



## 3.1 NEGOTIATION PROCEDURES

### 3.1.1 Requirements for R/W Acquisition

#### 3.1.1.1 Relocation Order

Before any interest in land can be acquired, Wisconsin Statutes require that a Relocation Order (RE1708) be filed along with the R/W plat when filing with the county clerk's office. For transportation project plats filed or recorded with the Register of Deeds, the Relocation Order is included on the face of each R/W plat sheet.

Exception for project's < \$1000 - [Section 32.05\(1\)\(b\), Wisconsin Statutes](#) allows for an exception to the Relocation Order requirement for certain projects under \$1,000. It states, "No Relocation Order is necessary under par. (a) If the compensation, as estimated by the appraisal under sub. (2)(a) will be less than \$1,000 in the aggregate." Such projects also do not require a standard R/W plat. The acquisition interests can instead be identified on the construction plan, if so desired. These exceptions apply even with projects that involve parcel condemnations. The process for such projects is as follows:

- Only the first Project Cost Allocation (RE1532) that accompanies original R/W plat will need to be signed by regional Planning and Real Estate. For revisions, Project Cost Allocation (RE1532) will not require signatures. Funding changes accompanying a Real Estate Encumbrance - Change Order (RE1597) will still require an appropriate signature.
- Region assigns a unique project ID for projects meeting criteria as defined above (as done with typical projects of \$1,000 or more).
- Region completes and submits a Project Cost Allocation (RE1532) to Bureau of State Highway Programs (BSHP) to authorize project for encumbrance purposes. Region should make note in Project Concepts box that project is under \$1,000 in total aggregate and meets criteria of [s. 32.05\(1\)\(b\), Wis. Stats.](#)
- Regions will identify such projects in READS by specifying "under \$1,000."
- Relocation Order is not required to charge 5550 acquisition costs to unique project ID assigned to such a project.

#### 3.1.1.2 Offering Price Approval

All offering prices must be pre-approved; details described in REPM/2.9 Offering Price. In summary, WisDOT's current policy is that nominal parcel offers of \$10,000 or less and, otherwise, those offers based on the non-detailed Appraisal Report Short Format Summary (RE1005) may be approved by regional review appraisers; but, a BTS-RE statewide review appraiser will need to review and approve all offers above the \$10,000 threshold. Reference Bureau of Technical Services-Real Estate (BTS-RE) [Delegation Table](#). Also related, see REPM/2.10 Waiver of Appraisal Provision.

### 3.1.1.3 Acquisition Restrictions

When determining right of way needs, [s. 86.255, Wis. Stats.](#) mandates that the department may not acquire land or any interest in land unless both of these conditions are met:

1. Land or interest in land is acquired in association with highway project.
2. Land or interest in land is located within 1/4 mile of highway.

The department interprets the phrase "within 1/4 mile of the highway" to mean that the purchase of land or interest in land located on a single parcel may be completely or partially within 1/4 mile of the highway or proposed highway, including frontage and service roads, park and ride facilities, scenic easements, and uneconomic remnants. Any purchase of land or interest in land must be for highway purposes. This statute does not apply to the following acquisition situations:

- Compensatory mitigation for replacement of Section 6(f) park or recreation land.
- Compensatory wetland mitigation.
- Lands or interests in lands purchased under agreements executed before October 29, 1999 or relocation orders filed before October 29, 1999.
- Relocation assistance.
- Scenic easements.
- Uneconomic remnants.

This statute does not differentiate between whether the purchases of lands or interests in lands are made in the name of WisDOT. It says that the department may not encumber or expend any moneys from the appropriations under [s. 20.395\(3\) Wis., Stats.](#), for purposes related to the purchase of land, easements or development rights in land. Therefore, Wisconsin Statutes will apply whether or not WisDOT or another entity such as a local public agency, purchases such lands or interests in lands with monies from the appropriations under [s. 20.395\(3\) Wis., Stats.](#) For more information regarding [s. 86.255, Wis. Stats.](#), reference the Facilities Development Manual (FDM 12-5-3). Any questions on acquisition can be directed to the statewide acquisition coordinator in BTS-RE.

