

Section 9.2

GENERAL RELOCATION REQUIREMENTS

TABLE OF CONTENTS

PURPOSE.....	9-2-1
AUTHORITY	9-2-1
SCOPE.....	9-2-1
REFERENCES.....	9-2-1
TRAINING	9-2-2
FORMS	9-2-2
9.2.1 Public Information.....	9-2-2
9.2.2 Eligibility Criteria	9-2-4
9.2.3 Relocation Advisory Services to be provided.....	9-2-5
9.2.4 Waivers of Relocation Assistance	9-2-7
9.2.5 Comparable Replacement Housing.....	9-2-7
9.2.6 Availability of Comparable Replacement Housing before Displacement	9-2-9
9.2.7 Decent, Safe and Sanitary Housing.....	9-2-10
9.2.8 Relocation Notices.....	9-2-12
9.2.9 Notice of Intent to Acquire	9-2-12
9.2.10 General Information Notice	9-2-13
9.2.11 Notice of Eligibility.....	9-2-13
9.2.12 Statement of Eligibility.....	9-2-14
9.2.13 90-Day Notice	9-2-14
9.2.14 Documentation for Relocation Payment Claims.....	9-2-15
9.2.15 Payment Disbursement.....	9-2-15
9.2.16 Advance Payments	9-2-16
9.2.17 Time for Filing Relocation Claims	9-2-16
9.2.18 Payment Claims for Multiple Occupancy	9-2-17

9.2.19 Deductions from Relocation Payments9-2-17
9.2.20 Relocation Payments Not Income9-2-18
9.2.21 Inclusion of Relocation Assistance in Administrative / Legal Settlement...9-2-18
9.2.22 Denial of Claim.....9-2-20
9.2.23 The Appeal Process.....9-2-20
HISTORY9-2-23

Section 9.2

GENERAL RELOCATION REQUIREMENTS

PURPOSE

To describe how and when relocation advisory services are offered to the public.

AUTHORITY

49 Code of Federal Regulations, Part 24
Rule Chapter 14-66, Florida Administrative Code
Section 20.23 (3) (a), Florida Statutes
Section 334.048 (3), Florida Statutes

SCOPE

This section will be used by appropriate District and Central Office Right of Way and Office of the General Counsel Staff.

REFERENCES

49 Code of Federal Regulations, Part 24
Uniform Relocation Assistance and Real Property Acquisition Policies Act Chapter 120,
Florida Statutes
Florida Constitution
Housing and Urban Development, Amendment Act of 1974
Internal Revenue Code of 1954
Guidance Document 12, Implementation of MAP-21 Uniform Act Benefit and Eligibility
Change Which “Straddle” the Effective Date of October 1, 2014
Right of Way Manual, Section 9.1, Relocation Assistance Program
Right of Way Manual, Section 9.3, Payment For Moving and Related Expenses
Right of Way Manual, Section 9.4, Replacement Housing Payments
Right of Way Manual, Section 9.5, Relocation Assistance for Mobile Homes
Right of Way Manual, Section 9.6, Last Resort Housing
Rule Chapter 14-66, Florida Administrative Code
Section 102 (c), Disaster Relief Act of 1974
Section 120.569, Florida Statutes
Section 120.57, Florida Statutes
Section 120.57 (1), Florida Statutes
Section 120.57 (2), Florida Statutes

Social Security Act
Title VIII of the Civil Rights Act of 1968

TRAINING

Training for this section is provided to all participants in the ***Right of Way Fundamentals Course***, a required element of the Right of Way Training Program.

FORMS

The following forms are available Department's Forms Library or the Right of Way Management System (RWMS):

- 575-040-03, Statement of Eligibility for Supplementary Replacement Housing Payment for 90 Day Occupant
- 575-040-05, RHP Determination - Three Comparable Method
- 575-040-06, Statement of Eligibility for Supplementary Replacement Housing Payment for Owner
- 575-040-09, 90 Day Letter of Assurance
- 575-040-11, 30 Day Notice to Vacate
- 575-040-13, Replacement Housing Questionnaire/Certification
- 575-040-14, Application and Claim for Replacement Housing Payment
- 575-040-20, Moving Expense Calculation Form
- 575-040-23, Application and Claim for Reimbursement of Moving Costs
- 575-040-24, Warrant Acknowledgment
- 575-040-25, Relocation Payment Appeal
- 575-040-30, Notice of Eligibility - Nonresidential/Signs
- 575-040-31, Notice of Eligibility - Residential
- 575-040-33, Notice of Claim Denial/Right to Appeal
- 575-040-34, Notice of Eligibility – Personal Property Only

9.2.1 Public Information

9.2.1.1 The District will provide and have relocation brochures describing available services and payments provided by the relocation program. This brochure will be available at all related public hearings.

