

FEDERAL REAL PROPERTY ACQUISITION PRACTICES:
SUMMARY OF FINDINGS AND CONCLUSIONS

The Select Subcommittee on Real Property Acquisition was created by resolution of the Committee on Public Works of the House of Representatives, dated August 24, 1961. The subcommittee was directed to make a comprehensive study "to determine whether owners, tenants, and other persons affected by the acquisition of real property in Federal and federally assisted programs receive fair and equal treatment, and adequate compensation, considering the value of their property and the losses and expenses they incur on being required to move from their homes, farms, or business locations." The subcommittee was also directed to develop specific legislative proposals to eliminate inequities or minimize hardships in these programs.

Creation of the subcommittee was prompted by a growing number of complaints to the Congress in recent years, questioning the fairness of government agency land acquisition practices, the sufficiency of traditional standards of compensation, and the adequacy of assistance for persons adversely affected by public improvement programs undertaken by the Federal Government, or with the aid of Federal funds. There was particular concern about the lack of uniformity in the practices of the various programs, so that persons apparently received varying amounts of compensation or assistance depending on the program rather than the actual loss suffered. It was felt that attempts to correct the law's inadequacies by piecemeal legislation might well worsen the situation. Therefore this comprehensive study was ordered to provide information regarding all major programs.

The subcommittee, under the chairmanship of Rep. Clifford Davis of Tennessee, carried on its study through the period of the 88th Congress, including the holding of public hearings in several major urban areas, and compiled its findings and recommendations in Committee Print No. 31, (88th Cong., 2d Sess.), published January 15, 1965.

Following is a summary of the findings and conclusions set forth in the subcommittee's report:

1. The amount of disruption caused by Federal and federally assisted programs is astoundingly large. The accelerated pace of Government activity, supported by broadened concepts of "public use" make any lessening of current activity in the foreseeable future highly unlikely.

2. The market value standard of just compensation under the Fifth Amendment requires payment for the property taken, but does not provide for other losses or expenses, however severe, that may be incurred by property owners or tenants because of the taking of property.

3. Under the judicial standard of compensation, residential tenants ordinarily receive no compensation, and relatively few small business tenants are compensated when the property they occupy is taken. Some 77,800, or 59 percent of the expected annual displacements by Federal and federally assisted programs, will be tenants.

4. Most displacements affect low- or moderate-income families or individuals, for whom a forced move generally is a very difficult experience. The problem is aggravated for the elderly, the large family, and the nonwhite displacee. The lack of standard housing at prices or rents that low- or moderate-income families can afford is the most serious relocation problem. Moving costs, where not reimbursed, and related expenses and losses are substantial burdens. Approximately 111,000 residential displacements are expected annually as a result of Federal or federally assisted programs. Urban renewal will account for 60 percent of these cases, Federal-aid highways 33 percent, and low rent housing 3 percent.

5. Displaced business concerns required to relocate at their own expense often incur substantial economic losses and sometimes suffer hardships. Displacement creates special problems for small businesses that cannot relocate without loss of their established patronage. The problem is most severe for owners of small retail or service establishments that depend primarily on neighborhood trade. Most of the businesses having serious difficulty are very small proprietorships with fewer than four employees.

6. The lack of adequate financing, and the absence of advice and counseling for displaced small business concerns contribute to the high rate of business discontinuance.

7. In contrast to the vast amount of displacement and disruption in present day programs, the market value standard, limiting compensation to the value of the property taken, was adopted by the courts in a comparatively uncomplicated time in our Nation's history, when land was plentiful, and Government acquisitions skirted cities and bypassed homes and businesses, causing few displacements and relatively little damage. Nevertheless the Federal courts have made it plain that they are bound by the established precedents, and that it is the responsibility of the Congress to determine whether other losses suffered by property owners or tenants should be absorbed by the public.

8. The Congress has authorized relocation payments and other assistance for displaced persons in some, but not all Federal and federally assisted programs. There are vast differences in the relocation provisions of the various programs. The scope or amount of the relocation payment or the assistance provided for a displaced person frequently depends more on the program involved than the loss suffered.

9. Concern for the effects of displacement by Government action is consistent with the policy of the Nation to assure economic and social opportunity for every citizen. Economic costs of displacement should be borne by the public on a uniform basis in all programs conducted by the Federal Government, or with the assistance of Federal funds. A broad range of relocation services and other assistance should be provided for all program displacees, consistent with their needs.

10. Present relocation payment provisions, and their administration, particularly in the case of business relocations, are too cumbersome. Current requirements for detailed documentation are costly for the public and for the displaced person. Fixed payment schedules should be provided in all programs, for all residential and most business relocation claims. Simplified procedures would encourage prompt payments and substantial savings in costs of administration, with adequate safeguards for all parties.

11. Many small business concerns suffer substantial economic injury because of the construction of public improvements, although the property they occupy is outside the project boundaries. At present these businesses are not eligible for low interest, displaced business disaster loans since they are not "physically displaced." Loan assistance should be provided for such businesses.

12. The market value standard generally provides a reasonable measure of compensation "for the real property taken", but subsidiary rules relating to the determination of market value in many jurisdictions are not always clear and sometimes result in inequities.

13. There are significant differences among Federal agencies and among Federal, State, and local government agencies with respect to policies and procedures for the acquisition of real property. In some instances, there are material differences in the practices of agencies within the same executive department.

14. It is evident from the above that the Congress did not intend, in enacting the Land Acquisition Policy Act, to provide for a practice whereby property owners would be offered less than the Army's approved value estimates.

15. Every property owner should be entitled to reasonable information concerning the agency's opinion of the value of his property, and he should be entitled to receive an offer for his property at the full amount of the agency's approved appraisal. Any other practice in a situation where, in effect, the owner must sell, is unfair.

16. A general practice of "trading on each property" is undesirable and does not promote public confidence in Government land acquisition activities.

17. Consideration has been given to "the Mayme Riley Problem" in which a private home taken for an urban renewal project was encumbered by trust notes for a total amount far greater than the market value of the real estate.

18. It is suggested that more equitable treatment might be achieved, without distortion of the market value concept of compensation for property taken, if public agencies were authorized to purchase or condemn notes or other evidences of debt in such cases, as well as the real property, each at its market value.

19. Provisions of the Internal Revenue Code relating to involuntary conversions sometimes result in inequities for owners of property taken for public use.

20. Since the Congress has recognized the equity of permitting the deferment of gain on property taken for public use, there seems to be no reason why the property owner's right to reinvest should be limited to real property, in a case where it is more reasonable for him to buy securities, or to buy or establish a business.