### 3.1.2 Negotiation Requirements

Appraiser/negotiator roles - For any parcels having an estimated value between \$10,001 - \$25,000 and up, because of the perceived potential for increased conflict of interest concerns, an appraiser cannot also act as the negotiator for that parcel, except and unless the approved offering price is \$10,000 or less. Only in low value situations (\$10,000 or less), may the appraiser, at the discretion of the regional RE management, also serve as the negotiator during the parcel acquisition process. The review of that appraisal, however, must still follow the state's standard review procedures and cannot be reviewed by the same person that appraised the parcel. Under the nominal parcel process, when an owner has the option to waive their right to an appraisal, the agent may turn the negotiation call into an appraisal inspection, if necessary, but ONLY if/when the estimated value is \$10,000 or less. Consultant negotiators can appraise only if they are a state licensed/certified appraiser and must follow the procedures set by WisDOT designed to adhere to state and federal conflict of interest rules. Otherwise, the dual roles of appraiser and negotiator are not allowed. See 49 CFR, part 24, s. 24.102(n)(3)...

(n) *Conflict of interest.* (1) The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Agency. Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

(2) No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Agency.

(3) An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less. (See appendix A, § 24.102(n).)

Negotiator/relocation agent roles - The same WisDOT policy standards apply to negotiator/relocation agent dual roles as with negotiator/appraiser dual roles. The negotiator may only serve as the relocation agent for the same parcel or project where the estimated total value is \$10,000 or less; and, even then, regional management should use caution in employing this practice. Using a single agent to act as both negotiator and relocation agent has proven to work best when limited to residential relocations. Commercial and farm relocations are typically more complex and can be more problematic. There is also a potential for conflict between the acquisition value, which can be negotiated, and the relocation benefits, which are not negotiable. A reasonable perception may exist that the potential for a conflict of interest may become more significant as the estimated values increase.

False statements - Agents who intentionally make false statements to property owners or fail to provide them with information required under [s. 32.26\(6\), Wis. Stats.](#) may be fined not less than \$50 nor more than \$1,000 or imprisoned for not more than one year in the county jail or both, [s. 32.29, Wis. Stats.](#)

Real Estate Automated Data System (READS) - All acquisition related data must be entered. Step-by-step entry and other instructions for READS can be found in the [READS training and reference manual](#).

### 3.1.3 Owner Contact

Prior to a meeting with the owner and/or owner's representative, the WisDOT negotiator should call the owner and send an introductory letter that provides an overview of the project and the acquisition process as well as plans for a face to face meeting. The letter must include required brochures and sketches of the owner's property specifying the area to be acquired. The letter should be written on approved WisDOT letterhead and the negotiator should be identified as working "on behalf of ...." or "as a representative of" WisDOT.

The introductory letter should be followed by a face to face meeting with the owner and/or owner's representative to answer questions and explain the process in greater detail. The negotiator will then provide the owner a written offer in person or by certified mail.

**Note:** In limited circumstances and with regional RE management approval, telephone/email/on-line negotiation may be conducted rather than a face to face negotiation.

If the property owner chooses an authorized representative to act on his/her behalf, personal contacts with the owner will cease and all further contacts will be with the designated

representative. The negotiator should secure written authorization and contact information for any or all designated representatives.

If unable to secure written direction, thoroughly document the owner's direction to negotiate with the representative in the Negotiation Diary (RE2058).

Trustees and guardians - Sometimes title or interest has been vested in:

- A minor or person adjudged mentally incompetent.
- A trustee not authorized to sell, release or convey the property.

