



6.2 LEASE OF STATE OWNED PROPERTIES

6.2.0 Overview

WisDOT makes every effort to acquire properties in advance of a construction project for some of the following reasons:

- Aid a future displacee through a hardship acquisition.
- Allow both owners and occupants time to find suitable replacement housing, business sites or land on an upcoming project in order to minimize any disruption to their normal living pattern or income stream.
- Ensure the availability of property for future projects.

As a result, many properties are owned by the State that must be managed for some period of time prior to active highway construction and may be leased in the spirit of stewardship. In these situations, WisDOT plays the role of landlord and assumes certain landlord responsibilities. In order to both define and establish a uniform method of discharging these responsibilities, the following policies and procedures have been approved by WisDOT to comply with the provisions of [Sec. 85.015](#) and [32.05\(8\)](#), Wisconsin Stats., which apply to property rentals.

When to use a standard rental agreement and procedures under this section - The following characteristics dictate use of a standard rental agreement vs. FHWA airspace lease agreement:

- Whenever surplus properties are involved.
- Whenever the lease extends for a temporary term to accommodate displacees until a relocation site is found, whether federal funds are involved or not.
- Whenever WisDOT defines a temporary right of way line for the purposes of accommodating a lease on a federal aid project according to a procedure approved by FHWA. The land is needed in the future for transportation purposes, and can be leased until needed so long as the intended use does not impact safety nor diminish access control on the highway ([23CFR 713.103\(h\)](#))

6.2.1 WisDOT Right to Lease

When a project involves displacement of an owner and/or occupant, the State may afford the displacees an opportunity to rent the property and enter into a lease agreement with the State until construction occurs. [Sec. 32.05\(8\) Wis. Stats.](#) allows this and states:

..."The condemnor has the right to possession when the persons who occupied the acquired property vacate or hold over beyond the vacation date established by the condemnor, whichever is sooner, except that the condemnor may not require the persons who occupied the premises on the date title vested in the condemnor to vacate until a comparable replacement property is made available."

The acquisition of right of way and construction of the highway improvements shall be scheduled so that no occupant, except in the most unusual cases, shall be required to move

from a dwelling, or to move their business or farm without at least 90 days written notice of the vacation date from the acquiring agency, provided suitable replacement properties are made available as required in the above statute.

When WisDOT may enter into a lease - WisDOT may lease when it legally possesses and controls the property, which occurs when:

1. A deed has been signed and payment has been made; or,
2. In condemnation cases, when payment has been made and the Award of Damages has been recorded with the Register of Deeds in the county of acquisition.

6.2.2 The Rental Agreement - Terms and Conditions

6.2.2.1 Rental Agreement as Contract

All terms and conditions shall be in writing and shall be contained in a lease agreement. This agreement shall conform to department policy as outlined in this section. Terms and conditions shall include, but shall not be limited to the parties to the agreement; address of the subject property; lease term; responsibilities of both parties; responsibilities of the lessor and lessee; amount of rent; and signatures of appropriate parties executing the document.

6.2.2.2 Rental Agreements and Relocation

Continued occupancy by a former owner or tenant occupant will not be contingent upon a waiver of any relocation benefits or services due him as a result of the acquisition. However, occupancy under lease agreements with parties not in possession at the time of acquisition of the property shall not be construed as creating eligibility for any relocation benefits or services other than as provided under the present approved relocation assistance policy and such agreement shall be so stated in the rental agreement.

6.2.2.3 Accommodation of Tenants Prior to Construction

When consistent with the immediate, on-demand availability for highway uses, real estate acquired for highway purposes shall be placed under a temporary rental agreement. Such agreements allow continued use of such lands by the former owners or tenants pending intended use for highway purposes. Rental agreements shall be executed in all cases where continued occupancy by the owner or tenant is contemplated. In most cases of temporary occupancy, an agreement substantially in accordance with the addendum to a lease between the WisDOT and a "re-renter" (someone who rents after the displacee was vacated the property). This renting usually occurs when the parcel will not be needed for construction for an extended period of time. This addendum would be attached to a lease and per the addendum the tenant would not be eligible to claim relocation benefits and would be required to vacate if the house became unsafe or if the project was advanced.

