

RIGHT OF WAY

A Guide For
Property Owners and
Tenants



Division of Highways

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

All R/W markers shall be Type I unless others

Steps to your new road...

- 1 Need Established
- 2 Traffic Studies
- 3 Alternate Route Studied
- 4 Design Studies
- 5 Conferences and Public Hearings
- 6 Location Approved
- 7 Detailed Plans Prepared
- 8 Land Title Data Secured
- 9 Affected Property Appraised
- 10 Negotiations and Options Secured
- 11 Relocation Assistance Provided
- 12 Payment Made and Titles Transferred
- 13 Condemnation, If Necessary
- 14 Road Contractor Submit Bids
- 15 Construction of Road
- 16 Road Open to Traffic

WHY MUST MY PROPERTY BE TAKEN?

Many factors are critically analyzed in locating and designing a modern highway. The element of need is the first consideration. Necessity is established by a thorough study of existing roads and both present and estimated future traffic volumes. Traffic studies are basic in the design of the pavement and roadway and determining whether two, four, six or more traffic lanes are required.

The specific location of the highway is chosen only after a detailed study of each alternate route. Before a final location is chosen, consideration is given to the following factors:

- (1) The probable effect on the people in the area
- (2) Environmental impact
- (3) Construction costs
- (4) Property costs
- (5) Benefits to the highway user.

Your property is one of those within the limits of the proposed right of way of this route. Right of way is the land required to construct, maintain and operate a highway properly.

DOES THE STATE HAVE THE RIGHT TO TAKE MY PROPERTY?

Yes; however, Article 3, Section 9 of the *Constitution of West Virginia* provides that private property shall not be taken or damaged for public use without just compensation.

Thus, constitutional provisions guarantee that necessary public improvements can be built and so located that they will render maximum benefits and also that affected property owners will be fully compensated.

WHAT WILL I BE PAID FOR MY PROPERTY?

If your entire property is required, you will be paid the fair market value of the entire property. West Virginia law defines "market value" as the price a willing buyer would pay a willing seller, neither acting under compulsion or duress, both exercising prudence and intelligent judgment as to its value and familiar with the purpose for which the property is reasonably available.

If only a part of your property is required, you will be paid the fair market value of the part taken, plus damages, if any, to the residuc, less all benefits.

Fair market value will be determined by a competent, professional real estate appraiser after a thorough inspection of your property, a comparison with similar properties in the area that have been sold recently, a determination and consideration of its replacement cost and depreciation and consideration of the income-producing potential. Only men and women of the highest integrity, qualified by education, training and experience, are used as appraisers.

All appraisals are office-reviewed, then rechecked in the field by experienced, qualified reviewing appraisers for accuracy and to make certain that no items of allowable value have been overlooked or omitted.

Since the Division of Highways has adopted a firm price policy, you will be offered the full amount of the approved appraisal. There will be no attempt to buy your property at less than its fair market value. This policy guarantees that you receive the full value of your property and also that all citizens of the state receive full value for monies expended for highway rights of way.

WHO WILL CONTACT ME?

A Right of Way Agent of the Division of Highways will call on you to discuss the purchase of your property. You will find this agent to be competent, well-informed, courteous and, above all, helpful. Actually, the agent's responsibility is of a dual nature, as service must be rendered to the individual property owner as well as to the Division of Highways.

The agent is well-versed in basic highway design and plan reading and, consequently, is able to inform you fully about the effect highway construction will have on your property.

Based on the knowledge and understanding of the appraisal of real estate, the Right of Way Agent is able to explain the offer made by the Division of Highways for your property. A thorough knowledge of the laws and procedures governing the acquisition of private property enables the agent to explain your rights and responsibilities as well as those of the Division of Highways.

The Right of Way Agent's instructions are to help you, the property owner, in every possible proper way.

Preparatory to initiation of negotiations, the appraiser(s) and review appraiser will call to inspect your property. Other representatives of the Division of Highways will call on you to collect information for use in determining the needs of those who will be required to move.

WILL I BE ABLE TO MOVE MY BUILDINGS?

Although most owners prefer that the Division of Highways purchase all structures located within the right of way limits, it is possible to retain possession of your home or other buildings and make arrangements to have them relocated. This will result in a reduction of the amount of the offer by the Division of Highways. Consideration must be given to the size, age and condition of the buildings and availability of suitable sites, in addition to the cost of moving the structure(s) to be retained. The Right of Way Agent assigned to your property will advise you of the procedure and will be able to assist you in making the proper decision.