The State Relocation Administrator will develop brochures and make them available to the Districts.

9.2.1.2 During the Corridor Public Hearing, the following will be presented and discussed by the District:

- (A) The availability of relocation assistance and services, eligibility requirements and payment procedures;
- (B) The estimated number and types of displacements for each alternative;
- (C) The studies that have been made and the methods that will be used to assure that displacees' housing needs will be met.

9.2.1.3 During the Highway Design or Combined Public Hearing, the following will be presented in a brochure and/or be discussed by the Districts:

- (A) Services available under the Department's Relocation Assistance Advisory Program;
- (B) The address and telephone number of the local relocation office with the name of the Relocation Specialist in charge;
- (C) The fact that no displacee shall be required to move permanently from his/her dwelling unless at least one and preferably three or more comparable replacement dwellings have been made available to that person, see **Section 9.2.6.1**;
- (D) Eligibility requirements and payment procedures including:
 - (1) Eligibility requirements and payment limits for moving costs, replacement housing and rent supplement payments, and mortgage interest rate differentials;
 - (2) Payment of closing costs incidental to the purchase of a replacement dwelling;
- (E) The estimated number of individuals and/or families to be relocated;
- (F) The estimated number of dwelling units presently available and which will become available that meet replacement housing requirements;
- (G) The estimated time necessary for relocation;
- (H) The appeal process.

9.2.2 Eligibility Criteria

9.2.2.1 Relocation advisory services will be offered to:

- (A) Each displaced person as defined in the ***Right of Way Manual, Section 9.1, Relocation Assistance Program, Definitions;***
- (B) Any person occupying property adjacent to the real property acquired by the Department, if the District Relocation Administrator determines that the person is caused substantial economic injury because of the acquisition;
- (C) Any person who has lawfully occupied the real property to be acquired, but who is later evicted for cause on or after the date of the initiation of negotiations.

9.2.2.2 The following do not qualify as displaced persons:

- (A) A person who moves before the initiation of negotiations;
- (B) A person who initially enters into occupancy after the date of its acquisition for a project;
- (C) A person who does not need to relocate permanently as a direct result of a project;
- (D) A person whom the District Relocation Administrator determines is not displaced as a direct result of a partial acquisition;
- (E) A person who, having been issued a notice of relocation eligibility, is notified in writing that he/she will not be displaced after all:
 - (1) Providing that he/she has not yet moved;
 - (2) However, any expenses incurred by a written contract to relocate which was entered into after the date of the notice of relocation eligibility, and before receiving notice that he/she will not be displaced, will be reimbursed by the Department.
- (F) An owner/occupant who voluntarily conveys his/her property after being informed, in writing, that the Department will not acquire the property unless a mutually satisfactory agreement of sale is reached. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this procedure.

- (G) A person who retains the lifetime right to use the real property after acquisition by the Department;
- (H) A person who has occupied the property for the purpose of obtaining assistance under the ***Uniform Relocation Assistance and Real Property Acquisition Policies Act, (Uniform Act)***.
- (I) Persons determined to be in unlawful occupancy prior to the initiation of negotiations or a person who is lawfully evicted. A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Department to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under state law. A squatter who is a long standing occupant or who would suffer undue or unusual hardship because of the displacement may be considered to be in lawful occupancy. This determination will be made by the District Relocation Administrator.
- (J) Persons determined to be unlawfully present in the United States. A person is determined to be unlawfully present if he/she fails to certify to the Department that he/she is a citizen or national of the United States, an alien who is lawfully present in the United States, or his/her certification is found to be invalid. Aliens lawfully present in the United States must provide sufficient documentation of their residency status to the Department. A person who is not lawfully present in the United States, but can demonstrate to the Department's satisfaction, that denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States, may be considered eligible to receive relocation assistance. This determination will be made by the District Relocation Administrator.

