

## **Chapter 01**

### **RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION**

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## **I. GENERAL PROVISIONS**

**37.0101 Authority.**

The rules codified in this chapter are promulgated pursuant to authority granted the Governor by 37.2040 ASCA.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 1.01.

### **37.0102 Purpose.**

The purpose of this chapter is to provide guidelines for relocation payments and relocation assistance and to otherwise enable the ASG to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, PL 91-646, 2 Jan 71.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 1.02.

### **37.0103 Definitions.**

As used in this chapter, the term :

- (1) "agency" means any department, agency, or instrumentality of the territory;
- (2) "business" means any lawful activity, excepting a farm operation, conducted primarily:
  - (A) for the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
  - (B) for the sale of services to the public; or
  - (C) by a nonprofit organization; or
  - (D) solely for the purposes of 37.0105(a) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted;
- (3) "displaced person" means any person who, on or after the effective date of the rules codified in this chapter, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by an agency; and solely for the purposes of 37.0105 (a), (b) and 37.0108 as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project;
- (4) "farm operation" means any activity conducted solely or primarily for the production of 1 or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;
- (5) "mortgage" means the same as commonly defined in American jurisprudence except that it is an encumbrance against personal property and not real property when a dwelling has been separated from communal land per 37.1502 ASCA;
- (6) "nonprofit organization" means a corporation, partnership, individual, or other public or private entity, engaged in a business, professional, or instructional activity on a non-profit basis,

necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession, or institutional activity on the premises;

(7) "person" means any individual, partnership, corporation, or association.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 1.03.

## **II. RELOCATION ASSISTANCE**

### **37.0105 Moving and dislocation expenses.**

(a) If an agency acquires real property for public use, there shall be fair and reasonable payments to displaced persons and business as required by this chapter, for:

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expense that would have been required to relocate such property, as determined by the Governor; and

(3) actual reasonable expenses in searching for replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, not to exceed \$300; and a dislocation allowance of \$200;

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than \$2,500, nor more than \$ 10,000. In the case of a business no payment shall be made under this subsection unless the agency is satisfied that the business

(1) cannot be relocated without a substantial loss of its existing patronage, and

(2) is not part of a commercial enterprise having at least 1 other establishment not being acquired by the agency, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means  $\frac{1}{2}$  of any net earnings of the business or farm operation, before federal, state, and local income taxes, during the 2 taxable years immediately proceeding the taxable year in which the business or farm operation moves from the real property acquired for such project, or during such other period as the agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.01.

### **37.0106 Replacement housing for homeowners.**

(a) In addition to payments otherwise authorized by this chapter, the Governor shall make an additional payment not in excess of \$05,000.00 to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired, equals the actual cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market, or the amount determined by the territory as necessary to purchase a comparable dwelling, whichever is less;

(2) The amount, if any, which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the dwelling acquired was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located;

(3) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of a 1-year period beginning on the date on which he receives final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.02.

### **37.0107 Replacement housing for tenants and certain others.**

In addition to amounts otherwise authorized by this chapter, the Governor shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under 37.0106, which dwelling was actually and lawfully occupied by the displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. The payment shall be either:

(1) the amount necessary to enable the displaced person to lease or rent for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate the person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed \$4,000; the payment shall be determined by subtracting from the amount the tenant actually pays for replacement dwelling or, if

lesser, the amount determined by the territory necessary to rent a comparable dwelling for the next 4 years, the following amount:

(A) Forty-eight times the average monthly rental paid by the relocated individual or family during the last 3 months;

(B) If such average monthly rental is not reasonably equal to market rentals for similar dwellings, the economic rent as established by the territory shall be used;

(C) The "rent being paid" shall include any rent supplements supplied by others except when, by law, such supplement is to be discontinued upon vacation of the property; or

(2) the amount necessary to enable the person to make a down payment, including incidental expenses described in 37.0106 (a)

(3) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed \$4,000, except that if the amount exceeds \$2,000, the person must equally match any amount in excess of \$2,000, in making the down payment.

**History:** Relocation Asst. and Prop. Acq. Regs. eff prior to 1975, Reg. 2.03.

### **37.0108 Relocation assistance advisory programs.**

(a) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person, the Governor shall provide a relocation assistance advisory program for displaced persons which shall offer the services prescribed in subsection

(b) of this section. If the government determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer the person relocation advisory services under the program. (b) The relocation assistance program will take into consideration:

(1) the needs of displaced persons, business concerns, and nonprofit organizations for relocation assistance;

(2) type of assistance necessary to assist owners of displaced businesses and farm operations in obtaining and becoming established in suitable business locations or replacement farms;

(3) the need to supply information concerning programs of the federal government offering assistance to displaced persons and business concerns;

(4) the need to assist in minimizing hardships to displaced persons in adjusting to relocation; and

(5) the need to secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.04.

### **37.0109 Assured availability of replacement housing.**

Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person on or after the effective date of the rules codified in this chapter, the Governor shall assure that, within a reasonable period of time prior to displacement, there will be available in areas not generally less desirable in regard to public utilities, and public and commercial facilities, and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings equal in number to the number of displaced persons who require dwellings and reasonably accessible to their places of employment.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.05.

