

**The Constitution of the United States and the Constitution of the State of Oklahoma ensure that private property shall not be taken or damaged for public use without just compensation.**

It is with these provisions in mind that the Oklahoma Department of Transportation (ODOT) pursues the acquisition of right-of-way. This brochure provides the property owner(s)/authorized agent(s) with general information as to how this process works. A right-of-way agent will provide the property owner(s)/authorized agent(s) with additional specific information as it relates to the owner's legal and property rights.

### **APPRAISAL**

Before the initiation of negotiations for the purchase of real property, an amount is established by ODOT which is reasonably believed to be just compensation for the value of the part taken and the damages to the remaining property, if any. In cases involving the purchase of real property by ODOT with a fair market value of \$15,000 or less, no approved appraisal report will be required. Generally, real property is first appraised by a State-licensed or certified appraiser, and the property owner(s), or their designated representative(s), are given the opportunity to accompany the appraiser during the physical inspection of the subject property. The completed appraisal report is then reviewed by a separate review appraiser to ensure accuracy, completion and the proper use and full compliance with recognized appraisal principles and standards. Finally, an authorized amount is established by ODOT based upon the appraisal review for presentation to the property owner(s)/designated representative(s).

### **NEGOTIATION**

A right-of-way agent presents the property owner(s)/designated representative(s) with a copy of the appraisal and written offer letter containing the amount established as just compensation for the subject property to be acquired with the amount for damages, if any, separately set out. The option to waive the appraisal process and donate the subject property to ODOT is available if the property owner(s)/designated representative(s) wish to do so. A right-of-way agent will present the property owner(s)/designated representative(s) with an available set of plans for the project and will explain how much property must be acquired and what effect the acquisition will have on the remainder of the property, if any. The right-of-way agent is not authorized to alter the amount established as just compensation. No current abstract of the subject property will be requested or required from the subject

property owner(s)/designated representative(s). The right-of-way agent will periodically request that the property owner(s) or their designated representative(s) confirm the current surface ownership of the property regarding individual owners of record, liens, mortgages and tenants, if any. If a current mortgage exist on any property acquired the right-of-way agent will request a mortgage release from the mortgage company. A mortgage release must be obtained to complete the acquisition process. The property owner(s)/designated representative(s) are encouraged to advise the right-of-way agent when and if any actual or pending surface title changes occur.

Upon written notice, property owners may elect to retain the ground water rights, if any, that are attached to the property to be acquired. If the property owner elects to retain the ground water rights, the acquisition will be for surface rights only and will exclude any ground water rights. A property owner that chooses to retain the ground water rights shall have no right to use or occupy the surface rights to the property nor will the property owner have any right to construct, maintain or operate any water well, drilling equipment or lines on or under the surface without the express written permission of the Oklahoma Department of Transportation.

### **ACCEPTANCE OF OFFER**

If the property owner(s)/designated representative(s) agree to accept the offer presented, the right-of-way agent will prepare the deed(s) or easement(s), claim form(s) and other documentation necessary to transfer ownership of the subject property. No formal closing is required as the property owner(s)/designated representative(s) will simply be asked to execute and convey to the right-of-way agent the aforementioned documentation. After these documents have been properly executed, they will be forwarded to ODOT's Oklahoma City office for review, processing and the issuance of a State warrant (check). After the required processing period, normally 60 to 90 business days, the check will be mailed to the property owner(s)/designated representative(s). If there is a mortgage on the subject property, the check may take longer to be processed due to the mortgage holder agreeing to and executing a partial mortgage release or discharge of the mortgage. In the event the negotiation is contingent on the basis of the property owner(s)/designated representative(s) retaining and removing improvements from the right-of-way limits, a specific date will be established for the property owner(s)/designated representative(s) to remove the improvements. On projects where the lead time permits, the Department may be able to lease the improvement(s) to the property owner(s)/designated representative(s) on a month-to-month basis, until such time as the right-of-way must be cleared for utility relocations and/or construction.

## **EMINENT DOMAIN**

Should the property owner(s)/designated representative(s) decline to accept ODOT's offer of compensation, or should the title to the subject property be defective, it will be necessary for ODOT to acquire property for public use upon the payment of just compensation. The legal process by which the power of eminent domain is exercised is known as "condemnation".

Condemnation proceedings are commenced by filing a Petition in the District Court for the county in which the subject property is located. The property owner(s) will be served with a copy of the Petition. The first step taken in the condemnation process is for a District Judge to appoint three unbiased, disinterested freeholders, or "commissioners", to decide the amount of compensation that they believe the property owner(s) should receive.

The commissioners will be appointed at a hearing which will be held at the county courthouse, and the property owner(s) will be provided written notice at least ten (10) days prior to the aforementioned hearing. By law, the District Judge has the authority to select all three commissioners, however, in some instances the District Judge may ask the affected parties for suggestions as to whom to appoint. The property owners have the right to attend the hearing, but are not required to do so.