9.2.3 Relocation Advisory Services to be provided

9.2.3.1 Each District will determine the relocation needs and preferences of each person to be displaced by means of a personal interview.

9.2.3.2 The Relocation Specialist must explain relocation payments and other assistance offered by the Department to each potential displacee, including eligibility requirements and procedures for obtaining such assistance. Along with the explanation, the appropriate Relocation brochure, (residential, sign, or

business/farm/nonprofit) will be given to each person. Delivery of the brochure alone does not constitute explanation of services.

9.2.3.3 Each District will provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings. The following activities must be performed:

- (A) Explanation will be made that the person cannot be required to move until at least one comparable residential replacement dwelling is made available to him/her.
- (B) Inform the displacee in writing of the specific comparable replacement dwelling used as a basis to determine the maximum replacement housing payment and the dollar amount of the payment. This will be furnished at the initiation of negotiations or within thirty (30) days from that date. Noncompliance of this activity must be documented in the relocation file.
- (C) The displacee must be informed that a replacement housing payment will not be made unless the replacement dwelling is inspected and certified to be decent, safe and sanitary, see **Section 9.2.7**.
- (D) Whenever possible, minority persons shall be given reasonable opportunities to locate to decent, safe and sanitary replacement dwellings, outside of a minority neighborhood, that are within their financial means. This does not require the Department to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.
- (E) All residential displacees shall be offered transportation to inspect housing.

9.2.3.4 Each District will provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties, and offer assistance in reestablishing such displacees.

9.2.3.5 Counseling and advice as to other potential sources of assistance will be provided by each District. For example Federal and State housing programs, Small Business Administration programs, etc.

9.2.4 Waivers of Relocation Assistance

9.2.4.1 The Department will not request a displaced person to waive relocation assistance under the **Uniform Act**, nor will it make a waiver from the displaced person a condition of an administrative or legal settlement.

9.2.4.2 If a displaced person requests to waive relocation assistance, the waiver must be in writing and signed by the displaced person. It must clearly set out the specific entitlements available to the displaced person under the Uniform Act, including estimated monetary amounts for move costs and applicable replacement housing payments. If an owner is also waiving any right to claim move costs as an element of just compensation in eminent domain under the **Florida Constitution**, this must be specifically stated in the waiver. Any waiver precludes payment of specified relocation assistance benefits.

9.2.5 Comparable Replacement Housing

9.2.5.1 A comparable replacement dwelling is one which is:

- (A) Decent, safe and sanitary, see **Section 9.2.7**;
- (B) Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function and provides the same utility. While every feature of the subject dwelling need not be present the principle features must be.
- (C) Adequate in size to accommodate the occupants, see **Section 9.2.7**.
- (D) In an area that is not subject to adverse environmental conditions;
- (E) Not in a location generally less desirable in regard to public utilities and commercial and public facilities than that of the displacee's current dwelling;
- (F) Accessible to the displacee's place of employment;
- (G) On a site typical in size for residential development in the project vicinity with normal site improvements, such as landscaping;
- (H) Currently available to the displacee;
- (I) Within the financial means of the displacee as follows:

- (1) For a 90-day homeowner, one who was in occupancy for at least 90 days prior to initiation of negotiations, a replacement dwelling is within his/her financial means if the homeowner is paid the full price differential, all applicable increased mortgage(valid for 180 days prior to IN) interest costs and incidental expenses in accordance with ***Right of Way Manual, Section 9.4, Replacement Housing Payments*** and any amounts payable under Last Resort Housing provisions ***Right of Way Manual, Section 9.6, Last Resort Housing*** to which he/she is entitled.

- (2) For a displacee who will be renting his/her replacement dwelling, it is within his/her financial means if the new monthly rent and estimated monthly utility costs do not exceed the base monthly rent including average monthly utility costs of ***the subject dwelling as described in the Right of Way Manual, Section 9.4, Replacement Housing Payments.***
 - (a) Any rental assistance received must be taken into account.