### **37.0110 Payment procedure-Appeals.**

The Governor will insure that:

(1) the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) a displaced person who makes proper application for a payment authorized by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the Governor,

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.06

### **37.0111 Contracts for services.**

In order to prevent unnecessary expenses and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the Governor may enter into contracts with any individual, firm, association, or corporation for services in connection with those programs, or through any federal agency or any department or instrumentality of the territory.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.07

### **37.0112 Funding.**

Funds appropriated or otherwise available to any agency for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this chapter as applied to that program or project.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.08



### **37.0113 Payments not income or resources**

No payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any territorial law or for the purposes for the territory's personal income tax law, corporation tax law, or other tax laws. These payments shall not be considered as income or resources of any recipient of public assistance and the payment shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

**History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.09**

## **III. Land Acquisition**

### **37.0115 Purpose.**

This article prescribes the procedures for the acquisition of real property.

**History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.01**

### **36.0116 Practices generally.**

(a) In acquiring real property the government will to the greatest extent practicable;

(1) make every reasonable effort to acquire real property expeditiously through negotiation;

(2) before the initiation of negotiations have the real property appraised and give the owner or his representative an opportunity to accompany the appraiser during the inspection of the property;

(3) before the initiation of negotiations, establish an amount which is believed to be just compensation for the real property, and make a prompt written offer to acquire the property for that amount. In no event will the just compensation offered be less than the government's approved appraisal of the fair market value of such property. At the time the government makes an offer to purchase real property, the written statement of the basis for the amount estimated to be just compensation. In determining just compensation for the property, any increase or decrease of the fair market value caused by the public improvement for which the property is acquired prior to the date of valuation will be disregarded, other than that caused by physical deterioration;

(4) before requiring any owner to surrender possession of any real property:

(A) pay the agreed purchase price; or

(B) deposit with the court, for the benefit of the owner, an amount not less than the government's approved appraisal of the fair market value of the property; or

(C) pay the amount of the award of compensation in a condemnation proceedings for the property:

(4) if interest in the real property is to be acquired by exercise of power of eminent

domain, institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of this real property; and

(5) if the acquisition of only part of the property will leave its owner with an uneconomic remnant, offer to acquire that remnant.

(f) In acquiring real property, to the greatest extent practicable, the government will not;

(1) schedule a construction or development of the public improvement that will require

any person lawfully occupying real property to move from a dwelling, or to move his business or farm operation, without giving that person at least 90 days' written notice of the date he is required to move;

(2) if acquired property is rented to the former owner or tenant for a short term of subject

to termination by the government on short notice, charge a rent that is more than the fair rental value of the property to a short-term occupant;

(3) advance the time of condemnation;

(4) defer negotiations, condemnation, or deposit of funds in court for use of the owner; or

(5) owner to agree to a price for his property.

(f) Should a court determine condemnation was unauthorized or the property owner

obtain a judgment in the nature of inverse condemnation, or should the government abandon condemnation, then the owner shall be reimbursed for reasonable expenses of litigation, in line with Section 304, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(g) Nothing in this chapter should be construed to preclude a donation by an owner after

his property has been appraised and the full amount of the estimated just compensation has been tendered to him.

**History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.03**

### **37.0117 Compensation by benefit from project.**

(a) Notwithstanding the provisions of 37.0116, where it is shown by appropriate

means that a project will result in a direct benefit to a person, family, or village having custody of lands required by the government for such project, and where such benefit will at a minimum equal the value of lands to be acquired and/or damaged, such benefit to the owner will constitute just compensation; provided, that in all cases the government shall compensate owners for immediate losses of improvements. This determination or equal value in benefits for the land use must be agreed to by the property owners in writing in the presence of the secretary for Samoan affairs.

(b) When the acquisition of land under this article is made for projects or purposes which are not a direct benefit to the village or family having custody of such land, the government will provide compensation in accordance with 37.0116.

**History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.04**

### **37.0118 Improvements acquisition.**

In acquiring any interest in real property the government will acquire at least an equal interest in all buildings, structures, or other improvements located on that real property which will be removed or which will be adversely affected by the completed project.

**History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.04.1**

1. Ch-3 of the Relocation Assistance and Real Property Acquisition Regulations contained two regulations numbered 3.04.

### **37.0119 Tenant improvement payments.**

(a) In case of the building, structure, or other improvement owned by the tenant on real property acquired for a project to which this article applies, the government will, subject to subsection (b) of this section, pay the tenant the larger of:

(1) the fair market value of the improvement, as established by the appraisal board, assuming its removal from the property; or

(2) the enhancement to the fair market value of the real property.

(b) Payments will also be made for improvements that are damaged as well as those which must be removed.

(c) A payment may not be made to a tenant under subsection (a) of this section unless:

(1) the tenant, in consideration for the payment, assigns, transfers, and releases to the government all his right, title and interest in the improvement;

(2) the owner of the land involved disclaims any interest in the improvements; and

(3) the payment is not duplicated by any payment otherwise authorized by law or rule.

**History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975. Reg. 3.05.**

**37.0120 Expenses of title transfer.**

As soon as possible after real property has been acquired, the government shall reimburse the owner for:

(1) recording fees, taxes, and similar expenses incidental to conveying the real property to the agency;

(2) penalty cost for prepayment of any preexisting recorded mortgage entered into in good faith and encumbering the real property.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.06.

**37.0121 Procedures issuance.**

All departments of the ASG will issue procedures to assure compliance with this chapter.

**History:** Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.07.