disabled adults or of minors), court approval of a conveyance is always necessary. In such cases, you should obtain a copy of the court order appointing the guardian, and you should be furnished with a copy of the court order approving the conveyance in addition to the conveyance documents.

When there is no administration of a decedent's estate, the statute of descent provides the order in which an estate passes (755 ILCS 5/2-1).

The approval of title in condominium acquisitions will be on a case-by-case basis and will require close coordination with the Office of the Attorney General as well as the title company.

There will be cases when the Attorney General will approve title without a formal title commitment. A letter from the title company will be required which states that their search of the records indicates that the property in question is held in the name of a specific condominium association and that the title company will insure after conveyance by the board. With this letter, the title company will also provide the district with a copy of the Declaration of Condominium Ownership. From this information the district will be able to determine whom to contact to discuss and get copies of the bylaws that describe the power, authority, and structure of the appropriate board responsibility for conducting the business of the condominium association.

It is important that the title company know exactly the size and location of land taken from the condominium property. This will enable them to determine possible easements, liens, or mortgages that are affected by our acquisition. We will expect the title company to provide this information from the condominium plat recorded with the declaration. This information will be provided in letterform to the district. Since we will have no title commitment to rely on, our standard "Affidavit of Title" will need to be modified to also address any encumbrances that are and are not of record.

Along with the appropriately executed conveyance documents and our standard supporting material, an affidavit will have to be obtained that identifies each board member and certifies that their tenure as officers or agents is current.

We will also require a resolution of the appropriate board members indicating the conveyance has been approved in accordance with the bylaws of the condominium.

It should be noted that if the taking includes any interest of a specific owner of a condominium outside the common areas, a formal commitment will be required and those interests will need to be acquired from the owner. Condemnation actions involving condominium ownership will also require a title commitment.

Since January 1, 1994, Illinois has allowed the creation of limited liability companies (LLC) 805 ILCS 180/1-5 et seq.

A Limited Liability Company is authorized to own and sell real property and to elect a manager under 805 ILCS 180/1-3(3)(4)&(10). A Limited Liability Company has articles of organization which specify the management of the LLC (805 ILCS 180/5-5(4)&(5)). An operating agreement can allow the appointment of a manager and define his authority (805 ILCS 180/15-1, 15-5). An LLC is formed by filing the articles of organization with the Secretary of State (805 ILCS 180/5-40). The act requires the filing of annual reports with the Secretary of State (805 ILCS 180/50-1).

The required documents are:

- A warranty deed ([Exhibit 4.08-D1](#) or [4.08-D2](#)) signed on behalf of the LLC by the person or persons designated in the article of organization. The corporate deed form may be modified.
- Copies of the article of organization and amendments - If the articles of organization do not provide for property sales, the operating agreement may also be required.
- If the articles of organization or operating agreement show interests held by a corporation, partnership, or trust, then a disclosure should be requested until you know the names of individuals owning the interest in the entity involved, or can verify that the ultimate owner is a publicly-traded corporation in which no person is entitled to more than 7 1/2% of the total distributable income ([Exhibit 4.03-15B](#)).
- Some indication of good standing from the Secretary of State
- All other documents normally required (receipt, affidavit, tenants releases, etc.)

Real property owned by corporations is usually conveyed by one or more designated officials of the corporation, such as the president or vice president, after approval by the board of directors; and, the instrument is attested to by the secretary of such corporation. In these cases, the corporate notary acknowledgment must be used. A copy of the duly adopted resolution of the board of directors authorizing the conveyance, certified by the secretary or assistant secretary of the corporation with the corporate seal affixed, in a form similar to [Exhibit 4.03-8](#), must be submitted to the Central Bureau of Land Acquisition with the Warrant Requisition for Right of Way Acquisition ([Exhibit 7.02-1A](#)).

Municipalities (cities and villages) are to indicate the vote either by submitting a certified copy of the minutes or by having the results of the vote indicated in the resolution, so it may be determined the vote passed by a 2/3 majority of those elected officials in office as required by 50 ILCS 605/4. Each municipality's deed should mention the statutory cite of "50 ILCS 605/4."

Townships are to indicate the vote either by submitting a certified copy of the minutes or by having the results of the vote indicated in the resolution, so it may be determined that the vote passed by a majority vote of electors present and voting at the township meeting, as required by 60 ILCS 1/35-40. An elector is a person registered to vote within the township no less than 28 days before the date of the annual or special meeting when the vote was conducted. Each township's deed should mention the statutory cite of "60 ILCS 1/35-40."

Counties are to indicate the vote either by submitting a certified copy of the minutes or by having the results of the vote indicated in the resolution so it may be determined that the vote passed by a majority of the county board members present (majority of a quorum) at the county board meeting, as required by 55 ILCS 5/2-1005. Each county's deed should mention the statutory cite of "55 ILCS 5/2-1005.2."

Since a policy of insurance is to be obtained covering the title, the insurer may also want a certified copy of the resolution and/or want the same recorded. It is important that the corporate name be shown accurately and completely and that the corporate seal be affixed to the instrument of conveyance ([Exhibit 4.03-8](#)). If corporate property has been sold on a contract for deed, it will be necessary to secure a quitclaim deed from the contract purchaser.

Some of the larger corporations have designated various individuals to convey. In the event such a designation is used, it must be certified by the secretary that it is still in effect and that the officers designated therein are authorized to convey, with the corporate seal affixed to the certification.

Title evidence often refers to a corporation's name followed by a state reference such as "a Nevada Corporation." It should be noted that when title evidence makes such a reference, then the instruments of conveyance must describe the corporation in the same manner.

An Affidavit of Title ([Exhibit 4.09-1A](#)) is also required from corporations to protect the state from exclusions in the title policy and to obtain the identity of every shareholder who is entitled to receive more than 7 1/2% of the total distributable income of any corporation having an interest in the property. 50 ILCS 105/3.1. (Disclosure of the corporate ownership interest can also be obtained by using [Exhibit 4.03-15b](#) and [4.03-15c](#).)

Further, if the initial disclosures, or subsequent disclosures at other levels, show interests held by another corporation, partnership, or trust, then further disclosures should be requested until you know the names of individuals owning the interest in the entity involved, or can verify that the ultimate owner is a publicly-traded corporation in which no person is entitled to more than 7 1/2% of the total distributable income ([Exhibit 4.03-15A](#), [4.03-15B](#) or [4.03-15C](#)).

General

Instruments used to convey real property interests of partnerships must recite in the caption, "_____, and _____, doing business as _____" and the instrument must be executed by all partners. The Partnership Act, 805 ILCS 205/8 & 205/10, permits an interest in real property to be taken in the partnership name, and this will show in the commitment for title insurance. If this occurs, the grantor may be described as "..., a general partnership consisting of _____ and _____." Again all partners must sign the deed. The "partnership" is paid any consideration due. To be sure all appropriate partners have executed conveyance instruments, a copy of the partnership agreement will need to be secured.

Limited

Illinois has a Revised Uniform Limited Partnership Act, 805 ILCS 210/100 et. seq. Basic information on Illinois limited partnerships must be filed in the Secretary of State's office in Chicago and Springfield. A limited partnership will have one or more general partners who will have the power to control partnership business including the right to sell partnership property. A deed will normally read "Jones Bros., L.P. or Jones Bros., an Illinois limited partnership by John Jones its general partner." A copy of the partnership agreement will be needed to show authority of the general partner. Limited partners would not sign the deed and will normally not be required to consent to a conveyance.

If the general or limited partnership agreement shows interests held by a corporation, partnership, or trust, than a disclosure should be requested until you know the names of individuals owning the interest in the entity involved, or can verify that the ultimate owner is a publicly-traded corporation in which no person is entitled to more than 7 1/2% of the total distributable income ([Exhibit 4.03-15B](#)).

Church property is usually held in the name of the board of trustees. However, there are exceptions when it will be necessary to determine how the church acquired title. Ordinarily, a vote of approval by the congregation or by the official board must precede action by the board of trustees. The church by-laws will probably prescribe the proper procedure for conveyances and must be obtained in order that a review can be made to determine if the proper procedure has been followed. Property owned by the Roman Catholic Church is normally conveyed by the Bishop of the Diocese in which the property is located.

The trustees of schools or school officials having legal title to the land with the consent of the school board as officially indicated by the adopted resolution, can sell and convey to the state land required for highway purposes (105 ILCS 5/5-29). In Special Charter Districts, such as Springfield, the Board of Education is given all power of the Trustees of Schools and conveys under those powers (105 ILCS 5/32-4.8).

A landowner may give a substitute individual the authority to sell and convey the landowner's property. This substitute is called the attorney in fact but need not be an attorney at law. Often the attorney in fact is a family member.

The landowner must first sign and deliver to his/her attorney in fact a written instrument, called a "power of attorney," authorizing such attorney to sell and convey the land in question. Such an instrument must be as formal as the deed itself, and the other requirements relating to deeds must be observed, including acknowledgment and recording information dated prior to the execution of the deed. PA 91-790 requires that an additional witness sign the power of attorney along with the principal. The effective date of this requirement is June 9, 2000. The deed must name the landowner, not the attorney in fact, as the grantor. The name signed to the deed should be that of the landowner, as follows:

"John Doe by Richard Roe his Attorney in Fact" with the same language typed or printed below the signature, and so acknowledged.

The grantor must be alive on the date of the delivery of the deed, since death of the grantor automatically terminates the power of attorney. Insanity of the grantor may have the same result.

PA 91-790 amends the act to create a new section that applies to an agent acting for a principal who is incapacitated. A principal is considered incapacitated if he or she is under a legal disability as defined in Section 11a-2 of the Probate Act. A principal is also considered incapacitated if (1) a physician finds that the principal lacks decision-making capacity; (2) the physician has made a written record of this determination and has signed the written record within 90 days after an examination; and (3) the written record has been delivered to the agent. The agent may rely conclusively on that written record.

Since the landowner ordinarily has the power to terminate the agency at any time and take away the attorney's power to execute deeds on his/her behalf, it should be established by a sworn statement that the agency actually had not been terminated or revoked at the date of the delivery of the deed.

4.03-13 REQUIRED SIGNATURES - ACKNOWLEDGMENTS - RELEASES

Signatures and acknowledgments must be in complete agreement with the names of the grantors or other parties appearing in the caption or the body of the instrument. The signatures of tenants and lessees must also be secured to the instrument of conveyance or to any releases obtained. In cases involving tenant-owned improvements the instrument of conveyance to be obtained from the tenant owner will be a quitclaim deed or in the case of an advertising sign the conveyance document can be a Lessee's Release of Lease and Agreement to Vacate Advertising Sign ([Exhibit 4.20-A](#)) or Lessee's Release of Lease and Bill of Sale for Advertising Sign or Billboard ([Exhibit 4.20-B](#)). Releases will be obtained for all encumbrances, liens, and judgments of record, and releases or subordination agreements obtained for miscellaneous easements. The interest of tax purchasers must be acquired. Both the seller and the buyer must convey their respective interest in property being sold and purchased under a bond or contract for deed. The deed should be prepared as warranty deed for signature by both fee owners and contract buyers. A quitclaim deed ([Exhibit 4.08W](#)) with after acquired title clause may be accepted from the contract buyer in lieu of the warranty deed. Because of the nature of certain deeds, such as, trustee's deeds, executor deeds, warranty deeds from corporations, the warranty deed signed by the fee owner must not be signed by the contract buyer. In those transactions, the contract buyer must sign a quitclaim deed.

If the grantor is unable to write, he/she may sign by mark, in which case the signature line appears as follows:

His	Her
John X Smith or Jane X Doe	
Mark	Mark

Everything but the "X" may be typed. The "X" must be affixed by the grantor. Although not required, it is customary to have the mark witnessed in writing by two people.