 - (b) Whenever the maximum allowable replacement housing payment for purchase or rent would be insufficient to ensure that a comparable replacement dwelling will be available on a timely basis to a displacee, the Department will provide additional or alternative assistance under Last Resort Housing provisions ***Right of Way Manual, Section 9.6, Last Resort Housing.***

 - (c) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length of occupancy requirements, comparable replacement housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling. Such rental assistance must be paid under the ***Right of Way Manual, Section 9.6, Last Resort Housing.***

- (J) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance may be utilized. In such cases any requirements of the governmental housing assistance program relating to the size of the

replacement dwelling shall apply. If the government housing program is not available see **9.4.28 Cost of Comparable Replacement Dwelling**.

9.2.6 Availability of Comparable Replacement Housing before Displacement

9.2.6.1 No person to be displaced shall be required to move from his/her dwelling until at least one comparable replacement dwelling has been made available to the person by the Department. If available in the local housing market, three comparable replacement dwellings will be made available. If three are not available, the file will be so documented.

9.2.6.2 A comparable replacement dwelling is considered to have been made available to a person if:

- (A) The person is informed of its location; and
- (B) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
- (C) The person is assured of receiving the relocation assistance and acquisition payment to which he/she is entitled in sufficient time to complete the purchase or lease of the property.

9.2.6.3 The above policy may be waived by the Federal Highway Administration (FHWA) on federal-aid projects or by the District Right of Way Manager on nonfederal aid projects, if the district demonstrates a person must move because of:

- (A) A major disaster as defined in **Section 102(c), Disaster Relief Act of 1974**;
- (B) A presidential declared national emergency;
- (C) Another emergency which requires immediate vacation of the real property, if continued occupancy would constitute a substantial danger to the health or safety of the occupants or the general public.

9.2.6.4 When a person is required to relocate for a temporary period due to **Section 9.2.6.3(C)**, the Department shall:

- (A) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe and sanitary dwelling; and

- (B) Pay the actual reasonable out of pocket moving expenses and any reasonable increase in monthly housing costs incurred because of the temporary move; and
- (C) Make available to the displacee at least one comparable replacement dwelling.
 - (1) This will be done within fifteen (15) days from the date of temporary displacement, unless none are actually available.
 - (2) The date the displacee moves from the temporary dwelling is the date of displacement for purposes of filing a claim.

9.2.7 Decent, Safe and Sanitary Housing

9.2.7.1 A decent, safe and sanitary dwelling is one which conforms to all State and local housing and occupancy codes.

9.2.7.2 Minimum standards must be met. The dwelling must:

- (A) Be structurally sound, weather tight, and in good repair;
- (B) Contain an adequate and safe electrical wiring system for lighting and other electrical devices;
- (C) Have a functioning heating system capable of sustaining a temperature of 70 degrees Fahrenheit, except in areas where the local climate does not require such a system;
- (D) Be adequate in size with respect to the number of rooms and living space area needed to accommodate the displacee. The number of persons occupying each habitable room for sleeping or separate bedroom requirements for children of the opposite sex shall be in accordance with any applicable local housing codes. In the absence of local codes the following shall apply:
 - (1) Children of the opposite sex under age ten may occupy the same bedroom.
 - (2) One child under age two may occupy the parents' bedroom.

- (3)** Except for the above cases, husbands and wives, and couples living together by mutual consent, persons of the opposite sex should not be required to occupy the same bedroom.
- (4)** The number of bedrooms at the replacement dwelling should duplicate that of the acquired dwelling, unless more are needed to meet the above requirements.
- (E)** Have a continuing and adequate supply of safe, drinkable water;
- (F)** Have a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet. All must be in good working order and properly connected to appropriate sources of water and to a sewage drainage system;
- (G)** In the case of a housekeeping dwelling, have a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system. It must also have adequate space and utility service connections for a stove and refrigerator;
- (H)** Contain unobstructed egress to safe, open space at ground level;
- (I)** Free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by a displacee who is disabled.

9.2.7.3 Exceptions to decent, safe and sanitary housing standards may be granted in writing:

- (A)** The District Relocation Administrator must submit a request for exception, in writing, to the State Relocation Administrator stating circumstances which dictate the exception.
- (B)** For projects which include Federal aid in any phase, exceptions may be granted, in writing by FHWA. The State Relocation Administrator will review the District's request and submit it to FHWA within five (5) days from receipt.
- (C)** For projects with no Federal aid in any phase, the State Relocation Administrator will review the request and render a decision.