6.2.2.4 Contemplation of Leasing for Agricultural Use

If the continued use of vacant agricultural land is contemplated, the "Agricultural Rental Agreement" shall be used. The agricultural lease should be reviewed and renewed annually. If any tenancy longer than one year is contemplated, lease forms approved by the

Wisconsin Real Estate Examining Board should be used and those documents should be recorded. Whenever possible, in the event crops are planted prior to the rental agreement, the provisions of the agreement shall allow for a specific time period in which the Lessee may harvest crops. Terms should be written in the purchase agreement to hold the state harmless from any liability. Otherwise crop damage reimbursement should be considered.

6.2.2.5 When to have Rental Agreements Available

In the situation where the property is being leased to an owner or a tenant occupant that is being displaced, it shall be the responsibility of regional staff to have the proposed rental agreements available for execution at the closing of the property acquired from the owner. The regional Real Estate management or a designated specialist shall be authorized to execute the rental agreement on behalf of WisDOT at this time. In all other situations, rental agreements may be negotiated when an interest is expressed and it is determined that said property can be leased for the purposes and time frame identified.

6.2.2.6 Fulfillment of Obligations, Terms and Conditions of Rental Agreements

Upon acquisition of the property and execution of the agreement, it shall be the responsibility of regional staff to assure that all conditions of the agreement are complied with. This includes such items as maintenance by the occupant, payment for utilities, rent collection, maintenance of insurance on contents and public liability, etc. Particular care shall be exercised by each region to assure that no properties under agreement become encumbered with liens of any nature. Each region shall be responsible for establishing and maintaining its own rental record keeping system.

6.2.2.7 Maintenance

The tenant is expected to perform reasonable and proper normal maintenance and property upkeep. There may, however, be certain instances involving buildings requiring maintenance or repairs in excess of what might be considered normal. An example of such a situation would be a residential unit in which the roof started to leak and should be repaired or might even need replacement. Obviously, it is impossible to define what constitutes "normal" maintenance in every situation. In an attempt to establish uniformity, the following guidelines are established:

6.2.2.7.1 Normal (Minor) Maintenance

Those tasks which can be done by the occupant himself to keep the property in the same or nearly the same physical condition as at the commencement of said term of occupancy (normal use and wear, or damage by wind, fire, or other accidental causes excepted). The occupant shall be liable for this type of maintenance and for the repair of all damage caused by acts of negligence by resident or guests.

6.2.2.7.2 Unusual (Major) Maintenance

Those major structural or equipment repairs costing \$1,000.00 or more that may require services of a skilled tradesman, or are necessary to protect the state's investment (repairs due to acts of negligence by the occupant or guests excepted). Whenever

unusual maintenance is requested by the occupant, the region shall review the individual situation, considering such items as the need for the proposed maintenance, project scheduling, value of improvement, etc. If major maintenance (costing over \$1,000.00) situations arise, the approval of the Bureau of Technical Services-Real Estate (BTS-RE) must be secured before authorizing the work. If major maintenance is estimated to be over \$1,000 dollars, written estimates from at least two sources shall be obtained by the region and approved by BTS-RE. Upon completion of the work, the region shall submit the approved cost items to the BTS-RE. Along with a memorandum which shall include a brief itemization as to the work done and verification of its completion by a disinterested third party, including a lien waiver from the tradesman.

6.2.2.7.3 Emergency Repairs

Emergencies may arise that will require immediate attention. An example would be a furnace malfunction during heating season. In the event of such an emergency, the region shall authorize whatever service(s) or repair(s) may be reasonably necessary to correct the problem; BTS-RE concurrence may be requested by telephone. Upon completion of the work, the region shall submit the paid receipt for repairs to BTS-RE/Finance with the rental payment for the next month. If the tenant pays for the emergency repairs, they may be authorized to deduct the cost from their next month's rent, or the region may make arrangements to pay the tradesman directly for such repairs. If the emergency repair(s) is over \$1,000.00 dollars, authorization by BTS-RE is required before work is authorized or a rental deduction is approved. Three cost estimates are suggested in all situations; however, in life threatening situations due to extreme temperatures call BTS-RE to make immediate arrangements. Minor emergency repairs initiated by the renter without prior approval from the BTS-RE property management coordinator should be deducted from the next month's rent; do not give a cash reimbursement on these items.

