



TOWN OF MINTURN  
ESTABLISHED 1904

# Right of Way Property Acquisition Information

**YOUR RIGHTS** AS A PROPERTY OWNER



# TABLE OF CONTENTS

INTRODUCTION . . . . .	1
IMPORTANT TERMS USED IN THIS BROCHURE . . . . .	2
PROPERTY APPRAISAL AND THE DETERMINATION OF JUST COMPENSATION. . . . .	4
NEGOTIATIONS . . . . .	7
PAYMENT. . . . .	8
SETTLEMENTS AND CONDEMNATION . . . . .	8
LITIGATION EXPENSES. . . . .	9
REQUIRED ASSURANCES OR CERTIFICATIONS. . . . .	9



# INTRODUCTION

Transportation improvements bring advantages to areas that benefit local users as well as travelers and commercial users from across the nation. Typical improvements range from brand new highways to expanding and improving existing transportation infrastructure.

The Town of Minturn (Town) is designing a project to construct curb, gutter, sidewalks, curb ramps, and drainage improvements.

## NEED FOR PRIVATE PROPERTY

Many highway and related projects can be built within the Town's existing Right of Way (ROW) – property that the Town owns or has certain rights to, such as an easement. Whenever possible, the Town will build its projects within its own right of way.

However, some highway projects or improvements simply cannot be built within the Town's existing ROW. In these circumstances an acquisition of land or other property rights from private property owners is needed.

Private property rights are protected by both the Colorado and United States Constitutions. To provide uniform and equitable treatment for those whose property is acquired and for persons displaced by such acquisitions, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and has since amended it. This law, known as the Uniform Act, is the foundation for the information discussed in this brochure.

The Town respects these fundamental rights and is committed to treating all persons with fairness and respect.

This brochure will provide you with information about the process of acquiring rights of way for public improvement projects. Here you will find information on the valuation process, negotiations between you and the real estate specialist, settlements and payments.

Many local agencies (cities, counties and other jurisdictions) across Colorado use federal funds for some local highway and related transportation projects – known as "Federal-Aid Projects." Federal-Aid Projects must meet all of the requirements specified by the federal government for ROW acquisition under the Uniform Act.





# IMPORTANT TERMS USED IN THIS BROCHURE

## ACQUISITION

Activities to obtain an interest in, and possession of, real property. See the definition of "Real Property" in this section.

## ACQUIRING AGENCY OR AGENCY

An Agency is a local government which has the authority to acquire property by eminent domain under State law. The "Agency" shall refer to any local government using federal financial assistance for a program or project that acquires real property. For purposes of this brochure, this includes the Town acting as a local agency conducting business in a ROW project.

## APPRAISAL

A written statement or report independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of a described property as of a specific date, supported by the presentation and analysis of relevant market information.

## CONDEMNATION

Condemnation is the entire legal process of acquiring private property for public use or purpose through the Acquiring Agency's right of eminent domain. Condemnation is usually not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. An Acquiring Agency then goes to court to acquire the needed property.

## EASEMENT

An interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property. Easements can be permanent or temporary (i.e., limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right.

## EMINENT DOMAIN

Eminent domain is the right of a government to take private property for public use. In the United States, just compensation must be paid for private property acquired through eminent domain.

## FAIR MARKET VALUE (REASONABLE MARKET VALUE)

For purposes of eminent domain acquisition in Colorado, the term "Fair Market Value" is considered to have the same meaning and definition as the term "Reasonable Market Value" described in Colorado Jury Instructions for eminent domain acquisition: "Reasonable [Fair] Market Value means the fair, actual, cash market value of the property. It is the price the property could have been sold for on the open market under the usual and ordinary circumstances, that is, under those circumstances where the owner was willing to sell and the purchaser was willing to buy, but neither was under an obligation to do so."

## INTEREST

An interest is a right, title, or legal share in something. People who share in the ownership of real property have an interest in the property.

## JUST COMPENSATION

The term "just compensation" appears in the U.S. and Colorado Constitutions. Amendment V to the U.S. Constitution states "... nor shall private property be taken for public use, without just compensation." Article II, Section 15 of the Colorado Constitution states "Private property shall not be taken or damaged, for public or private use, without just compensation." See also definition of "Fair Market Value" (Reasonable Market Value) above.