In such situations, the circuit court can authorize and empower the trustee or, in the case of a minor or mentally incompetent person, can authorize the general guardian or special court-appointed guardian to sell and convey title, see [s. 32.15, Wis. Stats.](#)

Absentee owners - Owners, who reside at a location other than on the property to be acquired, or reside on the property only seasonally, can sometimes pose a problem. The acquisition options in these cases are as follows:

- If owner lives within reasonable traveling distance, the preferred method is to meet with owner at their office or place of residence. This allows presentation of all facts and for Real Estate agent to answer unforeseen questions.
- If owner resides in another WisDOT region, pertinent information, including conveyance, may be sent to Real Estate unit of that region, together with a request for them to complete acquisition.
- Out of state owner's will require additional and careful coordination to present all the facts and get questions answered. Remember to use the Negotiation Diary (RE2058) to document activities.

Unknown address/unknown owner - If a landowner of record cannot be located, the Real Estate agent should make a diligent effort to find any possible forwarding address of the landowner. In the event the landowner of record or any party of interest cannot be located, it is then necessary to proceed with the acquisition under the publication provisions found in [s. 32.05\(4\), Wis. Stats.](#) Perform a search of key terms (words) to find more discussion throughout Chapter 3 of this manual.

### 3.1.4 Preparing for Negotiation

Parcel acquisition records - The region is responsible for maintaining official information on all regional projects, including projects handled by consultants. At minimum, each parcel record should contain:

- Agreement for Purchase and Sale of Real Estate (RE1895 short form or RE1618 long form), if applicable.
- All appraisal reports.
- Conveyance form(s) (e.g., deed, TLE, nominal waiver, etc.)
- Copies of any written relocation notices given to a displaced person, if applicable.
- Copy of initiations of negotiations letter.
- Evidence that owner was paid for purchase price and expenses incidental to transfer of property (e.g., copy of payment request, check, certified mail receipts).
- IRS Form W-9.

- Negotiation Diary (RE2058).
- Property inventory forms when there is a purchase/sale of buildings.
- Property's legal description.
- Real Estate Transactions Closing Statement (RE1617), if applicable.
- Statement to the Construction Engineer (RE1528).
- The Rights of Landowners Under Wisconsin Eminent Domain Law brochure.
  - Mailed or given to owners(s) before monetary offer to acquire is made. Delivery must be documented in the parcel acquisition record.
- Title search information.

Parcel preparation and information resources - Agents should familiarize themselves thoroughly with the project and parcel. Resources for information might include:

- Appraisal reports and market studies
- Construction plan and right of way plat
- Design study report
- Environmental document commitments
- Photographs, aerial and others
- Public hearing notes
- Title information
- Topography notes

Title-related matters outside the chain of title - Anticipate potential title-related issues, such as:

- Easements
- Judgments
- Leasehold interests
- Lien holders
- Minors
- Out of state mortgage holders
- Unrecorded probate documents

Work with the owner(s) to get these problems resolved early in the acquisition stage. Recheck the title information immediately prior to negotiations (as well as just before the closing) to be certain you have correct and current information and that the new right of way is still free and clear of any new liens, mortgages, taxes, special assessments, etc. Check previous years' tax bills for special assessments and be alert for actual or planned municipal improvements within the project area that could generate such assessments. Identify potential problems early and address those parcels that could cause problems and that could take longer to process and clear. All acquisition agents must be able to review and explain the legal description. Any questions or concerns regarding the appraisal report should be discussed with the review appraiser before presenting an offer to the owner. Questions about design or construction details should be discussed with the project development supervisor or project engineer.