4.03-14

TRUSTS

Trusts can be created by a person when he/she is alive (inter vivos) or by will (testamentary). Where title is held in the name of a trust, it is necessary to include with the documents submitted for title approval the instrument creating the trust in order to determine if the trustee has power to convey, even though it may be in the recorded document. There is another form of trust sometimes known as the Illinois Land Trust which has been designed to keep the names of the owners of the beneficial interest unknown. The trustee takes title by deed and the deed makes reference to a trust agreement, but the agreement is not recorded. Consequently, in reviewing the title it is often impossible to determine whether or not the trustee has power to convey. In this situation a complete copy of the trust agreement must be obtained to determine his/her powers. It may be possible in rare instances to obtain title approval on the basis of a sworn statement which shows the particular provision of the trust relating to such power. The title company should always be contacted before anything less than the complete copy of the trust agreement is provided to the department. This will give the title company the opportunity to determine if it will insure title based upon the documentation provided. Most times the trust instrument will require a direction from the beneficiary to the trustee to convey and, if so, a copy of such letter of direction must be included with the submittal. Trusts of this nature should not be confused with a Trust Deed which, from its contents, indicates that it is a security transaction somewhat similar to a mortgage. The warranty deed in trust should not be confused with the trust agreement. Even though provisions of the trust may be referred to in the body of a warranty deed in trust, it is not acceptable in lieu of the trust agreement.

Exhibits 4.08E, 4.08F, 4.08G, 4.08G1, 4.08H, and 4.08H1 are examples of the types of deeds to be used when the department must acquire land from a trust. These deeds require the trustee to warrant title. When dealing with a trust you may find that the trustees refuse to warrant title and want to change the language in the conveyance document from "grants, conveys, and warrants" to "grants and conveys." When this occurs, such trustee deeds must also include the same "after acquired title" language.

The following is a sample of the language that is required.

". . . . in consideration of _____
(\$ _____) Dollars in hand paid, receipt of which is hereby
acknowledged, grants and conveys all the then existing legal or equitable rights of the
Grantor in the premises described herein, and shall extend to any after acquired title of
the described premises, unto the State of Illinois, Department of Transportation, the
following described real estate, to-wit:"

4.03-15 DISCLOSURE OF BENEFICIAL INTERESTS

Before any contract to acquire property is entered into by the state or any local governmental unit and their agencies, and a trustee has title to the property, or property is owned by a corporation, partnership, or limited liability company, then such trustee or managing entity shall provide an affidavit in writing and under oath disclosing the identity of every owner and beneficiary having any interest, real or personal in such property (50 ILCS 105/3.1). Other statutes also require the name, address and interest of beneficiaries under oath (765 ILCS 405/2). Forms of disclosure can be found as [Exhibit 4.03-15a](#), [Exhibit 4.03-15b](#), and [Exhibit 4.03-15c](#). This statutory requirement cannot be waived by anyone, and is required for deeds, permanent and temporary easements as all are contracts. Further, if the initial disclosures, or subsequent disclosures at other levels, show interests held by another corporation, partnership, limited liability company, or trust, then further disclosures should be requested until you know the names of individuals owning the interest in the entity involved, or can verify that the ultimate owner is a publicly-traded corporation in which no person is entitled to more than 7 1/2% of the total distributable income.

4.03-16 GUARDIANS

A guardian is a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person, who, for defect of age, understanding, or self-control, is considered incapable of administering their own affairs.

A guardian ad litem is a special guardian appointed by the court to prosecute or defend, on behalf of an infant or incompetent. a suit to which they are a party, and such guardian is considered an officer of the court to represent the interest of the infant or incompetent in the litigation. (Taken from the Fifth Edition of Black's Law Dictionary.)

There may be cases when a guardian or guardian ad litem is appointed by the court to complete a land acquisition transaction. When this occurs and the guardian executes the required conveyance instruments, then the documentation to approve title will need to include a copy of the guardian's letter of appointment and a copy of the court order that empowers the guardian to execute and deliver any deed or other instruments.

4.04

ENCUMBRANCES

4.04-1

MORTGAGE LIENS

A mortgage constitutes a lien on the land to be acquired. A partial release of the mortgage must be obtained from the mortgagee when only part of a property is being acquired. Mortgage releases will not be required on partial acquisitions costing \$10,000 or less unless the department has any reason to believe that there is a possibility the owner may default on the mortgage, there is a chance of foreclosure, or the remainder is of low value. If all of the property is being acquired, a complete and general release of the lien of mortgage must be obtained from the mortgagee. This includes fee takings and permanent easements. The mortgagee must be named a payee on the warrant even though a partial release has been obtained, unless it requests in writing that its name be omitted from the warrant. Mortgage companies should be paid as their interest is shown on the title commitment. Their local agent should not be made payee. If the mortgage has been assigned to another company or its name has changed, the warrant should pay the company to which it is assigned, or the current name of said company. Any such changes should be clearly detailed in the signatory portions of warrant requisition. If the state is acquiring "Access Rights" from a property, such acquisition will have an impact on the value of remaining property. Therefore, it is also necessary to secure a partial release from the mortgage company as with any other acquisition over \$10,000. All releases must be recorded. When the department's acquisition involves only the taking of a temporary easement a "Mortgagee's Consent to Temporary Easement" will need to be obtained in place of a release on those parcels over \$10,000. (Exhibit 4.08Y) The mortgagee should be named a payee or a letter obtained stating they do not want to be named payee on Temporary Easements over \$10,000.

Generally, a partial release of the so-called "blanket mortgages" covering real property owned by the large utility companies, subject to the Illinois Commerce Commission, such as railroads and power companies, will not be necessary. A statement should be made in regard to the title exception on the warrant request, as follows: "after considering Section 4.04-1 of the Land Acquisition Manual a release is not required." Where a substantial amount is involved requiring Illinois Commerce Commission approval to the sale, the release should be obtained.

4.04-2

REAL ESTATE TAX LIENS

State policy requires that all real estate taxes be paid if all or a substantial part of the subject property is being purchased. The statutes provide that the owner of real property on January 1, in any year, shall be liable for the taxes of that year. The state cannot pay state or local taxes either in their entirety or any pro-rata share thereof; consequently, the owner must clear the tax lien on the property.

The Illinois Attorney General has published guidelines for handling taxes on capital improvement acquisitions. A portion of this publication is reproduced below as a suggested method of dealing with real estate taxes:

"In Illinois, real estate taxes are payable in the year following their assessment and levy. Thus, taxes imposed in 1994 will be payable in 1995. Current taxes levied upon property constitute a lien upon the property, even though the taxes in question are not payable until the following year.

The grantor must arrange to pay the current real estate taxes now outstanding against the property. In this connection, your attention is directed to 35 ILCS 200/9-185 for the manner provided for settling real estate tax liability upon transfer of land to an exempt use. In the event that difficulty is encountered in satisfying real estate taxes before the date that taxes are payable, the following procedure is suggested: the grantor should pay the current real estate taxes now due and owing and deposit with an escrow agent, agreed upon between you or the Special Assistant Attorney General representing you, and the grantor, a sum equal to 120% of the latest available tax bill on the premises. (Please note that county treasurers will often agree to serve as escrow agents and will

hold such moneys for application to tax bills when issued.) The amount of the deposit should be based upon the fraction that the property being conveyed bears to the property described on the tax bill and should be pro-rated from January 1 of the current year to the date of the exchange of the consideration. The terms of the escrow agreement should be that the escrowee shall apply the funds in his hands to the payment of the current year's tax bill when issued next year and to refund any excess to the grantor. Upon delivery by the grantor of a properly receipted tax bill showing full payment of such tax before the delinquent date and before application of the fund by the escrowee to such purpose, the escrowee shall return the entire fund to the grantor and deliver the receipt to your office."

Property acquired by the Department for highway purposes is exempt from real estate taxes once the state takes title. The department is however still required to file an application for exemption. The form that is required is the FEDERAL/STATE AGENCY, Application for Property Tax Exemption, designated as PTAX-300FS and commonly known PTAX-300 and sometimes referred to herein as the FORM and shown as [Exhibit 4.04-2](#). This form shall be used for all fee acquisitions made by the department.

The FORM will be generated each month from LAS in the Central Bureau of Land Acquisition and sent to the districts for distribution to the appropriate Supervisor of Assessments/County Assessor. The districts should work with each county to determine the frequency with which the PTAX-300's are filed. Some counties may wish that the district file the FORMS monthly, quarterly or annually. When possible, a district should attempt to accommodate those requests. It should be noted that, depending on the type of acquisition involved there is specific documentation required to accompany these forms. Examples can include copies of deeds, complaints, order vesting title, etc.

The PTAX-300 is a Department of Revenue form that has been designed to be generated from LAS and will provide considerable savings in preparation time in the district if LAS is properly utilized. The PTAX-300 automatically draws the necessary data from the Parcel Screen (P), the Appraisal/Negotiation screen (A/N), the Condemnation Screen (CD), and the tax screen (T). It is absolutely mandatory that those screens be kept current and maintained in an accurate manner.

Each year a form of affidavit is requested by the district office from the County Assessor or Supervisor of Assessments in order that additions or deletions to previously listed highway tax exempt property can be noted by the district and filed with the county official (35 ILCS 205/15-20). This matter is also discussed in [Chapter 5](#).

Warrant requisitions should reflect the remaining value of the property in dollars so that the title data examiner will know if sufficient equity remains to satisfy all taxes. When the whole property has not been appraised, an estimated remaining value of the property should be made along with a statement that the whole property was not appraised with a reason therefore.

4.04-3

LIENS OF SPECIAL ASSESSMENTS

State policy requires that all liens of special assessment levied against the acquired property be satisfied if all or a substantial portion of the property is being purchased, even though *Petition of City of Mt. Vernon* (1893) 147 Ill. 359, holds that the state is not subject to special assessments.

4.04-4 LIENS OF OTHER STATE AGENCIES OR DEBTS OWED THE STATE

Statutes require that any amount owed the state must be set off before paying a claim against the state (15 ILCS 405/10.05). Accordingly, whenever a person from whom we are purchasing any real estate interest has a debt owed the state or a lien in favor of the state, such as for non-payment of sales tax, welfare payments, etc., it will be necessary to consult with the appropriate agency so that a release, full or partial, may be obtained and the proper offset made. Because the state cannot issue a warrant if there are federal or state taxes due, a release must be included with the warrant request as with any other curative documents.

4.04-5

OTHER ENCUMBRANCES

Considerable care should be exercised to obtain waiver of objections or to comply with requests of the title company, prior to submitting them to the Central Bureau of Land Acquisition. Handling of judgments, liens or other interests, such as easements, affecting the title, both recorded and unrecorded, must be shown on the warrant requisition. This should also include replies or explanations for the standard printed objections in the report on title. The warrant requisition must also contain a statement that the district has checked the description recited in the report on title and has found it to cover the land to be acquired by the instrument under consideration.

Since title insurance does not protect against claims of persons whose interests do not appear on record, it is imperative that all evidence of such possible interests be ascertained at the earliest possible date. Persons who call upon property owners or visit the property are to ascertain the identities of all parties in possession, to observe any visible evidence of easements, encroachments, or other encumbrances, and to note visible improvements to the premises which may have been completed within four months immediately preceding the date of the inspection. If possible interests appear from these visits, the nature of such interests is to be fully investigated. If valid interests, though not of record, are found to exist, such as a contract for deed, leases or unrecorded conveyances, the interests must be acquired by the proper instrument, and such interests must be explained on the warrant requisition. The affidavit called for in [Section 4.09](#) is also utilized to protect against the exceptions and exclusions of the title policy. If condemnation is necessary to acquire title, parties in possession must be included as additional defendants.

When the district receives a commitment that contains exceptions related to a recorded "NFR" (No Further Remediation) letter, a copy of the NFR letter must be faxed to the Central Bureau of Land Acquisition for review by the Office of Chief Counsel. An NFR letter may contain specific provisions that impose restrictions on the department as to how the property can be used. The Office of Chief Counsel will review the NFR letter and provide further direction if needed.