## LIEN

A charge against a property in which the property is the security for payment of a debt. A mortgage is a lien. So are property taxes. Customarily, liens must be paid in full when the property is sold. You as the property owner are required to provide a clear title. Your real estate specialist can assist you with this.

## MINERAL RIGHTS

Mineral rights are interpreted to mean the "deep" mineral interests such as oil, natural gas or coal, not the surface mineral interests such as sand and gravel.





## IMPORTANT TERMS USED IN THIS BROCHURE | CONTINUED

### NEGOTIATION

The process used by Acquiring Agencies to reach an amicable agreement with a property owner for the acquisition of needed property. An offer is made for the purchase of property in person or by mail, and the offer is discussed with the owner.

### PERSON

A person is an individual, family, partnership, corporation, or association.

### PERSONAL PROPERTY

In general, personal property is property that can be moved. It is not permanently attached to, or a part of, the real property. Personal property is not to be included and valued in the appraisal of real property.

### PROGRAM OR PROJECT

Any activity or series of activities undertaken by a federal agency. Also, any activity undertaken by a state, local agency or individual where federal financial assistance is used in any phase of the activity.

### QUALIFIED APPRAISER

A person who, by education, experience, ability, and licensing or certification is capable of preparing an appraisal of real estate in compliance with certain requirements. Quite often the appraiser will be an independent contractor.

### REAL ESTATE SPECIALIST

Also known as an "agent," the real estate specialist is the Agency staff person or contract person who will help you through the acquisition and relocation process (when relocation is necessary).

### REAL PROPERTY

Land and any improvements thereto, including but not limited to, fee interests, easements, air or access rights, and the right to control use, leasehold, and leased fee interests. In some states, real property and real estate are synonymous. In other states, real property is used to mean the interest, rights, and benefits as well as the land and improvements.

### WAIVER VALUATION

The valuation process used and the product produced when the Acquiring Agency determines that an appraisal is not required, pursuant to 49 CFR Part 24 § 24.102(c)(2) appraisal waiver provisions.



# PROPERTY APPRAISAL AND THE DETERMINATION OF JUST COMPENSATION

The Acquiring Agency determines specific property that needs to be acquired for a public project or program only after the project has been planned and government requirements have been met. The Agency will also review public records and other information about property in the area.

You will be notified as soon as possible about:

1. the Agency's interest in acquiring your property
2. the Agency's obligation to secure any necessary appraisals
3. any other useful information

Colorado law (§ 38-1-121(1), C.R.S) requires that when the value of the acquisition is estimated by the Agency to be \$5,000 or more, you have the right to hire an appraiser at the Agency's expense if certain conditions are met.

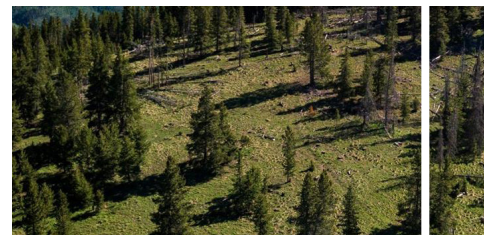
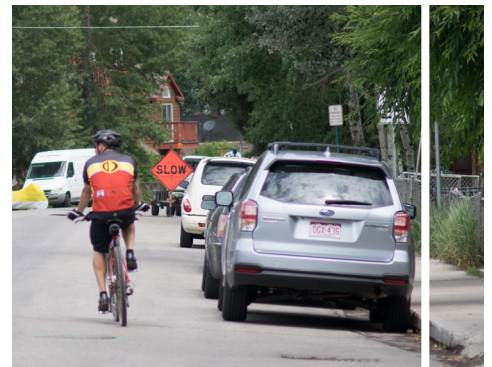
The Agency will reimburse your cost for one real estate appraisal, provided the cost of the appraisal does not exceed the usual and customary rate charged for the necessary type of appraisal service in the community where your property is located. The appraiser must apply recognized appraisal standards found in the industry for eminent domain acquisitions. To qualify for appraisal fee reimbursement, property owners have 90 days from receipt of notification by the Agency to deliver a completed appraisal report to the Agency for the proposed acquisition.

When the Agency begins to acquire private property for public use, the first personal contact with you should be no later than during the appraisal of your property.