HOW SOON MUST I MOVE?

Every effort will be made to provide ample time for you to relocate. On or after the initiation of negotiations for the parcel, the relocatee is given a written notice which specifies that he/she will not be required to move before 90 days from the date of the notice. This notice informs the relocatee that he/she will be given a 30-day written notice specifying the date by which he/

she must vacate the property. In the event the property is tenant-occupied, notices are given to both the tenant and the owner. Extension beyond 30 days must be granted in writing.

CAUTION: YOU SHOULD MAKE NO COMMITMENT REGARDING RELOCATION UNTIL YOU HAVE BEEN ADVISED OF ELIGIBILITY REQUIREMENTS OF THE PROGRAM BY A RELOCATION REPRESENTATIVE. FAILURE TO DO THIS MAY RESULT IN THE LOSS OF CERTAIN BENEFITS AND PAYMENTS.

WILL I RECEIVE ANY ASSISTANCE IN FINDING A SUITABLE PLACE TO MOVE?

Yes. A representative of the Relocation Services Section of the District Right of Way Office will call on you after initiation of negotiations to offer appropriate assistance. Should you desire assistance prior to that time, you may call the proper District Right of Way Office (see page 11-12 of this pamphlet) and a relocations representative will consult with you.

Representatives of this section assist in finding suitable replacement housing and business locations for all who must move because of highway construction. Guidance is provided in making claims for moving cost reimbursement and replacement housing payments when applicable.

Listing of available properties for sale and for rent, names and addresses of lending agencies and rental agencies, information of federal, state and local regulations and programs and other information which may

be helpful to you will be offered through the District Right of Way Relocation Services Section.

HOW WILL THE CLOSING BE HANDLED?

Approximately 45 days after you sign an option to sell your property to the Division of Highways, a state warrant will be issued. Thereafter the Division of Highways will be represented by a closing attorney who will meet with you and your attorney, if you are represented by one, at your convenience. The closing procedures are similar to those employed in most real estate transfers.

Releases and receipts of or for outstanding liens and/or encumbrances such as deeds of trust, taxes, judgment or leases must be obtained prior to or at the time of closing.

The Division of Highways will prepare the deed and cause it to be recorded at no cost to you. Should the transfer of your property to the Division require payment by you of any of the following expenses, you may claim reimbursement:

- (1) Other recording fees and similar expenses incidental to the conveyance of such property
- (2) Penalty costs for prepayment of any preexisting recorded mortgage (deed of trust) entered into in good faith encumbering your real property
- (3) The pro rata portion (on a calendar year basis) of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the Division

of Highways or the effective date of possession of such real property by the Division of Highways, whichever is earlier.

In a negotiated settlement, you will not be required to vacate the property until payment has been tendered in accordance with the terms of the option unless you have agreed in writing to do otherwise.

***MUST I ACCEPT THE OFFER OF
THE DIVISION OF HIGHWAYS FOR MY
PROPERTY?***

No. If you believe the offer of the Division of Highways is inadequate, you have the right to refuse the amount offered. However, on most projects, more than 90 percent of the parcels are acquired through negotiations based upon fair market value as determined by appraisers.

***WHAT WILL HAPPEN IF I FIND THIS OFFER
UNACCEPTABLE?***

Both you, the property owner, and the Division of Highways are protected by the *Constitution of West Virginia*, which provides that:

“Private property shall not be taken or damaged for public use, without just compensation....” and that “when required by either of the parties, such compensation shall be ascertained by an impartial jury of twelve freeholders.”

If the Division of Highways must acquire your property in order to construct the proposed highway, West Virginia law provides that the Division can institute condemnation proceedings if the offer is found unacceptable. This procedure involves the following steps:

(1) The Division of Highways files a petition in Circuit Court describing the property and identifying as defendants all persons who have an interest in such property.

(2) Five commissioners, from a list of 13 local freeholders nominated by the court, are selected by the owner and Division of Highways to view the property and hear evidence which either the owner or the Division wishes to submit.

(3) The commissioners are required to file with the court their findings of just compensation for the property taken and damage to the residue, if any, less all benefits.

(4) Within 10 days after the commissioners file their report, either the owner or the Division may file exceptions and demand a trial by jury.