4.05

MINERAL INTERESTS

District personnel must check the public records, review all other available data, and take such other action as may be necessary to determine: (1) the type of minerals involved, (2) whether the mineral interests are intact, and (3) any effect such mineral ownership and the inherent rights of surface owner have on the use which may be made of the land.

The state's title contract contains a separate bid item covering information relative to the severance deed and mineral report on title. The review of public records as well as a review of geological data, inspection of the site, etc., may enable the district engineer to recommend that nothing further be done at this time to acquire surface releases from the owners of the royalty or working interests.

The state acquires title to the minerals underlying the surface when the fee interest is acquired unless the owner has specifically reserved them or the same have been previously severed in some manner from the surface ownership. No additional payment should be made for the mineral interest, and if the owner insists upon payment, the minerals may be reserved. The following paragraph should be added to the warranty deed following the description if the minerals are to be specifically reserved by the surface owner.

"reserving however unto the Grantors, their heirs, executors, administrators, and assignees all of the coal, oil, gas and other minerals underlying the above described tract with the right to mine and remove the same, but without the right to break, disturb, or subside the surface of said tract."

If the mineral ownership has in some manner been severed from the surface ownership, the following procedures apply. The landowner's deed to the department must except out the previously severed mineral interest by adding either of the following after the deed's legal description:

"Except therein mineral interests previously conveyed"

"Except therein mineral interests previously reserved"

The warrant requisition must contain a statement or recommendation relative to such mineral ownership. If said rights will not have any affect on the acquisition, a statement such as the following should be made in the encumbrance's portion of requisition A.

"Standard Mineral Exception LAPPM 4.05"

4.05-1

OIL AND GAS - PRODUCING FACILITIES WITHIN THE PROPOSED RIGHT OF WAY

It is customary in oil and gas producing areas for the owner of the minerals to make an oil and gas lease providing for a 7/8th interest therein to be vested in an individual, group, or firm subject to the terms thereof. This lease is generally for a term of years, or so long as oil and gas are produced, and carries with it the right to break and disturb the surface in connection with the recovery of any oil or gas which might lie beneath the surface. Such an interest is known as a "working interest."

The mineral owner's rights in the surface must be released, regardless of whether the acquisition is in fee or is an easement for highway purposes, in those cases where the oil and gas rights have been severed in some manner from the surface ownership. A Release of Surface Rights ([Exhibit 4.05-1](#)) should be obtained from the lessee and all assignees thereof who hold working or certain lesser interests as provided hereinafter. The major oil companies are generally cooperative in releasing these rights, as are many individuals.

The 1/8th interest remaining in the owner is commonly called a "royalty interest" and can be conveyed, devised or inherited. A release of surface rights from the owner(s) of this royalty interest will be necessary since ownership carries the right to break or disturb the surface and all outstanding interests will recur in the owner(s) after the lease expires.

If a visual inspection indicates that there are outstanding mineral interests the interests to be acquired will be governed by the mineral report on title obtained separately or in conjunction with the report on title covering the surface.

4.05-2

OIL AND GAS - NO PRODUCING FACILITIES WITHIN THE PROPOSED RIGHT OF WAY

Even if the evidence of the district's review reveals that there have been no producing facilities in existence for many years, if it is found that a majority of the working interest is owned by a large oil company or by an individual, it is wise to obtain a release of the valid and unexpired surface rights ([Exhibit 4.05-1](#)) involved. Statutes require an ownership of the right to drill for and remove oil and gas, of one-half interest or more by one or more persons to be able to bring suit for authority to drill for and remove the oil and gas (765 ILCS 520/1). The same principle of obtaining releases of the majority interest might well be applied to the owner(s) of the royalty interest. No mineral report on title should be ordered or will be necessary. In the event a review of the records indicates that mineral rights have been severed but production has ceased or was never accomplished, the districts should obtain an Affidavit of Non-Production ([Exhibit 4.05-2](#)).

Mineral rights other than oil and gas may also be severed from the surface ownership. In determining whether it will be necessary to obtain a release of surface rights from the owner(s) of such mineral rights, you should consider whether the minerals have been mined or removed in some manner and, if not, whether removal of the same may affect the present or future integrity of the highway improvement. Highway improvements can be affected by the mineral owners right to break or disturb the surface, to purchase or use the surface, or cause subsidence without liability therefore. If the highway improvement can be affected, then so much of the mineral owners' rights as are needed to protect the highway improvement should be acquired.

Depending on the circumstances, it may be advisable to obtain the recommendation of a mineral specialist in determining whether to acquire the mineral interest or the surface rights of the mineral owner.

If, after proper review, a determination is made to acquire a release of surface rights, then it will be necessary to obtain a report on title covering mineral ownership, separately or in conjunction with the report on title covering the surface.

4.06 PROPERTY OR RIGHTS OWNED BY UTILITY COMPANIES

Crossing or in any manner affecting a utility company's operating facilities can give rise to many problems. The Bureau of Design and Environment is responsible for processing construction agreements involving railroads and other utilities. The department has issued a policy governing the accommodation, maintenance and emergency maintenance of utilities other than railroads on the State Highway System.

The following procedure will apply to the acquisition of utility company operating property or interests. Compensation, if any, will be determined, under [Section 2.02-15](#). See [Section 4.04-1](#) relative to release of mortgages on these acquisitions.

If the utility owns an easement in land required for the construction of a Federal-Aid Interstate Route, it will be necessary, in addition to obtaining the fee title from the underlying fee owner, to also obtain a release and subordination of the utility's interest to the right of the state to construct the highway. [Exhibit 4.06A](#) has been designed for this purpose.

When the utility owns an easement in land required for construction of all other routes (Freeway or Non-Freeway) it will be necessary, in addition to obtaining the fee title or an easement for the highway, as the case may be, from the underlying fee owner, to also obtain a release and subordination of the utility's interest (except that reference to Interstate Route and the paragraph relating to limitation of maintenance of the utility's facilities should be eliminated) ([Exhibit 4.06B](#)) or by having the utility company also execute the instrument obtained from the underlying fee owners.

If the utility owns the fee to the land required for construction of a Federal-Aid Interstate Route, it will be satisfactory to acquire an easement for public road purposes from the utility on crossings or an easement or fee title on longitudinal acquisitions using the standard form and adding the standard subordination paragraph limiting utility maintenance of its facilities.

In those cases where the utility owns the fee to the land required for construction of all other routes (Freeway or Non-Freeway), it will be satisfactory to acquire an easement for public road purposes on crossings, or an easement or fee title on longitudinal acquisitions using the appropriate standard form. [Exhibit 4.06C](#) (Freeway Release) will be used if no land is to be acquired and the utility ownership abuts the Freeway, except for freeways on new locations, in which case the Attorney General has held that there are no inherent rights of access in abutters.

If the utility facilities are to be relocated, it will be necessary to acquire all pre-existing rights of the utility in the property to be utilized for the highway. This can be accomplished by obtaining a warranty deed from the utility, if owned in fee, or, if an easement, by having the utility join in the conveyance from the underlying fee owner, or by executing the appropriate standard form. ([Exhibits 4.06A, 4.06B](#)) If this is the case, you must indicate the handling of the utility's interest on the warrant requisition for which covers the underlying fee owner, under encumbrances, etc., by stating that you have or will obtain an appropriate instrument executed by the utility company or that the easement of the utility does not affect the right of way.

The general utility easements occurring in subdivisions can often be handled by affidavit with the title insurance company, if no facilities are installed. A separate warrant requisition must be forwarded when the utility owns the fee the same as is customary on other acquisitions from the owners.

In acquiring non-operating property of a utility company, the company shall be treated as any other owner of land required for the project. A utility company property may be condemned but it requires approval of the Illinois Commerce Commission.

4.07

ACQUISITION FOR FREEWAYS

Statutes authorize the establishment of freeways in the state of Illinois (605 ILCS 5/8-101 to 5/8-109). A freeway is a controlled access highway, defined in the Illinois Vehicle Code as "Every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except as such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway" (625 ILCS 5/-1-112). An opinion of the Attorney General, (1959 OP Atty. Gen. #548), states that the department need not acquire or pay for the acquisition of access rights from property abutting a freeway on a new location. A new location is defined as one which does not replace a highway, street or roadway to which an abutting owner formerly had access. A freeway may be established under the concepts of either complete control of access, or modified control of access.

4.07-1

FULL FREEWAYS

Direct access from abutting property to the travel lanes of a freeway with complete control of access is never permitted. There may be occasions where a freeway is established on other than a new location, with complete control of access from the abutting property where it may be necessary to indicate how the abutting property will have access to the Freeway. If this situation occurs, a provision has been developed for incorporation in the instrument of conveyance:

Local Service Drive or Frontage Road to be Constructed - All Access Rights, or Right of Way and all Access Rights to be Acquired "Excepting, however, that the Grantee shall supplement the main Freeway pavement with a (permanent all weather) local service drive (frontage road) to provide access to the main Freeway pavement at an interchange. Access to the local service drive (frontage road) from the abutting property of the Grantor shall be by way of (an) entrance(s) to be provided thereto in accordance with the "Policy on Permits for Access Driveways to State Highways."

4.07-2

MODIFIED FREEWAYS

A freeway may be also established under a concept of modified control of access as follows:

- By agreement or stipulation with the property owner, when access rights are being acquired, the department may designate points of direct access to the freeway from the abutting property, to be used solely for agricultural or residential purposes.
- Whenever property held under one ownership is severed by a freeway, with limited or modified access control the department may permit the crossing of the freeway at a designated location and under specified terms and conditions to be used solely for one single family residential and/or farming purposes and for passage from one severed tract to the other. If such severed tracts at any time cease to be held under one ownership, the department shall terminate and revoke the said permit; however, access to the freeway will continue to be allowed at the same points, if this is the only access to the tract.
- Direct access from abutting property to the freeway is never permitted for commercial purposes. Where commercial units are located on roads that intersect the freeway, access to the freeway is limited to that provided by the said intersecting roads. When

these units are located in areas through which local service drives or frontage roads are to be constructed, access from the abutting property is to the local service drive or frontage road and thence to the freeway by way of the local service drives or frontage roads where such local service drives or frontage roads provide access to the freeway.

- If such a unit is so located as not to fit in either of the above patterns, then the right of access to the freeway will be completely extinguished by purchase or condemnation.

On freeways with a modified control of access, certain provisions have been developed for incorporation in the instrument of conveyance as appropriate, to wit:

CASE 1

Entrance is required solely to connect severed parcels. "A crossing at grade of the freeway solely for passage from one severed tract to another is provided at station _____ thereof, which crossing shall remain in effect and operation only so long as said lands are held under one ownership. Entrance(s) to the freeway will also be provided at station(s) _____ thereof, which shall remain in effect and operation only so long as said entrance(s) is used for farming or for one single family residence or both and so long as such entrance(s) is not used for access to a commercial enterprise other than farming. It is further understood that the use of either entrance by the general public to purchase any agricultural product is to be considered a commercial enterprise other than farming. Violation of any of the terms and conditions set forth herein authorizes the department to take such action as it deems necessary to terminate and revoke these rights and/or to enforce such terms and conditions as are contained herein."

CASE 2

All Grantor's property on one side of the Freeway. Existing entrance to remain in place. "The existing direct access entrance from the present abutting land of the Grantor to the freeway at station _____ thereof, shall remain in effect and operation only so long as the said entrance is used for farming purposes or for one single family residence or both, and so long as said entrance is not used for access to a commercial enterprise other than farming. It is further understood that the use of said entrance by the general public to purchase any agricultural product is to be considered a commercial enterprise other than farming. Violation of the terms and conditions set forth herein authorizes the department to take such action as it deems necessary to enforce such terms and conditions."