## EXCEPTIONS TO APPRAISAL REQUIREMENTS

An appraisal is not required by the Agency under the following circumstances:

- If the Agency determines that the acquisition is uncomplicated and a review of available data supports a fair market value of \$25,000 or less. In this case a waiver valuation may be completed by the Agency instead of an appraisal. However, if the estimated fair market value is \$10,000 or more the property owner may require the Agency to prepare an appraisal, in which case the Agency will not prepare a waiver valuation. Your agent can explain more to you about an Agency waiver valuation if this valuation method will be employed.
- If you elect to donate the property and release the Agency from the obligation of performing the appraisal.







## APPRAISAL

A staff or contract appraiser will contact you to make an appointment to inspect your property. The appraiser is responsible for determining the fair market value of the property. The Agency will use the appraiser's report to establish just compensation to be offered for the property.

You, or any representative that you designate, will be invited to accompany the appraiser when the property is inspected. The appraiser will also create an inventory of real property during the inspection. This provides you an opportunity to point out any unusual or hidden features of the property that the appraiser could overlook. You should also advise the appraiser if any of the following conditions exist:

1. Other people have ownership or interest in the property;
2. There are tenants on the property
3. Real or personal property that belongs to someone else is located on your property
4. Hazardous material, underground storage, or utilities are present

This is your opportunity to tell the appraiser about anything relevant to your property, including other properties in your area that have recently sold.

The appraiser will inspect your property and describe its physical characteristics and analyze its highest and best use. He or she will review sales, and in some cases leases, of other properties similar to yours in order to compare the facts of those sales with the facts about your property. The appraiser may have questions for you about your property (e.g. physical aspects; legal circumstances; real estate-related income and expense information; other questions). You are not required to answer the appraiser's questions, but such information might be important to ensuring the most complete and reliable appraisal report.

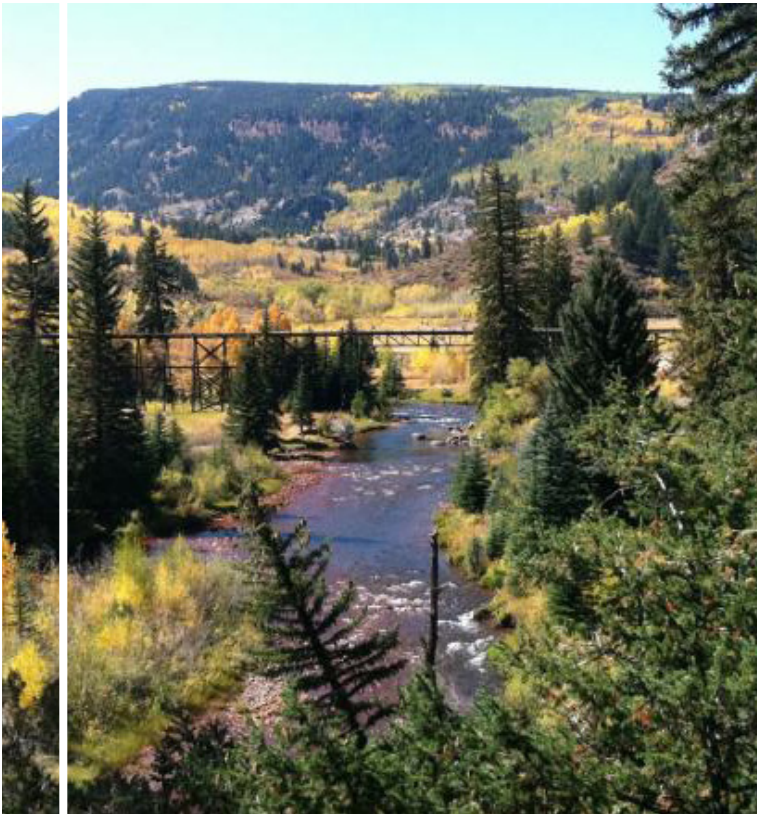
Under Colorado law, the Agency will not acquire by condemnation – and the appraisal will not include – mineral property rights such as oil, natural gas and other deep subsurface mineral resources, except those which might be necessary for subsurface support of the highway.

The appraisal report will present descriptive and analytical material that supports the appraiser's value conclusions and a summary of compensation for the proposed acquisition as of a stated date of value (commonly the date the appraiser last saw the property). Based on this or other appraisal report or based on a waiver valuation, the Agency will determine "just compensation" for the acquisition.

