Actual Direct Loss and Substitute Personal Property Payments – What’s the Difference?

By Lisa Barnes, VP, ORC Training, LLC

Imagine that you are sitting in a relocation course and the instructor asks who can explain the difference between the actual direct loss of tangible personal property payment and substitute personal property payment. Would you be the first person to raise a hand? Or would you think, you may have heard about these payments, but didn’t really understand how they are supposed to work? Maybe they always sounded too complicated to explain to the displaced business.

The idea behind both of these payments is to allow a business owner to claim a moving payment for an item of personal property without actually moving it to a replacement location. A business, farm or nonprofit may use either of these payments when it elects to not move personal property. (Note that this article will only refer to businesses for ease of reading.) There may be various reasons for not moving personal property - the owner is going out of business, the item doesn’t work, the business no longer needs it, or the item is outdated and the owner wants to modernize the operation.

These payments can provide an advantage to a business owner, as well as the displacing agency. The business is permitted to claim a payment for items it does not want to move, and the Uniform Act regulations are structured so the payments cannot exceed what the agency would have spent to move the personal property. In some situations, the amount may even be less than what the moving expense would have been.

So how does the business owner decide whether to use one of these alternate payments, and which one may be more appropriate? The relocation agent should discuss these options during the personal interview to assess whether the owner should consider them, and continue to provide information as part of advisory services.

The Acquirer is published by O. R. Colan Associates, a firm that specializes in right of way land acquisition, appraisal and relocation assistance for public projects implemented under state and federal guidelines. ORC Training, LLC and ORC Utility and Infrastructure Land Services, LLC are affiliate companies formed to serve our nation’s real estate infrastructure training needs and energy infrastructure needs, respectively. To learn more, visit www.ORColan.com or call us at 888-204-7667.
Here are some things that differentiate the payments, and issues to consider.

**Will the business replace the item not relocated with a similar item at the replacement location?**

This is the key difference between the two payments. The *direct loss payment* is intended for items of personal property the business does not want to move and will *not replace* at the new site. It is for those items no longer needed or wanted by the business. An owner can use this payment for almost any type of personal property: unwanted machinery and equipment (including equipment that is in storage or not being used), furniture, inventory that the business simply does not want to move, or other damaged inventory. An owner planning to discontinue the business could also take a direct loss payment for all the personal property at the displacement site.

On the other hand, the *substitute personal property payment* is intended for items the owner will not move, but will *promptly replace* with a similar item at the replacement site. The substitute property payment can offset the cost of the newer item, which provides a real benefit to the business. This payment can also be used for all types of personal property the owner does not want to move. Unlike the direct loss payment, the item must be used as part of the business operation, so the owner could not elect this payment for equipment that is in storage or not being used.

**Estimating move costs for a direct loss payment**

While both of these payments are limited to what the moving expense would have been for the item, the regulations have different provisions for estimating those expenses. In the case of a direct loss payment, the Uniform Act regulations refer to “the estimated cost of moving the item as is,” which requires some important distinctions about what can be included in the move cost estimate.

First, for a piece of equipment that is in storage, or not being used by the business, the estimate cannot include the cost of reconnecting it. This is a logical exclusion since the item is not currently connected to any utilities, and the estimate should reflect the “as is” condition and installation at the displacement site. Second, if the equipment is being used in the business operation, the estimated move cost should reflect the cost to install the equipment as it currently exists. It cannot include the cost of upgrades or improvements to the equipment that are required by codes that apply at a replacement location. Again, the “as is” condition cannot consider code modifications that are not in effect at the displacement site.

Let’s say the owner has a drill press that is in storage. The estimated cost to move would only include the cost to haul it to the replacement site. If the drill press is in use, the estimate would include disconnect, hauling and reconnect expenses. However, if new codes required a safety cut-off switch installed at the replacement site, this expense would not be included.

**Estimating move costs for a substitute personal property payment**

The substitute personal property payment is used for items that are currently used as part of the business operation, so the move cost would include reinstallation at the replacement site. The difference between reinstallation costs for a substitute personal property payment and the direct loss payment is that code modifications that would have been required to the substituted item can be included in the move estimate.
As an example, if the owner was substituting a drill press currently in use, the estimated move costs would include the cost to disconnect, haul it, reconnect, and install the code-required safety cut-off switch.

