

Are You Seeing Residential Sales Prices Exceed Asking Prices?

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If you own residential real estate, 2021 is a good time to sell. The real estate market across the United States has recently been a “seller’s market,” one that is very favorable to sellers. Usually this means the seller doesn’t need to make concessions to the buyer to facilitate a sale, such as agreeing to pay some or all of the buyer’s closing costs. However, many market areas are experiencing such a high demand that buyers are essentially bidding up the asking price of the house. Because the demand for residential property is high and the housing supply hasn’t kept pace, it isn’t uncommon for a buyer to make an initial offer that is higher than the asking price so the seller will accept.

Scenario

Eric Hayes has listed his house with a real estate broker with an asking price of \$250,000. Our experience tells us that a buyer will typically offer less than the asking price and the parties will then negotiate a price. Under the current market conditions, however, Mr. Hayes soon gets an offer for \$258,000. Later that same day, his real estate broker brings him a written offer from a second buyer for \$262,500.

Let’s look at how this market trend may impact the relocation of 90-day owner-occupants for a displacing Agency required to implement the Uniform Act (UA) regulations.

Alex and Margo Palmer are being displaced by a State DOT project and have been offered \$235,000 for their property. As 90-day owner-occupants, they are eligible for a price differential payment, which is calculated as the difference between the cost of a replacement dwelling and the acquisition cost of the displacement dwelling.



The DOT determines that Mr. Hayes’ house, listed for \$250,000, is the most comparable and computes a maximum price differential payment of \$15,000 (\$250,000 minus \$235,000). After seeing the house, the Palmers make an offer at the asking price of \$250,000. Mr. Hayes has already received offers for \$258,000 and \$262,500 and he doesn’t accept the Palmer’s offer at asking price.

The Palmers come back to the DOT and explain that they were unable to buy the replacement dwelling for a price of \$250,000 because other buyers offered to pay more. They think the DOT should have computed a price differential payment based on actual market conditions, which indicate that single-family dwellings in the area are selling for an average of 5% above list price.

Question: Can the DOT adjust the asking price of comparable replacement dwellings when computing the price differential payment? The short answer to this question is no, based on the current UA regulations at 49 CFR Part 24.

However, some historical background is useful when we consider this question.

Relevant Regulatory Information

Amendments to the UA in 1987 resulted in a governmentwide single rule for implementing the UA, effective on March 2, 1989. This regulation contained a requirement that displacing Agencies make an adjustment to the asking price of any dwelling to the extent justified by local market data. The preamble section of the final rule stated that adjustments be made “to the extent the market demonstrates that expected sales prices will be less than the asking price.” For example, an Agency’s analysis of market data may have indicated that properties were selling for an average of 97% of asking price. If the asking price of the selected comparable dwelling was \$250,000, the Agency adjusted the price to \$242,500 and used that price to compute the price differential payment. Using the Palmers as an example, the adjustment would have reduced the price differential eligibility to \$7,500.

Additional guidance in Appendix A of the rule addressed the primary issue with adjusting the asking price of comparables: what if the displaced person is unable to negotiate a lower price with the seller? This guidance stated, “If a displaced person elects to buy one of the selected comparables, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.” Although Agencies were given the flexibility to increase the price differential payment for one of the selected comparables, displaced owner-occupants often purchased a different replacement dwelling. This asking price adjustment requirement was difficult and burdensome for Agencies to implement and created an expectation that owner-occupants would have the necessary skills to negotiate for a price lower than asking price.

When the Uniform Act regulations were revised, effective February 3, 2005, the requirement to adjust the asking price of comparables was



removed. The preamble to the revised regulation addressed the removal of the requirement by noting that it was “burdensome for displacing Agencies, as well as for displaced homeowners by, in effect, forcing the homeowner to negotiate for a price lower than the asking price when purchasing a replacement dwelling.” The preamble also stated that since the requirement had been deleted from the rule, Agencies operating under the Uniform Act no longer had authority to make adjustments. Leaving no room for confusion, the preamble stated, “Displacing Agencies must now use the asking price of a comparable replacement dwelling in computing the replacement housing payment.”

It is important to note that while the Appendix section is a part of the regulation, the preamble section to a final rule is not considered regulatory. Still, the information in this section does provide useful information about how the Federal Highway Administration (FHWA) considers the implementation of the regulations.