## APPRAISAL REVIEW AND JUST COMPENSATION

Once the appraisal has been prepared, an Agency review appraiser or qualified contract review appraiser will review the report to ensure that all applicable appraisal standards and requirements were met. An approved appraisal will be relied on as basis for the amount of just compensation to be offered for your real property that the Agency needs for the project. This amount will never be less than the fair market value established by the approved appraisal. If the Agency is only acquiring a part of your property, any allowable damages or offsetting special benefits to the remaining property will be included in this amount. The Agency will provide a written offer of just compensation to you to initiate the acquisition.





## BUILDINGS, STRUCTURES AND IMPROVEMENTS

Sometimes buildings, structures, or other improvements considered to be real property are located on the property to be acquired. If this is the case, the Agency must offer to acquire such buildings, structures, or other improvements if they must be removed or if the Agency decides that the improvements will be adversely affected by the public program or project. Real property improvements are those that have been attached to the land in a permanent manner – improvements that if removed might be damaged as a result or which might cause damage to the building or other structure by their removal. Such improvements are real property that will be included in the appraisal.

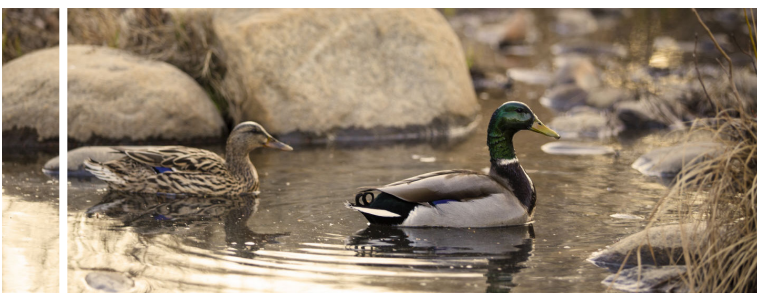
## TENANT-OWNED BUILDINGS, STRUCTURES AND IMPROVEMENTS

Sometimes tenants lease real property and build or add improvements to the leased property for their use. Tenants often have the right or obligation to remove the improvements at the expiration of the lease term. If, according to the appraisal, the improvements are considered to be real property, the Agency must make an offer to the tenants to acquire these improvements.

In order to be paid for tenant-owned improvements, the tenant-owner must assign, transfer, and release to the Agency all right, title, and interest in the improvements. Also, the owner of the real property on which the improvements are located must disclaim all interest in the improvements.

The compensation due for an improvement will be determined by the appraiser. All real property improvements are appraised in "as is" condition at their contributory value to the land in place.

If improvements are considered personal property under state law, the tenant-owner may be reimbursed for moving them under the relocation assistance provisions. The real estate specialist will personally contact the tenant-owners of improvements to explain the procedures to be followed. Any payments must be in accordance with federal rules and any applicable state laws.







# NEGOTIATIONS

## THE WRITTEN OFFER

The Agency will begin negotiations with you or your designated representative by delivering the Agency's written offer of just compensation for the purchase of the real property. If practical, this offer will be delivered in person by a real estate specialist. Otherwise, the offer will be made by mail and followed up with a contact in person or by telephone. All owners of the property with known addresses will be contacted unless they collectively have designated one person to represent their interests.

The Agency's written offer will consist of a written summary statement that includes all of the following information:

1. The amount offered as just compensation
2. The description and location of the property and the interest to be acquired
3. The identification of the buildings and other improvements that are considered to be part of the real property

The real estate specialist will give you a reasonable amount of time to consider the written offer and to ask questions or to request clarification of anything that is not understood. If you believe that any relevant material was not considered during the appraisal, you may present such information at this time. The Agency will consider any reasonable requests that are made during negotiations.

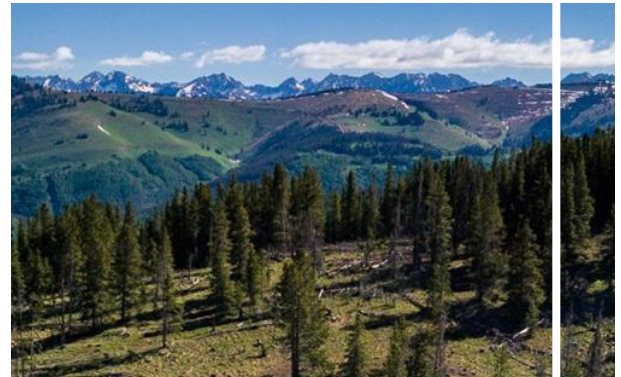
## PARTIAL ACQUISITION

Sometimes, the Agency does not need all the property you own. The Agency only purchases what it needs for the program or project.

