

RELOCATION ASSISTANCE

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INTRODUCTION AND OVERVIEW

Thank you for the opportunity to speak to you on the subject of relocation assistance. I understand many of you have limited experience with eminent domain issues so my comments today will be general in nature. I apologize in advance if my presentation is basic for any of you who have dealt with relocation assistance issues.

What is relocation assistance? Relocation assistance refers to the advisory services and payments that are available to residents and businesses when they are forced to move as a direct result of the acquisition of real property by eminent domain.

Before your first thought becomes “Big deal...how much can be involved in moving stuff?” I have found that because the relocation of residents or businesses often involves a confluence of complex legal and emotional issues, even the most benign case can quickly turn into a tinderbox. If eminent domain cases are to be part of your portfolio of services and you are not at least aware of some of these issues, then you will be missing out on potentially rewarding, legally important and very engaging work.

Allow me to start by making the following comments to illustrate these points:

Rewarding: Several years ago, I was asked to work for a manufacturing business that was being displaced for a highway expansion project. The owner of the business was a tenant and had no interest in the real estate acquisition. Although the business was doing very well, the owner was involved in a nasty divorce and wanted to close the business. The agency responsible for the project advised him that if he closed down instead of moved the most he would be paid for relocation benefits would be \$20,000. While he felt this was not fair, he was not given any other option by the agency. When I became involved, I found that the agency failed to mention that one of the benefits available to displaced businesses provides a business owner who closes rather than moves with a payment equal to the lesser of either the appraised value of the business' personal property or the estimated cost to relocate the personal property. Because this was a manufacturing concern, these costs were high. After the business closed, we eventually settled for a relocation payment of just under \$1,000,000. That is a far cry from the original \$20,000 initially offered by the agency.

Legally Important: I'm sure you are all aware of the Kelo case. While that case has drawn much attention to eminent domain, I believe that the dispute never would have come about if the City of New London applied federal relocation assistance standards rather than the Connecticut state laws that were more restrictive at the time. That is because under the federal rules, a person cannot be displaced from their dwelling unless a functionally equivalent dwelling is made available to them. Under the provisions of the federal regulations called "Last Resort Housing" the displacing agency basically must do whatever it takes, nearly regardless of cost, to enable the displaced person to occupy a new functionally equivalent home. If initially the rub with Ms. Kelo was the loss of her home near the waterfront, then under the federal rules the agency would have been required to make a suitable new home available to her or even move her existing home to another lot. My bet is this would have just been another run-of-the-mill relocation case if the City told Ms. Kelo at their first meeting not to worry and that she would be able to move to another suitable nearby home.

Engaging: Several years ago, Stephen King wrote a book called "Roadwork" where the main character is forced to move from his home and also loses his business due to eminent domain takings for a highway project. Gradually, the stress of being displaced caused the main character to snap, he eventually goes berserk and attempts to blow up the entire town. While this is a good example of a relocation case gone-bad, I keep a copy of this book with me to remind myself that anyone being displaced for a government project can crack under the pressure at any time. To avoid living in a Stephen King novel, I find it is necessary on nearly every relocation case to remain focused on and empathetic to the problems the displaced person is experiencing.

With this as background, let me turn to laws which deal with relocation assistance.

LAWS AND REGULATIONS

There are a series of laws, regulations, and policy directives that cover the monetary benefits and advisory services available to displaced businesses and residents.

Primary among these is the Uniform Real Property Acquisition and Relocation Assistance Act of 1970, commonly referred to as the Uniform Act and codified as Public Law 91-646. The regulations promulgated under this law are 49 Code of Federal Regulations, Part 24.00. This law and regulation address the benefits that are available to residents and businesses displaced due to projects that receive federal funding and/or federal financial assistance.

Prior to the enactment of the Uniform Act, the rules that covered relocation assistance were different from federal agency to federal agency. As you can imagine, this led to significant disparities in how displaced people and businesses were treated. Because the Uniform Act established a consistent baseline of benefits, it eventually became the basis for similar state laws. For many years following the enactment of the Uniform Act, the

relocation benefits outlined in the Uniform Act closely mirrored those included in nearly all state laws.

While the federal regulations are amended on a periodic basis, the Uniform Act has not been revised or updated in any way meaningful way for at least 20 years. Over the past several years, many states have changed their state laws covering relocation assistance. With nearly no exception, these changes have all resulted in state laws that offer relocation benefits that go beyond those included in the Uniform Act. Some of these changes include making payments for loss of good will to displaced businesses; increasing benefits that are limited by caps, and creating whole new categories of monetary benefits to displaced residents and businesses.

Because of the differences between benefits covered under federal and state laws, it is very important that you determine, as early in the process as possible, what the source of funding is for the project that is causing displacement. While I'd like to review some of the newer benefits included in state laws, due to time constraints, my comments outlining relocation assistance and benefits are limited to those covered in the Uniform Act.