CASE 3

All Grantor's property on one side of the freeway. New entrance to be provided. "A direct access entrance from the present abutting land of the Grantor to the freeway shall be provided at station _____ thereof, it being understood that said entrance shall remain in effect and operation only so long as the said entrance is used for farming purposes or for one single family residence or both, and so long as said entrance is not used for access to a commercial enterprise other than farming. It is further understood that the use of said entrance by the general public to purchase any agricultural product is to be considered as a commercial enterprise other than farming. Violation of the terms and conditions set forth herein authorizes the department to take such action as it deems necessary to enforce such terms and conditions."

The appropriate instruments of conveyance must be used if access rights are to be acquired as set forth above. This would include the use of the Freeway Release ([Exhibit 4.06C](#)) where access rights only are to be acquired.

The concepts concerning freeways set forth above are limited to those affecting the responsibility of the department's Land Acquisition personnel in acquiring the necessary rights or interest or in setting terms and conditions in the instruments of acquisition. Additional detailed material concerning the establishment of freeways can be found in the Bureau of Design and Environment manuals. The access control plan for a particular freeway also provides additional and valuable information for understanding the acquisition and the terms and conditions of the access control. The access control plan is available from the Bureau of Design and Environment. The Policy on Permits for Access Driveways to State Highways of the Bureau of Operations also contains information relating to access control on freeways. Violation of the terms and conditions of access restrictions contained in the instrument or instruments of conveyance are to be first referred by the district to the Central Bureau of Operations for such handling as it deems necessary with the Office of Chief Counsel.

4.08

INSTRUMENTS OF CONVEYANCE, ET AL

Copies of the approved forms of deeds, easements, releases, etc. are indexed at the beginning of [Chapter 4 Exhibits](#).

NOTE: District personnel are not authorized to change these documents without prior approval from the Central Office.

4.08-1

DAMAGE WAIVER

The department's standard deeds, permanent and temporary easements should all contain the following clause:

“The Grantor, without limiting the interest above granted and conveyed, does hereby acknowledge that upon payment of the agreed consideration, all claims arising out of the above acquisition have been settled, including any diminution in value to any remaining property of the grantor caused by the opening, improving and using the above-described premises for highway purposes. This acknowledgment does not waive any claim for trespass or negligence against the Grantee or Grantee’s agents which may cause damage to the Grantor’s remaining property.”

The purpose of this clause is to assure that the land acquired through negotiation accomplishes the same results as land acquired through the eminent domain process; settlement of all real and potential claims against the state as the result of a taking would be made.

The practice of accepting a deed without a damage waiver creates the potential of a later damage claim against the department or a Court of Claims action.

The only exceptions to requiring this damage clause in our conveyance documents are as follows:

- whole take is involved
- the landowner provides a separate release which states that the consideration includes compensation for any damages to the remainder due to the acquisition of the right-of-way (Use Release of Waiver of Damage, [Exhibit 4.08AA](#).)
- when the property is transferred to the state without payment of compensation
- when railroad right of way is needed for highway purposes, the requirement of the damage waiver is satisfied if there is an executed railroad agreement on the project

It is the Department’s policy to utilize the above exceptions only when the property owner specifically objects to the damage clause in the conveyance document and only when the acquisition meets the above-described circumstances.

In addition to the above, the following is also acceptable for the circumstance described:

For Freeway Deeds

"The Grantor, without limiting the interest above granted and conveyed, does hereby acknowledge that upon payment of the agreed consideration, all claims arising out of the above acquisition have been settled, including any diminution in value to any remaining property of the Grantor caused by the opening, improving and using the above-described premises for highway purposes. This acknowledgment does not waive any claim for trespass or negligence against the Grantee or Grantee's agents which may cause damage to the Grantor's remaining property; and for the consideration hereinabove stated the Grantor, conveys and relinquishes to Grantee all existing, future or potential easements or rights of access, crossing, light, air or view, to, from or over the premises herein described and the public highway identified as _____ Route _____ from or to any remaining real property of the Grantor abutting said premises or said public highway whether consisting of one tract or contiguous parcels."

The purpose of land acquisition is to provide the landowner with just compensation for land needed for highway purposes. This includes two elements:

- payment of fair market value of land taken or used by the department
- payment of the damage due to the reduction in value of the remainder of the property

Unless both the department and landowner have agreed on this value, there is no true agreement. The damage waiver assures that the landowner understands that acceptance of the state's offer is a final settlement of all elements of eminent domain. It proves evidence of the parties' agreement. If the landowner is unwilling to indicate his/her agreement of this matter, the parcel should be referred for condemnation.

4.09 CLOSING DOCUMENTS - GENERAL

In addition to obtaining the properly executed instruments of conveyance it is necessary to obtain an affidavit of title, and to provide the owner with a form of receipt to acknowledge the delivery of the fully executed instruments to the department. These forms are discussed in the following paragraphs.

4.09-1 AFFIDAVIT OF TITLE

In preparing the documents necessary for title examination, state policy requires that an Affidavit of Title be obtained (See [Exhibits 4.09-1A or 4.09-1B](#)). The purpose of this affidavit is to determine whether there are any outstanding interests which impair or potentially impair the title being transferred to the state of Illinois. In the case of the Affidavit or Operating Railroad Affidavit it will also disclose any shareholder's interest who is entitled to receive more than 7 1/2% of the total distributable income of any corporation having an interest in the property (50 ILCS 105/3.1). ("Further, if the initial disclosures, or subsequent disclosures at other levels, show interest held by another corporation, partnership, or trust, then further disclosures must be requested until the names of individuals owning the interest in the entity involved are known, or you can verify the fact that the ultimate owner is a publicly-traded corporation in which no person is entitled to more than 7 1/2% of the total distributable income." Disclosure forms can be found as [Exhibits 4.03-15A, 4.03-15B or 4.03-15C](#))

The items covered in the affidavit are also the same items excluded from the standard title insurance policy. They are general items which do not appear on the public records, but which must be accounted for in the title examination process.

The affidavit is part of a three-step method to protect the Department of Transportation from the existence of interests not covered by the title policy. These most important steps are (1) the observations by both the appraiser(s) and the negotiator of the condition of the property being acquired, (2) the Affidavit of Title, and (3) the records check prior to delivery of the warrant to the owner.

The affidavit must be made by some person who is fully acquainted with and knowledgeable of the facts. It cannot be made on information and belief or with a disclaimer. If a trustee is unable or unwilling to provide the information, a beneficial owner can make the affidavit. In the event that some of the statements cannot be made, the potential problem must be resolved before title can be approved. It is intended to disclose the existence of the following types of problems:

- Tenant's rights
- Existing unrecorded leases
- Unrecorded contracts for purchase
- Unrecorded deeds
- Unrecorded easements
- Encroachments or boundary disputes
- Chattel mortgages affecting crops or machinery
- Potential mechanics liens

- Unrecorded mineral leases
- Tax liens

In preparing the affidavit for signature, the negotiator must interview the owner to determine the use and occupancy history of the property. If the information received, and/or the negotiator's observation of the property, suggest that any of the above interests exist, further inquiry must be made to determine if it is necessary to obtain additional releases or quitclaim deeds to satisfy these interests. An affidavit is required for all acquisitions except temporary use permits. Temporary use permits from a corporation will require an affidavit in order to fulfill the ownership disclosure of interest requirement.

There are occasions when a railroad refuses to provide the required Affidavit of Title. Operating railroad right of way in particular can be likened to operating highway right of way. Because the usage is singular and monumental, either for railroad purposes or for highway purposes, the likelihood of claims against the standard title policy exceptions seems virtually non-existent.

Therefore, where it is clear from visual inspection that a railroad's property is in fact improved with operating railroad facilities and used solely for operating railroad purposes, [Exhibit 4.09-1B](#) entitled Operating Railroad Affidavit may be utilized. As an absolute minimum, all railroads must attest to the 7 1/2% ownership as this is a statutory requirement. Use Disclosure of Ownership Affidavit, ([Exhibit 4.03-15B](#) or [4.03-15C](#)). Any objections by a railroad to items #2 and #4 may alternatively be satisfied with affirmative statements by the surveys of the acquired property. Such statements by the district shall be in the following format and accompany the copies of title documents:

"District personnel have visually inspected the subject parcel and find it to in fact be operating railroad right of way with no parties other than the owners in possession of any portion of said parcel; nor does the department's survey of the subject property reveal any apparent encroachments, overlaps, or boundary line disputes involving the subject parcel."

In all acquisitions involving non-operating railroad-owned property, including abandoned railroad right of way, the more comprehensive Affidavit ([Exhibit 4.09-1A](#)) must be obtained without exception.

4.09-2 RECEIPT FOR WARRANTY DEED

A written receipt is to be issued to the property owner upon receipt of a fully and properly executed instrument conveying the property or property interest sought for right of way or other use by the Department of Transportation. The "Receipt" (See [Exhibit 4.09-2](#)) states that the property or interest therein is conveyed subject only to (1) approval of title by the state of Illinois, and (2) the payment of the recited consideration to the Grantor(s).

The receipt is captioned by reference to the route and section, project, and parcel number, and the name of the Grantor(s). Further reference is made to Section, Township, and Range and the approximate area of the subject land. The consideration for the owner retention of improvements, if applicable, is also noted. Provision is also made relative (1) the date of possession and (2) the date of commencement of, and the amount of rent to be charged if the property is to be rented by the previous owner, the same to be effective upon expiration of the established period of free occupancy. When a closing statement is required, (see [Section 4.09-3](#)) then [Exhibit 4.09-3](#) should be used in lieu of [Exhibit 4.09-2](#).

Restrictions or reservations relative to access control and/or limitations are normally recited in the instrument of conveyance. Agreements relative to construction items, if any, are normally handled by a separate letter from the district engineer which should be attached to the receipt.

It is important that all agreements relative to the conveyance be in writing so that there will be no area of doubt or controversy as to the respective obligations of the State and the Grantor(s), and those agreements should be attached to the receipt.

The Receipt for Deed ([Exhibits 4.09-2](#) and [4.09-3](#)) must also include the information necessary for the department to fulfill the IRS 1099-S filing requirements, as covered in [3.01-3](#).

4.09-3 THE CLOSING STATEMENT

A closing statement ("Closing Statement Receipt for Deed and Designation of Funds " - See [Exhibit 4.09-3](#)) is to be prepared and furnished the owner when deductions are made from the total purchase price for such things as payment for tenant-owned improvements, payments for mortgages, if a corporate mortgagee, taxes, lien releases, etc., which are to be paid by the state out of the purchase price. This form cannot be used to break out separate warrant if interests are not specifically called out by the title commitment except in cases of tenant-owned improvements. Normally all checks should be made payable to the fee owner and lien holder. The form is used for transactions not covered by a receipt for deed ([Section 4.09-2](#)).

It should be noted that except in cases of tenant owned improvements such designation of funds is not intended to be used in the nature of an assignment of funds to parties not holding an interest in the property nor can it be used to designate an allocation of funds to a real party in interest.

It is also necessary to prepare the closing statement when some part of the purchase price is withheld, subject to forfeiture, or to ensure performance as agreed of some act or action by the Grantor or other interested party. (For example - removal of a building.) [Section 4.20](#) addresses acquisition of advertising signs.

The closing statement should be acknowledged by the owner and certified as correct by the department representative handling the closing. A copy of the same must be presented to the owner for his records and file copy must be maintained in the district parcel file. If the deed will not be surrendered by the owners, then the closing statement and designation of funds should be used.

4.10

TITLE EXAMINATION

By statute, title to property or interests therein must be approved by the Attorney General when the consideration to be paid exceeds \$10,000 (30 ILCS 545/2). All invoices ordering the payment of said consideration are approved by the Attorney General as to title and interest of the payee(s). The Attorney General requires a commitment on title with minutes of condemnation prepared by a qualified title insurance company to examine in order to make this approval. The title findings shown in said commitment, or commitment with minutes of condemnation, must not be older than ninety (90) days, if consideration being paid is over \$10,000 and, if older, must be recertified or a date down endorsement thereto obtained. For those acquisitions of \$10,000 or less the commitment cannot be older than 120 days.