This article is only intended to provide an overview of the differences between the direct loss and substitute personal property payments. It is certainly not a full explanation of either payment or how to calculate them. For the full Uniform Act regulations see 49 CFR 24.301(g)(14), (g)(15), (g)(16) and Appendix A, 24.301(g)(14).

ORC Training, through its licensing agreement with IRWA, is currently developing an online training course that will provide detailed information about these payments, along with the cost of the sale, low value/high bulk payments and related nonresidential expenses. Learn more about computing these payments with a format that keeps learners engaged with interactive exercises, videos and case studies. For more information, see our ad in this newsletter, or visit irwauniversity.org.

**ORC Training Designs First IRWA Online Relocation Course**

*By Lisa Barnes, VP, ORC Training, LLC*

IRWA released its first online relocation course to its members on October 19, 2015. ORC Training, LLC (ORCT) designed the online version of Course 503 – *Mobile Home Relocation* under a licensing agreement with IRWA. This training addresses the various challenges associated with mobile home relocation – planning for the move of a mobile home park, providing advisory services, establishing eligibility and payments in different ownership scenarios, determining moving and related expenses, and computing replacement housing payments. The course is available on IRWA University.
As an online learner, you will remain engaged through audio narration and video clips that expand on the course topics. You will also have the opportunity to immediately apply concepts through exercises and case study scenarios. Each lesson ends with a progress quiz to gauge your learning, and there is an exam at the end of the course.

There are some additional benefits if you are working toward an IRWA certification – this course is a requirement for the R/W-URAC program and may be applied as an elective for the R/W-RAC program. It may also be used for recertification credit for these programs or the SR/VA program.

The next online course ORC Training will deliver to IRWA is Specialized Nonresidential Payments. This course focuses on alternative payments available to a business with a goal of taking some of the complexity out of these payments. It stresses the importance of the personal interview to assess whether a business owner should consider the use of these specialized payments. Course topics include:

- Actual direct loss of tangible personal property
- Purchase of substitute personal property
- Cost incurred in selling an item
- Low value/high bulk
- Related nonresidential expenses

These courses are part of a 5 year agreement with IRWA to license courses developed by ORC Training in an online format. This agreement links the expertise of ORC Training with IRWA’s educational and training opportunities to benefit the organization’s members.

Mobile Home Relocation now available at irwauniversity.org!

LA 616 (Arkansas Road)

By Joe Earls, Project Manager

ORC recently completed work for the Louisiana Department of Transportation and Development (LADOTD) on State Road 616 (Arkansas Road) in Quachita Parish. The project is a nine mile section of road in an urban area. The purpose is to expand the current two lane road to five lanes consisting of 2 eastbound lanes, 2 westbound lanes and a center turn lane. The project also includes the construction of four double lane roundabouts.

The right of way acquisition portion of the project was awarded to ORC in July of 2012 and the final parcel count consisted of 278 acquisitions and 134 relocations. ORC’s role on the job included title work, appraisals, acquisition and relocation services, asbestos surveys and improvement controls.

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There were a number of complicated industrial and commercial acquisitions on the project as well as a very sensitive negotiation with a large church. The plans called for the church to lose their entire front parking lot and would result in heavy damage to the property. ORC worked with the LADOTD, the Federal Highway Administration and the church to develop a less intrusive and costly design. This collaboration resulted in a new design that better serves the church and a settlement on the parcel. ORC was able to obtain a 90% settlement rate on the project.

A cemetery was located within the original layout of the plans for the road. Ground penetrating radar was used to determine where the graves/bodies were situated as some were unmarked. This cemetery goes back to the Civil war era. ORC met with LADOTD and a plan was created to re-design around every grave and purchase more from the other side of the highway when needed to avoid relocating any of the graves.

On the relocation side, the project involved a number of mobile home residential displacements as well as several situations where handicap modifications were required at the replacement dwelling.

Even with the size of the project, the number of relocations as well as a series of redesigns, ORC was able to meet the LADOTD RW project schedule to let the project on time.

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Announcing New Hires – Welcome to ORC

Marla Britton, SR/WA
Senior Project Manager

O. R. Colan Group, LLC (ORC) is pleased to welcome Marla Britton as Senior Project Manager for our operations in Florida. Ms. Britton has been involved in real estate valuation and RW consulting for 25 years, working primarily in Wisconsin, Minnesota, and North Dakota. She is a 20-year member of the International Right of Way Association (IRWA), and she earned IRWA’s prestigious SR/WA designation in 2002.