RELOCATION ADVISORY SERVICES AND PRE-ACQUISITION ISSUES

Because of the impact it has on businesses and residents, nearly all relocation programs are intended to have a component of advisory services. Generally, relocation advisory services are non-monetary assistance, counseling and guidance that the displacing agency should provide people and businesses that are forced to move. In practice, the level of advisory services made available depends on the experience and abilities of the staff assigned to manage the relocation process for a displacing agency. As you can imagine, advisory services are often inconsistent and ineffective.

That aside, some of the specific advisory services that are referenced in the federal relocation regulations include determining the replacement location needs and preferences of each person or business to be displaced; providing updated and continuing information on comparable replacement locations; making referrals to suitable loan programs and/or social services; offering transportation to replacement locations; and assisting in determining the need for outside specialists to help facilitate the move.

Federal regulations also mandate that in the early stages of a project, the responsible agency “plan (the project) in such a manner that recognizes the problems associated with displacement of (residents and businesses) and develop solutions to minimize the adverse impacts of displacement”. To comply with this requirement, some agencies will try to get information from residents and businesses by conducting field surveys or interviews. In such instances, it is wise for anyone who may be displaced to actively describe (preferably in writing) all of the problems they expect to face if they are displaced. Unfortunately, while the federal regulations mandate that planning be done to mitigate

relocation problems, there is no process for review and approval of such plans. As a result, effective relocation planning is a rare occurrence.

The federal regulations also require that certain notices be sent to persons who are to be displaced. The first such notice is a “General Information Notice” and is usually sent before property acquisition occurs. This notice informs the person or business that they may be displaced and describes the relocation process in general terms. The General Information Notice is worded to avoid establishing any eligibility for relocation benefits. The next notice sent is called a “Notice of Eligibility”. This is the notice that establishes the eligibility of relocation assistance and should be issued at the time a written offer to acquire real estate is made. The Notice of Eligibility also informs the person that they have a certain period of time in which to relocate. Finally, additional notices to vacate stating specific dates to move may also be issued.

For businesses, the most important issue that can affect relocation assistance prior to an eminent domain taking is how an agency decides to classify items of property. If an item is considered part of the real estate, then the agency’s position will be that they paid for it as part of the real estate. If an item is personal property, then it can be included as part of a relocation claim. I recall the case of a home heating fuel distributor who had his property taken for an urban renewal project. The agency determined unilaterally that all of the above ground and below ground tanks and related fixtures and appurtenances were part of the real estate. The agency then reduced the value of the real estate to zero on the basis that the cost to clean up the property was more than the value they determined the real estate to be. When the business owner went to relocate, he was told he could not claim the cost of putting in new tanks and that his relocation claim would essentially be limited to the cost to move his office. On appeal, the agency’s position was reversed and it was determined that all the tanks and fixtures should have been considered personal property. Unfortunately, the business owner actually had a heart attack when the agency told him he’d get essentially nothing for this business or real estate and died shortly after the eminent domain taking.

The most recent changes to the federal regulations now require that the appraisal used to set the value of property to be acquired include “an adequate description of the physical characteristics of the property being appraised **including items identified as personal property**”. While this will no doubt be a pain for real estate appraisers, it does present an opportunity for a business owner to present documentation of ownership of items that could otherwise be considered part of the real estate. However, this would only be useful if such documentation is provided before the appraisal is finalized.

OVERVIEW OF RELOCATION BENEFITS FOR BUSINESSES

There are two categories of relocation benefits available to displaced businesses.

The first category is called the “Fixed Payment in Lieu of Moving” benefit. This benefit is capped by federal law to a minimum of \$1,000 and a maximum of \$20,000. The amount of the payment is based upon the two year average annual net earnings of the business. If a business opts to take this benefit, they cannot also make any claims for moving expenses. While this benefit is fairly simple to calculate, it is really best suited for those businesses that have very little personal property that needs to be moved. Businesses like small offices, small contractor yards, home-based businesses and perhaps small non-profits are the best fit for this benefit.

The second category is called “Actual and Reasonable Moving and Related Expense” benefits. The federal regulations actually contain a list of the types of expenses that may fall under this category. This includes costs to transport personal property; expenses necessary to disconnect and reconnect personal property, including installation of electrical sub-panels, outlets, plumbing hook-ups etc.; costs for storage of personal property for up to one year; certain professional fees necessary to plan the move including architectural or engineering costs; reprinting of printed material made obsolete due to the move; signage; and other similar actual costs incurred. This category also includes the cost to purchase and install new equipment to replace old equipment that the business owner may decide not to move, limited to the lesser of either the cost to move the old item or purchase and install the new item. In addition, this category includes the actual direct loss of tangible personal property benefit. This benefit includes any items of personal property that the business owner decides to liquidate. The actual direct loss benefit is based on the lesser of either the appraised value of the personal property items or the estimated cost to dismantle move and reinstall the item.

