

# INVERSE CONDEMNATION AND THE UNIFORM RELOCATION ACT

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This article will discuss how the inverse condemnation concept interfaces with Uniform Act (URA) requirements.

## Legislative and Regulatory Background

The URA provides added protections for the property owner as well as responsibilities for the acquiring agency in the event of an inverse condemnation situation. Section 4651(8) of 49 U.S.C. of the URA (Title III, Section 301(8) of P.L 91-646) addresses this situation, and specifies that "...no federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property." The specific regulation relevant to these protections and responsibilities is found at 49 CFR 24.107.

### §24.107 Certain litigation expenses

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- (a) *The final judgment of the court is that the Agency cannot acquire the real property by condemnation;*
- (b) *The condemnation proceeding is abandoned by the Agency other than under an agreed upon settlement; or*
- (c) *The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.*

The relevant element of 49 CFR 24.107 is subsection (c) pertaining to the concept and use of an inverse condemnation proceeding by a property owner.

When an agency conducts its right of way program under the Uniform Act requirements, a basic premise is to make every reasonable effort to acquire the necessary property amicably through fair negotiations with the property owner. Because of these negotiations and other URA protections, inverse suits are seldom seen in the context of Federal or federally-assisted real property acquisitions.

This doesn't mean that property owners never bring inverse condemnation claims against public agencies using federal funds. Let's look at an example of how this could happen.

### An Example of Inverse Condemnation

Sometimes, impacts to real property can occur after construction due to unforeseen circumstances. These situations might involve an adverse impact to a remainder of an acquired property or the project may affect other property where an earlier acquisition had not occurred. As an example, let's

say a State DOT adds lanes to an existing facility. Topographical changes as the result of a project causes water runoff to begin ponding onto private land. Although this was an unanticipated impact by the DOT, it may cause a change in highest and best use (HBU) of the property since it may no longer be suitable for development or growing crops. In such a case, the owner would typically bring this to the attention of the acquiring agency; that is, something has been taken from me without compensating me for it. The owner could then expect the DOT to either correct the problem or, failing that, acquire the necessary interest in the property being impacted.

If the agency does not correct the water ponding problem or resolve it by acquiring a real property interest (like a ponding easement) in the impacted land area to mitigate the damage being caused, the property owner can seek relief through filing an inverse condemnation suit. The owner must then demonstrate to the court that a property interest has been taken for which he has not been compensated. (Remember that different standards apply in the fifty states.)

If the owner prevails with either a judgment in his favor or the agency agrees to a settlement of the proceeding, the owner is entitled to the reimbursement of certain expenses, which must be reasonable and actually incurred. The likely reasonable expenses the owner would incur in our example would be fees for an engineer to determine the cause of the runoff and ponding, and an appraiser to provide an opinion about the value of his property as of the current date and condition. The owner would also need an attorney to represent him in the inverse condemnation proceeding. ■ ■ ■



*Example: An additional lane being added to an existing roadway might result in runoff onto a nearby field. This runoff might alter the property's highest and best use, and if the agency does not correct the issue, the owner could seek relief through inverse condemnation.*