Ms. Britton is a graduate from the University of Illinois with a BS in Agriculture and, later, the University of Wisconsin with an MS in Education – Professional Development. She is a certified general appraiser in six states, including Florida, and a long-time member of the Appraisal Institute, the governing professional association for the appraisal field. As an appraiser, she has high levels of experience with many complex property types, including office buildings, shopping centers, apartment complexes, marinas, hotels, restaurants, business/industrial parks, air rights, avigation easements, utility easements, conservation easements, special purpose properties, developmental
land, self-storage facilities, agricultural lands, grain and dairy operations, and light and heavy industrial facilities. She has also been an active member in the appraisal community, serving as the Chair of the Wisconsin Real Estate Appraisers Board and an instructor/mentor to the next generation of appraisers.

“The Florida market is very important to us, and we are committed to expanding our presence there,” explains Chief Operating Officer Stephen J. Toth. “We have long known that, to accomplish this, we need a strong professional and established practice-builder to lead the effort. We are extremely confident in Marla in this respect, and we are elated that she has agreed to join our team.”

Marla views her role with ORC as an opportunity to apply her technical skills and her passion for business development to meet the objectives of a nationally recognized leader in the real estate industry. “This is an exciting opportunity for me – really the culmination of my life’s work. It is my honor and privilege to be an ambassador for ORC in Florida, and I am excited to combine a move to Florida with a high-level professional challenge. ORC is a legendary firm - really one of the forerunners in the right-of-way industry - and this is my opportunity to play an integral role in the organization’s success.”

Kim Bauman, PHR
Talent Acquisition & HR Generalist

Kim Bauman is coming to ORC from AECOM (formerly URS). Kim graduated from the University of Northern Colorado with a Bachelor of Interdisciplinary Studies in Education and a Master of Curriculum and Instruction from the University of Phoenix. She served as the Talent Acquisition Recruiting Coordinator for URS from 2011 until 2015 when she assumed the role of HR Generalist for a department of more than 400 people in the AECOM nuclear division.

Charlie O’Neill
Technical Expert, ORC Training, LLC

ORC Training is pleased to announce that Charles O’Neill has joined our staff of technical experts and instructors. Charlie has over 30 years of realty experience at local, state, and federal government levels; and served for over 25 years with the Federal Highway Administration. He was the Division Realty Officer in West Virginia, Michigan and Tennessee. Since 2012, Charlie was the Team Leader in the Office of Real Estate Services in Washington, DC, where he was the contact for all Division Offices, led the FHWA Realty staff in conducting Realty Program Reviews and Process Reviews, and directed his staff in the development/delivery of Realty webinars and training courses for State DOTs.

Charlie’s experience and expertise will be a welcome addition to our development and delivery of training, project management oversight services, research studies and right of way manual revisions/updates.
Recent Wins:

**ORC U&I Wins Contract with Tennessee Valley Authority**

*COLUMBUS, OH* – ORC Utilities & Infrastructure (ORC U&I) has been awarded a 5 year agreement with the Tennessee Valley Authority (TVA) for the provision of Preliminary Title Notes, Abstracts, and Buying services. The five-year contract will be effective from October 2015 through September 2020, with a TVA option for 2021 and 2022. ORC Utility and Infrastructure Land Services, LLC is an affiliate of O. R. Colan Associates (ORC), headquartered in Charlotte, NC.

**Wisconsin Department of Transportation (WisDOT) Real Estate Program Manual**

O. R. Colan Associates has been selected to revise and update the Wisconsin Department of Transportation (WisDOT) Real Estate Program Manual. The staff of ORC Training, with extensive experience in technical writing for federal regulations, agency guidelines, and State DOT procedures will focus on the areas of project development, appraisal, acquisition and property management. Our team will review these procedures for any necessary statutory or regulatory changes, and also analyze and evaluate opportunities for streamlining and efficiencies in existing processes and procedures. This effort will involve close coordination with WisDOT staff to produce a right of way manual that meets the needs of its users.