6.2.3 Owner or Tenant Refusal to Execute Rental Agreement

If the owner or tenant of the property being acquired refuses to execute a rental agreement, the regional office shall be responsible for delivering to the occupant a copy of the proposed agreement. Delivery may be made either by personal contact or certified mail. Regardless of the means of delivery, the agreement shall be signed by the region Real Estate management and shall also be accompanied by a statement that, whether or not the agreement is executed by the occupant, the conditions of occupancy shall be as stated therein and are binding of the tenant. A copy of the agreement stating its means of delivery shall be transmitted to BTS-RE. Even though the occupant fails to recognize the conditions of occupancy, the region must recognize the 90 day right of lawful occupancy under state and federal law. Legal remedies anticipating eviction may be started prior to the expiration of the 90 day period, as may be authorized by WisDOT counsel when conditions warrant.

6.2.3.1 Eviction

To the extent possible, eviction will be used only as a last resort. If used, it will not affect the eligibility of the displaced persons for either relocation services or benefits. When eviction is necessary, the region shall be responsible for adequately documenting the records to reflect the specific circumstances surrounding the eviction. The BTS-RE litigation coordinator will work with the Department of Justice and the regional surplus lands specialist on all

evictions. Eviction shall ordinarily be undertaken only for one or more of the following reasons, or for other good and sufficient cause:

- The eviction is required by state or local laws and cannot be prevented (i.e., violations of building or health codes).
- A material breach of the rental agreement (i.e., non-payment of rent).
- Maintenance of a public nuisance or use of the premises for illegal purposes.
- Refusal to accept comparable, available decent, safe, and sanitary replacement housing as defined by Department of Administration.
- The regional surplus land specialist shall work both with the BTS-RE litigation coordinator and the designated counsel at the Department of Justice whenever an eviction is to be exercised.

6.2.4 Payment and Collection of Rent

6.2.4.1 Payment

Whenever real property will be used or occupied by any party after acquisition by the State, the party or parties occupying such property shall pay reasonable rent as determined by the as reflected by local market conditions and circumstances of rental of the individual parcel. Rental payments covered by this policy shall commence with the date the State acquired title to the property. Including the time covered by the 90-day occupancy period. A grace period of rent free occupancy of at least 30 days and not to exceed 45 days may be granted to comply with the rent free occupancy terms of [Sec. 32.05\(8\) Wis. Stats.](#), assuming rental periods are computed from the 1st or the 15th of the month.

6.2.4.2 Collection

All rents shall be payable in advance, as established by the terms of the specific agreement. See Section 6.7 - Reporting Sale and Rental Revenue.

6.2.5 Procedure for Establishing Rent Under a Rental Agreement

6.2.5.1 When to Present the Rental Amount to the Lessee

In order that the former owner may be fully informed during the negotiation stage, the amount of rental along with the terms of the lease agreement is to be presented during the negotiation period. For tenant occupants, such rental amount shall be given within a reasonable time after closing. This requires a pre-determination of the rental amount.

6.2.5.2 Calculation of Rental Amount

Rental amounts shall be determined from market data whenever possible (i.e., other rental rates in the general vicinity for similar use properties). In the absence of such data, a substitute is the current "safe" annual interest rate (passbook or C.D.) applied to the acquisition price and divided into equal monthly installments. Example: A 6 % interest rate equates into one-half of one percent ($1/2 * 1\%$) per month of the acquisition price).

Residential properties - For an *owner occupied* property, the rent for the premises should be established first. It is recommended that the former owner will pay all utilities and perform reasonable and proper normal maintenance and property care. These payments and services may be considered as adjustments to the economic rent to arrive at a net rent for the premises. For a *tenant occupied* property, the existing rent shall usually be continued. Acceptance of responsibility by the tenant for utility payments and/or property maintenance may result in adjustments to existing monthly rents.

Rent establishment for non-residential / mixed use properties - While this procedure for establishing rent deals principally with residential units acquired, it is WisDOT's policy that the same rules shall apply to all properties, including business and farm properties. Business and farm properties, for example, may also involve residential units and the rent determined for such properties may be for either the entire combined use of the property, or for the individual business, farm, or residential unit, depending upon particulars of the situation. The rent in such cases may be determined in the same manner. Additional local market information as to business rental properties may also be considered. Regarding agricultural property, statewide and local agricultural rental experience shall also be considered for establishing rental value per acre. Pertinent information for crop land rental value is available from state and national agricultural statistical agencies. Agricultural land, in appropriate circumstances, may be considered separately from its accessory farm buildings and/or residential structures.

6.2.5.3 Adjustment of Rent during Negotiations

If during negotiations, information becomes available that indicates the rent may not be realistic, the region may, with proper justification and documentation, recommend a revision in the rent.