### 3.1.5 Formal Negotiations

If the acquisition is from a jointly held property, all interested parties should be included in the negotiations, and addressed in any correspondence. At the initial negotiation meeting, each owner should be given a packet of information containing, at a minimum:

1. Appraisal Guidelines and Agreement (RE1003)
2. Copies of all appraisals made on parcel
3. Copies of project's R/W plat showing owner's affected property
4. Initiations of negotiations letter
5. Legal description
6. Map showing all property affected by project
7. Names of at least ten or more neighboring property owners to whom offers will be made
8. Proposed Agreement for Purchase and Sale of Real Estate (RE1895/short form or RE1618/long form)

Negotiation Diary (RE2058) - The purpose of the Negotiation Diary (RE2058) is to present a clear picture or story of what transpired during the negotiation of the parcel or land being acquired. The Negotiation Diary (RE2058) must document ALL discussions with property owners and any others associated with the parcel as well as discussions with other department staff or management. Pay attention to the "remarks" section. In the event of disputes, litigation, audits or other future situations, such documentation will serve as a reference and clearly "tell the story" to those who may not have been involved in the actual acquisition discussions. Number and date each separate entry and indicate who made the contact. Use at least the first initial and full last name of person making the entry. In the case of the parcel's main Real Estate agent, the full name only needs to be entered once. Initials will suffice for the remaining entries. WisDOT Real Estate staff and consultants must use READS to generate the Negotiation Diary (RE2058) document.

Documentation of commitments - Discuss all commitments with the RE and/or Project Development/Construction supervisor, and where applicable, use the Statement to Construction Engineer (RE1528). Copies of the signed form must be included in the acquisition records with a copy to the owner; the original will go to the region project engineer. Be sure to address the paragraph regarding design modifications in this section, enter an N/A where/if applicable. All plan related commitments should be included with the PS&E submittal. Any new commitments made during negotiations must be listed on the Statement to the Construction Engineer (RE1528). It is very important that if no commitments are made, to write "none" or N/A on the form. In all cases (even when no commitments are made), the property owner must sign this form. This will aid all parties should any disputes or uncertainty develop over commitments. Examples of commitments might include:

- Allowing owner to harvest crop in R/W prior to construction.
- Allowing owner to remove old fence by specific date.
- Number and location of driveways to be replaced.

Initiations of negotiations letter - The initiations of negotiations letter includes:

- A statement of tax proration.
- Allocation between land, improvements and damages to remaining property. Fill in all lines. If no improvement allocation or no damages to remainder, indicate "0."
- Approved offering price. Note: Care must be taken that letter describes the number as the department's approved estimate of just compensation and not offering price.
- Description of buildings, improvements and fixtures considered part of acquisition.
- Identification of acquired property interest.
- List of tenant-owned improvements/fixtures.
- List of types/quantities of personal property located on remaining property.
- Statement that determination of just compensation is based on market value and disregards any decrease or increase in market value caused by project.



### 3.1.6 Owner's Appraisal

Owners must be informed of the right to obtain their own appraisal by a qualified appraiser as explained in the Appraisal Guidelines and Agreement (RE1003). Federal rule dictates that agencies can perform a "valuation" study for parcels expected to have a total estimated value \$10,000 or less, and for any parcels estimated to be between \$10,001 to \$25,000 or more, only then must property owners be given the option of a full (detailed) appraisal. In Wisconsin, however, the rule is that all property owners must be given the option of a full (detailed) appraisal for their property. If they choose to "waive" their rights to a full (detailed) appraisal, they must confirm this decision by signing the Nominal Payment Parcel - Waiver of Appraisal Recomm. & Approval (RE1897). WisDOT Real Estate procedure is that a property owner may agree to and sign an appraisal waiver agreement for their property on values estimated to be \$25,000 or less. To be eligible for reimbursement of "reasonable" appraisal fees, owners have 60 days from receipt of the state's appraisal to deliver their appraiser's report to the department. Owners should be cautioned that no payment will be made for appraisals which fail to comply with the guidelines or that are not received or postmarked within the 60-day period. Note: To give the owner and their appraiser more time to complete the report, the affected land owner's appraisal may be initiated prior to negotiations, but it cannot be submitted until after the state has made its formal offer. The 60 days begins upon receipt of the state's appraisal. When delivered in person, the time starts on the day of personal delivery. When mailed by certified mail, three days are added from the date of postmark to the 60-day period. It is the responsibility of the agent to calculate the 60th day for the owner. If the 60th day falls on a Saturday, Sunday or legal holiday, delivery is on the next secular day. See Wis. Stat. Section 990.001(4). Only partial payment may be approved for those fees that are considered excessive or unreasonable by the department. Regional management has the authority to determine if the appraisal complies with the Appraisal Guidelines and Agreement (RE1003), and if the amount is considered reasonable. WisDOT's statutory responsibility to pay the reasonable cost of an appraisal is not subject to or affected by an agreement reached between the property owner and their appraiser. The bill and the Payment Request (RE1630) together with any pertinent correspondence must be included in READS. Regions submit the request for the check to be made payable to the property owner, or to the property owner and appraiser together. With written permission from the property owner, the check can be made payable to only the appraiser. Regardless of the appraisal's compliance with the above reimbursement criteria, the information found within the owner's report should be taken into consideration during the negotiation process when determining if an increase in value is warranted. The BTS-RE review appraiser will assist regions in analyzing complex reports.