Title to those purchases of \$10,000 or less in District 1 is approved by a staff attorney in the District 1 Office. Title to those purchases of \$10,000 or less in Districts 2 through 9 is approved by a staff attorney in the Office of Chief Counsel.

The requirement of title approval by the Attorney General does not apply to property or other real estate interest acquired for projects constructed under the Bikeway Act. Title approval in these cases, when the necessary interest is taken in the name of the state, will be performed by the department's staff attorneys.

State policy requires that the examination and approval of title on all fee acquisitions shall be based upon a commitment on title, or commitment on title with minutes for condemnation, obtained from local abstractors. Where the consideration is \$10,000 or less, only one copy of the commitment, or commitment with minutes for condemnation need be furnished for staff attorneys examining and approving title; whereas, where the consideration is greater than \$10,000, an additional copy must be furnished to the Office of the Attorney General to examine and approve title.

Temporary easements or temporary use permits whose consideration is \$10,000 or less must also have one copy of the supporting data. "No title data of any kind will be necessary but the warrant requisition must contain a statement "that title to the land subject to the easement or permit has been examined by the district, the instrument executed by all necessary parties and, payee's certified as entitled to the compensation."

For temporary easements over \$10,000, title data and all other supportive documents are required. If a tenant is involved, [Exhibit 4.08X](#) shall be utilized to obtain the necessary consent. If the property is encumbered by a mortgage, [Exhibit 4.08Y](#) can be used. It should be specifically noted that if the Grantor is a land trustee, then a disclosure identifying the owners of the beneficial interests in the Trusts is required regardless of the amount of the consideration to be paid for the instrument. When acquiring only a temporary easement from a trust and the compensation is \$2,500 or less, it is not necessary to submit a copy of the trust agreement. If the value of the temporary easement exceeds \$2,500 a copy of the trust agreement must be submitted with the title documents when title approval and the warrant for payment are requested.

Bids are solicited by the Central Bureau of Land Acquisition from the title insurance companies qualified to perform title services throughout the state of Illinois for the furnishing of title insurance for all districts of the Division of Highways. Contracts for such services are awarded to the lowest qualified bidder, and each district office has the initial authority for ordering the required title data under the contract. All companies solicited to bid understand that orders for such title insurance will be to cover all parcels to be acquired whether by negotiated settlement or by condemnation proceedings. The contracts contain and require compliance with the Equal Opportunity Clause required by the Illinois Fair Employment Commission and non-discrimination requirements of the Regulations of the U.S. Department of Transportation. Under the contract, a commitment with minutes for condemnation, date down endorsement and policy are obtained.

Title guarantee policies shall be secured on all acquisitions except temporary easements, where commitments have been obtained. Each policy of insurance is to be in full value of the real estate acquired. The amount of damages to the remaining land, if any, will not be covered unless an extraordinary case occurs. The policy must be checked to see that all objections have been disposed of and that title is free and clear in the name of the People of the State of Illinois, Department of Transportation. Policies must be ordered within 180 days of the commitment or update to assure issuance of the policy.

When possession does not agree with the findings of the title company we may be required to provide an affidavit similar to those shown as [Exhibits 4.10-1A](#) and [4.10-1B](#).

Upon receipt of the warrant, and prior to delivery of the same, it will be necessary for the district office to determine whether or not there have been any changes in interested parties or other matters, subsequent to the execution of the instrument of conveyance, which might affect title. A checklist, modified to fit the records of each county, should be prepared to assist in this work. (See [Exhibit 4.10-2](#)) Each parcel file must include some type of documentation that the appropriate records were checked prior to the delivery of the warrant.

If there have been any changes, the Central Office should be contacted, the details given and the warrant held until further instructions are given. If the title is still clear, the acquisition can be closed. If the acquisition is to be closed in escrow, the warrant is delivered to the escrowee.

After the warrant is delivered, the executed right of way instruments must be immediately filed of record with the County Recorder of the county (this is strongly recommended for temporary easements) in which the real estate is located. The agent should be sure that the instruments are immediately entered upon the entry book. This must be done in order to avoid the possibility of a judgment or lien being placed on the property between the time the warrant is delivered and our deed is recorded. The recorder should be advised that the instruments are to be returned to the district office after recording. The state is required to pay recording fees. A title insurance policy, if applicable, should then be ordered from the authorized title insurance company. When the policy is received, it should be examined immediately to see that it covers the property acquired, and that merchantable title is vested in the state of Illinois.

The statutes provide "No recorder shall record any instrument affecting title to real estate unless the name of the person who prepared and drafted such instrument is printed, typewritten or stamped on the face thereof . . ." (55 ILCS 5/3-5022).

An Attorney General's opinion states that "person" or "persons" as well as all words referring to or importing persons may extend and be applied to bodies politic and corporate as well as individuals (1975 Opinion Atty. Gen. S-880). The instrument(s) should be stamped as follows:

"This instrument prepared by State of Illinois, Department of Transportation (Insert district's address here)."

Deeds to the People of the State of Illinois, Department of Transportation are exempt from real estate tax under Paragraph b of Section 4 of the Real Estate Transfer Law 35 ILCS 200/31-45(b). The Department of Revenue has advised County Recorders that, the completion and filing of the Real Estate Transfer declaration is required, but no tax is due. A rubber stamp may be used as follows:

"Exempt under provisions of Paragraph b, Section 31-45, Real Estate Transfer Tax Law."

_____	_____
Date	Buyer, Seller or Representative

Effective January 1, 1995, 55 ILCS 5/3-5018 made legal changes in the process of recording instruments filed for record in the Recorder's Office throughout the state of Illinois.

- The document shall consist of one or more individual sheets measuring 8.5 inches by 11 inches, not permanently bound and not a continuous form.
- The document shall be printed in black ink, typewritten or computer generated, in at least 10-point type.
- The document shall be on white paper of not less than 20-pound weight and shall have a clean margin of at least one-half inch on the top, the bottom, and each side.
- The first page of the document shall contain a blank space, measuring at least 3 inches by 5 inches, in the upper right corner.
- The document shall not have any attachment stapled or otherwise affixed to any page. A document that does not conform to these standards shall not be recorded except upon payment of the additional fee. This applies to documents dated after January 1, 1995.

4.10-4 ESCROW TITLE CLOSINGS

Escrow services are seldom used for title closings. However, fees for this service are set in the accepted bid for title services submitted by the bidding companies for each of the nine districts so that escrow services may be available when needed for complicated transactions or when requested by the property owner.

The deed to the state is deposited with the escrowee and the state agrees to deposit the consideration. The consideration for the purchase is made payable to and deposited with the escrowee who checks the title, records the deed, and issues a guarantee policy showing the title in the state after which the consideration is distributed to the interested parties.

4.11 REAL PROPERTY OWNED BY THE STATE AND UNDER THE CUSTODY AND CONTROL OF OTHER STATE AGENCIES

The Department of Transportation may acquire property owned by the state and under the custody and control of other State agencies (605 ILCS 5/4-504). For such an acquisition, an instrument is prepared for execution by the appropriate agency heads, and approval of the Governor. One copy of the instrument prepared in the draft form, and adjusted to cover the proper agency, route, purpose, etc., shall be submitted to the Central Bureau of Land Acquisition for review and final drafting, and to secure execution by the proper officials. A completed plat and title evidence will also be submitted to the Central Bureau of Land Acquisition by the district. A statement must accompany the request indicating that the transfer has been discussed and is satisfactory to the local office of the agency in question. Full particulars must also be included concerning any agreements with the said agency relative to fencing if access rights are not involved, etc.

4.12 REAL PROPERTY OWNED BY THE FEDERAL GOVERNMENT

The Federal Aid Policy Guide sets forth the procedures for acquiring lands or interests in lands owned by the United States for state highway purposes. In most cases the FHWA coordinates the land acquisition transactions conducted by other federal agencies. There are exceptions to this however and all acquisitions involving the United States Government should be coordinated through the Central Bureau of Land Acquisition.

4.13 ACQUISITION OF PRIVATELY OWNED LANDS OR INTERESTS IN LANDS BY FEDERAL CONDEMNATION ACTION

The state may also acquire privately owned land, or interests therein, through the use of the federal government's power of condemnation. Federal-aid Highway Program Manual, Volume 7, Chapter 2, Section 5 prescribes the policies and procedures relating to the acquisition of privately owned land, or interests in lands, by the United States Secretary of Transportation upon the request of a state, when such lands are required for the construction of the interstate system or defense access roads. It is imperative that the requirements of the Program Manual be complied with in its entirety and it will be necessary to furnish two additional copies of the required data in all such cases. A "right of entry" is given to the state for construction purposes after the United States has acquired title to the property. A formal deed is delivered for acceptance and recording at a later date.

4.14 ACQUISITION OF LAND FOR RELOCATION OF RAILWAY TRACKS OR PUBLIC UTILITY FACILITIES

It is possible to acquire by negotiation or condemnation, substitute right of way to relocate the line or tracks of railroad or facilities of a public utility which are not located in or upon a public street or highway and whose relocation is required by a highway improvement, if an agreement covering the relocation has been approved by the Illinois Commerce Commission (605 ILCS 5/4 505). It is the policy of the Division of Highways that a utility company acquires its

own right of way for such relocations. However, where the provisions of (605 ILCS 5/4 505) are to be utilized, the agreement, in triplicate, should be submitted in the form of [Exhibit 4.14A](#). The exhibit has been drafted to cover the acquisition and conveyance of an easement to the company but it may be that on occasions the fee title would be acquired requiring modification of said exhibit. It is expected that the utility company would obtain the approval of the Commerce Commission as a part of its contribution to the acquisition and provide the department with an order of the Commission approving the agreement for use in acquiring the substitute right of way. However, this approval from the Commerce Commission could also be obtained by the district. A form of deed for subsequent conveyance of the substitute right of way to the utility company, attached as [Exhibit 4.14B](#), must be prepared in draft form and submitted to the Central Bureau of Land Acquisition together with the agreement.

4.15 ACQUISITION OF PROPERTY TO REPLACE PROPERTY OF PUBLIC AGENCY

If property owned by another public agency and devoted to a public use is required for a state highway project, it is possible to acquire by negotiation or condemnation such easements, rights, lands or other property as may be necessary to replace this property required, provided that the department and the public agency enter an agreement relative thereto (605 ILCS 5/4-509). A form of such agreement can be found at [Exhibit 4.15](#). The execution of such agreement must precede the acquisition of the replacement property.

After acquiring the replacement property, the department is authorized to convey it to the public agency. This has been made applicable to property owned by state agencies by an Attorney General's opinion (1975 Op. Atty. Gen. S 1424). Rather than a deed, a transfer of jurisdiction under the Illinois Highway Code and [Section 4.11](#) is used to complete the action.

Detailed requirements for functional replacement of property of another public agency may be found in [Section 8.01](#) of the Manual.

4.16 ACQUISITION OF REMNANTS AND REMAINDERS

Under the Highway Code remnants or remainders can be acquired under certain conditions (605 ILCS 5/4-501). It is desirable to acquire these by a separate deed as non-operating right of way with the remnant or remainder value as the consideration. It is the policy of the Division of Highways to acquire such remnants with straight state funds rather than with participating federal funds. The parcel should be inventoried as potential excess land. See [Section 5.09](#).

4.16-1 INACCESSIBLE REMNANTS

Inaccessible remnants may be acquired by purchase or condemnation where, in the judgment of the acquiring agency, it is more practical and economical to acquire the fee to said inaccessible remnant than to pay severance damages.