If the Agency intends to acquire only a portion of your property, the Agency must state the amount to be paid for the part to be acquired.

## DONATION

You may make a gift or donation to the Agency of the specific property that needs to be acquired for the project, or the compensation paid for it. A donation may be made at any time during the development of the project or during the acquisition phase of the project. At the time of the donation, you will be informed of your right to receive just compensation for the property being donated and you will be asked to sign a written document voluntarily waiving such just compensation. Donations may be tax deductible to you. If so, it is your responsibility to ascertain the fair market value of the property being donated for tax purposes.





## AGREEMENT BETWEEN YOU AND THE AGENCY

When you reach agreement with the Agency on the purchase offer, you will be asked to sign a purchase agreement, a deed, an easement, or some other form of conveyance document prepared by the Agency. Your signature(s) will affirm that you and the Agency are in agreement concerning the acquisition of the property, including the terms and conditions of the acquisition.

If you do not reach an agreement with the Agency and the Agency has exhausted all its opportunities to reach a settlement with you, the Agency will initiate condemnation proceedings as prescribed under the law.

The Agency may not take any action to force you into accepting its offer. Prohibited Agency actions include the following:

1. Advancing the condemnation process
2. Deferring negotiations
3. Deferring condemnation
4. Delaying the deposit of funds for the owner's use with the court when condemnation is initiated
5. Any other coercive action designed to force an agreement by an owner regarding the price to be paid for the property

## PAYMENT

The next step in the acquisition process is payment for your property. The real estate specialist will prepare or have the necessary documents prepared for transferring title and will handle most details throughout the process. Any outstanding loans or liens including property taxes prorated to the time of closing must be satisfied by the owner before or at the time the title is transferred.

Your incidental expenses also will be paid or reimbursed. Incidental expenses are those reasonable expenses incurred as a result of transferring title to the Agency, such as:

- Recording fees
- Transfer taxes
- Documentary stamps
- Evidence of title
- Surveys
- Legal descriptions of the real property
- Other similar expenses necessary to convey the property to the Agency

The Agency, however, is not required to pay costs required solely to clear your title.

## SETTLEMENTS AND CONDEMNATION

### SETTLEMENTS

The Agency will make every effort to reach an agreement with you during negotiations. You may provide additional information and make reasonable counter offers and proposals for the Agency to consider. When it is in the public interest, most agencies may use the information provided as a basis for administrative and legal settlements, as appropriate.





## CONDEMNATION

If an agreement cannot be reached, the Agency can acquire the property by exercising its right of eminent domain. It will do this by instituting formal condemnation proceedings with the appropriate state or federal court.

In Colorado, you can choose to have a board of commissioners or a jury determine the amount of compensation you are due for the property acquired by the Agency. These proceedings take place in a "valuation hearing" (commission) or "valuation trial" (jury), and you and the Agency will be allowed to present information to the court about the fair market value of the property acquired. The commission or jury will determine just compensation for the acquisition, and the final amount of just compensation will be certified by the court upon conclusion of the value hearing or trial.

## LITIGATION EXPENSES

Normally, the Agency will not reimburse you for costs incurred as a result of condemnation proceedings.

If an eminent domain case goes all the way to a valuation hearing or trial, the Agency will pay your reasonable costs, but not your attorney's fees. However, your reasonable attorney's fees will be awarded if the amount of the final just compensation determined in the hearing or trial is 130% or more than the Agency's last written offer prior to condemnation.

## REQUIRED ASSURANCES OR CERTIFICATIONS

Any Agency receiving federal financial assistance for a program or project must assure or certify to the federal agency providing funds that in acquiring real property it agrees to the following:

"The Agency will comply with the land acquisition policies in the regulations governing real property acquisitions (49 CFR PART 24) to the greatest extent practical under state law."

The Agency will pay or reimburse property owners for the incidental expenses needed to transfer real property to the Agency.

The requirement for assurances or certification guarantees that you will be treated fairly and equitably by agencies acquiring real property for federally funded projects and programs. The information in this brochure should assist you in understanding the requirements that must be met by agencies, and your rights and obligations.