ORC has previously worked with the State DOTs in Virginia, Montana, Maine, Utah and New Jersey to produce comprehensive and professional right of way manuals. Each State DOT should certify to FHWA by January 1, 2016 whether their right of way manual complies with all applicable real estate laws and regulations, and is up to date, pursuant to 23 CFR 710.201(c). In addition, a notice of proposed rulemaking was issued for 23 CFR 710 in November 2014, and a final rule is expected to be published soon. A notice of proposed rulemaking is anticipated for 49 CFR 24 soon, with a final rule published some months after the 60-day comment period. Each State DOT will have an additional two (2) years to update its right of way manual after a final rule is achieved on 23 CFR and 49 CFR respectively.

**New York State Disaster Recovery**

ORC signed a Contract in August 2015 with New York State’s Governor’s Office of Storm Recovery (GOSR) to provide URA tenant relocation assistance services for two residential Staten Island, and Long Island HUD CDBG disaster programs. The GOSR/ORC contract is for one year with a one-year renewal, and provides funds to eligible property owner applicants whose residential properties have been damaged by Superstorm Sandy.

Under the Buyout/Acquisition Program, ORC permanently relocates tenants who are displaced when the State purchases a property owner/applicant’s home that has been substantially damaged by the Storm. In the Housing Recovery Program, tenants are temporarily relocated when construction to repair/rehab the property is necessary. The scope of relocation is difficult to predict because of the programs voluntary nature, but we estimate at least 80 permanent and 20-50 temporary relocations during the contract term.

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ORC has provided URA relocation services for the GOSR programs since October, 2013 – the one-year anniversary of Superstorm Sandy - as a Subcontractor under various Prime consultants. We are pleased that the client has asked us to continue URA relocation work in order to assist tenant residents that have been so impacted by this disaster.

On the Road with Bob –
Tavuk Sote in Cleveland, Ohio

By Bob Merryman, Senior Vice President, O. R. Colan Associates/ORC Training, LLC

Who would guess that Cleveland, Ohio has an outstanding Turkish restaurant? They do, but let me step back a bit and fill you in on why I was in Cleveland.

Companies in all industries have found it difficult to hire “good” employees. Even with high unemployment, people with the type of skills we need seem difficult to find. For many years, the private sector of the real estate acquisition business has hired experienced personnel from public agencies. However, many of those agencies no longer have large staffs, and are downsizing.

Many years ago, ORC determined that a productive way to develop skilled right way personnel was to hire employees with good people skills, and then train them for the right of way skills they would need. This approach seems to have worked well. Today, ORC has a management team that is largely composed of employees that began their careers at ORC, and were not trained by a public agency.

Recently in Cleveland, ORC conducted its own “Introduction to Real Estate for Public Agencies” for our new agents. This is a five day classroom presentation of basic right of way skills and information on how the infrastructure system functions. The course is deliberately very broad since we do not know what exact function each of the employees will eventually fill. We begin with the history of right of way, the Fifth Amendment to the U.S. Constitution, and how these impact our jobs. We then move on to discuss Uniform Act requirements for how an agency determines value for a parcel of right of way; negotiations to buy the parcel of right of way; and what happens to people and businesses that are displaced. We also address
environmental requirements, and how infrastructure is paid for through taxes and fees. In short, we want our new folks to understand that their job is an important element in a bigger story.

After class, we typically find a local restaurant to dine. One night we had everyone’s favorite, pizza. But another night, we elected to try a local Turkish restaurant that was highly recommended by an ORC employee. Anatolia Café Turkish restaurant is located in a “trendy” area of Cleveland, and was surprisingly busy for weekday evening. We assumed it was probably very good given the crowd.

The setting seemed right to try something a little off-beat. The menu offered an item that intrigued me called lebni. It is a thick homemade yogurt dip made with garlic, dill and walnuts. Our waiter gave it a thumbs-up, so we ordered it. It was served with warm pita bread wedges, and was outstanding. We also ordered some stuffed grape leaves which were also very good, and had a slightly minty taste.

I decided to be more conventional with my entrée and ordered a chicken mixed sauté called Tavuk Sote. Another entrée ordered was a vegetarian mixed grill platter. The portions were large and all of the food was very good. The desserts also looked great, but after the hearty sized entrees, we had no room left for desserts. But as always, there is more to dining out than just the food.

We talked with our waiter about the menu. He spoke perfect English but with a definite accent. He volunteered that he was an Iranian studying here in the United States. He discussed how he arranged to come to school in the United States, and worked at the restaurant to help pay his bills. I asked him if he liked being in the United States and he told us that he intended to make it his new country. He was very proud when he told us that he hoped he would be the founding patriarch of a new family of Americans. A great ending for the evening.