### 3.1.7 Related Issues

Design modifications - Significant design changes that would require a change in the plat are typically addressed early in the process and, as a rule, prior to making the initial approved offer to an owner. Minor design modifications, however, sometimes occur later such as for the relocation of driveways, driveway grading beyond the R/W line or when an owner suggests culvert positioning during negotiations, etc. When such suggestions are presented, the RE agent should not make any commitments without prior Project Development Section (PDS) approval. Tell the owner that the matter will need to be discussed with other personnel. In complex situations, it may be advisable to set up another meeting with the owner and include a representative from the regional PDS or other work areas, if necessary, to discuss the matter.

Leasehold interests and tenant owned improvements - Under state law, leasehold interests are not appraised separately. The leased property is appraised with respect to its market value as a whole and the value of the tenant owned property will be allocated in the appraisal. The



allocation could be based on an analysis of lease and or comparable lease data. Perform a search of key terms (words) to find more discussion throughout Chapter 2 of this manual. All real estate, regardless of ownership, needs to be included in the appraisal and acquisition process. The initiation of negotiation letter will contain the allocated value of the leasehold improvements and contain a statement that the indicated values for the leasehold improvements are only an allocation and that the final determination is a matter for the owner and lessee to decide. A copy of the initiations of negotiations letter will also be sent to the lessee. For a leased property, extreme caution must be taken to avoid creating an adverse relationship between lessor and lessee. During acquisition discussions, it is preferable to have both the property owner and lessees present since the agreements of one party may influence the other. When attempts to purchase are unsuccessful with either one or both parties, the only alternative is eminent domain. All parties of interest must join in on the conveyance. If condemnation becomes necessary, legal means may be pursued by the lessor and/or lessee to determine their relative share of the damages paid. The title search typically includes information as to leasehold and lien interests. Examine all documents, such as a lease, lien, or judgment interest. Take care to ascertain which signatures are needed to convey the lease or to clear the lien interest. Lessees may inquire as to the money value of their respective interests. Explain that all interests, collectively, must be recognized, but the department cannot designate the respective amount of individual interests. However, if the interested parties agree to a division of the total payment in writing, separate checks may be issued upon receipt of a request endorsed by all parties concerned.

Release of mineral rights - Obtain a release of damages from persons owning certain mineral rights lying under the real property. A liability exists against anyone who may cause damage against such mineral interest and that person may be required to make monetary restitution. Treat such mineral interests as you would a lien against the real estate.

Unrecorded documents - When discussions with the owner of record reveal they are no longer the owner or there are other unrecorded interests such as land interests, leases, etc., the RE agent must cease all negotiations immediately. All unrecorded interests are to be recorded before negotiations can be continued with the proper principals. In these cases, recording fees can be paid by the department as an incidental parcel expense.

Two WisDOT appraisals - Two appraisals may be advisable when an acquisition presents complex appraisal issues, high value, and/or high potential for litigation. A copy of each appraisal is to be provided to the owner. Negotiation from two appraisals is at the region's discretion.