9.2.8 Relocation Notices

All notices shall be written in plain, understandable language. Persons who are unable to read and understand the notices must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help

9.2.8.1 Each notice within this section must be personally delivered by District personnel, unless there is:

- (A) A danger or hazard to the Relocation Specialist;
- (B) Temporary unavailability of the displacee or other special circumstances, as documented by the District Relocation Administrator.

9.2.8.2 When not delivered personally, each notice must be sent by certified mail, return receipt requested.

9.2.8.3 The file must be documented with the date and method of delivery, the reason for non-personal delivery and a copy of the certified return receipt, ***U. S. Postal Service Form No. 3811***.

9.2.9 Notice of Intent to Acquire

If the Department decides to establish eligibility for relocation assistance prior to the initiation of negotiations on a parcel, a written notice of the Department's intent to acquire the property, along with a copy of the relocation brochure, will be delivered. The following guidelines will apply:

9.2.9.1 If a notice of intent to acquire is issued, the date the displacee moves will constitute the date of initiation of negotiations for the parcel.

9.2.9.2 On federally funded projects, the notice will not be issued prior to the FHWA Division Administrator authorizing the initiation of negotiations on the project or authorizing acquisition of individual parcels solely for protective buying or because of hardship.

9.2.9.3 The notice will contain the notice of eligibility and any restrictions thereto, the anticipated date of the initiation of negotiations for acquisition of the property. It will also contain how additional information pertaining to relocation assistance payments and services can be obtained.

9.2.9.4 If a notice of intent to acquire is furnished an owner, it must also be furnished to his or her tenants within 14 days.

9.2.9.5 If a notice of intent to acquire is furnished a tenant, the owner must be simultaneously notified of such action.

9.2.9.6 The Department normally will not utilize the notice of intent to acquire unless the initiation of negotiations on the parcel is imminent.

9.2.10 General Information Notice

A person scheduled to be displaced shall be furnished with written information on the relocation program on or before the initiation of negotiations. The notice must inform the person that he/she:

- (A) May be displaced by a project and generally describe the eligibility conditions and payment(s) he/she may be eligible for, and the procedures for obtaining payment;
- (B) Will be given relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other assistance necessary for a successful relocation;
- (C) Will not be required to move without a minimum of 90 days written advance notice, and that a minimum of one comparable replacement dwelling must have been made available;
- (D) Has the right to appeal the District's determination as to eligibility for, or the amount of, any relocation payment for which he/she may be eligible.

9.2.11 Notice of Eligibility

9.2.11.1 All occupants of a property to be acquired must be notified by the District, in writing, of their eligibility for relocation assistance.

An explanation of entitlement to advisory services and payment types the occupant may receive must be included, although the amount of such payments may be delivered at a later time. Information as to where additional information concerning relocation assistance can be obtained must be included.

9.2.11.2 For owners, this notice will be given at the initiation of negotiations.

9.2.11.3 For tenants, this notice will be given no later than 14 days from the date of initiation of negotiations; for advance acquisition projects refer to **Section 8.1.1 Advance Acquisition**.

9.2.11.4 If this Notice is delivered by certified mail, the displaced person must be personally contacted within 30 days from the date of initiation of negotiations.

9.2.12 Statement of Eligibility

9.2.12.1 Each residential displaced person shall be delivered a written Statement of Eligibility. This statement shall include:

- (A) The amount of the maximum payment eligibility.
- (B) An identification of the comparable replacement housing upon which such amount is based.
- (C) A description of the procedures which the displaced person must follow in order to obtain the full amount of the payment.

9.2.12.2 The Statement of Eligibility may be delivered at the initiation of negotiations or at a time subsequent thereto.

9.2.12.3 The comparable replacement housing upon which the payment eligibility is based must be available to the displaced person at the time the Statement is delivered.

9.2.13 90-Day Notice

9.2.13.1 Each displaced person shall be delivered **Form No. 575-040-09, 90-Day Letter of Assurance** which states the displacee will not be required to move before at least 90 days have elapsed from the date of receipt of the notice.

9.2.13.2 The notice will either state the earliest date by which a displacee will be required to move or will indicate the displacee will receive written notice, at least 30 days in advance, specifying the date he/she must move.