Possible Solutions

So, where does all this leave displacing Agencies and displaced homeowners in a market that requires buyers to pay more than the asking price? Using our scenario outlined above, how should the Agency respond to the Palmers’ claim that it should have known they would not be able

to purchase the selected comparable at the asking price? The Uniform Act Frequently Asked Questions (FAQs) available at [Uniform Act Frequently Asked Questions](#), addresses a question related to this topic.

FAQ #7. §24.2(a)(6). In localities where houses sell for a premium over the list price, can the relocation agent adjust the relocation housing payment to account for this premium?

The regulation does not call for adjusting the asking price, either upward or downward. The regulation does say the comparable must be available. If a comparable is not available for the amount calculated, a new calculation may be in order.



This answer emphasizes the requirement that the comparable selected and offered by the Agency must be available to the displaced person (§24.2(a)(6)(iv)). If the Agency computed a payment based on the asking price and the displaced person cannot purchase it for that amount, then the Agency should calculate a payment that will make it available and within the financial means of the displaced owner-occupant.

Although there is no written guidance for calculating a new payment, the following is a suggested process for determining when and how to recompute the payment.

1. The Agency should be well-informed about market trends in the project area and know if houses or dwellings are selling for more than the asking price and identify the average percentage increase over the asking price.
2. As part of its advisory services responsibilities, when the Agency offers the selected comparable to the displaced owner-occupant, it should explain:
 - The maximum price differential payment is based on the asking price of the comparable dwelling.
 - The Agency has analyzed current market conditions and the data indicates that houses are on average selling for x% above the asking price.
 - If the displaced owner-occupant is unable to purchase the replacement dwelling for the asking price, they must provide documentation of the negotiations with the seller to demonstrate that the comparable replacement dwelling is not available at the asking price.
 - Documentation of negotiations may include copies of written offers and counteroffers, written notes prepared contemporaneously by the displaced owner-occupant summarizing the negotiations, written statements provided by a real estate broker or salesperson involved in the negotiations, written statements from the seller confirming their counteroffer(s) for amount(s) more than the asking price.

- If the Agency determines the documentation provided supports a higher price for the comparable, it will recalculate the price differential payment to an amount that will make the comparable replacement dwelling available and within the financial means of the displaced owner-occupant.
Note: The original property the Agency used to compute the payment is likely no longer available since the owner would have accepted one of the competing offers. The Agency will need to confirm that a comparable replacement dwelling is still available for the asking price of the original property.
- The sales price used to recalculate the amount will not exceed the asking price plus the average percentage increase derived from market data.
Note: Using the example of the Palmers, the maximum sales price the Agency would use to recalculate a price differential payment would be \$262,500 (the asking price of \$250,000 plus a 5% increase of \$12,500).

Owner Purchases a Different Replacement Dwelling

As noted earlier, the displaced owner-occupant often chooses to purchase a replacement dwelling that is not one of the Agency's selected comparables. Keep in mind that the Agency uses a selected comparable replacement dwelling to establish the maximum eligibility for a price differential payment. There is no requirement that the displaced person purchase that specific dwelling to qualify for the payment, but they must purchase a decent, safe, and sanitary (DSS) replacement dwelling that cost as much or more than the Agency's selected comparable. It seems reasonable to apply the same process outlined above for this situation. Using the example of the Palmers again, let's say they find a DSS replacement dwelling with an asking price of \$252,000. Although this price is higher than the selected comparable, the Agency could limit the maximum sales price to \$262,500 as it would for the selected comparable. The Agency should advise the Palmers of this limitation.

Conclusion

These current market trends reinforce the need for an Agency to stay informed and knowledgeable about the real estate market in a project area and recognize how conditions may affect the relocation of displaced persons. Although an adjustment to the asking price of comparables has not been required since 2005, the Agency must still ensure the comparables offered to residential displaced persons are available and within their financial means. If an Agency adopts a process or policy to address a market where sale prices exceed asking prices, it must use a fair and consistent approach, i.e., adopting a uniform process.

It is also important to note that there is no written guidance on this issue from the FHWA as the Lead Agency. The possible solutions outlined in this article are suggestions based on the need to provide comparable replacement dwellings that are available to the displaced person. The displacing Agency should discuss this issue with its federal funding agency and coordinate an acceptable approach.