Some of the benefits are limited by monetary caps. Specifically, the cost incurred by a business to search for a replacement location is capped under federal regulations (although not the law) to \$2,500. In addition, there is something called the business re-establishment benefit which is capped at \$10,000. This benefit covers the cost of making improvements to the real estate at a new location as well as increases in operating expenses for up to a two year period of time.

The recent revisions to the federal regulations also created a new category of expenses called “Related non-residential eligible expenses”. This benefit includes the cost of connections to utilities, feasibility studies to determine if a replacement location is suitable, and impact fees or one-time assessments for heavy utility usage.

There are also a number of expenses that are specified as being non-eligible for reimbursement under both categories of expenses. This includes the cost to purchase

capital assets, the cost to purchase manufacturing materials or product inventory, and interest on money borrowed to make a move or purchase replacement property.

While the regulations attempt to describe the types of expenses that are covered as part of an actual and reasonable move expense claim, every business is different and can incur expenses that are not always clearly outlined within the regulations.

OVERVIEW OF RELOCATION BENEFITS FOR RESIDENTS

With respect to relocation benefits for displaced residents, the regulations separate displaced residents into categories of displaced homeowners and displaced tenants. Both displaced homeowners and displaced tenants are eligible to be paid for the actual and reasonable costs to pack move and unpack all household personal property items. They are also eligible to be paid for ancillary expenses like hooking up washers and dryers, reconnecting televisions and computer cables, dumpster charges, and pretty much any other expense that a homeowner or tenant would ordinarily incur when they move. As an alternative to this, a homeowner or tenant may be paid a lump sum to cover their moving expenses. This amount is determined by a schedule issued by the Federal Highway Administration. The schedule varies depending upon the state that the displaced person is moving from and the number of furnished rooms at their displacement dwelling.

In addition to move expenses, displaced tenants are also eligible for a benefit called the “rent differential payment”. This payment is intended to capture increases in rent for over a 42 month time period and is limited to a total of \$5,250.00.

Displaced homeowners are eligible for a benefit called the “replacement housing payment”. This payment is based upon the difference between the amount that is paid for their home by the agency and the lesser of the amount paid to purchase a new home or the cost of a comparable new home as determined by the agency. This payment also includes reimbursement of certain closing costs as well as some increased mortgage interest charges. This payment is capped at \$22,500.

A central requirement for persons displaced from a dwelling is that the displacing agency must offer them at least one suitable replacement dwelling that is available for rent or purchase at the time they are issued a notice of eligibility. The comparable dwelling that the agency offers must meet a number of standards, including that it be “decent safe and sanitary” and be functionally equivalent to the displacement dwelling. The comparable dwelling offered by the agency is important since the cost of the comparable dwelling establishes the eventual limit of the rent differential payment or the replacement housing payment.

If the agency cannot provide a displaced resident with a suitable comparable dwelling that meets all of the requirements of the regulations within the above referenced caps, then they default to what is called the “Last Resort Housing” benefit. This is a separate

benefit that has become increasingly more common as the caps for the rent differential and replacement housing payments become more outdated. Under Last Resort Housing, the agency has broad latitude to ensure the displaced resident occupies suitable replacement housing. This includes not only making payments beyond the capped amounts but also rehabilitating existing homes, constructing new homes, making a direct loan from the agency to the displaced person, purchasing land so a new home can be constructed, or removing barriers for disabled displaced persons.

MISCELLANEOUS POINTS ON RELOCATION PAYMENTS

Finally, here are a few miscellaneous points regarding relocation assistance and relocation payments:

Relocation payments are not considered income for tax purposes. Relocation payments are not factored in to determine benefits for social security or public housing.

Displaced residents and businesses have up to 18 months from the date the move to file a relocation claim. As such, it is wise to make sure that no “final claims” are made until the displaced person is sure that they have made claims for all eligible expenses.

Illegal aliens are not eligible for relocation assistance or payments under the Uniform Act. The extent an agency determines if a person is an illegal alien varies.

Relocation appeals procedures are different from state to state and agency to agency, but the grievance process usually starts with an appeal to the displacing agency itself. Due to this procedure, appeals of relocation disputes can be time consuming and difficult.

Anyone displaced should take an active role in preparing their claim for expenses. Requests should be made for relocation claim forms and such claims forms should be filled out by the displaced person, if possible. It is also important to notify the agency of the displaced person’s plans to relocate and seek agreement in advance as to what the agency considers suitable documentation of claimed expenses.

CONCLUSIONS

I hope that the material presented today was helpful. Relocation assistance can be a very challenging and difficult process, but the laws and regulations are designed to make sure that people who are forced to move do not suffer disproportionately and are treated in a fair and equitable manner.

Thank you.