4.16-2 ACCESSIBLE REMNANTS OR REMAINDERS

When a part of a parcel of land is to be taken and the accessible remnant is to be left in a shape or condition rendering it of little value or use to the owner or giving rise to claims for severance or other damages, then upon the written request of the owner, the acquiring agency may acquire the whole parcel. (See [Section 3.05-17](#), UNECONOMIC REMNANTS)

When acquiring land for a highway on a new location and when a parcel of land of one acre or less in area contains a single family residence, which is in conformance with existing zoning ordinances, and only a part of said parcel is required for state highway purposes causing the

remainder of the parcel not to conform with existing zoning ordinances, or when the location of the right of way line of the proposed highway reduces the distance from an existing single family residence to the right of way line to ten feet or less, the acquiring agency, shall, if the owner so demands, take the whole parcel by negotiation or condemnation.

4.17 JOINT IMPROVEMENT AGREEMENTS - GENERAL

Joint improvement agreements are prepared by the district and processed either by the Central Bureau of Design and Environment or Central Bureau of Local Roads and Streets, depending upon the road system or type of funds involved. Agreements having right of way consideration should be reviewed by the district land acquisition staff before being submitted to the appropriate Central Bureau, after which they will be reviewed by the Central Bureau of Land Acquisition.

The responsible highway agency, the type of funds involved, and designation of the acquiring agency each has a bearing on the right of way acquisition provisions to be included in joint improvement project agreements.

For purposes of these procedures there are two types of projects to be considered as follows:

- State highway projects, with or without federal-aid in right of way acquisition costs and/or construction costs - Detailed procedures for drafting agreements for this type of project are set out in [Sections 4.17-1, 4.17-2 and 4.17-3](#).
- Local agency projects, in which federal-aid participation is to be sought in any project costs - Detailed procedures for drafting agreements for this type of project are set out in [Sections 4.17-4 and 4.17-5](#).

4.17-1 TITLE TO RIGHT OF WAY STATE HIGHWAY PROJECTS

State highway projects are defined as any improvement project, in whole or in part, of any existing highway on the state's system of highways, whether on a marked or unmarked route, in which the state has jurisdictional responsibility. Ordinarily additional right of way is acquired by the state, in which case the joint agreement for the improvement would contain a statement to the effect that "The state agrees to acquire all necessary additional right of way for the project at its own cost and expense (subject to reimbursement as hereinafter provided)."

However, as a condition of participation in state highway improvement projects, local agencies may be willing to provide such acquisition services, acting as agents of the state, in accordance with the department's Land Acquisition Policies and Procedures. This and the following paragraphs deal with the provisions required in joint improvement agreements to assure a complete understanding concerning each agency's responsibilities and duties.

The only governmental units authorized to take title in their own name for a state highway improvement are the department or any county, and this is regardless of how the cost of the right of way is treated (605 ILCS 5/4-501).

While under the statute a county can take title in its own name to land required for a State highway improvement, it is the policy of the division that such title should be taken in the name of the state. Therefore, except in unusual circumstances it is mandatory that agreements covering joint improvements with local governmental agencies provide that all right of way required for an improvement to the state highway system be taken in the name of the state.

It should be noted this policy does not apply to federal-aid secondary routes on the county highway system, but does apply to federal aid secondary routes for which the state will have maintenance responsibility as these are on the state highway system (605 ILCS 5/2-101 & 5/2-102).

4.17-2 TITLE APPROVAL TO LAND STATE HIGHWAY PROJECTS

See [Section 4.10](#). The provisions therein are also extended to cover a situation where the county acquires title in its own name for a state highway improvement. In the event the local agency is paying for the cost of the right of way, at the time title approval is requested in accordance with [Section 4.10](#), a notation should be added to the warrant requisition form indicating that the local agency will pay the consideration for the purchase.

4.17-3 STANDARD AGREEMENT PROVISIONS- STATE HIGHWAY PROJECTS

If the local agency is to provide the personnel for acquiring the right of way on behalf of the state, the provisions shown on [Exhibit 4.17-3](#) should be used. However, all local agency staff members or contract personnel who are to perform appraisal, negotiation or relocation functions must be approved in advance by the state.

Paragraph G of [Exhibit 4.17-3](#) provides that it is the state's responsibility to supervise and to guide and assist local agencies in each step of the right of way acquisition process to assure compliance with the department's Land Acquisition Policies and Procedures. This responsibility is delegated to the district of Land Acquisition who must also work closely with the District Bureau of Local Roads and Streets in coordinating project activities prior to and during the entire right of way acquisition process.

4.17-4 TITLE TO RIGHT OF WAY- LOCAL AGENCY HIGHWAY PROJECTS

For our purposes local agency projects are defined as any federally aided project for the improvement of any existing highway, road or street, not on the state's system of highways. The acquisition of any needed right of way for a local agency improvement project, including the approval of title thereto, is the responsibility of the local agency and such additional right of way is acquired in the name of agency.

As a prerequisite to advertising an improvement project for letting by the state, the local agency must certify to the department's district engineer that the additional right of way required for the improvement has been secured, paid for and vacated and that the interests acquired in such right of way are adequate for the highway facility to be constructed thereon. The department then makes the same certification to the Federal Highway Administration when requesting authorization to advertise a project. Verification and certification of compliance with Titles II and III of the Uniform Act will be in accordance with [Section 8.03](#).

4.17-5 STANDARD AGREEMENT PROVISIONS LOCAL AGENCY HIGHWAY PROJECTS WITH FEDERAL PARTICIPATION

On local agency projects, in which there is to be federal participation in any of the project's costs, local agencies will be required to follow the department's Land Acquisition Policies and Procedures as these are the only policies and procedures which have been approved by the Federal Highway Administration. All local agency staff members or contract personnel who are to perform appraisal, negotiation or relocation functions must be approved by the state in advance of such activities.

When there is federal participation, project agreements with local agencies should include the provisions shown in [Exhibit 4.17-5](#). As set out in Paragraph C, it is the state's responsibility, delegated to the District Land Acquisition Engineer to provide guidance and assistance and to monitor the activities of the local agency through each phase of the right of way acquisition process, working closely with the District Bureau of Local Roads and Streets in coordinating project activities prior to and during the entire right of way acquisition process.

The use of the department's Land Acquisition Policies and Procedures together with the Compliance Review Check lists ([Section 4.17-6](#)), and guidance and assistance provided by district land acquisition personnel will assure that local agencies will be in a position to make the required certification to the department as to the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended.

4.17-6 COMPLIANCE REVIEW CHECKLISTS

To assist local agencies in acquiring right of way on behalf of the department for a state highway, or on their behalf for a local federally aided highway project, the Compliance Review Checklists should be provided the local agencies at the conceptual stage of each project.

The checklists are designed to guide local agencies in order that they can provide in the order of occurrence, information and documentation as to events, approvals and requirements which must be met throughout the entire right of way acquisition process.

PART A, PROJECT COMPLIANCE REVIEW CHECKLIST ([Exhibit 4.17-6A](#)) is to be used by the local agency from the initiation of each project at the design-location approval stage for either a state or a local agency highway project.

PART B-1, PARCEL COMPLIANCE REVIEW CHECKLIST ([Exhibit 4.17-6B](#)) is to be used by the local agency (one for each parcel file) from the initiation of appraisal activities for either a state or a local agency highway project in which there are to be federal funds used in any of the project costs.

PART C, PARCEL COMPLIANCE REVIEW CHECKLIST FOR RELOCATION ASSISTANCE ACTIVITIES ([Exhibit 4.17-6C](#)) is to be used by the local agency (one for each parcel file) for each parcel of right of way in which there will be a displacement of any individual, family, business or farm operation or the personal property thereof on either a state or a local agency highway project.

4.17-7 COMPLIANCE REVIEWS BY DISTRICT

To assure that local agencies are complying with Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), as amended, and/or the department's Land Acquisition Policies and Procedures, representatives of the

district Land Acquisition, with the assistance of representatives of the Central Bureau of Land Acquisition, will review the improvement project files using the checklists discussed in [Section 4.17-6](#). A compliance review is a prerequisite to the district engineer's acceptance of the local agency's certification and recommendation to request authorization to advertise the improvement project for a letting. If the reviewer determines that the project is not in compliance with the aforesaid Act and the department's Land Acquisition Policy and Procedures, then such non-compliance must be resolved by the local agency before the project certification can be accepted. If the reviewer determines that the project is in compliance with the aforesaid Act and the department's Land Acquisition Policies and Procedures, then the District Land Acquisition Engineer through the district engineer will forward a memorandum to the Central Bureau of Land Acquisition together with a copy of the completed Project Compliance Review Checklist giving a concise report as to the status of the right of way. The Central Bureau of Land Acquisition will then report to the Central Bureau of Local Roads and Streets or the Central Bureau of Design and Environment as to the status of the right of way.

4.18 ENTRY ON LANDS TO MAKE SURVEYS

The department, or any county, by its officers, agents or employees, after written notice to the owner, may enter upon the lands or water of any person for the purpose of making subsurface soil surveys, preliminary surveys and determinations of the amount and extent of such land, rights or other property required, but subject to responsibility for all damages which shall be occasioned thereby. 605 ILCS 5/4-503. It is important to note that claims for damages must be verified and payment determined by the department. Documentation supporting each claim, (see Exhibit 4.18) along with proof that the amount being claimed has been determined and approved by the district, must accompany any request for payment submitted to this office. A Form of Damage Release can be found as [Exhibits 4.18-1](#) and [4.18-2](#).

Illinois Department of Transportation Order 14-4, dated July 1, 1981, and entitled "Contacting Property Owners Prior To Entering Their Property For Survey Work" is the governing procedure for this activity. If entry under the procedures set forth in the Order is not permitted and legal action is required, the district engineer should formally request through the Director of Highways by letter outlining the facts, that the Office of Chief Counsel review and, if necessary, seek the assignment of the matter to a Special Assistant Attorney General. If the matter is assigned to a Special Assistant Attorney General, the district will receive a copy of the assignment after which the district should immediately contact the special assistant and assist him/her in obtaining the necessary rights to enter the property.

4.19 LAND ACQUISITION STATISTICS

Two reports are required to be completed by the Central Bureau of Land Acquisition. The two reports are the Real Property Acquisition Statistics report, and the Summary of Right of Way Acquisition report. These reports are provided to the FHWA prior to October 30th of each year. Samples of these reports are attached as [Exhibits 4.19A](#) and [4.19B](#).

4.20

ADVERTISING SIGNS

Advertising signs located on right of way to be acquired will be classified as “on-premise” or “off-premise” signs. On-premise signs are those signs that advertise an activity conducted on the property where the sign is located. When a parcel needed for right of way contains an on-premise sign owned by a tenant, the same principles for dealing with any other tenant-owned improvement will apply. (See [Section 3.01-4](#) of this manual). The sign owner’s interest can be obtained utilizing a “Lessee’s Release of Interest and Agreement to Vacate Advertising Sign” ([Exhibit 4.20-A](#)), “Leasee’s Release of Lease and Bill of Sale for Advertising Sign or Billboard” ([Exhibit 4.20-B](#)) or a Quitclaim deed. In all cases the compensation for on-premise signs will be included in the department’s offer.

Except for signs classified as “Legal Non-conforming” signs under the Highway Advertising Control Act of 1971, off-premise signs will be handled under the department’s relocation program. No offer will include compensation for advertising signs determined to be illegal under the provisions of the Highway Advertising Control Act of 1971. (For information regarding the method of determining compensation to a sign owner, see [Section 2.02-11](#).)

Section 7-101 of the Code of Civil Procedure states in part that “the right to just compensation as provided in this Article applies to the owner or owners of any lawfully erected off-premise outdoor advertising sign that is compelled to be altered or removed... and also applies to the owner or owners of the property on which that sign is erected.” In order to satisfy what is commonly referred to as the “Unit Rule”, the department’s appraisers must appraise property as if all interests in that property were held by one individual or entity. The matter of the apportionment of the just compensation to the parties in interest is a matter in which only the owners of the various property interests are involved. Legal sign sites may enhance the value of a specific property. These facts are included in the department’s determination of just compensation. Owners of off-premise signs are also required to release their interest in the right of way being acquired. This interest can be obtained through a Tenants Release of Lease ([Exhibit 4.08R](#)) or a Quitclaim Deed ([Exhibit 4.08W](#)).