9.2.13.3 If the 90 day notice is delivered to a residential displacee prior to delivery of the Statement of Eligibility, the notice must clearly state the occupant will not be required to move for at least 90 days after comparable replacement housing is made available.

9.2.13.4 This notice must be issued by the District at least 90 days before the person is expected to be displaced.

9.2.13.5 If the District Relocation Administrator determines that a 90-day notice is impractical because continued occupancy would constitute a substantial danger to health or safety, an occupant may be required to move earlier. A written record of this determination, approved by the State Relocation Administrator, must be maintained in the parcel file.

9.2.14 Documentation for Relocation Payment Claims

Each relocation payment claim must be accompanied by complete documentation supporting expenses incurred, such as bills, receipts, and appraisals. The District shall ensure that each displaced person receives reasonable assistance necessary to complete and file any required claim for payment.

9.2.15 Payment Disbursement

Disbursement shall be made as follows:

- (A) The approval of a relocation assistance claim based on work that has been completed or eligibility requirements that have already been met will take no longer than ten(10)working days from the date the claim is received in the District office. If any additional documentation is needed to support the claim, the Department shall notify the claimant within ten working days from the date the claim is received.
- (B) The District is deemed to receive the claim on the date the displaced person signs the claim if the District has failed to annotate the claim with actual receipt date or fails at the time the claim was signed to designate a specific location to which the claim must be delivered.
- (C) The above requirement does not apply to the approval of a relocation assistance claim when it is an advance warrant request for work to be done or an eligibility requirement to be met at a future date.
- (D) Approved payment packages must be submitted to the appropriate District Financial Services Office or Disbursement Operations Office within five (5) calendar days from date of approval of the claim by the District Right of Way Office.

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- (E) No person shall receive any payment under Relocation procedures that duplicates all or part of a payment received for the same purpose under Federal, State or local law.
 - (F) The warrant must not be **in the possession of or delivered** by the same Department employee who computed the payment or who estimated the move costs.
 - (1) The person who computes the payment, estimates the move cost, or assembles the invoices shall be the one who submits the calculation form.
 - (2) The reviewer of **Form No. 575-040-05, Replacement Housing Payment Determination, Three Comparable Method** is also disqualified from delivering the warrant.

9.2.16 Advance Payments

Advance Payments can be made under the following conditions:

- (A) An advance payment is one that is delivered to a displacee prior to the displacee completing all conditions normally required for payment disbursement. Requesting a warrant in advance of a displacee fulfilling all requirements does not constitute an advance payment.
- (B) A displacee must demonstrate the need for an advance payment in order to avoid or reduce a hardship. An example of this may be when:
 - (1) Displacees do not currently have the funds to cover the cost(s) involved in their relocation; and
 - (2) They do not have access to the funds, for example, as in securing a loan.
- (C) The District Relocation Administrator must approve an advance payment and the file must include supportive documentation for this decision.
- (D) Payment must be made no sooner than needed in order to safeguard against expenditures other than those involved in the relocation.

9.2.17 Time for Filing Relocation Claims

The following conditions apply:

- (A) For tenants, all claims for relocation payments must be made within 18 months from the date of move.
- (B) For owners, all claims for relocation payments must be made within 18 months from the date of displacement or the date of final payment for the acquisition of the real property, whichever is later.
- (C) This time period shall be waived for good cause. Such waiver shall be in writing and approved by the District Relocation Administrator.

9.2.18 Payment Claims for Multiple Occupancy

The following conditions apply to processing payment claims for multiple occupancy:

- (A) If two or more occupants of the displacement dwelling maintained a single household and they move to separate replacement dwellings, each will receive a prorated share of the total relocation payment(s) allowable.
- (B) If two or more occupants of the displacement dwelling maintained separate households within the same dwelling, each is entitled to individual relocation payments.
 - (1) The replacement housing payment will be based upon housing comparable to the quarters privately occupied by each displacee plus shared community rooms.
 - (2) The District may determine that separate households may be maintained when:
 - (a) Two or more distinct family units share a dwelling;
 - (b) Two or more unrelated persons divide rent and expenses on a prorated basis while maintaining lifestyles independent and exclusive of one another.
 - (c) A person rents a sleeping room within a dwelling.