Three court-appointed commissioners will then inspect the subject property and assess the amount of compensation they believe ODOT should pay. Compensation awarded by the commissioners (known as the commissioners' award) will include the value of the property actually acquired as well as damages, if any, by way of reduction in value to the remaining portion of the property not acquired.

Any special and direct benefits to the part of the property not acquired may be offset against any injury (damage) to the property not acquired. The commissioners will then file a written Report of Commissioners with the Court Clerk detailing their findings.

Subsequent to the filing of the Report of Commissioners, ODOT will deposit the amount awarded by the commissioners with the Court Clerk. State law provides that upon such deposit, ODOT acquires the right to take possession of the subject property. If the property owner(s) wishes to do so, an application may be made to the Court for disbursement of the commissioners' award to the owner(s) (or at least a portion of the award to which they are entitled). The withdrawal of the commissioners' award in no way affects the property owner(s) right to pursue further

legal action as detailed below.

If either party believes there has been an error or omission in the Report of Commissioners, or if the property owner(s) wish to challenge ODOT's legal power to take possession of the subject property, a **written exception** to the Report of Commissioners must be filed within thirty (30) days of the filing of the Report of Commissioners. The written exception must be filed with the Court Clerk and the Court may then accept or reject the written exception. If the Court accepts the written exception, it may order a new appraisal. In that event, ODOT will have a continuing right of possession acquired via the first Report of Commissioners, unless and until the Court rules that ODOT does not have the power to condemn the subject property.

If either party desires to challenge only the amount awarded by the commissioners, it must do so by filing a Demand for Jury Trial with the Court Clerk within sixty (60) days of the filing of the Report of Commissioners.

In the event of a jury trial and a jury verdict which exceeds the amount awarded by the court-appointed commissioners, ODOT would then have to deposit an amount equal to the difference between the jury verdict and the commissioners' award with the Court Clerk. Similarly, should the jury verdict be for an amount less than the commissioners' award, the property owner(s) would be required to return that portion of the commissioners' award which exceeds the amount of the jury verdict. Should the amount of the jury's verdict exceed the amount of the commissioners' award by ten percent (10%) or more, then ODOT must reimburse the property owner(s) for their reasonable attorney, appraisal and engineering fees, that were incurred in connection with the condemnation proceedings. Either party may appeal the action taken by the District Court to the Oklahoma Supreme Court.

**INCIDENTAL EXPENSES**

A real property owner may qualify for the reimbursement of expenses incurred for items such as recording fees, transfer taxes and similar expense incidental to conveying such real property to ODOT. The extent of reimbursement must be incurred by the property owner(s) and shall be determined and pre-approved by ODOT. Penalties for prepayment of any existing recorded mortgages are also included. If the property owner(s) is/are refused an incidental expense payment or believes the payment offered is not adequate to cover incurred expenses, they have the right file a written appeal to:

Chairman, Board of Appeals  
Oklahoma Department of Transportation, Office of the General Counsel  
200 N.E. 21<sup>st</sup> Street, Oklahoma City, Oklahoma 73105

The appeal must be filed within sixty (60) days of the date ODOT assumes legal possession of the subject property being acquired. This appeal procedure is provided in relation to incidental expenses only. If the property owner(s) are not satisfied with the fair market value offer for the subject property, they can consult the right-of-way agent for information regarding their rights to court proceedings. The "fair market value offer" to buy is a separate offer and is not subject to review by the Board of Appeals.

If the property owner(s) wish to review the plans on the project, or if they decide to accept ODOT's offer after the right-of-way agent has completed their attempts to negotiate, they are asked to contact:

Oklahoma Department of Transportation  
Right-of-Way and Utilities Division  
200 N.E. 21<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105  
(405) 521-2651

It is the sincere desire and hope of the Oklahoma Department of Transportation (ODOT) to be fair and to successfully negotiate with each property owner. ODOT complies with Title VI of the Civil Rights Act of 1964, which requires that no person in the United States shall, on the basis of race, color, religion, sex, disability, age or national origin, be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which ODOT received Federal Financial Assistance.

If a property owner(s) believes that they have been discriminated against, they have the right to file a Title VI complaint with the Oklahoma Department of Transportation's Title VI Coordinator at (405) 521-3379 or email [kfire@odot.org](mailto:kfire@odot.org).

*The Oklahoma Department of Transportation (ODOT) ensures that no person or groups of persons shall, on the grounds of race, color, sex, religion, national origin, age, disability, or genetic information, be excluded from participation in, be denied the benefits of, be retaliated against, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by ODOT, its recipients, sub-recipients, and contractors. To request an accommodation, please contact the ADA Manager at least 72 hours before an event at 405-490-0381 or the Oklahoma Relay Service at 1-800-722-0353. If you have any ADA or Title VI questions, email [ODOT-ada-titlevi@odot.org](mailto:ODOT-ada-titlevi@odot.org).*