If condemnation is necessary to acquire any parcel containing an advertising sign both land owner and sign owner will be named in the eminent domain action unless the sign owner’s interest is somehow satisfied and the removal of the sign owner’s interest is specifically authorized by the Special Assistant Attorney General assigned to handle the condemnation case.

4.20-1 USE OF RIGHT OF WAY FOR ADVERTISING SIGNS

Statutes require no person shall place or cause to be placed, any sign or billboard or any advertising of any kind or description upon any state highway or on any other highway outside the corporate limits of any municipality (605 ILCS 5/9-112).

4.21

PROCEDURE FOR REVIEWING STATUS OF ABANDONED RAILROAD RIGHT OF WAY

There have been and continues to be numerous rail mergers and track abandonments in the state that may affect the integrity of access control to existing freeways as well as the state use of abandoned railroad right of way for existing and future state highway facilities.

The Bureau of Railroads monitors all proposed railroad abandonments as part of its ongoing program and is in the best position to advise the Division of Highways of proposed abandonment proceedings. Therefore, the Bureau of Railroads will notify the appropriate district engineers as early as possible of all actions to be taken in the abandonment process by the Interstate Commerce Commission on every proposed abandonment in the state.

Upon being so notified, the district shall determine whether or not the department has previously acquired an easement for highway purposes and/or access rights by a recorded instrument of conveyance from the railroad in the area affected by the abandonment proceedings. The district should carefully examine the instruments of conveyance for conditions that may affect the department's use and/or control of access to the highway facility. Generally, where such easements or access rights are a matter of record, nothing further needs to be done.

Where a freeway exists and it is determined that the department has not previously acquired access rights from the railroad, the district should proceed to acquire such access rights as required to be consistent with the department's established access control plan for the facility involved.

Where additional land of the railroad and/or access rights are contemplated as being required for some future improvement, it would be advantageous to acquire such additional land and/or access rights from the railroad rather than from some successor owner. Furthermore, it may be well to acquire the additional land in fee, and to include the fee to any land underlying the recorded easement if it can be acquired for a nominal consideration.

Any acquisition of the railroad's interest should be coordinated with the Central Bureau of Design and Environment to insure that the department is not acquiring the railroad's liabilities. This coordination will also allow the department to avoid conflicts with ongoing litigation.

In proceeding to acquire any additional land or access rights, the district must first determine what title or rights the railroad possesses in its right of way. This is normally accomplished by obtaining a report on title from the title insurance firm holding the contract in the county. If the railroad possesses fee title, then the district may proceed to accomplish its acquisition directly with the railroad.

However, it may be that the railroad merely possesses an easement for railroad purposes, and such rights would be extinguished or revert to the underlying fee owner upon abandonment by the railroad. If this is the case, rather than an acquisition from the railroad, it would be necessary to negotiate with the owners of record for the acquisition of any additional land and/or access rights after such extinguishment or reversion becomes effective.

Where the department merely occupies railroad land, whether it be for a grade separation, grade crossing or a longitudinal use, it is desirable to obtain some instrument evidencing such use and occupation, such as an easement or fee title. Whether or not the railroad would be entitled to any compensation is uncertain since it is assumed the department would have occupied and used the area for some years, either adversely or by way of some form of permission such as a construction agreement, and will continue to do so regardless of whether or not it has such evidence.

These situations may be complicated; therefore, they must be addressed on a case-by-case basis and as early as possible in the proposed abandonment proceedings. The acquisition of any land and/or access rights shall be accomplished in accordance with the established policies and procedures of the Bureau of Land Acquisition.

4.22 ACQUISITION OF RIGHT OF WAY FOR FUTURE USE

The state is without authority to control the rezoning of private property and has limited authority for the acquisition of property for future highway use. The statutes authorize the Department of Transportation to establish the approximate locations and widths of right-of-way for future additions to the state highway system, and subject to the provisions of such law, to acquire such land by purchase or through eminent domain proceedings (605 ILCS 5/4-510). Procedures to carry out this provision of the statute have been established by the Central Bureau of Design and Environment in its manual. A public hearing is required after proper public notice. Subsequent to the approval of a Corridor Protection Plan, owners of land needed for the improvement are served by registered mail of the determination of the approximate location and width after which the owner may not rebuild, alter or add to any improvement or incur development cost or place improvements in, upon or under the land without giving this department 60 days notice. The department has 45 days thereafter to indicate its intention to acquire the land and an additional 120 days to acquire it. Acquisition would then be in accordance with the established procedures in this Manual.

On sections of highway where federal participation is proposed in right of way costs, approval of advance acquisition is requested in accordance with Chapter 1.

Should there be any uneconomic remnants/remainers acquired through this process, it is the negotiator's responsibility to notify the District Property Manager of the acquisition of these uneconomic remnants/remainers so this information can be incorporated into the department's NORWAY inventory ([See Section 5.09](#)).

4.23 URBAN RENEWAL PROJECTS

Where there will be an application of Federal-aid highway funds to costs of highway right of way conveyed to the Department of Transportation by a local public agency acting in cooperation with the Department of Housing and Urban Development, then such application shall be coordinated through the Federal Highway Administration.

4.24 THRU 4.29 RESERVED FOR FUTURE USE

4.30

CONDEMNATION

4.30-1

REQUEST FOR CONDEMNATION

If, in the district's opinion, the possibility of reaching agreement by negotiation has been exhausted or if condemnation is necessary for any of the other reasons set forth by statute, such as incapability of consenting, non-residency or name or residence being unknown, a request for condemnation should be forwarded by the district office to the Central Bureau of Land Acquisition (735 ILCS 5/7-102). Even with the use of quick take procedures, the time between the initial request for condemnation and the actual vesting of title may be at least ninety days or more. Therefore, from the inception of each right of way project the scheduling of acquisition activities should include the time required for full negotiation and the condemnation process. The statutes state that to acquire property by condemnation from a railroad or other public utility, subject to the jurisdiction of the Illinois Commerce Commission, the prior approval of the Commission is required. For all districts except District One, three copies of the data for condemnation must be submitted to Central Bureau of Land Acquisition for parcels which require Illinois Commerce Commission approval. In any case, sufficient facts and information must be furnished so that the Special Assistant Attorney General can prepare the condemnation petition and the motion for immediate vesting of title. In the event that a parcel is settled after it has been submitted for condemnation but prior to the actual filing of the complaint, the district must inform the Central Bureau of Land Acquisition with a copy to the Attorney General's Office that the condemnation proceedings will no longer be required. This will enable the Central Office as well as the Office of the Attorney General to close their files on the matter. The district should also immediately telephone and confirm in writing with the Special Assistant Attorney General, if one has been appointed, so that no further legal proceeding or expenses will occur.

The request and data for condemnation with all of the required attachments thereto, should be submitted to the Central Bureau of Land Acquisition and should include all of the items in the format described below:

SHORT OFFICE MEMORANDUM (Original copy only - Use BRW 1368)

TO: (Engineer of Land Acquisition)
 FROM: (District Engineer)
 DATE: _____
 SUBJECT: Land Acquisition - Condemnation

_____ Route _____
 Section _____
 _____ County
 Job No. _____
 Parcel No(s). _____
 (Name of first party defendant), et al

Attached are two copies of data for condemnation on the subject parcel(s). This project is scheduled to be let on _____.

It is recommended that the parcel(s) be referred to the Office of the Attorney General for acquisition by condemnation proceedings. (If an entity is shown as the owner the district should also include a statement noting that a disclosure of the beneficial owners thereof, under oath, must be obtained in accordance with 50 ILCS 105/3.1.)

ATTACH TO THE AFORESAID MEMORANDUM

- One (1) copy of Negotiator's Report completed to date for Central Bureau use only.
- Two (2) copies of Data for Condemnation in following format: DATA FOR CONDEMNATION - PARCEL NO(S).

_____ Route _____
Section _____
Job No. _____
_____ County

○ PURPOSE OF ACQUISITION

(Briefly describe the nature of improvement requiring the parcel(s). The location of parcel(s) and type of taking such as total or partial. The effects on remainder property (ies), i.e., general information about accessibility, severance, buildings, etc. The status of programming for construction, and whether or not quick take procedure is to be utilized.)

○ STATUS OF PROJECT ACQUISITIONS

(Indicate whether acquisition of subject parcel(s) will complete project acquisitions or if additional parcels may have to be condemned to complete the project.)

- FREEWAY STATUS

(Whether or not it is an established freeway. If so, date(s) of Order Establishing Freeway and Amendments thereto, if any, and whether fully controlled or modified freeway.)

- PARCEL NO (S) INTERESTED PARTIES AND ADDRESSES INTERESTS TO BE ACQUIRED DATE COMPLAINT CAN BE FILED 60 DAY NOTICE DATE

(Name all interested parties known whether shown on minutes of condemnation or not, including address and interests to be acquired, such as, fee, permanent easement, perpetual easement for highway purposes, temporary easement and access control rights. If temporary easement, indicate either a specific termination date or number of years for which desired. Specify amount and date of the final offer letters.)

- PARCEL NO (S) COUNTER OFFERS REASON FOR CONDEMNATION

(List counter offers, if any, and under reasons for condemnation specify either - inability to reach agreement on compensation offered, or offer acceptable - unable to obtain clear title to parcel.)

- Attach to the Data for Condemnation two (2) copies each of the following:

(NOTE: For those parcels requiring Illinois Commerce Commission approval, three copies will be required, except in District One.)

- Legal descriptions of all parcels to be condemned for insertion in the complaint for condemnation. The legal description should adequately describe the property without a plat. (NOTE: If a freeway on existing location, describe the access rights to be acquired including any exceptions. If a modified freeway, include appropriate provision for limited access as set forth in [Section 4.07.](#))
- Right of way parcel plats, sketches or right of way plans of sufficient detail to identify the property. These plats are to be furnished for the benefit of the Special Assistant Attorney General's review and, if requested, to be furnished to the opposing counsel.
- Report on title (not older than ninety days).
- A quick take authorization form (See [Exhibit 4.30-4](#)) for the parcel. This form will be signed and returned to the appointed Special Assistant Attorney General when quick take is authorized by the Attorney General.

This form should be completed in a manner that will allow the Attorney General to have sufficient information to make an informed decision on the request.

There are five areas of information to be completed:

- q Identify the parcel.
- q Insert fiscal year and strike out the inapplicable word (current or future). Include month and year of anticipated letting.

Give the number based on the job and completed negotiations.

- q Use a number that includes the current references, previous reference and your best estimate on open negotiations.
- q Provide name of Assistant Attorney General who will have authority to allow filing of a quick take motion.

4.30-2 APPOINTMENT OF A SPECIAL ASSISTANT ATTORNEY GENERAL

Eminent domain for the Department of Transportation is initiated and prosecuted by the Attorney General through appointed assistants. The Attorney General appoints Special Assistant Attorneys General to act as trial attorneys in the counties where condemnation must be undertaken. These assistants are compensated on an hourly basis by the Department of Transportation for services performed. The Attorney General has prepared and distributed a Condemnation Manual to the Special Assistant Attorneys General.

4.30-3 ASSIGNMENT TO A SPECIAL ASSISTANT ATTORNEY GENERAL

The Bureau of Land Acquisition will forward two copies of the district engineer's Data for Condemnation, together with all attachments thereto, to the proper office of the Attorney General (Chicago or Springfield) with the request that the matter be assigned to a Special Assistant Attorney General for handling the condemnation of the parcel. The Attorney General will, in turn, forward one copy of all the documents to the appropriate Special Assistant Attorney General with the request that condemnation be instituted. Copies of the Attorney General's letter of transmittal will be forwarded to the appropriate district and Central Bureau of Land Acquisition.