9.2.19 Deductions from Relocation Payments

The following conditions apply to deductions from relocation payments:

- (A) The Department will deduct the amount of any advance relocation payment(s) from the total relocation payment to which a displacee is entitled.
- (B) No portion of a relocation payment may be withheld by the Department to make payment to any other creditor.

9.2.20 Relocation Payments Not Income

Relocation payments for displaced persons are not considered as income for the purpose of:

- (A) The *Internal Revenue Code of 1954*;
- (B) Determining the eligibility or extent of eligibility of any person for assistance under the *Social Security Act* or any other law, except for any Federal law providing low income housing assistance.

9.2.21 Inclusion of Relocation Assistance in an Administrative or Legal Settlement

9.2.21.1 If relocation assistance available under the Uniform Act are included in a settlement, each amount paid must be supported and documented and all eligibility requirements met in accordance with the *Uniform Act; 49 Code of Federal Regulations (C.F.R.), Part 24; Rule Chapter 14-66, Florida Administrative Code (F.A.C.)*, and *FDOT Right of Way Manual* and as follows:

- (A) A payment for move costs based on estimated amounts may be made without the submittal of receipted bills or invoices if the amount is supported with appropriate inventories, estimates or other documentation necessary to determine a reasonable payment and the method used to calculate the payment is clearly documented in the official file. The District may elect to require this additional documentation from the displacee after the costs are actually incurred. In the case of a nonresidential fixed payment in lieu of move costs, the displaced business or nonprofit organization must furnish signed copies of income tax returns or certified financial statements.

- (B)** The inclusion of a replacement housing payment in a settlement would require either the purchase and occupancy or rental and occupancy of replacement housing by the displaced person.
- (C)** In the case of an administrative settlement, it is recommended that the amount of the move costs or replacement housing payment be stated on the purchase agreement as a hold-back amount. The warrant for these payments will then be delivered when the displaced person has complied with the necessary requirements. In the case of a legal settlement, the final judgment could indicate that specified relocation assistance will be paid when necessary conditions have been met.
- (D)** It is recommended that a statement regarding advisory services be made an essential and integral part of all administrative settlements that include relocation entitlements. The statement must incorporate the availability of personnel to provide the advisory services throughout the relocation process. A suggested text to include in the purchase agreement would be:

The Department and the seller/displacée understand that the inclusion of relocation assistance as a part of this administrative settlement does not preclude seller/displacées right to advisory services related to their relocation from the project site. The Department invites and encourages the seller to take full advantage of the opportunity to use these services provided by relocation personnel.

9.2.21.2 If the District recommends that an administrative or legal settlement include relocation assistance prior to the displaced person complying with specified entitlement requirements, the Director, Office of Right of Way, must grant an exemption to the relocation assistance manual prior to approval of the settlement. An agreement to pay benefits prior to compliance with standard requirements should be a rare exception to the manual. The exemption requirements are as follows:

- (A)** The District Right of Way Manager must submit a request for the exemption, in writing, to the Director, Office of Right of Way, stating the specific circumstances which dictate the exemption and demonstrate the reason an exemption is in the best interests of the Department. The Director, Office of Right of Way, shall have fourteen (14) days from date of receipt of the request to approve or disapprove the exemption. If there are time restrictions on the proposed settlement, review shall be expedited to the greatest extent possible in order to accommodate the settlement time frame.

- (B) For projects which include federal funding in any phase, the District Right of Way Manager's written request for exemption will be reviewed by the Director, Office of Right of Way, who will render a decision. If the Director, Office of Right of Way, approves the exemption, it will then be submitted to FHWA for approval. Every effort will be made to obtain a timely response from FHWA.
- (C) For projects with no federal funding in any phase, the Director, Office of Right of Way, will review the request and render a decision.

9.2.22 Denial of Claim

9.2.22.1 Prior to denial of eligibility for relocation assistance or all or part of any claim, the District should make personal contact with the displacee to provide an explanation of such denial. At the discretion of the District Relocation Administrator, such contact may be made by certified mail. The parcel file must be documented as to the circumstances upon which the decision to use certified mail was made. The Department may disapprove all or part of a claim or may refuse to consider a claim because of untimely filing.