ADVANCEMENT OF COMPENSATION

In the event it is necessary to institute condemnation proceedings to acquire your property, the Division of Highways will deposit with the Clerk of the Circuit Court an amount equal to the Division's approved appraisal.

The property owner can arrange to withdraw such amount for his/her immediate use according to his/her interest in the property.

**WHAT IS THE RELATIONSHIP BETWEEN
THE WEST VIRGINIA DEPARTMENT OF
TRANSPORTATION, DIVISION OF
HIGHWAYS, AND THE FEDERAL HIGHWAY
ADMINISTRATION**

The Federal Highway Administration (FHWA), an agency of the United States Department of Transportation, participates in the cost of construction, right of way and engineering in West Virginia when such highways are on the Federal Aid System and the Division of Highways requests federal assistance in such a project. The FHWA does not actually design any roads, buy any right of way or construct any roads.

The Division of Highways submits proposed projects to the FHWA. If the proposal is acceptable and federal funds are available, the FHWA will approve the project and agree to reimburse the Division a portion of the project costs, varying from 50 percent to 90 percent, depending on the type of highway. As the project develops, the FHWA reviews all phases of work, from design through right of way acquisition and construction. If, at any time during these reviews, it finds that the work does not meet federal aid requirements, it may refuse to pay all or a portion of its share of the cost of the project.

After construction is completed, maintenance of the highway and associated costs become the responsibil-

ity of the Division of Highways, without federal participation or aid. FHWA involvement at this stage is limited to annual inspections to review the adequacy of maintenance.

In public hearings, the FHWA usually has present a representative who may answer questions concerning the *Federal-Aid Highway Program Manual* if asked to do so by the Division of Highways. After each hearing and after considering all of the pertinent comments offered in connection with the hearing, the Division of Highways will make a formal recommendation to the FHWA. The FHWA will review this and take action, either approving or disapproving the recommendation.

Simply stated, the FHWA-Division of Highways relationship is one in which the FHWA reviews the work the Division proposes to do or has done and tells the Division whether it meets all requirements for federal aid. If the proposed work or work completed does not meet these requirements, FHWA may pay only a portion of its normal share or deny participation completely.

DISTRICT RIGHT OF WAY OFFICES

DISTRICT ONE

Telephone: (304) 558-3021
Address: 1334 Smith Street
Charleston, WV 25301-1492

Boone, Clay, Kanawha, Mason, Putnam

DISTRICT TWO

Telephone: (304) 528-5635
Address: 801 Madison Avenue W. (Location)
Box 880 (Mailing)
Huntington, WV 25712-0880

Cabell, Lincoln, Logan, Mingo, Wayne

DISTRICT THREE

Telephone: (304) 420-4685
Address: 624 Depot Street
Parkersburg, WV 26102-0308

**Calhoun, Jackson, Pleasants, Ritchie, Roane,
Wirt, Wood**

DISTRICT FOUR

Telephone: (304) 842-1551
Address: Meadowbrook Exit, M.P. 121
(Location)
P. O. Box 4220 (Mailing)
Clarksburg, WV 26302-4220

**Doddridge, Harrison, Marion, Monongalia,
Preston, Taylor**

DISTRICT FIVE

Telephone: (304) 289-3521
Address: US Route 50 (Location)
P. O. Box 99 (Mailing)
Burlington, WV 26710-0099

**Berkeley, Grant, Hampshire, Hardy, Jefferson,
Mineral,
Morgan**

DISTRICT SIX

Telephone: (304) 843-4041

Address: 1001 Lafayette Avenue
Moundsville, WV 26041-2227

Brooke, Hancock, Marshall, Ohio, Tyler, Wetzel

DISTRICT SEVEN

Telephone: (304) 269-0404

Address: Depot Street (Location)
P. O. Box 1228 (Mailing)
Weston, WV 26452-1288

Barbour, Braxton, Gilmer, Lewis, Upshur, Webster

DISTRICT EIGHT

Telephone: (304) 637-0220

Address: US 219 (Location)
P. O. Box 1516 (Mailing)
Elkins, WV 26241-1516

Pendleton, Pocahontas, Randolph, Tucker

DISTRICT NINE

Telephone: (304) 647-7450

Address: 103 ½ Church Street
Lewisburg, WV 24901

Fayette, Greenbrier, Monroe, Nicholas, Summers

DISTRICT TEN

Telephone: (304) 487-5265

Address: 120 Scott Street
Princeton, WV 24740-2737

McDowell, Mercer, Raleigh, Wyoming