When the district office receives an informational copy of the letter assigning the condemnation to the Special Assistant Attorney General, the district representative should contact the Special Assistant Attorney General and offer any assistance from an engineering standpoint in the preparation of the complaint for condemnation. He/she should also be informed at that time as to whether a motion for immediate vesting of title is necessary in order to meet construction deadlines.

The original complaint for condemnation is executed and forwarded by the Special Assistant Attorney General to the district engineer for checking with two additional copies and then is forwarded with one copy to the Central Bureau of Land Acquisition for the obtaining of the signatures of the Governor and the Secretary. It is important to note that in checking the complaint the district must verify that the legal description is correct, the interest being sought in the condemnation process is properly recited and the complaint is executed by our Special Assistant Attorney General. Having obtained the signatures of the Governor and Secretary, the

Central Bureau of Land Acquisition will forward the original complaint and one copy to the proper office of the Attorney General (Springfield or Chicago) for final checking and approval of the Attorney General. The Office of the Attorney General will then forward the fully executed original complaint to the Special Assistant Attorney General with a copy of the letter of transmittal to the district engineer and Central Bureau of Land Acquisition. The district engineer is required to contact the Special Assistant Attorney General and inform him/her relative to filing the complaint. If a settlement has been reached on a parcel prior to the filing of the complaint for condemnation, it is necessary for record purposes that the office of the Attorney General and Central Bureau of Land Acquisition be so informed. Once a complaint for condemnation is filed, any final resolution to that case is the responsibility of the Illinois Attorney General. All negotiations from the time the complaint is filed must be closely coordinated with the Special Assistant in charge of the case. It is the department's policy that the final resolution of any case filed should be by court order. Exceptions to this policy must be coordinated with the Central Bureau of Land Acquisition and approved by the appropriate Office of the Attorney General (Chicago/Springfield). After filing the complaint for condemnation, a request should be made to the title company for a date down endorsement on title covering the date of filing of the complaint. When received from the Title Company, the report should be delivered to the Special Assistant Attorney General for his/her use in determining whether all necessary parties have been included in the complaint for condemnation.

4.30-4 IMMEDIATE POSSESSION (QUICK TAKE PROCEDURES)

The department is authorized under eminent domain to acquire title prior to the final adjudication and payment of just compensation (735 ILCS 5/7-101 et. seq). The petitioner may file a motion at any time after the complaint to condemn has been filed requesting the immediate vesting of title in the petitioner. However, no Motion for quick take shall be filed without prior approval of the Assistant Attorney General in charge of Land Acquisition. The Form shown as [Exhibit 4.30-4](#) should be completed by the Land Acquisition Engineer and submitted with the request for condemnation to the Central Bureau of Land Acquisition so that it will accompany that request to the Attorney General's Office. The court must set the motion for hearing in no less than five days. At the hearing, the court shall determine the propriety of the petitioner's authority to exercise its right to eminent domain over the property sought to be taken. The court's order on this point is a final order and may be appealed within thirty days.

In the event of an appeal, either the trial or reviewing court may stay further proceedings pending the outcome of such appeal. A stay may well prevent the department from obtaining title or possession in less than six months. Under usual circumstances, where either no appeal is taken or no stay ordered, the court goes on to hear such evidence as it deems necessary for a preliminary finding of just compensation. If it sees fit, the court may appoint three appraisers to aid in its decision. Following a preliminary determination of just compensation, the condemner deposits the amount of preliminary just compensation with the County Treasurer and, the court enters an order vesting it with title to the property and fixing a date for possession. See [Section 7.02](#) for warrant requisition procedures.

4.30-5 PREPARATION FOR TRIAL

The District Land Acquisition Engineer and his/her representatives should cooperate as fully as possible with the Special Assistant Attorney General in preparation for the trial. Care should be taken to see that the Special Assistant has the opportunity to interview all of the appraisers who are expected to testify, sufficiently in advance of the trial, so that they may be advised on the legal aspects of their appraisal, such as compensable or noncompensable items and the proper method of valuation. The Special Assistant is the one most qualified to know whether additional appraisers or other witnesses should be retained to assure success at the trial and the district should rely on the attorney's advice in these matters. The district should also cooperate as fully as possible in the preparation of exhibits recommended by the Special Assistant.

The district should stand ready to furnish any personnel requested by the Special Assistant for testimony during trial. This would include personnel from any district bureau when needed for the proper presentation of the state's case.

4.30-7 COURT ORDERS, DISCLOSURES OF BENEFICIAL INTERESTS IN CORPORATIONS, PARTNERSHIPS & TRUSTS AND TITLE INSURANCE POLICY

It is imperative that sufficient copies of the necessary court orders be obtained by the district from the Special Assistant Attorney General and prompt attention given to requesting warrants to deposit in order to obtain an order vesting title or to satisfy a final judgment. One certified copy of the order is sufficient for the Central Bureau of Land Acquisition even though it may cover several parcels. A copy of such order should be forwarded by the Special Assistant Attorney General to the proper office of the Attorney General (Springfield or Chicago) but it is not necessary that these be certified.

If a corporation, partnership, limited liability company or trust is a party to the suit as an owner, a disclosure of the beneficial owners under oath, must be obtained by the Special Assistant Attorney General assigned the parcel and be submitted to the Central Bureau of Land Acquisition by the district as soon as it is obtained, but not later than the submittal of the settlement report covering the stipulated settlement or commencement of trial. Discovery proceedings under the Code of Civil Procedure should be used, if necessary, to obtain this information. The disclosure will be obtained in most cases by the Special Assistant Attorney General and it may be desirable for him/her to seek and if possible obtain such a disclosure prior to an order vesting title. The disclosure should then accompany the order setting preliminary just compensation. Since acquisitions are settled by stipulation or proceed to trial as much as several years after the vesting title, a second disclosure must be obtained and submitted not later than the submittal of the final judgment order in order to cover the possibility of a later sale of the beneficial interests. If the initial disclosures, or subsequent disclosures at other levels, show interests held by another corporation, partnership, or trust, then further disclosures should be requested until you know the names of individuals owning the interest in the entity involved, or can verify that the ultimate owner is a publicly-traded corporation in which no person is entitled to more than 7 1/2% of the total distributable income.

After a warrant has been deposited and an order vesting title obtained or a final judgment order without there first having been an order vesting title, the title company should be requested to issue its policy of insurance covering the title acquired by condemnation. Careful attention should be given to the examination of the policy to be sure that it insures the state's title against all outstanding interests which might affect the use of the property. Should any discrepancies in title be shown, it is important that immediate action be taken by the Special Assistant Attorney General to clear these discrepancies, either by negotiation or through additional condemnation proceedings. See [Sections 7.02](#) and [7.04-3](#) for warrant requisition or refund procedures.

4.30-8 DOCUMENTATION OF CONDEMNATION AWARDS AFTER SETTLEMENT

The district engineer has been designated by the Director of Highways as having final authority over right of way matters at the district level and approves such settlements upon the recommendation of the Special Assistant Attorney General assigned the parcel for condemnation, normally, after consultation and exchange of views between the Special

Assistant Attorney General and representatives of the district engineer. A Settlement Report in the format found in the Attorney General's Condemnation Manual must then be prepared and signed in duplicate by the Special Assistant Attorney General and forwarded to the district engineer for approval. Upon approval of the district engineer (in duplicate), one original executed copy should be returned to the Special Assistant Attorney General requesting that a copy be forwarded to the proper office of the Attorney General (Springfield or Chicago). The second original executed copy is to be retained in the district file. No settlement reports need be prepared when the final just compensation is in the same amount as the original approved appraisal amount. A copy of the settlement report must be submitted with a copy of any court orders when a warrant requesting payment is ordered for those parcels acquired through condemnation proceedings.

In settling cases, it is generally more convenient for the department if the matter can be concluded by a single payment constituting full and final just compensation rather than by payment of the judgment amount followed by a separate payment of interest thereon. Therefore, whenever possible, claims for interest should be a consideration in the settlement amount that is negotiated. When negotiating a settlement, the property owner must understand that the agreed-to amount will include his/her right to all interest.

If a settlement is negotiated after a condemnation complaint is filed, title is obtained by means of a final judgment order because this assures clear title without the necessity for obtaining releases from the holders of liens, mortgages, and other encumbrances, and the recording of the same. It also saves the payment of escrow and recording fees. If for some unusual reason, after the complaint has been filed and title not vested in the state, title is to be acquired by deed, then it is necessary for the Special Assistant Attorney General to obtain the permission of the proper office of the Attorney General (Springfield or Chicago). A final judgment order is always obtained when a settlement has been reached after the court has vested title in the state under quick take procedures.

4.30-9 DOCUMENTATION OF CONDEMNATION AWARDS AFTER CONTESTED TRIAL

A trial report, in the format found in the Attorney General's Condemnation Manual, must be prepared by the Special Assistant Attorney General following each contested trial. This report is required regardless of whether the award is substantially in excess of the reviewing appraiser's determination of value and regardless of whether federal funds are involved. Two signed copies should be furnished to the district engineer for concurrence and signature. One fully executed copy must thereafter be retained in the district files, and the second fully executed copy returned to the Special Assistant Attorney General requesting that a copy be forwarded to the proper office of the Attorney General (Springfield or Chicago). The district shall send one copy to the Central Bureau of Land Acquisition.

Care should be taken to see that the Special Assistant Attorney General includes proper and sufficient information relating to the trial, including recommendations as to post trial motions and possible appeal. See [Sections 7.02-3](#) and [7.04-3](#) for warrant requisition or refund procedures.

4.30-10 APPEALS

When, in the opinion of the district engineer and the Special Assistant Attorney General, an appeal of the trial court judgment would be in the best interest of the state, as evidenced by the Trial Report, the Special Assistant Attorney General should, in addition to the Trial Report, make a request in writing to the proper office of the Attorney General (Springfield or Chicago) with a

copy to the district. The Central Bureau of Land Acquisition should then be informed of this action so that the matter can be reviewed with the staff of the proper office of the Attorney General (Springfield or Chicago), and, if warranted after such review, an appeal proceeding will be authorized. The district will be informed of the action to be taken.

4.30-11

INVERSE CONDEMNATION

Illinois statutes provide for the payment of attorney's fees and other expenses to a property owner if the state is required by a court to initiate a condemnation proceeding for the actual physical taking of real property (735 ILCS 5/7-122). A classic example would be constructing an improvement on land without having title thereto or having only a partial title, etc. A property owner in this case could file a Complaint for a Writ of Mandamus to the Circuit Court requesting the Court to order the Secretary to file a Complaint for Condemnation to determine the value of the taking and any damages as a result thereof. If the Court orders the initiation of the proceedings and the owner is successful in obtaining a judgment, then we would also be required to pay the property owner attorney's fees and other expenses.

Fees and other expenses are payable only if the state is required by a court to initiate condemnation proceedings. Consequently, this would not be applicable to normal condemnation proceedings as these are brought by the department on its own volition and not by order of a court.

Federal funds will participate in such condemnation costs on federal-aid projects; however, the Federal Highway Administration normally would like as much advance notice and information concerning the action as may be possible.

The possibility of inverse condemnation is an additional reason for land acquisition personnel to assure that procedures are properly followed and all outstanding interests are acquired or released.

4.30-12

EMINENT DOMAIN CHECKLIST

Each district has a person assigned to coordinate those parcels to be acquired by condemnation. In most instances this person is referred to as the District Condemnation Engineer. It is this person's responsibility to see that an Eminent Domain Checklist ([Exhibit 4.30-12](#)) is maintained for each file. This checklist will ensure that all the information and documentation for condemned parcels are properly contained in the acquisition file for future reference by department personnel and outside auditors.

When parcels are obtained by condemnation, it is the Condemnation Engineer's responsibility to notify the District Property Manager of the acquisition of any uneconomic remnants/reminders so this information can be incorporated into the department's NORWAY inventory ([See Section 5.09](#)).