9.2.22.2 If a person objects to the denial, the Department must notify the claimant in writing within five working days after a determination is made, the basis for that determination, and the procedures for appealing that determination using the **Form No. 575-040-33, Notice of Claim Denial/Right to Appeal**.

9.2.22.3 This notice must be delivered in person or sent by certified mail, return receipt requested.

9.2.23 The Appeal Process

9.2.23.1 Any person may file a written appeal with the Department in any case in which he/she believes that the Department has failed to properly determine eligibility for or the amount of a relocation payment. The appeal will be considered without regard to its form.

9.2.23.2 Filing an appeal is a two-step process as follows:

- (A) The displacee or aggrieved person may submit a written appeal to the State Relocation Administrator who will conduct an administrative review of the case. The appeal should be directed to:

State Relocation Administrator
Florida Department of Transportation
605 Suwannee Street, M.S. 22
Tallahassee, Florida 32399-0450

The written appeal must be filed not later than 60 days from the date the aggrieved person receives written notification from the District Relocation Administrator that the claim has been denied. Failure to submit a written appeal within this time may result in a denial of the claim.

- (B) If the State Relocation Administrator denies the claim, he/she will advise the aggrieved person of his/her right to appeal that decision under **Sections 120.569 and 120.57, Florida Statutes (F.S.)** The person may request either a formal hearing pursuant to **Section 120.57(1), F.S.**, if he/she disagrees with the facts stated, or an informal proceeding, pursuant to **Section 120.57(2), F.S.**, if he/she does not dispute the facts stated, but disagrees with the Department's decision. Any request for a formal hearing or informal proceeding must be made in writing and directed to:

The Clerk of Agency Proceedings
Florida Department of Transportation
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399-0458

9.2.23.3 Payment limitations prescribed in Relocation Assistance Procedures are not appealable, such as search expenses or reestablishment expenses, which have a statutory maximum payment amount.

9.2.23.4 A person has a right to legal or other representations in connection with his/her appeal, but solely at his/her expense.

9.2.23.5 The Department will provide assistance as needed in completing the appeal form, will explain the appeal process to the displacee or aggrieved person, and will permit him/her to inspect and photocopy all but confidential materials, such as appraisals, pertinent to the appeal during work hours.

9.2.23.6 An administrative review will be conducted by the State Relocation Administrator.

9.2.23.7 All information and justifications submitted by the displacee or aggrieved person shall be considered. The State Relocation Administrator may personally contact the displacee.

9.2.23.8 All documentation used as a basis for the District's decision and any information requested by the State Relocation Administrator shall be promptly sent to the Central Office, including:

- (A) A statement of the issue under review;
- (B) Citations of applicable provisions upon which the Department's determination was based;
- (C) Copies of eligibility statements, payment computation forms, and related materials;
- (D) A statement of any extenuating circumstances pertinent to the District's actions;
- (E) A recommendation of administrative action.

9.2.23.9 After review of all pertinent information the following will apply:

- (A) If the State Relocation Administrator finds in favor of the displacee or aggrieved person, the appeal will be reviewed by the Deputy State Right of Way Manager, Relocation, and, if requested by the District, the Director, Office of Right of Way.

If the reviewing officer(s) concurs with the State Relocation Administrator, then the displacee or aggrieved person will be notified of this determination and the Department must provide the necessary claim forms and assistance to process the claim.

- (B) If the Administrator concurs with the District's determination, the displacee or aggrieved person must be notified that he/she may file an appeal for an administrative hearing:
 - (1) Notice must include an explanation of the basis on which the decision was made, referencing the specific procedures and rules under which the claim was denied, when such is the case.

- (2) Notice must be by certified letter, return receipt requested, and response must be sent within 60 days from receipt of appeal by the Central Office. The Director, Office of Right of Way may, when necessary, grant written extensions of this 60-day period.
- (3) The notice must advise the displacee that a hearing request, under **Chapter 120, F.S.**, must be made within 21 days from receipt of notification from the State Relocation Administrator to:

The Clerk of Agency Proceedings
Florida Department of Transportation
605 Suwannee Street, M.S. 58
Tallahassee, Florida 32399-0458

HISTORY

04/15/99; 07/15/99; 04/28/00; 9/27/05; 10/2/2007; 7/28/2009